

Massachusetts Smart Growth Zoning Overlays: 40R and 40S

Using State Incentives for Local Housing Production

Housing affordability remains one of the most pressing issues in Massachusetts in 2023. Reports since the onset of the COVID pandemic indicate that the Commonwealth is currently [short approximately](#) 108,000 units and will need to [produce up to](#) 200,000 additional housing units by 2030. Unaffordable housing hurts lower-income residents and stymies economic development; as workers choose not to live in Massachusetts or are priced out, we see decreases in employment, available services, and municipal revenue, plus the loss of potential support for locally-owned businesses.

The most effective way to combat unaffordability is to encourage development of new housing units, including [market rate](#) developments; increasing the housing stock will result in lower housing prices. Increasing density around transit and city centers by loosening strict land and zoning regulations—a practice known as “smart growth”—is one of the most effective ways to accomplish this, while simultaneously being more environmentally friendly and reducing systemic zoning structures that perpetuate racial segregation.



In 2004, Massachusetts [enacted](#) the “Smart Growth Zoning and Housing Production Act,” also known as Chapter 40R, to promote smart growth development. It offers financial incentives to cities and towns that adopt zoning overlays for increased density around transit and village centers. With the continued severity of the housing crisis, the need for more municipalities to encourage housing density, and the enactment of [Section 3A](#) of the Zoning Act—colloquially known as the “MBTA Communities Act”—it is important that more municipalities should become aware of and consider initiating plans to create 40R districts. This program not only offers financial payments to municipalities for increasing density, but it offers an easy solution to a new municipal requirement with which many towns in Eastern and Central Massachusetts must comply.

What is 40R?

Under Chapter 40R, Massachusetts communities can designate zoning districts to allow for “as-of-right” higher density construction in return for financial compensation from the state. These incentives are priced depending on the capacity of the district for increased housing, as well as how many actual units are built. These districts typically must be either near transit, an area of concentrated development, or an area suitable for a mixed-use district. The current financial payments of 40R are as follows:

- 1.) **Zoning Incentive Payments:** Payment based on potential new housing units, and paid at the time the zoning district is passed locally. These payments can be used for anything legally allowed by the city.
 - Up to 20 units: \$10,000
 - Between 21-100 units: \$75,000
 - Between 101-200 units: \$200,000
 - Between 201-500 units: \$350,000
 - More than 501 units: \$600,000

- 2.) **Bonus Payments:** Additional payments of \$3,000 for every new unit of housing once the building permit has been issued.

Chapter 40R requires that 20% of the units are affordable. If 25% are affordable, all units will count toward the Chapter 40B goal that communities demonstrate that 10% of their units are affordable. While 40R facilitates the zoning, it does not require housing development, which is within the control of developers’ assessment of the housing market, construction costs, interest rates, etc.

40R District Requirements:

- Must overlay base zoning
- Under 15% of local land area (can be petitioned up to 25%)
- All residential and mixed-use development must be as-of-right
- 20% of housing must be affordable at 80% AMI for 30 years
 - Note that these requirements are minimums. Localities can increase required percentage of affordable housing or reduce the required AMI level to include lower-income households.
- Must provide a minimum allowable density:
 - 8 units/acre for single-family
 - 12 units/acre for 2-3 family
 - 20 units/acre for multi-family
- Provide diverse housing options

Example 40R District: Haverhill

As an example, consider the 40R district in Downtown Haverhill. Located near both the regional bus station and a train station that serves the commuter rail and Amtrak, this 53-acre district satisfied the transportation infrastructural requirement. The [initial proposal](#) identified 526 potential additional units; as of [2016](#), 362 of these units had been built. It offers at least 107 affordable units, a diverse range of housing options, and densities above the minimum requirements.



To calculate the 40R financial reward to date, we combine the Zoning Incentive Payment (>500 potential units) and the Bonus Payments for the built units:

$$\begin{aligned} \text{40R Payment} &= \text{Zoning Incentive Payment} + \text{Bonus Payments} \\ &= \$600,000 + \$3,000 * (362 \text{ units}) \\ &= \$1,686,000 \end{aligned}$$

Haverhill's 40R district was initiated by the mayor in an effort to contribute to a broader urban revitalization effort. The City Council was initially hesitant because they were uneasy about potentially losing discretion in permitting. However, Haverhill completed a mill redevelopment in 2006 under the [Chapter 40B](#) requirements; seeing the success, and hoping to encourage similar redevelopments, City Council eventually passed the 40R resolution. This district overlay laid the groundwork for the development of the Hamel Mill Lofts and the Hayes and Railroad Square Building—305- and 57-unit projects, respectively—and contributed to the goal of reimagining the downtown as a vibrant urban area. Since communities can include detailed design standards in the Chapter 40R district zoning, local control is exerted prior to passage of the 40R zoning. Very little local control is in fact given up.

Initiating and Proposing a 40R District

The beginning stages of planning for a 40R district can be initiated by either the municipality or a private developer. Often the municipality decides that a 40R district is the best way to achieve its broader economic development goals, including efforts to spur economic growth, encourage downtown revitalization, or address affordability concerns. However, it is also [possible](#) for a private entity to initiate a proposal with the city or town in order to build a specific project that would benefit from the overlay.

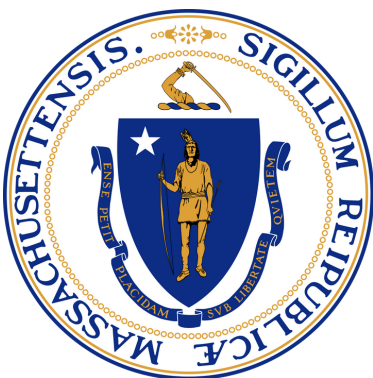
Once the idea for a 40R district has been set in motion, the basic steps to achieve state approval include the following:

- 1.) **Municipality creates a 40R Zoning Application** by creating an initial proposal (usually including design standards), holding preliminary public hearings, and incorporating public comment. This is then sent to the Department of Housing and Community Development (DHCD).
- 2.) **DHCD reviews application eligibility**. The department can then either:
 - (a) approve the proposal without conditions,
 - (b) conditionally approve, requiring certain changes to be made, or
 - (c) deny the request.
- 3.) Assuming at least conditional approval, the **municipality formally adopts the 40R Zoning district** within three years of DHCD eligibility determination. If DHCD required changes, the municipality must address these concerns. Since DHCD approves the zoning measure in advance, there is essentially no risk that the community-passed zoning will be denied for substantive reasons after the vote.
- 4.) **DHCD reviews and accepts the formal adoption** of the zoning district. The amount due for the Zoning Incentive Payments is determined and issued shortly after.

Planning Funding Assistance

There are several grants available to local planning departments to help secure technical or professional assistance in adopting various community projects, including 40R.

- 1.) [Community Planning Grant Program](#), offered by the State, provides grants between \$25,000 - \$75,000 for technical assistance for various planning projects, including proposing 40R zoning districts.
- 2.) [MassDevelopment Real Estate Services \(RES\) Technical Assistance](#) offers assistance from in-house consultants and grants to support phases of community development projects. This has been previously used to fund assistance for 40R proposal. RES is part of the [One Stop for Growth](#) application, allowing for easier application to other municipality-relevant grants.
- 3.) [Planning Assistance Grants](#), issued by the Executive Office of Energy and Environmental Affairs (EEA), are given to municipalities looking for assistance in creating 40R zoning proposals. In FY21, Adams and Manchester by the Sea received grants for \$45,000 and \$23,000 respectively, and Fairhaven received \$45,000 in FY22.
- 4.) [Metropolitan Area Planning Council \(MAPC\)](#) offers grants through the Technical Assistance Program (TAP).



Other Municipal Costs of Development: Introducing 40S

One of the common objections to increased residential density is the potential cost of additional services for new residents, especially public schools. [Chapter 40S](#), “Smart Growth School Cost Reimbursement,” offers a solution to this concern. For cities and towns that approve and implement a 40R district, additional state funds are available to cover costs of educating any public school students who move into the new homes.

The reimbursement covers additional costs of educating children that exceed the sum of: (a) the share of new taxes that would go to education (~52% of new taxes, reflecting the Commonwealth average expense of education) and (b) other increases in state funding targeting education.

Example 40S Payment: Beverly

For an example, let’s consider Beverly, MA. Their proposed 40R district estimates that they may add 79 school-aged children. With the average cost of education at around \$11,671 per student, this reflects \$922,009 in additional education costs. Additional property and excise taxes are expected to cover \$49,751, and additional Chapter 70 payments from the state total \$128,793. Thus, the estimated 40S reimbursement reflects the following calculation:



$$\begin{aligned} \text{40S Reimbursement} &= \text{Cost of Education} - \text{Additional Taxes} - \text{State Funds} \\ &= \$922,009 - \$49,751 - \$128,793 \\ &= \$743,465 \end{aligned}$$

Summary

Chapters 40R and 40S offer ready-made, financially valuable solutions for municipalities to work towards their housing, affordability, and climate goals. They also allow an easy solution to new municipal requirements, including Section 3A (“MBTA Communities Act”); by implementing the zoning overlay, local leaders can satisfy similar requirements while simultaneously gaining the benefits of financial rewards. Districts like Haverhill have already accrued over \$1 million from 40R implementation and construction; from a list of [27 districts](#) from 2017, fourteen have the ability to make more than \$1 million between zoning incentive payments and bonus payments for future construction. Funding from 40S additionally covers marginal costs of educating new public school students that would otherwise be supported by the pre-existing tax base, reducing one common objection of development.

Although the benefits of Chapter 40R are clear, one additional concern for implementation is that many local planning staffs lack the resources to fully develop 40R proposals. This document outlines several grants for technical assistance and planning support provided from various state offices and regional planning organizations.

We hope that more local leaders take advantage of this program. It offers an efficient avenue through which municipalities can add needed housing to their communities—which contribute to improved affordability, increased community inclusion, and decreased emissions, plus support for locally-owned businesses—all while receiving financial rewards from the state to be used for other important services. To make Massachusetts more affordable and solve the housing crisis, all communities and towns must do their part; Chapters 40R and 40S, as well as the technical assistance grants, reduce local burdens and make our housing and climate goals more achievable.



Housing Forward-MA is a nonprofit research and education organization focused on developing and disseminating accurate data related to housing creation in Massachusetts and the broader economic impacts of housing supply and demand. By providing training, education, and model policy proposals our organization will support organizing and advocacy efforts for affordable, workforce housing across the state.

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