

**GUIDANCE for
M.G.L. c. 40R
and
760 CMR 59.00:**

**SMART GROWTH ZONING
AND
STARTER HOME ZONING**

September 2018



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I. INTRODUCTION

The Department of Housing and Community Development (DHCD) is issuing this Guidance to aid in the administration of the Smart Growth Zoning and Starter Home Zoning Programs under M.G.L. c. 40R (Chapter 40R) and 760 CMR 59.00: Smart Growth Zoning Districts and Starter Home Zoning Districts (Regulations). This Guidance describes the process by which Municipalities may propose, for review and approval by DHCD, new 40R Zoning provisions that allow the As-of-right development of high-density Smart Growth housing, Starter Homes and Mixed-use Development within zoning overlay Districts.

Chapter 40R seeks to substantially increase the supply of housing and decrease its cost, by increasing the amount of land zoned for dense housing. It targets the shortfall in housing for low- and moderate-income households, by requiring the inclusion of affordable units in most private projects. The Smart Growth Zoning Overlay District Act, Chapter 149 of the Acts of 2004, codified as M.G.L. c. 40R, was originally enacted to encourage communities to create dense residential or mixed-use Smart Growth Zoning Districts, including a high percentage of affordable housing units, to be located near transit stations, in Areas of Concentrated Development such as existing city and town centers, and in other Highly Suitable Locations.

Chapter 40R provides financial incentives for communities to establish Smart Growth Zoning overlay Districts, as well as bonus payments for units constructed as a result of the greater density afforded in the districts.

Chapter 40R was amended by St. 2016, c. 219, to provide the same financial incentives for Starter Home Zoning Districts, which are districts zoned As-of-right for 4 single-family home units per acre as well as Accessory Dwelling Units, to be located in Highly Suitable Locations that are similar to, but more flexible or expansive than the locations for Smart Growth Zoning. The revised Regulations, promulgated effective December 29, 2017, sets out the application process and requirements for both types of zoning districts. Upon state review and approval of a local overlay district, communities become eligible for Zoning Incentive Payments.

Projects must be developable under the community's Smart Growth Zoning or Starter Home Zoning adopted under Chapter 40R, either As-of-right or through a limited plan review process akin to site plan review. Communities are eligible for Bonus Payments upon the issuance of building permits for Incentive Units.

This Guidance provides explanations of terms used in the Regulations and identifies sources of useful information to assist Municipalities in preparing applications for approval of overlay districts, and to guide developers in preparing applications for plan approval by Municipalities. All capitalized terms used in this Guidance and not specifically defined in this Guidance will have the meaning provided in the M.G.L. c. 40R, § 2 or in the Regulations.¹

¹ See Section II below regarding transition rules for 40R Zoning in process as of December 29, 2017.

Included in this Guidance are forms and templates for submission of application and reporting information to DHCD. Please contact the following DHCD staff with any questions.

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II. TRANSITION RULES

These Transition Rules will assist communities in implementing Smart Growth Zoning and Starter Home Zoning in light of revisions to the Regulations that were promulgated on December 29, 2017 (2017 Version).

1. The version of the Regulations that is in effect as of the date the Municipality holds its preliminary public hearing regarding the adoption of proposed 40R Zoning pursuant to 760 CMR 59.05(1) applies to the notice and the hearing, except that a Municipality that published notice of the hearing on or prior to December 29, 2017 is encouraged but not required to post notice on its website as required by the 2017 Version.
2. Except as provided in this Section and in Section 5 below, the version of the Regulations that is in effect on the date the Municipality submits to DHCD an application for preliminary determination of eligibility of 40R Zoning under 760 CMR 59.03(1) applies to the following:
 - a. The form and content of such application;
 - b. The review and approval standards under 760 CMR 59.03, 760 CMR 59.04, and 760 CMR 59.05(1) to (4), except that in all cases Affordable Units shall be subject to affordable housing restrictions that are approved by DHCD in accordance to DHCD guidance, pursuant to the 2017 Version of 760 CMR 59.04(1)(j); and
 - c. The Plan Review procedure and standards under 760 CMR 59.04(1)(f).

With written notice to DHCD, a Municipality that has submitted an application for preliminary determination of eligibility of 40R Zoning prior to December 29, 2017 may choose to have the 2017 Version apply to the review and approval standards under 760 CMR 59.03, 760 CMR 59.04, and 760 CMR 59.05(1) to (4); and the Plan Review procedure and standards under 760 CMR 59.04(1)(f).

3. The version of the Regulations that is in effect as of the date of submission of a proposed amendment or repeal of a 40R Zoning District, as that term is defined in the 2017 Version, to DHCD under 760 CMR 59.05(5) applies to the amendment or repeal procedure and standards.
4. A Municipality's entitlement to Zoning Incentive Payments or Bonus Payments is determined pursuant to the review and approval standards of the version of the Regulations in effect as of the date of submission of the 40R Zoning Application for the applicable 40R Zoning District, except that the 2017 Version will apply to the determination of whether Zoning Incentive Payments or Bonus Payments will be suspended or required to be repaid pursuant to 760 CMR 59.06(3).

5. Except for 40R Districts that have been approved prior to December 29, 2017, the definitions of Bonus Unit, Highly Suitable Location, and Incentive Unit contained in 760 CMR 59.02 of the 2017 Version shall apply.
6. The 2017 Version applies to all provisions contained in the Regulations not specifically addressed in these Guidelines.

III. DEFINITIONS AND TERMINOLOGY

A. Accessory Dwelling Units in Starter Home Zoning Districts

1. Pursuant to G.L. c. 40R, § 2, Municipalities may permit the construction of Accessory Dwelling Units (ADU) in Starter Home Zoning Districts. For purposes of the Starter Home Zoning program, an ADU is a dwelling unit that is 600 square feet or less in size and exists on the same lot as a Starter Home.
2. ADUs qualify as Bonus Units, which means that ADUs count toward the number of units that are included in determining the Municipality's Bonus Payment. However, ADUs do not qualify as Future Zoned Units or Incentive Units, which means that ADUs do not count toward the number of units that are included in determining the Municipality's Zoning Incentive Payment.
3. 760 CMR 59.04(1)(e)2. requires at least 20% of all units constructed in a Starter Home Zoning District to be Income-restricted units. ADUs built in Starter Home Zoning Districts do not count toward the 20% requirement even if they are Income-restricted.

B. Additional Municipal Standards

1. Municipal Certification of Additional Municipal Standards

Documentation substantiating the imposition of Additional Municipal Standards must generally be certified by a Municipal engineer or public works, board of health or conservation commission official (with relevant expertise). Where a Municipal official with the necessary expertise is not available to provide such certification or such certification/documentation is deemed insufficient, DHCD may accept or, if necessary, require certification provided by a qualified, official from another Massachusetts Municipality, an applicable regional entity (e.g., RPA), or qualified consultant who meets the applicable professional licensing and certification requirements.

2. Massachusetts Department of Environmental Protection (DEP) Determination that Local Conditions Warrant Imposition of Additional Municipal Standards

Relative to 760 CMR 59.05(2)(f)5., if DEP determines that local conditions warrant imposition of Additional Municipal Standards, DHCD will issue a revised preliminary determination of eligibility within 30 days. Absent the intervening receipt of new information (e.g., Developer Certificate of Feasibility) demonstrating, to the satisfaction of DHCD, that the imposition of such Additional Municipal Standards, nonetheless, will not Render Development Infeasible within the Starter Home Zoning District, DHCD may place additional conditions in such revised preliminary determination of eligibility. Such revised Letter of Conditional Eligibility may specify that any corresponding DHCD approval of the

subsequently adopted District be subject to a Letter of Conditional Approval. Such Letter of Conditional Approval may condition eligibility for all or a portion of any associated Zoning Incentive Payment upon submission of building permits, other local permits, information about municipal extension of infrastructure or other adequate information demonstrating that the Additional Municipal Standards will not Render Development Infeasible.

C. Affordable and Income-restricted Income and Asset Limits

1. General

- a. Eligibility for a household to rent or purchase an Affordable or Income-restricted unit based on the household's income and assets must be verified consistent with the requirements outlined in this Guidance.
- b. Household income, including income imputed from assets, must be calculated following HUD requirements and guidance established pursuant to 24 CFR 5.609 and Appendix II.2 of DHCD's G.L. C.40B Comprehensive Permit Projects and Subsidized Housing Inventory Guidelines.
- c. Types and sources of property that are identified as assets in United States Department of Housing and Urban Development's (HUD) Handbook 4350.3, Chapter 5 "Occupancy Requirements of Subsidizing Multifamily Housing Programs" must be included in the calculation of a household's assets.
- d. If there are any conflicts between HUD's regulations and guidance and the explicit requirements under this Guidance, the requirements of this Guidance shall take precedence.

2. Income

- a. In order for a household to be eligible to rent or purchase an Affordable or Income-restricted unit, the household's income must not exceed:
 - i. For Affordable units, 80% of the AMI; and
 - ii. For Income-restricted units, 100% of the AMI.
- b. With DHCD approval, Municipalities may establish a lower income limit in 40R Zoning Districts than is required by Chapter 40R and the Regulations, in which case an eligible household's annual income must not exceed the lower income limit established.

3. Assets

a. Ownership:

- i. For non-age restricted Affordable units, household assets must not exceed \$75,000 in value. For age-restricted Affordable units, household assets must not exceed \$275,000 in value, including equity in a home that is to be sold by the household when purchasing the Affordable unit.
- ii. For Income-restricted units, household assets must not exceed \$95,000 in value. (No Income-restricted units may be age-restricted.)

b. Rental:

- i. For both Affordable units and Income-restricted units, the greater of the following will be added to a household's income: (1) the income derived from the household's countable assets; or (2) an imputation of value calculated in a manner consistent with HUD requirements in place at the time of marketing.
- c. If a household purchasing an ownership unit divests itself of a countable asset for less than full and fair cash value of the asset within two years prior to application, the full and fair cash value of the asset will be used.

4. Verification

- a. Eligibility verification must be completed consistent with DHCD's Affirmative Fair Housing Marketing and Resident Selection Plan Guidelines ("AFHMP Guidelines").
- b. Timeline of Documenting Eligibility:
 - i. For rental units, documentation determining initial eligibility and continuing eligibility upon lease renewal must be current within 60 days of the request for such documentation.
 - ii. For ownership units, documentation determining eligibility must be current within 60 days of the lottery deadline and must be updated within 60 days of the purchase closing date. Applicant households must meet the income and asset limits in effect at the time they apply for a unit and must continue to meet the limits in effect at the time they purchase the unit.

- c. An applicant household must submit the following documents pertaining to all working members of the household to the lottery agent or monitoring agent, as applicable, for purposes of determining eligibility:
 - i. Five (5) most recent paystubs/earning statements;
 - ii. Three (3) most recent bank statements and 401K reports;
 - iii. For ownership units, three (3) most recent federal and state tax returns (including all schedules and forms);
 - iv. For rental units, the most recent year's federal and state tax returns (including all schedules and forms); and
 - v. Other materials deemed necessary by the lottery agent or monitoring agent, as applicable, to verify the household's income or assets.

D. Affordable and Income-restricted Sale Prices and Rents

1. General

This section of the Guidance describes how maximum sale prices and rents must be determined for:

- a. Residential units sold and rented as Affordable units as part of a Project developed under Smart Growth Zoning pursuant to M.G.L. c. 40R, § 6(4) and 760 CMR 59.04(1)(e)1., restricted for sale and rent both at initial occupancy and turnover to households whose income is equal to or less than 80% of area median income as determined by HUD annually for Metropolitan Statistical areas (MSAs) and non-metropolitan counties, adjusted for household size as described below (AMI); and
- b. Residential units sold and rented as Income-restricted units as part of a Project developed under Starter Home Zoning pursuant to M.G.L. c. 40R, § 6(5) and 760 CMR 59.04(1)(e)2., restricted for sale and rent both at initial occupancy and turnover to households whose income is equal to or less than 100% of AMI.

2. Maximum Sale Prices - General

- a. Maximum sale prices for Affordable units and Income-restricted units are established at a level affordable to households at an income 10% below the maximum income eligibility level, creating a "window of opportunity" for income-eligible households to obtain financing for and occupy such units without spending an excessive percentage of their income on housing costs. Area median incomes are based on annual HUD

determinations for MSAs and non-metropolitan counties based on household size. Setting maximum sale prices at what is affordable to a household earning slightly less than the maximum qualifying income also means that the sale prices will be affordable to a range of income-eligible purchasers, making it more likely that units will actually be sold to purchasers meeting income eligibility requirements for Affordable and Income-restricted units.

- b. In the formula described below, maximum sale prices are calculated based not on the actual income of the purchaser, but rather on an imputed household size assuming that the number of household members of the family most likely to occupy the unit will be equal to the number of bedrooms plus one. For example, a two-bedroom unit would be priced based on a formula tied to the applicable percentage of AMI for a household of three, and a three-bedroom unit would be priced based on a formula tied to the applicable percentage of AMI for a household of four.
- c. Municipalities must select a monitoring agent that will be responsible for monitoring Income-restricted and Affordable units in 40R Projects to verify their continued affordability and compliance with a 40R affordable housing restriction approved by DHCD (40R AHR). The monitoring agent must calculate and approve the applicable initial maximum sale prices, as well as resale prices on turnover, of Income-restricted and Affordable units in 40R Projects consistent with this Guidance. The 40R AHR must also require purchasers, upon initial sale and subsequent resales of Income-restricted and Affordable units, to execute an affordable housing restriction in the form of a deed rider approved by DHCD, which incorporates maximum sale price restrictions consistent with this Guidance (40R Deed Rider).

3. Calculating Maximum Sale Prices

- a. *Smart Growth Affordable Units* – The maximum sale price of an Affordable unit must be set so that a household of the imputed size based on the number of bedrooms in the unit plus one, earning 70% of AMI for a household of that size, would not expend more than 30% of monthly income for the Monthly Housing Cost, defined below. See Table 1.1 for an example of how the maximum sale price of an Affordable unit is calculated.
- b. *Starter Home Income-restricted Units* – The maximum sale price of an Income-restricted unit must be set so that a household of the imputed size based on the number of bedrooms in the unit plus one, earning 90% of AMI for a household of that size, would not expend more than 30% of monthly income for the Monthly Housing Cost, defined below. See Table 1.2 for an example of how the maximum sale price of an Income-restricted unit is calculated.
- c. *Monthly Housing Cost* - For purposes of calculating maximum sale prices of Affordable units and Income-restricted units, the Monthly Housing Cost includes mortgage principal and interest (assuming a 5% down payment, 30-year fully amortizing mortgage loan

with a fixed interest rate that is 50 basis points above the then-current average 30-year fixed-rate mortgage interest rate according to the Freddie Mac Primary Mortgage Market Survey), property taxes, hazard insurance (for condominium projects with master insurance policies, the yearly premium is assumed to cost \$4/\$1,000 of the maximum sale price and, for all other projects, \$6/\$1,000 of the maximum sale price), private mortgage insurance (assuming that the yearly premium costs 0.078% of the maximum sale price), and condominium, co-op or homeowner association fee payments.

- d. *Role of Monitoring Agent* – The monitoring agent will be responsible for setting the initial maximum sale price for each Affordable and Income-restricted unit taking into account the then-current applicable AMI and Monthly Housing Costs. 40R Deed Riders executed by each purchaser of Affordable and Income-restricted units will require that, upon resale, a new discounted purchase price will be set by the monitoring agent identified in the applicable 40R AHR, based on the formula described in the 40R Deed Rider. The monitoring agent will be responsible for monitoring and enforcing the maximum sale price restrictions contained in the 40R AHR and 40R Deed Rider upon subsequent resales of both Affordable and Income-restricted units.
- e. *Homeownership Association/Condominium Association Fees* - If a 40R Project will be developed as a condominium or cooperative requiring payment of monthly fees tied to percentage interest, or if the 40R Project will establish a homeownership association requiring payment of association fees, the maximum initial fees must be approved by the monitoring agent and identified in the 40R AHR. The maximum initial fee, in turn, will be taken into account as part of the calculation of the maximum sale price. For condominium units, the ratio of the approved monthly condominium fees to the aggregate monthly fees for the condominium must correspond to the percentage interests assigned to the Affordable units or Income-restricted units, as applicable, in the condominium master deed. This, in turn, may require that a lower percentage interest be assigned to those units in the master deed as compared with market-rate units. The schedule of beneficial interests in the master deed should be reviewed by the monitoring agent to confirm that Affordable units or Income-restricted units, as applicable, have been assigned percentage interests in the condominium that correspond to the ratio of the approved monthly condominium fees to the aggregate monthly fees for the condominium. Condominium projects with extraordinary on-going costs (such as the cost of on-site wastewater treatment plants, elevators, parking garages, etc.) must reflect the cost of operating and maintaining such facilities in their condominium budgets (including replacement reserves).

For the resale of an Affordable or Income-restricted unit, the unit's then-current fee will be used by the monitoring agent to calculate the maximum sale price.

Tables 1.1 and 1.2 below illustrate the calculation of the maximum sale price for Affordable and Income-restricted units, respectively.

Table 1.1: Calculating the Maximum Sale Price of an Affordable Unit

Affordable Unit Maximum Sale Price	
Household Income:	
# of Bedrooms	2
Imputed Household size	3
70% AMI Income	\$61,556
Maximum Monthly Housing Cost @ 70%AMI (\$61,556 x 30% / 12)	\$1,539
Housing Cost:	
Assumptions	
Sales Price	\$199,700
5% Down payment	\$9,985
Mortgage	\$189,715
Interest rate	4.50%
Amortization	30
Tax Rate	\$12.79
Actual Monthly Housing Cost (\$199,700 Sale Price)	\$1,539
Monthly Principal & Interest Payments	\$961.26
Monthly Property Tax	\$213
Monthly Hazard Insurance	\$67
Monthly Private Mortgage Insurance	\$123
Monthly Condo/HOA fees (if applicable)	\$175

Note:

The above table provides the Sale Price for a 2-bedroom Affordable Unit in Bridgewater, MA using the applicable (Barnstable HMFA/MSA) regional income limit for 2017 adjusted to the applicable target household size (i.e., 3-person) and assuming the local 2017 tax rate of \$15.61, a mortgage interest rate of 4.5%, and monthly condo fees of \$175.

The established Sale Price results in a Monthly Housing Cost that matches the Target Monthly Housing Cost for a household earning 70% of the applicable AMI.

The allowable Sale Price will increase or decrease if there are any changes in any of the key variables that determine Monthly Housing Cost. An increase in interest rates, resulting in higher Monthly Principal and Interest Payments for a given loan amount, could drive up the Monthly Housing Cost above the maximum allowable, necessitating a reduction in the Maximum Sale Price to lower monthly debt payments. Conversely, an increase in the AMI would increase the permitted maximum Monthly Housing Cost allowing an increase in the Maximum Sale Price if no other variable changes.

Table 1.2: Calculating the Maximum Sale Price of an Income-restricted Unit

Income-restricted Unit Maximum Sale Price	
Household Income:	
# of Bedrooms	2
Imputed Household size	3
100% AMI Income	\$81,180
Maximum Monthly Housing Cost @ 90%AMI (\$81,180 x 30% / 12)	\$2,030
Housing Cost:	
Assumptions	
Sales Price	\$241,900
5% Down payment	\$12,095
Mortgage	\$229,805
Interest rate	4.50%
Amortization	30
Tax Rate	\$12.79
Actual Monthly Housing Cost (\$241,900 Sale Price)	\$1,827
Monthly Principal & Interest Payments	\$1,164
Monthly Property Tax	\$258
Monthly Hazard Insurance	\$81
Monthly Private Mortgage Insurance	\$149
Monthly Condo/HOA fees (if applicable)	\$175

Note: The above table provides the Sale Price for a 2-bedroom Income-restricted Unit in Bridgewater, MA using the applicable (Barnstable HMFA/MSA) regional income limit for 2017 adjusted to the applicable target household size (i.e., 3-person) and assuming the local 2017 tax rate of \$15.61, a mortgage interest rate of 4.5%, and monthly condo fees of \$175.

The established Sale Price results in a Monthly Housing Cost that matches the Target Monthly Housing Cost for a household earning 100% of the applicable AMI.

The allowable Sale Price will increase or decrease if there are any changes in any of the key variables that determine Monthly Housing Cost. An increase interest rates, resulting in higher Monthly Principal and Interest Payments for a given loan amount could drive up the Monthly Housing Cost above the maximum allowable, necessitating a reduction in the Maximum Sale Price to lower monthly debt payments. Conversely, an increase in the AMI would increase the permitted maximum Monthly Housing Cost allowing an increase in the Maximum Sale Price if no other variables change.

4. Maximum Rents – General

- a. For both Income-restricted and Affordable units, the monthly rent is established at a level affordable to households at a specified income level so that households do not spend more than 30 percent of their monthly income on housing costs. Monthly rent plus any reasonable utility allowance must be less than or equal to 30 percent of imputed monthly income as determined by the AMI of the applicable household size, based on the number of bedrooms plus one.
- b. If the utilities of Income-restricted and Affordable units are separately metered and the utilities are paid by the tenant, the monthly rent must be reduced to reflect the tenant's payment of utilities, based on the area's utility allowance.
- c. The area's utility allowance must be based on the current Section 8 utility allowance for the applicable unit size and type as adopted by the Municipality's housing authority, or, if the Municipality or its region does not have a housing authority, a neighboring Municipality's or region's housing authority, or other non-profit or government organization approved by DHCD or the monitoring agent identified in the 40R AHR.
- d. Initial monthly rents for Income-restricted and Affordable units in a 40R Project must be approved by the monitoring agent. The monitoring agent will be responsible for annually approving changes in monthly rents and utility allowances proposed by owners of 40R Projects consistent with the 40R Regulations and this Guidance.
- e. The monthly rent of Income-restricted and Affordable units may not be increased without the approval of the monitoring agent. An increase may only be allowed in proportion to growth in AMI as determined by HUD.
- f. Applicants for Income-restricted and Affordable units must meet the applicable income limits in effect both at the time they apply for a unit and during their occupancy of the unit. If the income of the tenant household of an Income-restricted or Affordable unit later exceeds 140% of the maximum income permitted, the applicable rent restrictions will no longer apply to that household and that unit will no longer be considered Income-restricted or Affordable. In that case, the next available market-rate unit in the 40R Project with the same or greater number of bedrooms must be rented to an eligible household.

5. Calculating Maximum Rents for Smart Growth Affordable Units

Rents for Affordable units must be set so that a household of the imputed size based on the number of bedrooms in the unit plus one, earning 80% of the applicable AMI, would not spend more than 30% of the household's monthly income for housing costs, which include rent and a utility allowance, if applicable. See Table 2.1 for an example of the rent calculation of two-bedroom and three-bedroom Affordable units in the Barnstable MSA.

Table 2.1: Calculating Affordable Rents

Calculation of Maximum Rent Without Utility Allowance				
Barnstable MSA	Household Size (Number of Bedrooms + 1)	80% of AMI	Monthly Income (80% of AMI)	Maximum Housing Cost/Rent (30% of Monthly Income)
2 Bedroom Unit	3 Person Household	\$61,200	\$5,100	\$1,530
3 Bedroom Unit	4 Person Household	\$68,000	\$5,667	\$1,700

Calculation of Maximum Rent With Utility Allowance						
Barnstable MSA	Household Size (Number of Bedrooms + 1)	80% of AMI	Monthly Income (80% of AMI)	Maximum Housing Cost (30% of Monthly Income)	Utility Allowance	Maximum Rent (Max. Housing Cost Minus Utility Allowance)
2 Bedroom Unit	3 Person Household	\$61,200	\$5,100	\$1,530	\$196	\$1,334
3 Bedroom Unit	4 Person Household	\$68,000	\$5,667	\$1,700	\$240	\$1,460

Note: The above tables provide the respective maximum allowable rent for 2-bedroom and 3-bedroom Affordable units using the Barnstable MSA regional limit for 2017 adjusted to the applicable target household size (i.e., a 3-person household and 4-person household respectively). The Utility Allowances shown include monthly payments for natural gas heating, cooking, water heating, and fees; electricity use and fees; air conditioning; and water as reflected on the chart for Apartments on the Barnstable Housing Authority's Allowances for Tenant Furnished Utilities and other Services, dated November 1, 2016.

6. Calculating Maximum Rents for Starter Home Income-restricted Units

Rents for Income-restricted units must be set so that a household of the imputed size based on the number of bedrooms in the unit plus one, earning 100% of the applicable AMI, would not spend more than 30% of the household's monthly income for housing costs, which include rent and a utility allowance, if applicable. See Table 2.2 for an example of the rent calculation of two-bedroom and three-bedroom Income-restricted units in the Barnstable MSA.

Table 2.2: Calculating Income-restricted Rents

Calculation of Maximum Rent Without Utility Allowance				
Barnstable Town MSA	Household Size (Number of Bedrooms + 1)	100% of AMI	Monthly Income (100% of AMI)	Maximum Housing Cost/Rent (30% of Monthly Income)
2 Bedroom Unit	3 Person Household	\$81,180	\$6,765	\$2,030
3 Bedroom Unit	4 Person Household	\$90,200	\$7,517	\$2,255

Calculation of Maximum Rent With Utility Allowance						
Barnstable MSA	Household Size (Number of Bedrooms + 1)	100% of AMI	Monthly Income (100% of AMI)	Maximum Housing Cost (30% of Monthly Income)	Utility Allowance	Maximum Rent (Max. Housing Cost Minus Utility Allowance)
2 Bedroom Unit	3 Person Household	\$81,180	\$6,765	\$2,030	\$296	\$1,734
3 Bedroom Unit	4 Person Household	\$90,200	\$7,517	\$2,255	\$346	\$1,909

Note: The above tables provide the respective maximum allowable rent for 2-bedroom and 3-bedroom Income-restricted units using the Barnstable MSA regional limit for 2017 adjusted to the applicable target household size (i.e., a 3-person household and 4-person household respectively). The Utility Allowances shown include monthly payments for natural gas heating, cooking, water heating, and fees; electricity use and fees; air conditioning; water; and trash collection as reflected on the chart for Detached Houses on the Barnstable Housing Authority's Allowances for Tenant Furnished Utilities and other Services, dated November 1, 2016.

E. Capital Expenditures

1. General

When M.G.L. c. 40R was originally enacted, a Smart Growth Housing Trust Fund (Trust Fund) was established under M.G.L. c. 10, § 35AA, to be used, without appropriation, by DHCD for the purpose of making payments to Municipalities (including both Zoning Incentive Payments and Density Bonus Payments) (collectively, 40R Payments). Funding for the Trust Fund derived from the sale of state surplus lands, appropriations from the General Fund of the Commonwealth, and monetary sanctions, if any, imposed by DHCD under M.G.L. c. 40R, § 7(c). Because none of those sources was restricted for use for capital expenditures, DHCD did not impose any limitations on Municipalities with respect to the use of 40R Payments.

When it became apparent that the sources designated for deposit into the Trust Fund under M.G.L. c. 10, § 35AA would be insufficient to make required 40R Payments to Municipalities, additional funding sources were required. Pursuant to Section 2B of Chapter 219 of the Acts of 2016 (Chapter 219), the Legislature authorized funding, under Line Item 7004-8016, in the amount of up to \$15,000,000, to recapitalize the Trust Fund. As described in Section 133 of Chapter 219, the source of such funding is the issuance and sale of bonds of the Commonwealth. The Commonwealth's Five-Year Capital Investment Plan for Fiscal Years 2018-2022 specifically contemplates use of capital funding to provide payments to Municipalities.²

The Executive Office for Administration and Finance of the Commonwealth (ANF) is the state agency with authority and responsibility for determining what constitutes a "capital expenditure" and, therefore, an authorized use of the capital funds to be used to make 40R Payments. In response to public comment on the revised Regulations, DHCD is issuing this Guidance to aid Municipalities in understanding what may constitute a capital expenditure, and to refer Municipalities to ANF and Department of Revenue (DOR) resources for further guidance. It is not DHCD's intention to substitute DHCD's judgment for that of ANF or DOR, and Municipalities with further questions should consult those agencies directly.

2. Terminology³

- a. A "capital expenditure" is an expenditure made in acquiring, adding to or bettering a "fixed" or "capital" asset. For accounting purposes, capital expenditures are not charged against current revenue. They are added to capital account or "capitalized" and then may be depreciated, amortized, or recovered when the underlying asset is

² Report available at <http://www.mass.gov/bb/cap/fy2018/dnld/fy18capitalplanma.pdf>. As described in the report, the FY18 capital plan only includes "bond cap" spending, the source of which is general obligation bonds subject to the debt limit issued in a fiscal year to support *capital spending*.

³ Many of the terms used in this Capital Expenditures section are derived from the Budget Terminology list published by ANF and available at <https://www.mass.gov/service-details/budget-terminology#gC>.

sold. This concept should be distinguished from an expenditure or cost which, for accounting purposes, is charged against current revenue (referred to as an “expense”).

- b. The terms “capital asset” and “fixed asset” are used interchangeably. According to the Municipal Finance Glossary published by DOR’s Division of Local Services (DLS),⁴ the term “Capital Assets” includes all tangible property used in the operation of government, which is not easily converted into cash, and has an initial useful life extended beyond a single financial reporting period. DLS’ Municipal Finance Glossary gives examples of capital assets including land and land improvements; infrastructure such as roads, bridges, water and sewer lines; easements; buildings and building improvements; vehicles, machinery and equipment, noting that communities typically define capital assets in terms of a minimum useful life and a minimum initial cost.
- c. This concept of communities “defining” capital assets is important, as Massachusetts gives Municipalities flexibility to develop their own definitions of capital assets as part of their capital improvements program. DLS guidance for Municipalities on developing a capital improvements program⁵ describes the process by which a Municipality should develop the key components of a capital improvements program: a **capital budget** and a **capital program**. As described in DLS’ *Capital Improvement Planning Manual*,⁶ local policymakers define the criteria by which an expenditure is determined to be a capital expenditure or an expense in a departmental operating budget:

“For instance, a policy might state that to qualify as a capital expenditure, a proposed purchase or project must have a useful life of five years or more and must exceed \$25,000 in cost. Both thresholds must be satisfied; otherwise the purchase or project is not a capital item and should be funded as an expense in the departmental operating budget. Local policy may also dictate that any capital expenditure less than \$50,000 should be financed through cash and that requesting departments must clearly state all impacts to the operating budget in their project descriptions.”

⁴ Municipal Finance Glossary, available at <https://www.mass.gov/files/documents/2017/09/08/Municipal%20Finance%20Glossary.pdf>.

⁵ Division of Local Services, Massachusetts Department of Revenue, *Capital Improvement Planning Guide: Developing a Comprehensive Community Program*, August, 2016, available at <http://www.mass.gov/dor/docs/dls/tab/cipguidefinal.pdf>. This guide superseded earlier guidance Municipal Data Management and Technical Assistance Bureau, Division of Local Services, Department of Revenue, *Developing a Capital Improvements Program: A Manual for Massachusetts Communities*, March, 1997.

⁶ *Capital Improvement Planning Manual Forms and Instructions*, August 2016, available at <http://www.mass.gov/dor/docs/dls/tab/cipmanualfinal.pdf>.

- d. Another way of thinking about capital expenditures is that they are typically expenditures that can materially add to the useful life of property and remain in use for an indefinite period of time.⁷ Based on Internal Revenue Service and DLS guidance, capital expenditures may include, but are not limited to:
 - i. Acquisition costs - land, buildings and other capital assets;
 - ii. New building construction or capital improvements to existing infrastructure;
 - iii. Infrastructure such as roads, sidewalks and curbs, bridges, tunnels, electrical lines, water lines, and sewer lines;
 - iv. The cost of acquiring long-term easements over real property;
 - v. Acquisition costs of vehicles, machinery, and heavy equipment, or major building fixtures;
 - vi. The cost of acquiring, creating, or making major renovations to parks and recreational fields;
 - vii. Research and feasibility studies, engineering or design work required for a capital project; and
 - viii. Certain computer equipment and technology.
- e. Expenditures not associated with tangible property or those expenditures associated with tangible property that does not have a minimum useful life span are not capital expenditures. Examples of costs that are **not** capital expenditures include, but are not limited to:
 - i. Operating expenses including rent, salaries, insurance, and utilities;
 - ii. Maintenance expenses;
 - iii. Small purchases with a short life span including most office equipment, purchases associated with meetings and events, and all perishable items; and
 - iv. Ongoing debt service payments.

3. Expenditures In Connection with Privately Owned Project Serving a Public Purpose.

Some Municipalities may wish to make funds available as loans or grants to private parties to further a legitimate public purpose. For example, a Municipality might make a loan of funds to a developer to fund capital expenditures relating to an affordable housing development. While each determination will be fact-specific, a key factor will be whether the Municipality holds a long-term recorded use restriction limiting the use of the property in a manner that furthers a public purpose. For example, M.G.L. c. 184, § 31 specifically authorizes use restrictions, either in perpetuity or for a specified number of years, for several identified purposes, including conservation, historic preservation, agriculture, watershed restriction and affordable housing.

⁷ *Id.*

4. Consistency with Capital Improvements Plan.

For a Municipality with a Capital Improvements Plan, factors relevant to the determination as to whether a particular cost constitutes a “capital expenditure” that may be funded from 40R Payments will include whether the expenditure is associated with tangible property that has a minimum useful life span consistent with the Municipality’s Capital Improvements Plan, and whether the amount of the expenditure exceeds the threshold established under the Municipality’s Capital Improvements Plan.

5. Consultation with Division of Local Services.

This Guidance is intended to offer Municipalities a general sense of the types of expenditures that will qualify as “capital expenditures” that may be funded from 40R Payments. Municipal officials with questions regarding specific proposed expenditures should consult DLS. For contact information and additional DLS guidance, see <https://www.mass.gov/orgs/division-of-local-services>.

F. Cluster Zoning

1. General

This Guidance provides a framework for Municipalities to successfully implement Cluster Zoning in Starter Home Zoning Districts as contemplated by M.G.L. c. 40R and the Regulations.

- a. Cluster Zoning, also sometimes referred to as “open space residential zoning” is premised on the “smart growth” goals of promoting the efficient use of land by minimizing the aggregate land that is developed while preserving open space and mitigating the development’s impact upon surrounding areas.
- b. Specifically, Cluster Zoning is zoning in which (a) the permitted density of residential development is determined for the entire area of a development, rather than on a per-house-lot basis and (b) dimensional requirements such as lot area, frontage, setbacks of structures from lot lines and/or other structures and minimum lot area per dwelling unit are reduced for individual house lots to allow “Cluster Development” - concentration of construction on a smaller part of the land than would be required under conventional zoning. To preserve open space and mitigate the impact of a clustered development on adjacent parcels, under the Regulations, Cluster Development requires permanent conservation of land for passive or active recreational activities, pursuant to a recorded use restriction. *See* 760 CMR 67.02: Cluster Zoning.
- c. For purposes of M.G.L. c. 40R, Cluster Zoning is primarily relevant to the development of Starter Home Zoning Districts, given the density requirements

applicable in a Smart Growth Zoning District under M.G.L. c. 40R, § 6. The lower number of residential units required in a Starter Home Zoning District makes it more feasible to set aside a portion of a development parcel as permanently restricted open space while concentrating residential development in certain portions of the development parcel. In addition, because the Regulations provide greater flexibility in determining whether a particular location will qualify as a Highly Suitable Location for establishment of a Starter Home Zoning District (as opposed to a Smart Growth Zoning District), utilizing Cluster Development techniques is important to assure that the Starter Home Zoning District will serve the statutory goals identified under M.G.L. c. 40R, § 1.

- i. Consistent with the requirements for Smart Growth Zoning Districts, the Regulations allow a Municipality to demonstrate that a proposed Starter Home Zoning District is in a Highly Suitable Location based on its location in either an Area of Concentrated Development or a Substantial Transit Access Area. If a Starter Home Zoning District satisfies the requirements of 760 CMR 59.04 (a)(1) (Substantial Transit Access Area) or 760 CMR 59.04(a)(2) (Area of Concentrated Development), then development within the Starter Home Zoning District must utilize *either* Cluster Development or Low Impact Development Techniques, but Cluster Development is not an absolute requirement.
- ii. If, on the other hand, the Starter Home Zoning District is not within a Substantial Transit Access Area or an Area of Concentrated Development, but qualifies as a Highly Suitable Location solely based on Pedestrian Access to a Pedestrian Destination, pursuant to 760 CMR 67.02: Highly Suitable Location (a)4.b., the Starter Home Zoning District *must* incorporate Cluster Zoning so as to permit Cluster Development. 760 CMR 67.02: Highly Suitable Location (a)3.

2. Considerations to Developing Cluster Zoning

- a. *Density.* To satisfy the Regulations' development density requirements, Starter Home Zoning Districts are required to provide for a minimum allowable As-of-right density of no less than 4 units per acre of Developable Land. In a Starter Home Zoning District that adopts Cluster Zoning the minimum allowable density for a given development parcel may be achieved by clustering development within any specified area of the Developable Land that comprises the development parcel as long as the development conforms to the applicable minimum allowable density. This method of determining the applicable minimum allowable density promotes the flexibility necessary to encourage Cluster Development while also meeting the Starter Home Zoning density requirements.

- b. *Dimensional Requirements.* Cluster Zoning must provide for the reduction or modification of development site sizes, unit placement, shape, and other dimensional requirements for development sites to promote the flexibility needed for Cluster Development(s) within a Starter Home Zoning District.
- c. *Dedicated Open Space.*
 - i. Cluster Zoning must promote permanent conservation of Dedicated Open Space and must provide for a minimum percentage of the Starter Home Zoning District to be Dedicated Open Space that is usable for passive or active recreational activities based on a careful assessment of developable lands (e.g., identifying whether any portion of the developable lands are significantly restrained by existing wetlands resources or whether there are significant parcels with the majority of their developable land in resource areas). The area of a Dedicated Open Space will in no event be required to be more than the amount of open space per dwelling unit required by the underlying zoning.
 - ii. Dedicated Open Space must:
 - 1. Be contiguous (unless it is determined on a case by case basis that allowing noncontiguous Dedicated Open Space promotes the goals of Smart Growth and the protection of identified conservation areas).
 - 2. Be used for the protection of one or more of the areas identified in 760 CMR 59.02: Dedicated Open Space.
 - 3. Wastewater and stormwater management systems serving the SHZ Districts may be located within the Dedicated Open Space.
 - iii. Dedicated Open Space must be conveyed to the Municipality⁸ or subject to a permanent Conservation Restriction or Agricultural Preservation Restriction in accordance with M.G.L. c. 184 § 31, conforming to the standards of the Massachusetts Executive Office of Environmental Affairs, Division of Conservation Services, or Department of Agricultural Resources, as applicable. The Dedicated Open Space must be perpetually kept in an open state, preserved exclusively for its purposes, and maintained in a manner ensuring its suitability for its intended purpose. Any proposed open space that will not be conveyed to the Municipality and does not qualify for

⁸ For purposes of determining the General Land Area Minimum of a Municipality pursuant to M.G.L. c. 40B, § 20 and 760 CMR 56.03(3)(b), Dedicated Open Space that is conveyed to the Municipality will be subtracted from both the numerator and denominator of the General Land Area Minimum calculation.

inclusion in a Conservation Restriction or Agricultural Preservation Restriction or that is rejected from inclusion in these programs by the Commonwealth of Massachusetts shall be subject to a Restrictive Covenant, which shall be approved by and enforceable by the Municipality.

- iv. The Starter Home Zoning must provide for the maintenance of the Dedicated Open Space.

G. Housing History and Strategy

Recent changes to M.G.L. c. 40R and the Regulations afford Municipalities greater flexibility in the documentation they must submit to DHCD to demonstrate their housing history and strategy as part of the documentation required for DHCD to make a preliminary determination of eligibility. Municipalities may now choose to submit an existing Comprehensive Housing Plan or Housing Production Plan (with certain updates, as described below), or a new, streamlined Housing Production Summary, using a template provided by DHCD.

1. Massachusetts Housing Data Portal. As a starting point, whether choosing to submit a new Housing Production Summary or relying on an existing Comprehensive Housing Plan or Housing Production Plan, a Municipality must submit a copy of its **Housing Data Profile** and **Basic Needs Assessment** exported from the **Massachusetts Housing Data Portal** (<http://www.housing.ma/>). This new portal provides an immediately available compilation of information about each Municipality in the Commonwealth, and the ability to produce data exported from the portal⁹ significantly reduces the amount of work needed for Municipalities to document their current demographic and housing data.
2. Housing Production Summary. A Municipality may now utilize a streamlined Housing Production Summary to provide information regarding the Municipality's affordable housing production history, housing needs and demand, development constraints and capacity, and housing goals and strategies. This template provides links to readily available, Internet-based data sources and is designed as a straightforward tool that can be completed by municipal staff. A Municipality may, but is not required to, use a Housing Production Summary template to supplement an existing Housing Production Plan or Comprehensive Housing Plan, particularly if there have been significant changes in housing supply or housing needs since the original plan was created.
3. Housing Production Plan. A Municipality that has a DHCD-approved Housing Production Plan currently in effect may submit the Housing Production Plan, together with the Housing Data Profile and Basic Needs Assessment exported from the Massachusetts Housing Data

⁹ Data from the Massachusetts Housing Data Portal may be exported to a CSV file (a form of Excel file) by selecting the appropriate service (Housing Data Profile or Basic Needs Assessment), then clicking "Export", and following the instructions on the portal to save the document. Column widths may need to be adjusted so that all data is visible.

Portal, to satisfy the requirements of 760 59.03(1)(h). If DHCD has granted certification of compliance with the Housing Production Plan, the Municipality should also submit a copy of the certification letter. A Municipality submitting a Housing Production Plan must document any significant changes since the existing Housing Production Plan was approved (and, if applicable, certified).

4. Comprehensive Housing Plan. A Comprehensive Housing Plan can be any planning document prepared by a Municipality that provides an assessment of the Municipality's housing needs and describes specific strategies, including but not limited to those contained in the 40R Zoning, to address those needs, provided that it meets the following requirements:
 - a. A Comprehensive Housing Plan may be developed as part of the 40R process, but may also take the form of a community development plan or an equivalent document prepared by the Municipality within the past five years, including documents created for another purpose.
 - b. The plan should contain, at a minimum, information comparable to what would need to be provided as part of a Housing Production Summary template. In particular, the plan must contain sufficient information to demonstrate compliance with the following conditions to DHCD approval under 760 CMR 59.04:
 - i. The plan must contemplate development of housing which is appropriate for diverse populations, including households with children, individuals, households including individuals with disabilities, households including elderly persons, and other households. *See 760 CMR 59.04(g).*
 - ii. The plan must comply with the requirements of 760 CMR 59.04(i) regarding occupancy restrictions in a Smart Growth Zoning District or Starter Home Zoning District, as applicable.
 - iii. The plan must be consistent with federal, state and Municipal fair housing laws. *See 760 CMR 59.04(j).*
 - c. If an existing, previously adopted plan did not address all of the areas covered in the Housing Production Summary template, the Municipality may supplement the plan, using the Housing Production Summary template or any other format that provides comparable information.
 - d. A Comprehensive Housing Plan (including any separate documents comprising part of the plan) adopted more than five years prior to the Municipality's application for a preliminary determination of eligibility of 40R Zoning must include an update containing the latest available data (*e.g.*, US Census) corresponding to the data

covered in the initial document, if not covered by the Housing Data Profile and Basic Needs Assessment.

H. Infrastructure Certification

1. As a part of its 40R Zoning Application, a Municipality must provide DHCD with sufficient information to demonstrate that the planned build-out of all Future Zoned Units within a proposed 40R Zoning District will not overburden existing Infrastructure or Planned Infrastructure. Information regarding Planned Infrastructure must include (1) the timing for completion of the improvements¹⁰ and (2) the identity of the entities responsible for completing the improvements.
2. The information related to Infrastructure and Planned Infrastructure in a 40R Zoning Application must be certified by a Municipal engineer, or public works, board of health or conservation commission official of the Municipality submitting the 40R Zoning Application or other person with similar expertise, acceptable to DHCD. "Other person with similar expertise" may refer to:
 - a. a Municipal engineer or public works, board of health or conservation commission official from a different Municipality if the necessary expertise is not available in the Municipality submitting the 40R Zoning Application;
 - b. a staff member of or consultant to a regional planning agency or pertinent state agency who has appropriate technical expertise; or
 - c. a consulting engineer or specialist with appropriate technical expertise hired by either the Municipality or, as applicable and acceptable to DHCD, one or more developers, with corresponding Site Control, of a proposed Project or Projects in the proposed 40R Zoning District.
3. If (1) the certifier of the information presented in the 40R Zoning Application is any party other than a Municipal engineer, or public works, board of health or conservation commission official or other Municipal employee or official with similar expertise who is duly authorized and employed or elected by the Municipality submitting the 40R Zoning Application and (2) the certification relies in whole or in part on Planned Infrastructure, the Municipality must provide a separate certification as to the timing for completion and the identity of the party(ies) responsible for completing the Planned Infrastructure improvements.

¹⁰ The timing of completion is to be within five years of the 40R Zoning Application date, or other reasonable time period approved by DHCD, taking into consideration the anticipated build-out schedule or timeline. 760 CMR 59.03(1)(j).

4. In order to be considered “sufficient,” the information certified in the 40R Zoning Application must include an assessment of the capacity of the existing Infrastructure or any Planned Infrastructure to meet the current demand as well as projected future demand, based on the corresponding number of Incentive Units or Future Zoned Units, as determined by DHCD. In the case of Planned Infrastructure, the information must also address the availability of funds to complete the Planned Infrastructure and must identify any federal, state or local approvals that will be required to undertake such Planned Infrastructure improvements. In addition, if any party other than the Municipality is identified as having responsibility for carrying out any Planned Infrastructure, the 40R Zoning Application must address the capacity and financial strength of the responsible party and any mechanisms utilized by the Municipality to assure the availability of funding to complete the Planned Infrastructure.
5. The definition of Infrastructure includes the following facilities, services, and installations: Pedestrian Access, Multi-modal Access and vehicular access; public and private facilities for storm water and wastewater transport, treatment and disposal; water and power supply lines. For purposes of a Starter Home Zoning District only, Infrastructure shall not be required to include public sewer and/or public water supply. Typically, an Infrastructure assessment will evaluate the water distribution systems and determine if they will be serviced by public water supply, where the connections will occur, and if adequate supply is available.¹¹ The impact of the proposed Future Zoned Units should also assess projected sewage flow rates¹² and the design flow capacity of existing Infrastructure or Planned Infrastructure, the presence of any “nitrogen sensitive areas” designated by DEP in accordance with DEP regulations, as well as access to cable television, telephone, gas and electric services.

I. Low Impact Development Techniques

1. Applicability of Low Impact Development Techniques

DHCD generally encourages the use of Low Impact Development Techniques as incorporated by DEP in its adoption of the Wetlands Protection Act stormwater standards. DEP’s stormwater standards promote the use of low impact development techniques as part of an overall environmentally sensitive site design approach to stormwater management for development projects, consistent with the Smart Growth goal of preserving open space, farmland, natural beauty and critical environmental areas.

¹¹Any build-out proposal that affects public water systems must meet DEP’s minimum distribution standards. Guidance on these standards can be found at <https://www.mass.gov/files/documents/2016/08/pr/glchpt9.pdf>.

¹² Projected flow rates must be based on the quantity of sanitary sewage, expressed in gallons per day, for which a sanitary sewer system or septic system must be designed in accordance with applicable DEP regulations and guidance.

There are two circumstances under which the use of Low Impact Development Techniques is required for DHCD approval of Starter Home Zoning Districts:

- a. *Expedited Review.* Municipalities that wish to qualify for consideration of Starter Home Zoning Districts under the Regulations' expedited review process established in 760 CMR 59.03(2) must utilize Low Impact Development Techniques best practices.
- b. *Qualification Under 760 CMR 59.02: Highly Suitable Location(a)3.* In addition, if a Municipality seeks to qualify a Starter Home Zoning District as a Highly Suitable Location under 760 CMR 59.02: Highly Suitable Location(a)3., the Starter Home Zoning must require all development within the District to utilize Low Impact Development Techniques.

2. DEP Stormwater Standards

When required to adopt Low Impact Development Techniques by the Regulations, Municipalities must utilize Low Impact Development Techniques best management practices (BMP) in accordance with the Massachusetts Stormwater Handbook published by DEP, as the same may be amended from time to time (Stormwater Handbook). In particular, Municipalities must utilize BMPs recognized to be suitable in Volume 2, Chapter 2 of the Stormwater Handbook, which provides technical specifications for BMPs. That section of the Stormwater Handbook provides guidance on how to implement BMPs in engineering designs and illustrates how BMPs can be utilized to achieve compliance with the stormwater standards of the Wetlands Protection Act. Municipalities should refer to the following relevant sections of the Stormwater Handbook for further guidance:

- The Three Components of Stormwater Management, Volume 1, Chapter 2, pp. 1-7;
- Credit No. 1 Environmentally Sensitive Site Development, Volume 3, Chapter 1, pp. 44-46;
- Credit No. 2 Rooftop Runoff Directed to Qualifying Areas, Volume 3, Chapter 1, pp. 46-50;
- Credit No. 3 Roadway, Driveway, or Parking Lot runoff Directed to Qualifying Areas, pp. 50-53;
- Bioretention (rain garden) specifications: Volume 2, Chapter 2, page 23-35;
- Constructed stormwater wetland (including gravel wetlands) specifications: Volume 2, Chapter 2, pp. 36-48;
- Treebox filter specifications: Volume 2, Chapter 2, pp. 61-62;
- Water quality swale: Volume 2, Chapter 2, pp. 77-82;
- Grass Channels: Volume 2, Chapter 2, pp. 73-76; and
- Green roofs: Volume 2, Chapter 2, pp. 112-116.

The Stormwater Handbook is available at DEP's website:

<https://www.mass.gov/guides/massachusetts-stormwater-handbook-and-stormwater-standards>.

J. Roadway and Subdivision Design

To qualify for the expedited eligibility determination process, a proposed Starter Home Zoning District must utilize best practice standards for roadway and subdivision designs as identified in *Sustainable Neighborhood Road Design, A Guidebook for Massachusetts Cities and Towns*, dated May 2011, as the same may be amended from time to time. (Available at: http://www.apa-ma.org/apa-ma_documents/Publications/NRB_Guidebook_2011.pdf)

K. Substantially Developed Land

1. Property currently in use by a national credit tenant will be presumed to be Substantially Developed Land and generally not considered to be a marginal or declining use.
2. Whether or not buildings and other improvements on a particular parcel or portion of a parcel are considered Substantially Developed Land will be assessed in part in relation to what is allowed under the Underlying Zoning. The mere fact that the proposed Smart Growth Zoning would allow more intensive development on a given piece of land than the existing use and improvements, is not a sufficient demonstration that such land is Underutilized Land rather than Substantially Developed Land.
3. For Smart Growth Zoning Districts, parcels or portions of parcels that are generally and substantially occupied as a residential use or are directly serving such use at the time of application for the proposed District, will be presumed to be Substantially Developed Land.
4. Parcels or portions of parcels that are fully occupied, in year round use reasonably consistent with or exceeding the density of the underlying zoning, and are in reasonable condition (e.g., not characterized by substandard, decadent or blighted conditions as such terms apply under M.G.L. c. 121B or other clearly marginal or declining use) shall be presumed to be Substantially Developed Land in Smart Growth Zoning Districts unless the Municipality can demonstrate that such parcels are listed for sale and would be immediately available for viable redevelopment under the Smart Growth Zoning.

L. Three Contiguous Acres for Starter Homes

Solely for the purposes of determining whether the Starter Home Zoning District consists of not less than three contiguous acres of Developable Land area, DHCD may treat land that would otherwise qualify as Substantially Developed Land as Developable Land where there is nonetheless sufficient Developable Land within the Starter Home Zoning District that would allow for the development of at least 12 Starter Homes within the District. In addition, for the

purpose of determining whether the Starter Home Zoning District consists of not less than three contiguous acres of Developable Land, the Developable Land calculation may include qualifying undeveloped or underutilized portions of a given parcel and need not comprise the entire parcel in order for such portions to qualify as Developable Land.

IV. FORMS, TEMPLATES, AND RESOURCES

A. Model Zoning Bylaws

DHCD is currently preparing the Smart Growth Zoning bylaw template. Once it is finalized, this Guidance will be updated to include the template. In the meantime, Municipalities should refer to the Smart Growth Zoning template (and guidance) that is currently available on DHCD's website (<https://www.mass.gov/service-details/chapter-40-r>). The template is accessible by clicking on the "40R Local Smart Growth Zoning Bylaw Guidance" link under the heading "General Information about 40R."

1. Chapter 40R Local Smart Growth Zoning Bylaw Guidance Document and Sample Zoning Bylaw With Comments
(forthcoming)
2. Chapter 40R Local Starter Home Zoning Bylaw Guidance Document and Sample Zoning Bylaw With Comments (see attached)

CHAPTER 40R LOCAL STARTER HOME ZONING BYLAW GUIDANCE DOCUMENT

OVERVIEW

NOTE: Proposed Starter Home Zoning Bylaws must conform substantially to the sample bylaw with all changes redlined (tracked electronically) to the sample bylaw and any changes explained.

This document has been developed by the Department of Housing and Community Development (DHCD) to assist communities in drafting Starter Home zoning bylaws in accordance with M.G.L. chapter 40R (Chapter 40R). DHCD has adopted regulations, 760 CMR 59.00 (the 40R Regulations), that expand upon the requirements of Chapter 40R for the submission of applications and the approval of both Starter Home Zoning and Smart Growth Zoning Overlay Districts under Chapter 40R. Any capitalized terms not defined in this document, shall have the meaning given in the 40R Regulations.

With the 2016 statutory amendments, Chapter 40R encourages communities to create compact residential Starter Home Zoning Overlay Districts (SHZOD), including a substantial percentage of Income-restricted housing units, to be located near transit stations, in Areas of Concentrated Development such as existing city and town centers, and in other Highly Suitable Locations. Projects must be developable under the community's Starter Home Zoning adopted under Chapter 40R, either purely As-of-right or through an As-of-right Plan Review process as provided for in the corresponding definition contained in the sample bylaw below. Upon DHCD's review and approval of a local zoning overlay district, a community becomes eligible for payments administered by DHCD.

DHCD has developed a sample zoning bylaw, with accompanying comments, that addresses the full range of issues that must be included in a community's Starter Home Zoning. The sample bylaw is divided into two main parts with the first containing provisions that apply to all SHZODs and the second containing the establishment, delineation and all other provisions that are specific to a particular SHZOD. DHCD has found that this approach minimizes redundancy and/or extensive amendments should a community decide to establish additional SHZOD. DHCD expects municipalities to submit proposed bylaws redlined against the sample bylaw. All changes from the language of the sample bylaw shall be redlined and explained. Although municipalities may dispense with some of the sample bylaw's provisions, DHCD has highlighted those provisions which are required to be included in the municipal bylaw. In some specific instances, highlighted in the comments, DHCD requires either these specific provisions or language of substantially equivalent effect. Following the sample bylaw will expedite the DHCD review process. The following is an overview of the sample bylaw:

Part A: General Provisions that apply to all Starter Home Zoning Districts

Section A.1 and A.2: Purpose and Definitions

The sample bylaw references Chapter 40R and its housing and Smart Growth goals for Starter Homes in Section A.1, as well as other applicable local purposes. Section A.2 contains specific definitions relating to the sample text; other definitions should be included as necessary. Note

that under the 40R Regulations, the Starter Home Zoning provisions must be in an all-inclusive, separate section of the zoning ordinance or bylaw.

Sections A.3 and A.4: Overlay District, Applicability

The sample bylaw contains provisions clarifying the general scope of any SHZOD and any respective sub-districts, and the relationship of the Starter Home Zoning to underlying provisions of the local zoning bylaw. Consistent with Chapter 40R, the sample bylaw states that a property owner may either develop a Project in accordance with the requirements of the Starter Home Zoning, or in accordance with the requirements of the regulations for use, dimension, and all other provisions of the zoning bylaw governing the underlying zoning district(s).

Section A.5: Permitted Uses

In addition to allowing for different types of Starter Homes and the option of allowing Accessory Dwelling Units, SHZODs can allow for other types of uses including non-residential and mixed-uses. However, DHCD's sample bylaw does not address these additional uses. If a Municipality wishes to allow for mixed-use or commercial projects, please contact DHCD for additional guidance.

Section A.6: Income Restriction

Chapter 40R requires that under the Starter Home Zoning, at least 20% of all Starter Homes, not including Accessory Dwelling Units, constructed as part of a Project be Income-restricted to households at or below 100% of Area Median Income (AMI). Chapter 40R also requires mechanisms to ensure effective monitoring and enforcement. DHCD has developed detailed language in Section A.6 of the sample bylaw to address these statutory requirements; the Starter Home Zoning must contain these provisions, or language of substantially equivalent effect.

Sections A.7 and A.8: Dimensional, Density, and Parking Requirements - General

The sample bylaw includes recommended text, while leaving the actual physical requirements within the District (and any sub-districts) to be defined by each community. The one absolute requirement imposed under Chapter 40R is a minimum residential density: the Starter Home Zoning must allow at least 4 Starter Homes per acre of Developable Land. The Starter Home Zoning may provide for different sub-districts with different types of Starter Homes (e.g., attached or detached) in each, so long as each sub-district meets the minimum density standards of the 40R Regulations and Chapter 40R.

Sections A.9 through A.12: Plan Approval Process

A community may elect to subject some or all Projects within a District to a Plan Approval process. Chapter 40R and the Regulations spell out detailed procedural and substantive requirements for the Plan Approval process, which are reflected in these sections of the sample bylaw. Therefore, DHCD will require the Starter Home Zoning to contain these provisions, or language of substantially equivalent effect. Among other related issues, the sample bylaw addresses the phasing and segmenting of Projects and may allow the Plan Approval Authority

(PAA) to issue waivers from dimensional and other requirements (but not those pertaining to the Income restrictions).

Sections A.13 and A.14: Low Impact Development Techniques and Design Standards – General

As part of the Plan Approval process, Chapter 40R allows the PAA to apply Design Standards, to ensure that a Project is complementary to adjacent buildings and structures and provides for higher density quality development consistent with design features traditionally found in densely settled areas of the community, if any. The Design Standards are subject to DHCD’s review and approval; DHCD may disallow a design standard as unduly restrictive if it would add unreasonable costs or unreasonably impair the economic feasibility of Projects within the District or if the standard is not sufficiently clear such that it conflicts with the requirement that the Starter Home Zoning be As-of-right. Additionally, the Starter Home Zoning must utilize best practices for roadway and subdivision design and Low Impact Development Techniques consistent with DHCD guidance.

Part B: Establishment and Delineation of the Starter Home Zoning Overlay Districts

Section B.1: [Name of District] Starter Home Zoning Overlay District

This part of the sample bylaw provides for the establishment and delineation of individual SHZODs and all other provisions, including permitted uses (including sub-districts); dimensional, density, and parking requirements; and design standards, that are specific to a particular SHZOD. Communities should insert a new section for each additional SHZOD that will be subject to different provisions.

SAMPLE ZONING BYLAW WITH COMMENTS

COMMENTS: The 40R Regulations state that the Starter Home Zoning must be all-inclusive. This means that the development of a Project within the District pursuant to the Starter Home Zoning shall be governed solely by the Starter Home Zoning, without reference to any standards or procedures contained elsewhere in the Zoning Bylaw.

SECTION [x]: STARTER HOME ZONING OVERLAY DISTRICTS (SHZODs)

A. General Regulations that apply to all Starter Home Zoning Districts

1. PURPOSES

The purpose(s) of Starter Home Zoning Overlay Districts is/are:

- a) to encourage the development of Starter Homes in accordance with the purposes of G. L. Chapter 40R.

[add other objectives as applicable]

COMMENTS: Since the Starter Home Zoning must be all-inclusive – that is, no other provisions of the Zoning Bylaw are applicable to a Project being developed pursuant to the Starter Home Zoning within a District - DHCD recommends that the Starter Home Zoning contain a purpose section. The purpose section should, at minimum, state that the Starter Home Zoning will encourage the development of Starter Homes in accordance with the purposes of G.L. Chapter 40R.

2. DEFINITIONS

For purposes of this Section[x], the following definitions shall apply. To the extent that there is any conflict between the definitions set forth in this Section and the Governing Laws, the terms of the Governing Laws shall govern.

Accessory Dwelling Unit - a dwelling unit of 600 square feet or less on the same lot as a Starter Home.

Applicant – the individual or entity that submits a Project for Plan Approval.

Area Median Income – the area-wide median income as determined by HUD, adjusted for household size and using HUD's rules for attribution of income to assets.

As-of-right - a use allowed under Section [x]A.5 without recourse to a special permit, variance, zoning amendment, or other form of zoning relief. A Project that requires Plan Approval by the PAA pursuant to Sections A.9.0 through A.14.0 shall be considered an As-of-right Project.

Department or DHCD - the Massachusetts Department of Housing and Community Development, or any successor agency.

Design Standards – means provisions of Section [x]A.14 made applicable to Projects within the SHZOD that are subject to the Plan Approval process.

Designating Official—the PAA, chief executive of the Municipality, or other municipal official who designates the Monitoring Agent pursuant to Section [x]A.6.2.

Eligible Household - an individual or household whose annual income is less than or equal to 100 percent of the Area-Median Income as determined by the United States Department of Housing and Urban Development (HUD), adjusted for household size, with income computed using HUD's rules for attribution of income to assets.

COMMENTS: The Starter Home Zoning may further decrease the maximum income limits of eligible households (below 100 percent of the Area Median Income as determined by HUD). The Municipality shall be required to prove to DHCD in its submission that any such decrease will not unduly restrict opportunities for development within the proposed District under the Starter Home Zoning consistent with G.L c. 40R, § 6(e), which means that the decrease may not impair the economic feasibility of proposed Projects. See 760 CMR 59.04(1)(e)3.

Governing Laws - G.L. Chapter 40R, 760 CMR 59.00, and DHCD administrative guidance relating to G.L Chapter 40R.

Income-Restricted Homeownership Unit - an Income-Restricted housing unit required to be sold to and occupied by an Eligible Household.

Income Restriction – a restriction imposed on a housing unit which contains affordability provisions consistent with the Governing Laws with respect to Starter Homes and the requirements of Section [x]A.6.5 of this Bylaw.

Income-Restricted Rental Unit - an Income-Restricted housing unit required to be rented to and occupied by an Eligible Household.

Low Impact Development Technique - development techniques suitable to a particular site that protect the natural features of the site, including, without limitation, (a) natural resource oriented site design, (b) appropriately scaled and decentralized stormwater management techniques that limit the rate of off-site storm water runoff (both peak and non-peak flows) to levels substantially similar to natural hydrology (or, in the case of a redevelopment site, that reduce such flows from pre-existing conditions), through means including, bioretention/rain gardens, infiltration/permeable pavements, stormwater planters, vegetated swales, vegetated buffers, cisterns, rain barrels, and green roofs; and (c) appropriately scaled roads.

Monitoring Agent or Administering Agent – the local housing authority or other qualified housing entity designated by the Designating Official, pursuant to Section [x]A.6.2, to review and implement the Income Restriction requirements affecting Projects under Section [x]A.6.0.

Municipality – the [City] [Town] of _____.

PAA Regulations – administrative rules and regulations adopted by the PAA pursuant to Section [x]A.9.3, but not including any ordinance or by-law adopted by the Municipality. Under the 40R Regulations, any change in the PAA Regulations must be reviewed and approved by DHCD.

Plan Approval - standards and procedures which [certain categories of] Projects in the SHZOD must meet pursuant to Sections [x]A.9.0 through [x]A.14.0 and the Governing Laws.

COMMENTS: A Municipality has the option, in Section A.9.1, either to subject all Projects within the SHZOD to the Plan Approval process, or to limit the review process to certain categories of Projects.

Plan Approval Authority (PAA) - the local approval authority authorized under Section [x]A.9.2 to conduct the Plan Approval process for purposes of reviewing Project applications and issuing Plan Approval decisions within the SHZOD.

Project or Development Project - a project that consists solely of residential Starter Homes [and Accessory Dwelling Units, if permitted], parking, and accessory uses, as further defined in Section [x]A.5.1 and undertaken within the SHZOD in accordance with the requirements of this Section [x].

Starter Home - a single-family home not exceeding 1,850 square feet in heated living area, not including any associated Accessory Dwelling Unit.

Starter Home Zoning Overlay District (SHZOD) – the Starter Home Zoning Overlay District established in accordance with this Section [x].

Statutory Affordable Housing Restriction – an affordable housing restriction meeting statutory requirements in G.L. Chapter 184, Section 31, and which contains Income Restrictions.

Zoning Bylaw - the Zoning Bylaw of the Municipality.

[add other definitions as required, either here or in the PAA Regulations]

COMMENTS: Because of the requirement in the 40R Regulations that the local Starter Home Zoning must be all-inclusive, it must contain a definitions section with all defined terms, rather than referring the reader to other sections of the local zoning code. In particular, to satisfy the requirements of Chapter 40R and the 40R Regulations regarding Income-Restricted housing, the following definitions are required by DHCD:

- *Eligible Household*
- *Income Restriction*
- *Income-Restricted Homeownership Unit*
- *Income-Restricted Rental Unit*
- *Monitoring Agent (Administering Agency)*
- *Statutory Affordable Housing Restriction*

The sample bylaw includes certain definitions required by the text. Other definitions are likely to be required (for example, terms used in relation to the use and dimensional provisions of Sections [x]A.5 and [x]A.7)

3. APPLICABILITY OF SHZOD

3.1 Applicability of SHZODs. An applicant may seek development of a Project located within a SHZOD in accordance with the provisions of the Governing Laws and this Section [x], including a request for Plan Approval by the PAA, if necessary. In such case, notwithstanding anything to the contrary in the Zoning Bylaw, such application shall not be subject to any other provisions of the Zoning Bylaw, including limitations upon the issuance of building permits for residential uses related to a rate of development or phased growth limitation or to a local moratorium on the issuance of such permits, or to other building permit or dwelling unit limitations.

COMMENTS: The 40R Regulations require that Projects within a SHZOD shall not be subject to any limitation on the issuance of building permits for residential uses or a local moratorium on the issuance of such permits. Therefore, the Starter Home Zoning must specify that Projects in SHZODs are not subject to any such provisions in the Zoning Bylaw. It is also recommended that the Starter Home Zoning state that a local rate of development provision (if any) does not apply to Projects in SHZODs.

4.2 Underlying Zoning. SHZODs are overlay districts superimposed on all underlying zoning districts. The regulations for use, dimension, and all other provisions of the Zoning Bylaw governing the respective underlying zoning district(s) shall remain in full force, except for those Projects undergoing development pursuant to this Section [x]. Within the boundaries of a SHZOD, a developer may elect either to develop a Project in accordance with the requirements of the Starter Home Zoning, or to develop a project in accordance with requirements of the regulations for use, dimension, and all other provisions of the Zoning Bylaw governing the underlying zoning district(s).

COMMENTS: Chapter 40R and the 40R Regulations state that, within the boundaries of a District, a developer may elect either to develop a Project in accordance with the requirements of the 40R Zoning, or to develop a project in accordance with the requirements of the Underlying Zoning. Therefore, for the sake of clarity, the Starter Home Zoning must acknowledge that the underlying zoning remains in effect, except for Projects specifically being developed under the Starter Home Zoning.

4.3 Administration, Enforcement, and Appeals. The provisions of this Section [x] shall be administered by the building commissioner, except as otherwise provided herein. Any legal appeal arising out of a Plan Approval decision by the PAA under Sections [x]A.9 through [x]A.14 shall be governed by the applicable provisions of G. L. Chapter 40R. Any other request for enforcement or appeal arising under this Section [x] shall be governed by the applicable provisions of G. L. Chapter 40A.

5. PERMITTED USES - GENERAL

The following uses are permitted As-of-Right for Projects within the all SHZODs unless otherwise specified under the corresponding section of the District-specific requirements.

5.1 Residential Projects. A Residential Project within the SHZOD may include:

- a) Starter Homes;
 - b) Accessory Dwelling Units;
 - c) Parking accessory to any of the above permitted uses, including surface and garage-under parking; and
 - d) Accessory uses customarily incidental to any of the above permitted uses.
- [Insert additional text for any additional permitted uses or if there are sub-districts within the District, and the permitted residential uses vary among the sub-districts.]

COMMENTS: Chapter 40R and the 40R Regulations state that Projects must be permitted As-of-right, although they may be subject to Plan Approval by the PAA (see definition of “As-of-right” in Section [x]A.2 above). If there are sub-districts within the District, the Starter Home Zoning must specify which types of residential uses are allowed within each sub-district (see also comment box below the definition of Eligible Household).

Note that Chapter 40R and the 40R Regulations state that, within a Substantially Developed sub-district, the Starter Home Zoning must permit the As-of-right construction of infill housing on existing lots and of additional housing units in existing residential buildings or additions thereto or replacements thereof. Drafters should consult with DHCD on this and other issues if the Starter Home Zoning will include provisions for a Substantially Developed sub-district. See also Section [x]A.7.2.

6. HOUSING AND HOUSING INCOME-RESTRICTION

6.1 Number of Income-Restricted Housing Units. For all Projects, not less than twenty percent (20%) of housing units constructed shall be Income-Restricted. For purposes of calculating the number of Income-Restricted units required within a Project, any fractional unit shall be deemed to constitute a whole unit.

COMMENTS: Chapter 40R and the 40R Regulations require that, under the Starter Home Zoning, not less than 20 percent of all housing units constructed within Projects shall be Income-restricted. The 20% Income-restricted standard applies to all Projects developed under the Starter Home Zoning and subject to this Section [x]A.6. Therefore, the Starter Home Zoning must contain the above language.

With DHCD approval, the Starter Home Zoning may require a higher percentage of Income-restricted units or a percentage of affordable units as defined in the Governing Laws; however, DHCD must approve any such provisions to ensure that they will not “unduly restrict” opportunities for development within the proposed District by impairing the economic feasibility of proposed Projects. Note that for the purposes of satisfying the twenty percent (20%) Income restriction requirement, any units, including Income-restricted units, in a project located within the geographic boundaries of the District, and which receives a project eligibility letter under M.G.L. c.40B after the date upon which the 40R Application was submitted to DHCD, shall be counted toward the twenty percent (20%) Income restriction requirement.

The income threshold for Income-restricted housing units is one hundred percent (100%) of Area Median Income. With DHCD approval, Municipalities may impose a more strict income threshold at a lower percentage of Area median Income in a Project for purposes of counting housing units on the Subsidized Housing Inventory; however, DHCD must approve any such provisions to ensure that they will not impair the economic feasibility of proposed Projects.

6.2 Monitoring Agent. A Monitoring Agent which may be the local housing authority or other qualified housing entity shall be designated by the Designating Official. In a case where the Monitoring Agent cannot adequately carry out its administrative duties, upon certification of this fact by the Designating Official or by DHCD such duties shall devolve to and thereafter be administered by a qualified housing entity designated by the Designating Official. In any event, such Monitoring Agent shall ensure the following, both prior to issuance of a building permit for a Project within the SHZOD, and on a continuing basis thereafter, as applicable:

1. the calculation of sale prices of Income-Restricted Homeownership Units and rents of Income-Restricted Rental Units are consistent with this Section [x]A.6 and the terms of the applicable Statutory Affordable Housing Restriction;
2. the determination of eligibility of households applying for Income-Restricted units is consistent with this Section [x]A.6 and the terms of the applicable Statutory Affordable Housing Restriction;
3. the affirmative fair housing marketing and resident selection plan conforms to all applicable requirements; has been approved by DHCD, and is properly administered;

4. Eligible Households are selected in accordance with the applicable affirmative fair housing marketing and resident selection plan, which provides for the appropriate determination of unit size and preference for each household; and
5. a Statutory Affordable Housing Restriction meeting the requirements of this Section [x]A.6 is approved by DHCD; is executed and recorded with the appropriate registry of deeds; and is fully enforced during its term.

COMMENTS: Chapter 40R and the 40R Regulations state that the Starter Home Zoning shall contain provisions to ensure effective monitoring and enforcement of the affordable housing restriction during the term of Income restriction. Therefore, the Starter Home Zoning must contain this provision, or language of substantially equivalent effect.

6.3 Submission Requirements. As part of any application for Plan Approval for a Project within the SHZOD submitted under Sections [x]A.9 through [x]A.14 (or, for Projects not requiring Plan Approval, prior to submission of any application for a building permit), the Applicant must submit the following documents to the PAA and the Monitoring Agent:

- 1) documentation that the Project complies with the cost and eligibility requirements of Section [x]A.6.4;
- 2) Project plans that demonstrate compliance with the requirements of Section [x]A.6.5; and
- 3) a form of Statutory Affordable Housing Restriction that satisfies the requirements of Section [x]A.6.6.

These documents, in combination, shall be submitted with an application for Plan Approval (or, for Projects not requiring Plan Approval, prior to submission of any application for a building permit), and shall include details about construction related to the provision, within the development, of units that are accessible to individuals with disabilities and units that are appropriate for diverse populations, including households with children, other households, individuals, households including individuals with disabilities, and the elderly.

COMMENTS: Chapter 40R and the 40R Regulations require within a District the development of housing which is appropriate for a diverse population, including households with children, other households, individuals, households including individuals with disabilities, and the elderly. Therefore, the Starter Home Zoning must contain this provision, or language of substantially equivalent effect.

6.4 Cost and Eligibility Requirements. Income-Restricted units shall comply with the following requirements:

1. Income-Restricted units shall be rented or sold, as applicable, to and occupied only by Eligible Households.
2. For an Income-Restricted Rental Unit, the monthly rent payment, including applicable utility allowances, shall not exceed 30 percent of the maximum monthly income permissible for an Eligible Household, assuming a family size equal to the number of bedrooms in the unit plus

one, unless another affordable housing program methodology for calculating rent limits as approved by DHCD applies.

3. For an Income-Restricted Homeownership Unit the monthly housing payment, including mortgage principal and interest, private mortgage insurance, property taxes, condominium and/or homeowner's association fees, and insurance, shall not exceed 30 percent of the maximum monthly income permissible for an Eligible Household, assuming a family size equal to the number of bedrooms in the unit plus one.

Prior to the granting of any [building permit or Plan Approval] for a Project, the Applicant must demonstrate:

- a. to the satisfaction of the Monitoring Agent, that the calculation of the rents or purchase prices, as applicable, of Income-Restricted units is consistent with state and federal affordability guidelines that are applicable to the Municipality; and
- b. to the satisfaction of the Monitoring Agent and the PAA that the Project's affirmative fair housing marketing and resident selection plan and Statutory Affordable Housing Restriction have been approved by DHCD.

COMMENTS: The Starter Home Zoning must contain this provision, or language of substantially equivalent effect. Chapter 40R and the 40R Regulations require that an affordable housing restriction ensure an Income-restricted unit is occupied by an eligible household paying an Income-restricted rent or Income-restricted purchase price during the term of the restriction. The Starter Home Zoning must also contain provisions specifying the method by which such Income-restricted rents or Income-restricted purchase prices are computed.

6.5 Design and Construction. Income-Restricted units shall be finished housing units. Income-Restricted units shall be equitably integrated and dispersed throughout the Project of which they are a part, across each style and size of Starter Home included in the Project and be comparable in initial construction quality, size and exterior design to the other housing units in the Project. Unless expressly required otherwise under one or more applicable state or federal housing subsidy programs, the bedroom-per-unit average for the Income-Restricted Housing must be equal to or greater than the bedroom-per-unit average for the unrestricted/market-rate units.

COMMENTS: Pursuant to the 40R Regulations, Income-restricted units must be equitably integrated and dispersed throughout the District and Project. The Starter Home Zoning must contain this provision, or language of substantially equivalent effect. In order for units to be considered Bonus Units for the purposes of the Governing Laws, (1) each Project must contain a proportionate share of the required percentage of Income-Restricted units across unit sizes and locations, and (2) the units must be equitably distributed throughout each Project in the District across unit sizes and locations.

6.6 Statutory Affordable Housing Restriction. Each Project shall be subject to a Statutory Affordable Housing Restriction which is recorded with the appropriate

registry of deeds or district registry of the Land Court and which contains the following:

1. Specification of the term of the Statutory Affordable Housing Restriction which shall be no less than thirty years;
2. The name and address of the Monitoring Agent with a designation of its power to monitor and enforce the Statutory Affordable Housing Restriction;
3. With respect to homeownership Projects or portions of Projects, a description of the Income-Restricted Homeownership Unit by address and number of bedrooms; the Statutory Affordable Housing Restriction shall apply to the identified Income-Restricted Homeownership Units.
4. With respect to rental Projects or portions of Projects, a description of the overall quantity, initial unit designations and number of bedrooms, and number of bedroom types of Income-Restricted Rental Units; the Statutory Affordable Housing Restriction shall apply to a percentage of rental units of a rental Project with the initially designated Income-Restricted Rental Units identified, and able to float subject to specific approval by DHCD in accordance with the Project's affirmative fair housing marketing and resident selection plan and any applicable DHCD guidance.
5. Reference to an affirmative fair housing marketing and resident selection plan, to which the Income-Restricted units are subject, and which includes an affirmative fair housing marketing program, including public notice and a fair resident selection process. Such plan shall include a preference based on need for number of bedrooms in a unit consistent with applicable DHCD guidance;
6. A requirement that Eligible Household buyers or tenants will be selected at the initial sale or rental, as applicable, and upon all subsequent sales and rentals from a list of Eligible Households compiled in accordance with the affirmative fair housing marketing and resident selection plan;
7. Reference to the formula pursuant to which the rent of an Income-Restricted Rental Unit or the maximum resale price of an Income-Restricted Homeownership Unit will be set;
8. A requirement that only an Eligible Household may reside in Income-Restricted units and that notice of any lease of any Income-Restricted Rental Unit shall be given to the Monitoring Agent;
9. A requirement for effective monitoring and enforcement of the terms and provisions of the Statutory Affordable Housing Restriction by the Monitoring Agent;
10. A requirement that the Statutory Affordable Housing Restriction on an Income-Restricted Homeownership Unit shall run in favor of the Monitoring Agent and the Municipality, in a form approved by DHCD, and shall limit initial sale and re-sale to an Eligible Household which shall occupy the unit as the Household's primary residence;

11. A requirement that the Statutory Affordable Housing Restriction on Income-Restricted Rental Units in a rental Project shall run with the rental Project and shall run in favor of the Monitoring Agent and the Municipality, in a form approved by DHCD, and shall limit rental and occupancy to an Eligible Household;
12. A requirement that the owner[s] or manager[s] of Income-Restricted Rental Unit[s] shall file an annual report to the Monitoring Agent, in a form specified by the Monitoring Agent, certifying compliance with the Income Restriction provisions of this Bylaw and the Statutory Affordable Housing Restriction and containing such other information as may be reasonably requested in order to ensure compliance with the Statutory Affordable Housing Restriction and this Bylaw; and
13. A requirement that residents in Income-Restricted units provide such information as the Monitoring Agent may reasonably request in order to ensure compliance with the Statutory Affordable Housing Restriction and this Bylaw.

COMMENTS: Chapter 40R and the 40R Regulations state that the Starter Home Zoning shall contain provisions to ensure that there shall be effective monitoring and enforcement of the Statutory Affordable Housing Restriction during the term of Income restriction. Therefore, the Starter Home Zoning must contain this provision, or language of substantially equivalent effect.

6.7 Costs of Affirmative Fair Housing Marketing and Resident Selection Plan. The affirmative fair housing marketing and resident selection plan may make provision for payment by the Applicant of reasonable costs to the Monitoring Agent to develop, advertise, and maintain the list of Eligible Households and to monitor and enforce compliance with affordability requirements consistent with the Statutory Affordable Housing Restriction.

COMMENTS: To ensure that the costs of the marketing and enforcement measures are not unduly burdensome, the Starter Home Zoning must contain this provision, or language of substantially equivalent effect.

6.8 No Age Restrictions. Pursuant to 760 CMR 59.04(1)(i)2.ii, no restrictions on age shall be imposed in any Project developed under this Bylaw.

COMMENTS: Pursuant to Chapter 40R and the 40R Regulations, age restrictions cannot be imposed in any Project developed under the Starter Home Zoning.

6.9 3-Bedroom Requirement. At least 50 percent of the Starter Homes to be developed in a proposed Starter Home Zoning District, excluding Accessory Dwelling Units, must contain 3 or more bedrooms. These 3 or more-bedroom units shall be equitably integrated and dispersed among the Starter Homes throughout the SHZOD and within each Project including by unit type and construction phase.

COMMENTS: This provision is required under 760 CMR 59.04(1)(d)4.c. For SHZODs approved under the expedited review process, this provision must require that 100% of the Starter Homes contain at least three bedrooms.

6.10 Phasing. For any Project that is approved and developed in phases in accordance with Section [x]A.9.4, the percentage of Income-Restricted units in each phase shall be at least equal to the minimum percentage of Income-Restricted units required under Section [x]A.6.1. Where the percentage of Income-Restricted units is not uniform across all phases, the unit dispersal and bedroom proportionality requirements under Section [x]A.6.5 shall be applied proportionate to the Income-Restricted units provided for in each respective phase.

COMMENTS: To address the proportionality requirements of the 40R Regulations, the Starter Home Zoning must contain this provision, or language of substantially equivalent effect.

6.11 No Waiver. Notwithstanding anything to the contrary herein, the Income-Restriction provisions in this Section [x]A.6 shall not be waived unless expressly approved in writing by DHCD.

COMMENTS: The 40R Regulations state that the Income restriction requirements may not be waived as part of the Plan Approval process for a Project. Therefore, the Starter Home Zoning must contain this provision.

7. DIMENSIONAL AND DENSITY REQUIREMENTS

7.1 Table of Requirements. Notwithstanding anything to the contrary in this Bylaw, the dimensional requirements applicable in the SHZOD are as follows:

[Insert applicable dimensional requirements. Insert additional provisions if there are sub-districts within the District, and the dimensional requirements vary among the sub-districts.]

COMMENTS: The Starter Home Zoning shall set out the dimensional, use, parking, and other standards applicable to Projects within the District including but not limited to height limits, setbacks, lot areas, lot dimensions, unit to lot ratios, floor area ratios, lot coverage ratios, and open space ratios. (For discussion of parking ratios, parking locations, and roadway design standards, see Sections [x]A.8 and [x]A.14.) The Starter Home Zoning must provide for a minimum allowable As-of-right density of at least 4 Starter Home units per acre for Developable Land zoned for single-family residential use.

If the SHZOD is anticipated to contain only a single Project, then restricting the total number of residential units developable within the SHZOD is permissible, provided that the maximum number will permit the SHZOD to achieve the minimum applicable As-of right density required. Additionally, the Starter Home Zoning must provide for utilization of either Cluster Development or Low Impact Development Techniques.

To qualify for expedited review, the 40R Regulations provide that the Starter Home Zoning shall (1) allow for no more than 30 Starter Homes in a District and (2) require each Starter Home to contain at least 3 bedrooms.

8. PARKING REQUIREMENTS - GENERAL

These parking requirements are applicable to Projects in all SHZOD unless specified otherwise under any alternative or supplementary provisions under the corresponding District-specific requirements.

8.1 Number of parking spaces. Unless otherwise approved by the PAA, the following minimum/maximum numbers of off-street parking spaces shall be provided by use, either in surface parking, within garages or other structures [or on-street:]:

[Insert applicable parking requirements]

The PAA may allow for a decrease in the required parking as provided in Sections [x]A.8.2 and [x]A.8.3 below.

COMMENTS: To support the Starter Home goals of Chapter 40R and encourage alternatives to automobile travel, DHCD encourages communities to consider provisions limiting parking with maximums as an alternative or supplement to setting minimum requirements. Where minimum requirements are deemed necessary, DHCD encourages allowing the reduction of minimum parking requirements beyond what is commonly required. Particularly for locations near transit stations, defining maximum as well as minimum parking requirements can further support the Starter Home goals of Chapter 40R.

8.2 Shared Parking. Minimum parking requirements above may be reduced by the PAA through the Plan Approval process (or, for Projects not requiring Plan Approval, prior to submission of any application for a building permit), if the applicant can demonstrate that shared spaces will meet parking demands by using accepted methodologies (such as the Urban Land Institute Shared Parking Report, or ITE Shared Parking Guidelines).

COMMENTS: Where minimum requirements are deemed necessary, DHCD encourages allowing the reduction of minimum parking requirements if parking is shared by different uses.

8.3 Reduction in parking requirements. Notwithstanding anything to the contrary herein, any minimum required amount of parking may be reduced by the PAA through the Plan Approval process (or, for Projects not requiring Plan Approval, prior to submission of any application for a building permit), if the applicant can demonstrate that the reduced amount of parking will not cause excessive congestion, endanger public safety, or that lesser amount of parking will provide positive environmental or other benefits, taking into consideration:

- a) the availability of surplus off street parking in the vicinity of the use being served and/or the proximity of a bus stop or transit station;
- b) the availability of public or commercial parking facilities in the vicinity of the use being served;
- c) shared use of off street parking spaces serving other uses having peak user demands at different times;
- d) occupancy restrictions which are likely to result in a lower level of motor

- vehicle usage;
- e) impact of the parking requirement on the physical environment of the affected lot or the adjacent lots including reduction in green space, destruction of significant existing trees and other vegetation, destruction of existing dwelling units, or loss of pedestrian amenities along public ways; and
- f) such other factors as may be considered by the PAA.

COMMENTS: DHCD encourages communities to consider provisions allowing the reduction of minimum parking requirements.

9. PLAN APPROVAL OF PROJECTS: GENERAL PROVISIONS

The 40R Regulations state that the Plan Approval provisions of the Starter Home Zoning and/or any separate Design Standards must be clearly written, fairly and consistently applied, and allow for flexibility and creativity, consistent with the goals of Chapter 40R. In addition, to qualify for expedited review for SHZODs pursuant to 760 CMR 59.03(2)(a)6.a., unless the 40R Application is accompanied by a Developer Certificate of Feasibility, Design Standards shall address no more than the size and location of garages/carports, decks, or other non-living area structures associated with a Starter Home or Accessory Dwelling Unit, as applicable, and the basic roof style. The contents of the following Sections [x]A.9 through [x]A.14 are intended to satisfy these regulatory requirements. For any community that subjects Projects to Plan Approval, the Starter Home Zoning must contain these provisions, or language of substantially equivalent effect.

9.1 Plan Approval. An application for Plan Approval shall be reviewed by the PAA for consistency with the purpose and intent of Sections [x]A.9 through [x]A.14. Such Plan Approval process shall be construed as an As-of-right review and approval process as required by and in accordance with the Governing Laws.

[If the Municipality wants separate categories of Projects to be subject to Plan Approval, then insert:

The following categories of Projects shall be subject to the Plan Approval process:

- a) Any Project providing more than [___] residential units.

COMMENTS: The 40R Regulations state that if the Starter Home Zoning provides for Plan Approval of Projects within the District, it shall specify the categories of Projects that will be subject to Plan Approval (defined by size, type, or otherwise). The sample bylaw provides an example of a project-scale threshold of review for a Starter Home Project.

9.2 Plan Approval Authority (PAA). The [name of local approval authority], consistent with G.L. Chapter 40R and 760 CMR 59.00, shall be the PAA, and it is authorized to conduct the Plan Approval process for purposes of reviewing Project applications and issuing Plan Approval decisions within the SHZOD.

COMMENTS: The 40R Regulations state that if the Starter Home Zoning provides for Plan Approval of Projects within the District, it shall specify the PAA. Therefore, DHCD will require the Starter Home Zoning to contain this provision if Projects are subject to Plan Approval.

9.3 PAA Regulations. The PAA may adopt administrative rules and regulations relative to Plan Approval. Such rules and regulations and any amendments thereof must be approved by DHCD before taking effect.

COMMENTS: If the Starter Home Zoning empowers the PAA to adopt rules and regulations for the Plan Approval of Projects, such regulations must be dated and approved by DHCD.

9.4 Project Phasing. An Applicant may propose, in a Plan Approval submission, that a Project be developed in phases subject to the approval of the PAA, provided that the submission shows the full buildout of the Project and all associated impacts as of the completion of the final phase. Any phased Project shall comply with the provisions of Section [x]A.6.9.

COMMENTS: The 40R Regulations permit Projects to be phased; see also Section [x]A.11.4 below. Therefore, DHCD will require the Starter Home Zoning to contain this provision.

10. PLAN APPROVAL PROCEDURES

10.1 Preapplication. Prior to the submittal of a Plan Approval submission, a “concept plan” may be submitted to help guide the development of the definitive submission for Project buildout and individual elements thereof. Such concept plan should reflect the following:

1. Overall building envelope areas;
2. Open space and natural resource areas; and
3. General site improvements, groupings of buildings, and proposed land uses.

The concept plan is intended to be used as a tool for both the Applicant and the PAA to ensure that the proposed Project design will be consistent with the Design Standards and other requirements of the SHZOD.

COMMENTS: Voluntary pre-application provisions are recommended, although Chapter 40R does not permit a Municipality to require a pre-application process.

10.2 Required Submittals. An application for Plan Approval shall be submitted to the PAA on the form provided by the PAA and approved by DHCD. The application shall be accompanied by such plans and documents as may be required and set forth in the PAA Regulations; the application fee specified in the PAA Regulations; and all materials required under Section [x]A.6.3. All site plans shall be prepared by a certified architect, landscape architect, and/or a civil engineer registered in the Commonwealth of Massachusetts. All landscape plans shall be prepared by a certified landscape architect registered in the Commonwealth of Massachusetts. All building elevations shall be prepared by a

certified architect registered in the Commonwealth of Massachusetts. All plans shall be signed and stamped, and drawings prepared at a scale of [one inch equals forty feet (1"=40') or larger], or at a scale as approved in advance by the PAA.

COMMENTS: The 40R Regulations state that if the Starter Home Zoning provides for Plan Approval of Projects within the District, it shall specify the criteria for such review, including the contents of an application for approval of a Project. DHCD recommends that the form of application, and rules governing the processing of the application by the PAA, be included in the PAA Regulations, rather than including such requirements in the Starter Home Zoning. Note that the PAA Regulations will be subject to review and approval by DHCD. Where filing fees are required, documentation must be submitted justifying the required fee(s).

10.3 Filing. An Applicant for Plan Approval shall file the required number of copies of the application form and the other required submittals as set forth in the PAA Regulations with the Municipal Clerk and a copy of the application including the date of filing certified by the Municipal Clerk shall be filed forthwith with the PAA.

COMMENTS: DHCD will require the Starter Home Zoning to contain this provision if Projects are subject to Plan Approval.

10.4 Circulation to Other Boards. Upon receipt of the application, the PAA shall within 5 business days provide a copy of the application materials to the [Select Board / City Council], Board of Appeals, Board of Health, Conservation Commission, Fire Department, Police Department, Building Commissioner, Department of Public Works, the Monitoring Agent (for any Project subject to the Income-Restriction requirements of Section [x]A.6), and other municipal officers, agencies or boards for comment, and any such board, agency or officer shall provide any written comments within 60 days of its receipt of a copy of the plan and application for approval.

COMMENTS: If an application is to be referred to any municipal officer, agency or board, including but not limited to the Monitoring Agent referenced in Section A.6.0, DHCD will require the Starter Home Zoning to contain this provision.

10.5 Hearing. The PAA shall hold a public hearing for which notice has been given as provided in G.L. Chapter 40A, § 11. The decision of the PAA shall be made, and a written notice of the decision filed with the Municipal Clerk, within 120 days of the receipt of the application by the Municipal Clerk. The required time limits for such action may be extended by written agreement between the Applicant and the PAA, with a copy of such agreement being filed in the office of the Municipal Clerk. Failure of the PAA to take action within said 120 days or extended time, if applicable, shall be deemed to be an approval of the Plan Approval application.

COMMENTS: DHCD will require the Starter Home Zoning to contain this provision if Projects are subject to Plan Approval.

10.6 Peer Review. For larger, more complex Projects or other circumstances where the PAA determines that it may be appropriate to utilize peer review, the Applicant shall be required to pay for reasonable consulting fees to provide peer review of the Plan Approval application, pursuant to G.L. Chapter 40R, § 11(a). Such fees shall be held by the Municipality in a separate account and used only for expenses associated with the review of the application by outside consultants, including, but not limited to, attorneys, engineers, urban designers, housing consultants, planners, and others. The submissions required of the Applicant and the scope of any such peer review must maintain a proportionality and rational nexus to the potential impacts of the Project on the site and on nearby land. Any surplus remaining after the completion of such review, including any interest accrued, shall be returned to the Applicant forthwith.

COMMENTS: The scale and nature of most Starter Home Projects will likely not necessitate peer review; however, if an application is to be reviewed by outside consultants, DHCD will require the Starter Home Zoning to contain this provision. DHCD recommends that the PAA regulations specify the amount of fees.

11. PLAN APPROVAL DECISIONS

11.1 Plan Approval. Plan Approval shall be granted where the PAA finds that:

1. the Applicant has submitted the required fees and information as set forth in the PAA Regulations; and
2. the Project as described in the application meets all of the requirements and standards set forth in this Section [x] and the PAA Regulations, or a waiver has been granted therefrom, including written confirmation by the Monitoring Agent that all requirements of that Section have been satisfied;
3. the Project's affirmative fair housing marketing and resident selection plan and Statutory Affordable Housing Restriction have been approved by DHCD, or the PAA approval is conditioned upon DHCD granting approval of the Project's affirmative fair housing marketing and resident selection plan and Statutory Affordable Housing Restriction; provided that if any provision in the PAA decision is in conflict with DHCD's requirements for affirmative fair housing marketing and resident selection, DHCD's requirements shall control; and
4. any extraordinary adverse potential impacts of the Project on nearby properties have been adequately mitigated.

The PAA may attach conditions to the Plan Approval decision that are necessary to ensure substantial compliance with this Section [x], or to mitigate any extraordinary adverse potential impacts of the Project on nearby properties. Any conditions and fees imposed upon the Applicant must be proportional and have a rational nexus to the potential impacts of the Project on the site and on nearby land.

COMMENTS: The 40R Regulations state that if the Starter Home Zoning provides for Plan Approval of Projects within the District, it shall specify the criteria upon which the PAA may condition its approval. DHCD will require the Starter Home Zoning to contain this provision if Projects are subject to Plan Approval.

11.2 Plan Disapproval. A Plan Approval application may be disapproved only where the PAA finds that:

1. the Applicant has not submitted the required fees and information as set forth in the Regulations; or
2. the Project as described in the application does not meet all of the requirements and standards set forth in this Section [x] and the PAA Regulations, or that a requested waiver therefrom has not been granted; or
3. it is not possible to adequately mitigate extraordinary adverse Project impacts on nearby properties by means of suitable conditions.

COMMENTS: The 40R Regulations state that if the Starter Home Zoning provides for Plan Approval of Projects within the District, it shall specify the criteria upon which the PAA may disapprove a proposed Project, or condition its approval. Chapter 40R states that a proposed Project may be denied Plan Approval only on the grounds that:

- 1) the Project does not meet the conditions and requirements set forth in the Starter Home Zoning;*
- 2) the applicant failed to submit information and fees required by the Starter Home Zoning and necessary for an adequate and timely review of the design of the Project or potential Project impacts; or*
- 3) it is not possible to adequately mitigate significant adverse Project impacts on nearby properties by means of suitable conditions.*

To implement this requirement of the 40R Regulations, DHCD will require the Starter Home Zoning to contain this provision if Projects are subject to Plan Approval. The Starter Home Zoning must require that any conditions imposed upon the Applicant by the PAA be proportional to and have a rational nexus to the potential impacts of the Project on the site and on nearby land.

11.3 Waivers. Upon the request of the Applicant and subject to compliance with G.L. c. 40R, 760 CMR 59.00 and Section [x]A.6.10, the Plan Approval Authority may waive dimensional and other requirements of this Section [x], including the Design Standards, in the interests of design flexibility and overall project quality, and upon a finding of consistency of such variation with the overall purpose and objectives of the SHZOD, or if it finds that such waiver will allow the Project to achieve the density, Income-Restriction, mix of uses, and/or physical character allowable under this Section [x].

COMMENTS: Chapter 40R states that the Starter Home Zoning may allow the PAA, through the Plan Approval process, to waive specific dimensional and other standards (other than Income-restriction requirements) otherwise applicable to a Project, if it finds that the waiver will allow the Project to achieve the density, Income-restriction, mix of uses, and/or physical character allowable under the Starter Home Zoning, and that the Project is consistent with the Design Standards. The 40R Regulations state that the waiver criteria must be defined in the Starter Home Zoning. Therefore, if the community intends to grant waivers through the Plan Approval process, the Starter Home Zoning must contain this provision.

11.4 Project Phasing. The PAA, as a condition of any Plan Approval, may allow a Project to be phased at the request of the Applicant, or it may require a Project to be phased for the purpose of coordinating its development with the

construction of Planned Infrastructure Improvements (as that term is defined under 760 CMR 59.00), or to mitigate any extraordinary adverse Project impacts on nearby properties. For Projects that are approved and developed in phases, unless otherwise explicitly approved in writing by DHCD in relation to the specific Project, the proportion of Income-Restricted units shall be at least equal to the minimum percentage of Income-Restricted units required under Section [x]A.6.1.

COMMENTS: The Chapter 40R Regulations state that 40R Zoning may permit the PAA to allow proposed Projects to be phased for the purpose of coordinating development with the construction of Planned Infrastructure Upgrades that are identified in the 40R Application or that are required to mitigate any extraordinary adverse Project impacts on neighboring properties. For Projects that are approved and developed in phases, the proportion of Income-Restricted units shall be at least equal to the minimum percentage of Income-restricted units required under Chapter 40R, the 40R Regulations and Section [x]A.6.1. Therefore, DHCD will require the Starter Home Zoning to contain this provision if Projects are subject to Plan Approval.

11.5 Form of Decision. The PAA shall issue to the Applicant a copy of its decision containing the name and address of the owner, identifying the land affected, and the plans that were the subject of the decision, and certifying that a copy of the decision has been filed with the Municipality Clerk and that all plans referred to in the decision are on file with the PAA. If twenty (20) days have elapsed after the decision has been filed in the office of the Municipality Clerk without an appeal having been filed or if such appeal, having been filed, is dismissed or denied, the Municipal Clerk shall so certify on a copy of the decision. If a plan is approved by reason of the failure of the PAA to timely act, the Municipal Clerk shall make such certification on a copy of the application. A copy of the decision or application bearing such certification shall be recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or recorded and noted on the owner's certificate of title. The fee for recording or registering shall be paid by the Applicant.

COMMENTS: DHCD will require the Starter Home Zoning to contain this provision if Projects are subject to Plan Approval.

11.6 Validity of Decision. A Plan Approval shall remain valid and shall run with the land indefinitely, provided that construction has commenced within two years after the decision is issued, which time shall be extended by the time required to adjudicate any appeal from such approval and which time shall also be extended if the Project proponent is actively pursuing other required permits for the Project or there is other good cause for the failure to commence construction, or as may be provided in a Plan Approval for a multi-phase Project.

COMMENTS: DHCD recommends that the Starter Home Zoning contain this provision if Projects are subject to Plan Approval.

12. CHANGE IN PLANS AFTER APPROVAL BY PAA

12.1 Minor Change. After Plan Approval, an Applicant may apply to make minor changes in a Project involving minor utility or building orientation adjustments, or minor adjustments to parking or other site details that do not affect the overall buildout or building envelope of the site, or provision of open space, number of housing units, or housing need or Income-Restriction features. Such minor changes must be submitted to the PAA on redlined prints of the approved plan, reflecting the proposed change, and on application forms provided by the PAA. The PAA may authorize such changes at any regularly scheduled meeting, without the need to hold a public hearing. The PAA shall set forth any decision to approve or deny such minor change by motion and written decision, and provide a copy to the Applicant for filing with the Municipal Clerk.

COMMENTS: DHCD recommends that the Starter Home Zoning contain this provision if Projects are subject to Plan Approval.

12.2 Major Change. Those changes deemed by the PAA to constitute a major change in a Project because of the nature of the change in relation to the prior approved plan, or because such change cannot be appropriately characterized as a minor change as described above, shall be processed by the PAA as a new application for Plan Approval pursuant to Sections [x]A.9 - through [x]A.14.

COMMENTS: Starter Home Zoning may apply Design Standards to Starter Home Zoning Districts; the language below represents a sample of Design Standards for Starter Homes generally. However, in an application for preliminary determination of eligibility for a SHZOD that is seeking expedited review, the Design Standards shall address no more than the size and location of garages/carports, decks or other non-living area structures associated with a Starter Home or Accessory Dwelling Unit, as applicable, and the basic roof style.

13. LOW IMPACT DEVELOPMENT TECHNIQUES

13.1 Terms. In these Sections A.13 and A.14, the words “shall,” “should,” and “may” are used to describe specific conditions. To clarify the meanings intended by the use of these words, the following definitions apply:

- A. Shall: A mandatory condition. Where certain requirements in the design or application of the standard are described with the “shall” stipulation, it is mandatory that these requirements be met.
- B. Should: An advisory condition. Where the word “should” is used, a condition is considered advisable, but is not mandatory. Noncompliance with a condition stipulated with the word “should” will not be the basis for denial of Plan Approval.
- C. May: A permissive condition. No requirement or recommendation is intended.

13.2 Surfacing, Drainage, & Irrigation

- 1. In any Project undergoing the Project Approval process:
 - A. Low Impact Development Techniques should be used throughout the site to the extent feasible.
 - B. Natural drainage courses should be utilized insofar as possible.

- C. Curbing shall be required only as necessary to limit off pavement vehicle access or for pedestrian safety, unless other suitable materials are used.
 - D. All Low Impact Development stormwater features, detention, and filtration systems shall be designed to conform to the most recent edition of the Massachusetts Stormwater Handbook of the Massachusetts Department of Environmental Protection.
 - E. Impervious surface should be minimized.
 - F. Paved roadway, parking, and other impervious areas should be drained toward areas of low impact development practices such as bioretention areas (rain gardens), roadside swales and infiltration structures.
2. Low Impact Development Techniques employ a variety of natural and built features that:
- A. Collect and treat stormwater runoff close to its source;
 - B. Reduce the rate of runoff;
 - C. Filter out its pollutants; and
 - D. Facilitate the infiltration of water into the ground.

Rather than collecting runoff in piped or channelized networks and controlling the flow downstream in a large stormwater management facility, Low Impact Development Techniques take a decentralized approach that disperses flows and manages runoff closer to where it originates, and incorporates a set of overall site design strategies as well as highly localized, small-scale, decentralized source control techniques such as, for example, rain gardens, roof run-off collection or infiltration system, and permeable paving.

3. Roads, driveways and parking areas shall be graded, surfaced with asphalt, concrete, or other suitable non-erosive material, and drained in a manner to prevent nuisance of standing water, erosion, or excessive water flow across abutting streets or ways, within the proposed parking area, to abutting properties, and to wetland resource areas; natural drainage courses shall be utilized insofar as possible. Pervious asphalt, pervious concrete, pervious pavers or reinforced turf should be used where consistent with sound engineering practices, such as in low traffic volume areas and parking areas located in areas furthest from the buildings being served. To the extent feasible and practical, stormwater management shall incorporate Low Impact Development Techniques.

14. DESIGN STANDARDS - GENERAL

[If the Design Standards are to be contained in the SHZ, the following provisions should be adopted:

14.1 Adoption of Design Standards. Any Project undergoing the Plan Approval process shall be subject to Design Standards as set forth or referenced in the Design Standards section below corresponding to a specific SHZOD.

14.2 Purpose. The Design Standards are adopted to ensure that the physical character of Projects within the SHZOD:

1. will be complementary to nearby buildings and structures;
2. will be consistent with the Comprehensive Housing Plan, an applicable master plan, an area specific plan, or any other plan document adopted by the Municipality and approved by DHCD as satisfying the corresponding consistency requirements under 760 CMR 59.04(1)(f)3.b.; and
3. will, as applicable, provide for compact quality development consistent with the character of building types, streetscapes, and other community features traditionally found in densely settled areas of the Municipality or in the region of the Municipality.

[If the Design Standards are to be contained within the PAA regulations, the following provisions should be adopted:

14.1. Design Standards. The PAA may adopt, by simple majority vote, Design Standards which shall be applicable to Projects subject to Plan Approval by the PAA. Such Design Standards must clearly distinguish standard requirements from recommendations or guiding principles and must be articulated objectively so that compliance can be reasonably interpreted and measured. Such Design Standards may only address:

1. for expedited review of SHZODs without the submission of a Developer's Certificate of Feasibility: the size and location of garages or carports decks or other non-living area structures associated with a Starter Home or Accessory Dwelling Unit, and basic roof styles.
2. for standard review of SHZODs: the scale and proportions of buildings, the alignment, width, and grade of streets and sidewalks, the type and location of infrastructure, the location of building and garage entrances, off street parking, the protection of significant natural site features, the location and design of on-site open spaces, exterior signs, and buffering in relation to adjacent properties.] DHCD may, at its discretion, require Design Standards to contain graphics illustrating a particular standard or definition in order to make such standard or definition clear and understandable.]

14.2. DHCD Approval. After adopting Design Standards, the PAA shall submit Design Standards to DHCD for approval. Design Standards shall not take effect until approved by DHCD and filed with the Municipal Clerk. In submitting proposed Design Standards for DHCD approval, the PAA shall also submit sufficient documentation clearly showing that the proposed Design Standards will not add unreasonable costs to development Projects or unreasonably impair the economic feasibility of a Project. Unless it is a Developer Certificate of Feasibility under the 40R Regulations, a letter from a developer, property owner or other interested party indicating that the Design Standards will not add unreasonable costs or unreasonably impair the economic feasibility of a Project shall not constitute sufficient documentation. In its discretion, DHCD may disapprove Design Standards if it finds that the PAA has not adopted objective Design Standards or has not submitted such documentation.

14.3. Plan Approval. An application for Plan Approval that has been submitted to the Municipal Clerk pursuant to this Section [x] shall not be subject to Design Standards that have not been approved by DHCD and filed with the Municipal Clerk.]

COMMENTS: For non-expedited 40R Applications for Starter Homes, Design Standards may address some or all of the following factors:

- a) the scale, proportions, and exterior appearance of buildings;*
- b) the placement, alignment, width, and grade of streets and sidewalks;*
- c) the type and location of infrastructure;*
- d) the location of building and garage entrances;*
- e) off-street parking;*
- f) the protection of significant natural site features;*
- g) the location and design of on-site open spaces, landscaping, and exterior signs; and*
- j) buffering in relation to adjacent properties.*

Under the Chapter 40R Regulations, the Municipality has the option either to include the Design Standards within the Starter Home Zoning, or to make them a part of the PAA Regulations. In either case, they must be reviewed and approved by DHCD before they can take effect. The Municipality must demonstrate to the satisfaction of DHCD that its Design Standards will not Unreasonably Impair the development of Projects in the District: that means that the Design Standards may not add unreasonable costs or unreasonably diminish the economic feasibility of proposed Projects. DHCD may disapprove a proposed District if the Design Standards fail to meet this test.

To qualify for expedited review for SHZODs, unless the 40R Application is accompanied by a Developer Certificate of Feasibility, the Design Standards may only address the size and location of garages or carports, decks or other non-living area structures associated with a Starter Home or Accessory Dwelling Unit, and basic roof styles. Additionally (without regard to whether a Developer Certificate of Feasibility is submitted), the Starter Home Zoning must utilize best practices for roadway and subdivision design and Low Impact Development Techniques consistent with DHCD guidance.

15. SEVERABILITY.

If any provision of this Section [x] is found to be invalid by a court of competent jurisdiction, the remainder of Section [x] shall not be affected but shall remain in full force. The invalidity of any provision of this Section [x] shall not affect the validity of the remainder of the Municipality's Zoning Bylaw/Ordinance.

COMMENTS: DHCD recommends that the Starter Home Zoning contain this section.

B. Establishment and Delineation of the Starter Home Zoning Overlay Districts

1. [NAME OF DISTRICT] START HOME ZONING OVERLAY DISTRICT

a.1 Establishment. The [District Name] Starter Home Zoning Overlay District, hereinafter referred to as the "SHZOD," is an overlay district having a land area of approximately __ acres in size that is superimposed over the underlying zoning district (s) and is shown on the Zoning Map as set forth on the map entitled

“[Name of District] Starter Home Zoning Overlay District, dated ____, prepared by ____.” This map is hereby made a part of the Zoning By-law and is on file in the Office of the Municipal Clerk.

COMMENTS: The Starter Home Zoning must specify that the District is an overlay district. DHCD will further require that the Starter Home Zoning sufficiently identify the SHZOD overlay map. The Starter Home Zoning must state that the map is part of the local zoning bylaw and is on file in the office of the Municipal clerk.

a.2 Sub-districts. The SHZOD contains the following sub-districts: [e.g., Detached Starter Home with Accessory Dwelling Unit sub-district / Attached Starter Home sub-district / Mixed-use sub-district].

COMMENTS: Although a SHZOD is not likely to contain sub-districts, if a community decides to adopt a SHZOD that will contain sub-districts, it is recommended that the community first consult with DHCD before drafting the bylaw.

b. Permitted Uses (District-Specific). The SHZOD contains the following sub-districts: [e.g., Detached Starter Home sub-district / Attached Starter Home sub-district].

COMMENTS: This section should identify any particular type of Starter Home, Accessory Dwelling Unit or other allowable use that is specific to the corresponding SHZOD.

c. Dimensional, Density and Parking Requirements (District-Specific) The SHZOD contains the following sub-districts: [e.g., Detached Starter Home sub-district / Attached Start Home sub-district].

COMMENTS: This section should identify any dimensional requirements, etc., that are particular to the corresponding SHZOD.

d. Design Standards (District-Specific)

COMMENTS: This section should specify any Design Standards (if applicable) that are particular to the corresponding SHZOD.

B. Application Forms

1. 40R District/Zoning Application Form—Preliminary (see attached)

**MASSACHUSETTS DEPARTMENT OF
HOUSING AND COMMUNITY DEVELOPMENT**

**40R DISTRICT / ZONING APPLICATION FORM
PRELIMINARY DETERMINATION OF ELIGIBILITY**

Municipality:

Name of District:

☐ Smart Growth Zoning District (SGZD) ☐ Starter Home Zoning District (SHZD) ☐
Expedited Review (qualified SHZDs only; [see corresponding checklist](#))

Municipal contact person:

Title & Department:

Address:

Phone:

Email:

The undersigned, chief executive of a Municipality or duly authorized designee of the City/Town of _____ hereby certifies that all information in this application is accurate and complete as of the date hereof.

Signed: _____

Name, title:

Date:

Key Data from corresponding District Summary Information Spreadsheet

Complete the Smart Growth / Starter Home Residential Density Plan/Map and Density Data Spreadsheet prior to completing this application form and before completing the accompanying District Summary Information Spreadsheet, certain cells of which will automatically populate based on information from the Density Data Spreadsheet. It is highly recommended that the municipality submit a draft Smart Growth / Starter Home Residential Density Plan/Map to DHCD for informal review and feedback prior to submission of a formal application, particularly if the Developable Land within the proposed District includes land identified as Underutilized Land. Capitalized terms used but not defined in this document have the meaning set forth in the Density Data Spreadsheet and/or 760 CMR 59.02. Where other capitalized terms first appear, there is generally a corresponding hyperlink to the definitions section in the last portion of this document. Pressing the "Ctrl" key and clicking on the back arrow symbol [↶] that appears after the linked definition will bring you back to the corresponding reference in the application form.

Type of Eligible Location (1.B, 1C, 1E or 1F): _____

Estimated # of Incentive Units: ⚡

Estimated Zoning Incentive Payment:

1. ELIGIBLE LOCATION

1.A Locator Map(s). Attach the Locator Map(s) of the proposed District, identifying the corresponding [Eligible Location](#), proposed District, and any other portions or features of the surrounding area or Municipality that may be relevant to the category of Eligible Location and type of 40R District. For applications seeking qualification as an Eligible Location under the [Area of Concentrated Development](#) (ACD) category, the Locator Map(s) should illustrate that at least 51% of the proposed ACD is Substantially Developed Land or Underutilized Land. See corresponding definitions at the end of this document or in the Density Data Spreadsheet and/or consult DHCD).

The purpose of the Locator Map(s) is to support the Department's finding that the District is located in an Eligible Location. As such, collectively, the Locator Map(s) should include all information necessary to illustrate that the proposed District qualifies as an Eligible Location.

For example, the Locator Map(s) for Districts intended to qualify as all or part of a [Substantial Transit Access Area](#) (STAA), must, at a minimum, clearly show that, with the exception of any qualifying [Adjacent Area](#), at least a portion of all parcels within the proposed Smart Growth or Starter Home District are within a ½ mile or 1 mile distance, respectively, from the applicable transit facility (where further seeking qualification of an Adjacent Area(s), these distances may be extended up to an additional ½ mile, subject to applicable [Infrastructure](#) and [Pedestrian Access](#) requirements).

For Districts to qualify as within an Area of Concentrated Development (ACD), including an Existing Rural Village District (ERVD), the Locator Map(s) must clearly show the boundaries of both the proposed District and the boundaries of the applicable ACD/ERVD (i.e., area that includes the corresponding city or town center, other existing commercial district).

In addition, for Districts in certain areas to qualify under the Other Highly Suitable category, the Locator Map(s) may need to further demonstrate that such proposed Districts cannot otherwise qualify under the STAA or ACD Eligible Location categories. Consult DHCD's program staff for any questions on how to prepare the Locator Map(s)).

1.B Substantial Transit Access Area. If the District is near to a transit station, identify the station:_____.

1.C(i) City / Town Center or Existing Commercial District. If the municipality is seeking eligibility of the District as located within an Area of Concentrated Development that does not qualify as an existing rural village district (see below), is the ACD currently served (yes ___ no ___) or scheduled to be served within five years of the application (yes ___ no ___) by public sewer(s) and/or private sewage treatment plant(s)?

If the ACD is scheduled to be served by public sewer(s) and/or private sewage treatment plant(s), provide documentation in Attachment 7-1. Note that for Starter

Home Zoning Districts, the District itself need not be served or scheduled to be served by public sewer(s) and/or private sewage treatment plant(s), so long as the associated ACD is so served or scheduled to be served (unless otherwise qualified as an existing rural village district).

Briefly describe/summarize the primary current use and zoning (*consistent with the Underlying Zoning, see Attachments 2-1 & 2-2*) of land and buildings in both the ACD and the proposed District: _____ (note: see corresponding regulatory definition of ACD which must include a city or town center or other contiguous, previously developed portions of an existing commercial district where such portions are substantial in the context of the Municipality.)

Is the District within land designated as a commercial center under M.G.L. c.40, § 60 (yes ____ no ____)?

If yes, attach a copy of the designation document from DHCD as Attachment 1-2.

1.C(ii) Existing Rural Village District. If the District comprises part or all of what would otherwise qualify an ACD, but the area is not served or scheduled to be served within five years of the application by public sewer(s) and/or private sewage treatment plant(s), does the area include the Municipality's principal road intersection or other civic center point of the Municipality, preliminarily approved by DHCD (yes ____ no ____)?

Does it contain two or more of a town hall, post office, public library, public school, or public safety facility (yes ____ no ____)?

If yes, identify the facilities that it contains: _____.

Does it contain an existing village retail district (yes ____ no ____)?

If yes, briefly describe its characteristics: _____.

1.D Adjacent Areas. For Districts proposed as comprising part of all of the land within a STAA or ACD, does the District contain an Adjacent Area (yes ____ no ____)? (*note: Adjacent Areas are not applicable to Districts qualifying as Eligible Locations under 1.E or 1.F*)

If yes, identify in detail, as part of the Locator Map(s) requirement, and briefly describe the Pedestrian Access: _____.

Is the Adjacent Area currently served (yes ____ no ____) or planned to be served within five years of the application (yes ____ no ____) by the Infrastructure necessary to support the units that will be allowed under the SGZ or SHZ (note: for SHZDs this need not include public sewer(s) and/or private sewage treatment plant(s))?

If the Adjacent Area is scheduled to be served by any applicable Infrastructure that does not currently exist, provide documentation in Attachment 7-1.

1.E Starter Homes (additional Eligible Location). For a proposed SHZD, if the location of the proposed SHZD is not otherwise eligible as a [Highly Suitable Location](#):

- Is the associated land nonetheless zoned for residential use (yes___ no___);
- Is there Pedestrian Access for a distance of no more than ¾ mile from proposed SHZD to a [Pedestrian Destination](#) (yes___ no___);
- Does the Starter Home Zoning incorporate [Cluster Zoning](#) (yes___ no___) so as to permit [Cluster Development](#); and
- Does the SHZ require all development to utilize [Low Impact Development Techniques](#) and include features that encourage walking within Starter Home [Projects](#) and the SHZD as a whole (yes___ no___).

1.F Other Highly Suitable Location (OHSL). Has the District been identified as an appropriate locus for high-density housing or mixed-use development in a state or regional plan document (yes ___ no ___)?

If yes, attach a copy of the plan as Attachment 1-3 and identify and describe briefly the section(s): _____.

Further describe how the proposed District qualifies as an OHSL in relation to the various criteria and factors specified in sub-sections (a)4., b. through e. and (b) 1. through 4. under 760 CMR 59.02 Highly Suitable Location and, as applicable, any other factors that the municipality believes support the case that residential or [Mixed-use Development](#) in the area of the proposed District would nonetheless promote [Smart Growth](#) consistent with the statutory goals for Smart Growth set forth in M.G.L. c.40R §1. Provide as a statement to be attached as Attachment 1-5):_____

2. UNDERLYING ZONING

2.A Underlying Zoning. Attach a copy of the text and map(s) as Attachments 2-1 and 2-2, respectively. The Underlying Zoning must be certified by the municipal clerk and the municipal clerk must also certify that such zoning was in effect one year prior to the application date. The Underlying Zoning provides the basis for determining the existing As-of-right residential densities and units that must be provided in the Density Data Spreadsheet.

3. SMART GROWTH RESIDENTIAL DENSITY PLAN/MAP(S) & DENSITY DATA SPREADSHEET

3.A Smart Growth Residential Density Plan/Map(s). Attach the Smart Growth Residential Density Plan/Map(s) of the District as Attachment 3-1. The purpose of the Plan is to provide a summary illustration of the number of Existing Zoned, Future Zoned and Incentive/estimated Bonus Units on a parcel-by-parcel basis on the Developable Land / Underutilized Land and, as applicable, Substantially Developed Land, throughout the proposed District. The land plan/map should distinguish between parcels (or portions thereof) qualifying as Developable/ Underutilized Land and land that is

considered Substantially Developed Land as defined in the regulations. If impractical, it is not necessary to include the corresponding unit numbers on the land plan/map, so long as individual parcels are uniquely identified and correspond to the parcel information provided in the Density Data Spreadsheet. Depending upon the scale and complexity of the proposed District, conveying this information clearly may involve more than one land plan/map. Attach the Smart Growth Residential Density Plan/Map(s) as Attachment 3-1. For Smart Growth Zoning District applications seeking qualification as an Eligible Location under the Area of Concentrated Development category, the Smart Growth Residential Density Plan/Map should illustrate that at least 51% of the proposed District is Substantially Developed Land or Underutilized Land.

3.B Density Data Spreadsheet. Attach the Density Data and District Summary Information Spreadsheets as Attachments 3-2 and 3-3.

The purpose of these spreadsheets is to calculate and document the number of Future Zoned and Incentive Units. These spreadsheets will also be used to estimate the number of potential Bonus Units as well as the amount of the Zoning Incentive Payment.

4. SMART GROWTH/STARTER HOME ZONING, DESIGN STANDARDS & ADDITIONAL MUNICIPAL STANDARDS

4.A Smart Growth / Starter Home Zoning. Attach a copy of the text and map(s) for the Smart Growth Zoning applicable to the District as Attachments 4-1 and 4-2. **The copy of the proposed SGZ text should be provided as an MS Word file with all changes to the most recent SGZ/SHZ template red-lined / made visible with track changes.**

4.B Mixed-use Development. Does the Smart Growth / Starter Home Zoning allow Mixed-Use Development Projects As-of-right (yes ___ no ___)?
If yes, what is the minimum portion of such Mixed-use Development Projects that must be devoted to residential uses: ____? (this percentage must be used to calculate the minimum number of residential units that would be developed on parcels that will allow Mixed-use Development. If the proposed SGZ/SHZ will allow non-residential use outside of such Mixed-use Developments, the SGZ/SHZ must establish an overall minimum of the estimated developable square footage that will be devoted to residential use and overall maximum cap on developable square footage that can be devoted to non-residential use in order to calculate the number of Incentive Units which will be based on the minimum share of the developable square footage that must be devoted to residential use.)

4.C Substantially Developed Sub-districts. Does the Smart Growth / Starter Home Zoning contain any Substantially Developed sub-district(s) within the District where maximum As-of-right residential densities differ from those applicable to the Developable Land sub-district(s) (yes ___ no ___)?
If yes, state the maximum As-of-right residential densities within such sub-district(s): ____ units/acre.

Identify the provisions of the Smart Growth / Starter Home Zoning that ensure the construction of infill housing on existing residential vacant lots: _____.

For SGZDs, identify the provisions of the SGZ that permit additional housing units in existing residential buildings and permit additional housing units for additions or replacement of such buildings: _____.

4.D Affordability - Project requirements For SGZDs only, does the SGZ establish a project-size threshold (e.g., 13 units) for Projects that are subject to the SGZ Affordability requirement (yes ____ no ____)?

If yes, what is that unit # threshold (cannot exceed 13) and identify the section of the SGZ containing that requirement: _____. (the SGZ can only exempt Projects of 12 or fewer units from the Affordability requirements)

For SGZD only, does the SGZ contain provisions to ensure that Projects are not segmented to evade the size threshold for Affordability (yes ____ no ____)?

If yes, identify the section of the SGZ containing such provision: _____.

4.E Affordability - District-wide Affordability target. For SGZDs only, identify the provisions of the SGZ that ensure the total number of Affordable units constructed in the District equals not less than twenty percent (20%) of the total number of all units constructed within Projects in the District: _____.

The following questions refer to the SGZ/SHZ attached as Attachment 4-1, or the [Design Standards](#) attached as Attachment 4-3.

4.G Categories of Project; Plan Approval Authority. Does the SGZ/SHZ provide for [Plan Review](#) of Projects within the District (yes ____ no ____)?

If yes, who is the [Plan Approval Authority](#): _____.

4.H Design Standards. Does the SGZ/SHZ contain Design Standards (yes ____ no ____)?

If no, have separate Design Standards been promulgated or drafted (yes ____ no ____)?

If yes, attach a copy as Attachment 4-3.

Have these Design Standards been previously applied to Affordable or mixed-income residential development in the community (for example, through the Underlying Zoning) (yes ____ no ____)?

If yes, briefly identify the project(s) that have been approved using these standards: _____.

Describe how the Municipality will ensure that its Design Standards will not [Unreasonably Impair](#) the development of Projects in the District: _____.

4.I **Waivers.** Does the SGZ/SHZ allow the Plan Approval Authority, through the Plan Review process, to waive specific dimensional and other standards (other than Affordability requirements) otherwise applicable to a Project (yes ___ no ___)?

4.J **Phased Project Reviews.** Does the SGZ/SHZ permit the Plan Review approvals of proposed Projects to be phased for the purpose of coordinating development with the construction of [Planned Infrastructure](#) upgrades that are identified in the application (yes ___ no ___) or that are required to mitigate any extraordinary adverse Project impacts on neighboring properties (yes ___ no ___)?

For Projects that are approved and developed in phases, identify the provisions of the SGZ/SHZ requiring that the percentage of Affordable units in each such phase is no less than the minimum percentage required for the Project as a whole: _____.

4.K **Additional Municipal Standards.** (For Starter Home Zoning Districts only) Will any [Additional Municipal Standards](#) apply to development that proceeds under the Starter Home Zoning (yes ___ no ___)? If yes, include copies of the Additional Municipal Standards as Attachment 4-4, together with one of the following, as applicable, as Attachment 4-5:

1. A Developer Certificate of Feasibility with respect to Additional Municipal Standards; or
2. Documentation demonstrating that such Additional Municipal Standards do not [Render Development Infeasible](#), certified by a Municipal official, civil engineer or other individual with appropriate expertise to evaluate and opine as to the feasibility of such development; or
3. Documentation substantiating the circumstances the Municipality asserts warrant the imposition of Additional Municipal Standards on development under the Starter Home Zoning in the proposed District, which shall be certified by a Municipal engineer or by a public works, board of health or conservation commission official with relevant expertise, unless otherwise substantiated in accordance with guidance issued by DHCD.

5. HOUSING PLAN REQUIREMENT

Subject to the requirements below, the housing plan requirement can generally be satisfied with a current [Comprehensive Housing Plan](#) (or acceptable equivalent) or current (i.e., approved by DHCD within the past 5 years) [Housing Production Plan](#). DHCD has active Housing Production Plans on file, so there is no need to resubmit such plans. Comprehensive Housing Plans (or equivalent plans) should be attached as Attachment 5-1. Municipalities that do not have such plans can fulfill the housing plan application requirement by completing a [Housing Production Summary](#). While any municipality can submit a Housing Production Summary, submission is only necessary and considered for the purposes of satisfying the housing plan requirement if the

municipality does not have valid Comprehensive Housing Plan (or acceptable equivalent plan) or Housing Production Plan.

For Comprehensive Housing Plans or equivalent municipal plans, please confirm the following plan components:

☐ Housing needs within the Municipality (including the needs of households in protected classes). If covered, where in the plan can this be found:_____

☐ Housing Strategies (including strategies for the development of housing that serves and provides housing choice for those in protected classes): If covered, where in the plan can this be found:_____

For Housing Production Plans, Comprehensive Housing Plans or equivalent municipal plans, please confirm the following plan components:

☐ An explanation of how the proposed SGZ/SHZ will allow for the development of housing which is appropriate for a diverse population. If covered, where in the plan can this be found:_____

If any these components are not covered in the submitted plan, please provide an addendum to the plan that addresses the missing component(s) and attach as Attachment 5-2.

M.G.L. c. 40R additionally requires that the plan that summarize the Existing Zoned Units, Future Zoned Units, and Incentive Units of the proposed Smart Growth Zoning District. Because many otherwise valid housing plans will not contain this level of specificity and because certain figures/information provided in the application may be revised in the course of DHCD preliminary determination of eligibility, as part of any Final or Conditional Approval of an adopted District, the municipality will need to submit evidence that its housing plan has been amended to incorporate the preliminarily-approved SGZ/SHZ and the corresponding application for preliminary determination of eligibility, as ultimately accepted and approved by DHCD.

6. LOCAL PUBLIC NOTICE AND HEARING

6.A Public Hearing. Did the chief executive of the Municipality or designee hold a public hearing on the application as submitted to DHCD (including the draft SGZ/SHZ) for a preliminary determination of eligibility for the proposed Smart Growth District (yes ___ no ___)?

If yes, attach copies of the notice of the hearing as Attachment 6-1. (note: this hearing should not be confused with or seen as a substitute for hearings that are otherwise required as part of the local zoning adoption process which should commence after DHCD has issued a Letter of Eligibility)

6.B Public Comments. Attach copies of any written comments received by the Municipality on the proposed SGZ/SHZ and the District, including any letters of support/concern issued by the planning board, board of health, conservation commission, or other interested parties, as Attachment 6-2. Attach any transcript or a summary of any oral comments received by the Municipality at the public hearing as Attachment 6-3.

Summarize briefly any modifications that were made in the proposed SGZ/SHZ or other documents in response to the comments received: _____,

7. INFRASTRUCTURE IMPACTS AND UPGRADES

In order for a proposed District to ultimately receive Final (vs. Conditional) Approval and qualify for all or a portion, as applicable, of any corresponding Zoning Incentive Payment, the Municipality must document and certify that the impacts of Future Zoned Units within the District will not over burden transportation, water, public and/or private wastewater systems, and other relevant Infrastructure, as it exists or may be practicably upgraded. The purpose of this requirement is both to ensure consistency with Smart Growth principles by supporting growth in areas with sufficient existing or Planned Infrastructure and to ensure that any required Infrastructure that does exist or is insufficient and cannot be practicably upgraded is identified and addressed before the Department issues any associated Zoning Incentive Payment(s).

The attachment must be certified by a municipal engineer or public works official.

Check List of Attachments

Identify documents submitted with the Smart Growth / Starter Home application in the following manner:

Submitted?	Attachment #	Description
<input type="checkbox"/>	1-1	Locator Map(s) of the Municipality, including, as applicable, a map showing the relationship of the proposed District to the applicable Area of Concentrated Development (required)
<input type="checkbox"/>	1-2	Copy of designation letter under M.G.L. c.40, § 60 (if applicable under I.D)
<input type="checkbox"/>	1-3	Copy of relevant portions of plan document (if applicable under 1.G)
<input type="checkbox"/>	1-4	Copy of designation letter under M.G.L. c.40Q (if applicable under 1.G)
<input type="checkbox"/>	1-5	Evidence of District's consistency with statutory goals for smart growth (if applicable under 1.G)
<input type="checkbox"/>	2-1	Underlying Zoning Text (required)
<input type="checkbox"/>	2-2	Underlying Zoning Map(s) (required)
<input type="checkbox"/>	3-1	SG / SH Residential Density Plan/Map(s) of District (required)
<input type="checkbox"/>	3-2	Density Data Spreadsheet (required)
<input type="checkbox"/>	3-3	District Summary Information Spreadsheet (required)
<input type="checkbox"/>	4-1	Smart Growth Zoning / Starter Home Zoning
<input type="checkbox"/>	4-2	Smart Growth/Starter Home Zoning Map(s) (required)
<input type="checkbox"/>	4-3	Design Standards (if not contained within Smart Growth Zoning)
<input type="checkbox"/>	4-4 & 4-5	Additional Municipal Standards and associated documentation (SHZDs only)
<input type="checkbox"/>	5-1	Comprehensive Housing Plan, Housing Production Plan or Housing Production Summary (required)
<input type="checkbox"/>	5-2	Plan enhancements/ updates (if applicable)
<input type="checkbox"/>	6-1	Notice of public hearing (required)
<input type="checkbox"/>	6-2	Written comments on Smart Growth Zoning and District (required)
<input type="checkbox"/>	6-3	Summary or transcript of oral comments on Smart Growth Zoning and District (required)
<input type="checkbox"/>	7-1	Information on Infrastructure impacts and Planned Infrastructure upgrades, certified by municipal official (required)

EXPEDITED APPLICATION PROCESS FOR QUALIFIED STARTER HOME ZONING DISTRICTS ONLY PURSUANT TO 760 CMR 59.03(2)

Qualification. In order to qualify for the expedited eligibility determination process pursuant to 760 CMR 59.03(2), a proposed Starter Home Zoning District must either meet the requirements in Qualifications A through F below, or must meet the requirements in Qualifications A through E plus the additional requirements in Qualifications G and H below. [↗](#)

- A.** Does the Starter Home Zoning conform substantially to the DHCD Starter Home Zoning template, and does the application include a copy of the Starter Home Zoning indicating all changes from the template with this application (yes___ no___)?
- B.** Does the Starter Home Zoning District allow for no more than thirty (30) Starter Homes in the District (yes___ no___)?
- C.** Does the Starter Home Zoning District require that each Starter Home in the District contain at least three (3) bedrooms (yes___ no___)?
- D.** Does the Starter Home Zoning District utilize Low Impact Development Techniques as defined in 760 CMR 59.02 (yes___ no___)?
- E.** Does the Starter Home Zoning District utilize best practices for roadway and subdivision design as referenced in DHCD guidance (yes___ no___)?
- F.** Is this Application accompanied by a Developer Certificate of Feasibility as defined in 760 CMR 59.02 (yes___ no___)?
- G.** Are the Starter Home Zoning District Design Standards limited in scope to addressing (1) the size and location of garages/carports, decks, or other non-living area structures associated with a Starter Home or Accessory Dwelling Unit and (2) basic roof style (yes___ no___)?
- H.** Can development under the Starter Home Zoning be carried out without being subject to any Additional Municipal Standards, as defined in 760 CMR 59.02, either because no such Additional Municipal Standards exist or because they do not apply within the Starter Home Zoning District (yes___ no___)?

Key Definitions from 760 CMR 59.02

Additional Municipal Standards. A Municipal environmental or health ordinance, bylaw or regulation that exceeds applicable requirements of state law or regulation. [↗](#)

Adjacent Area. An area that (1) is physically contiguous to an Eligible Location qualifying as a Highly Suitable Location under 760 CMR 59.04(1)(a)1. through 3.; (2) extends to a distance no more than ½ mile from an Eligible Location, except that if only a portion of a parcel of land lies within such a distance, the entire parcel may be included in the Adjacent Area; and (3) provides Pedestrian Access to a qualifying Eligible Location. To qualify as an Adjacent Area, the area must be currently served by Infrastructure or planned to be served within five years of the 40R Zoning Application by Planned Infrastructure. With respect to Starter Home Zoning Districts only, the Infrastructure or Planned Infrastructure required in an Adjacent Area need not include public sewer(s) or private wastewater treatment plant(s). [↗](#)

Area of Concentrated Development.

(a) An area:

(1) That includes a city or town center; contiguous, previously developed portions of an existing commercial district that are substantial in the context of the Municipality; or a rural village district; the boundaries of which are clearly identified and submitted on a corresponding map;

(2) That, except in the case of an existing rural village district as set forth in 760 CMR 59.02: Area of Concentrated Development (b), is currently served or scheduled to be served (as shown by sufficient documentation) within five years of the 40R Zoning Application by public sewer(s) and/or private sewage treatment plant(s) (applicable to Smart Growth Zoning Districts only);

(3) Of which at least 50 percent of the total land area is either Substantially Developed Land or Underutilized Land; and

(4) Of which the primary current use (or, in the case of Underutilized Land, the primary current zoning) of land and/or buildings is commercial (including retail, office, or industrial businesses) or mixed-use. Land designated as a commercial center under M.G.L. c. 40, § 60 qualifies as an Area of Concentrated Development.

(b) Notwithstanding anything to the contrary in this definition, in areas that are not sewered or scheduled to be sewered, an existing rural village district will still qualify as an Area of Concentrated Development if:

1. it includes the Municipality's principal road intersection or other civic center point of the Municipality approved by DHCD and is characterized by the most Substantially Developed portions of the surrounding village area plus any land that would otherwise

qualify as Substantially Developed Land or Underutilized Land within up to ½ mile distance of such principal road intersection or other approved civic center point;

2. it contains two or more of a town hall, post office, public library, public school, or public safety facility, or it contains an existing village retail district; and
3. at least 50 percent of the total land area within the existing rural village district is either Substantially Developed Land or Underutilized Land. See 760 CMR 59.04(1)(a)2.

[↩](#)

Cluster Development. Development in which the buildings and associated roadways or parking are clustered together into one or more groups separated from adjacent property and/or other groups within the development by intervening Dedicated Open Space usable for passive or active recreational activities. [↩](#)

Cluster Zoning. Zoning in which (a) development density is determined for an entire specified area, rather than on a per-lot basis and (b) dimensional requirements such as lot area, frontage, setbacks of structures from lot lines and/or other structures and minimum lot area per dwelling unit are reduced for individual lots to allow concentration of construction on part of the land through Cluster Development, and which requires permanent conservation of Dedicated Open Space usable for passive or active recreational activities, including without limitation, Future Open Space, as provided in DHCD guidance. [↩](#)

Comprehensive Housing Plan. A document, prepared by a Municipality for review by DHCD, providing an assessment of the housing needs within the Municipality, and describing specific strategies, including but not limited to those contained in the 40R Zoning, to address these needs and ensure that the applicable approval standards of 760 CMR 59.04(1)(g), (i), (j) and (k) are satisfied. The Comprehensive Housing Plan shall identify the numbers of Existing Zoned Units, estimated Future Zoned Units, and estimated Incentive Units within the proposed District. A Comprehensive Housing Plan may be a community development plan, master plan, area specific plan, or equivalent Municipally prepared document that is supplemented as necessary to satisfy these requirements, as well as the requirements of 760 CMR 59.03(1)(h)1., regarding the proposed 40R Zoning. [↩](#)

Design Standards. Provisions of, or regulations adopted pursuant to, 40R Zoning, which are made applicable to Projects within the District that are subject to Plan Review by the Plan Approval Authority. See 760 CMR 59.04(1)(f). [↩](#)

Developer Certificate of Feasibility. Certification by a developer with [Site Control](#), or by an architect, engineer or other professional with appropriate expertise certifying on behalf of such developer, that (a) any Additional Municipal Standards applicable to development under the Starter Home Zoning do not Render Development Infeasible

and/or (b) any Design Standards do not Unreasonably Impair development within the District. [↩](#)

Eligible Location. An area within a Highly Suitable Location that qualifies under the criteria set forth in 760 CMR 59.04(1)(a). If a portion of a parcel of land falls within an Eligible Location, then all of such parcel, to the extent of its legal boundaries, may also be deemed an Eligible Location in the discretion of DHCD. [↩](#)

Highly Suitable Location. A location that, as determined by DHCD based on satisfactory documentation provided by the Municipality, is consistent with the statutory goals for [Smart Growth](#), including the production of Starter Homes, set forth in M.G.L. c. 40R, § 1 and 760 CMR 59.00.

(a) To qualify as a Highly Suitable Location, an area must, at a minimum, be one of the following:

1. within a Substantial Transit Access Area;
2. within an Area of Concentrated Development;
3. for Starter Homes, an area zoned for residential use that is not otherwise eligible to be a Highly Suitable Location, only if all or a portion of the Starter Home Zoning District has Pedestrian Access within a distance of no more than $\frac{3}{4}$ mile to a Pedestrian Destination and the Starter Home Zoning incorporates Cluster Zoning so as to permit Cluster Development, and requires all development under the Starter Home Zoning to utilize Low Impact Development Techniques and to include features that encourage walking within Starter Home Projects; or
4. a location, not otherwise eligible to be a Highly Suitable Location, where residential or Mixed-use Development would nonetheless promote Smart Growth, as demonstrated by the Municipality through documentation satisfactory to DHCD, demonstrating the degree to which:
 - a. the location is near a rapid transit or commuter rail station or bus or ferry station terminal, though not within a Substantial Transit Access Area;
 - b. the location has Pedestrian Access within a distance of $\frac{3}{4}$ mile to a Pedestrian Destination;
 - c. proposed zoning in the location and existing zoning near the location will encourage compact, land-use-efficient design, and Mixed-use Development;
 - d. infill and redevelopment of previously-developed areas with Infrastructure are likely to occur that will help to preserve open space, farmland, natural beauty, and critical environmental areas elsewhere in the Municipality; and

e. prior identification as an appropriate locus for higher-density housing or higher-density Mixed-use Development in an adopted regional or state plan.

(b) Factors DHCD may consider in determining whether a location that does not qualify under 760 CMR 59.04(1)(a) as being either within a Substantial Transit Access Area or an Area of Concentrated Development is nonetheless a Highly Suitable Location for a District include, without limitation, the extent to which the area is characterized by:

1. Infrastructure, including access to public facilities for storm water and wastewater transport, treatment and disposal and public water supply;
2. Multi-modal Access;
3. Existing Underutilized Facilities; or
4. a location within or immediately adjacent to a Priority Development Area.

(c) An area will not qualify as a Highly Suitable Location if more than 50% of the proposed District contains Prime Farmland Soils on state-owned land. If more than 50% of a proposed District has Prime Farmland Soils that are not state-owned, DHCD may take into account the availability of other potential Highly Suitable Locations in the Municipality, and may request additional information from the Municipality, to determine whether the proposed District qualifies as a Highly Suitable Location.

(d) DHCD may from time to time issue guidance as to other factors that are relevant to the determination of whether a location is Highly Suitable. [↗](#)

Housing Production Plan. An affordable housing plan adopted by a Municipality and approved by DHCD in accordance with 760 CMR 56.03(4). [↗](#)

Housing Production Summary. A detailed summary, consistent with guidance and/or templates issued by DHCD regarding format and content, of the Municipality's: (1) affordable housing production history; (2) housing needs and housing demand assessment; (3) analysis of development constraints and capacity; (4) current housing goals and strategy for achieving those goals; and (5) proposed locations for affordable housing production. [↗](#)

Infrastructure. The basic facilities, services, and installations needed for the functioning of the area of the Municipality within which the District is to be located, including: Pedestrian Access and vehicular access; public and private facilities for storm water and wastewater transport, treatment and disposal; and water and power supply lines. For purposes of a Starter Home Zoning District only, Infrastructure shall not be required to include public sewer and/or public water supply. [↗](#)

Low Impact Development Techniques. Development techniques suitable to a particular site that protect the natural features of the site, including, without limitation, (a) natural resource oriented site design, (b) appropriately scaled and decentralized stormwater management techniques that limit the rate of off-site storm water runoff (both peak and non-peak flows) to levels substantially similar to natural hydrology (or, in the case of a redevelopment site, that reduce such flows from pre-existing conditions), through means including, bioretention/rain gardens, infiltration/permeable pavements, stormwater planters, vegetated swales, vegetated buffers, cisterns, rain barrels, and green roofs; and (c) appropriately scaled roads.

MassGIS. The Massachusetts Office of Geographic Information. [↗](#)

Mixed-use Development. A Project containing: (a) for Smart Growth Zoning Districts, a mix of Multi-family Residential, two- and three-family residential, or single-family residential uses, together with commercial, institutional, industrial, or other non-residential uses; or (b) for Starter Home Zoning Districts, a mix of any Starter Home units with commercial, institutional, industrial, or other non-residential uses; in which the applicable residential densities set forth in 760 CMR 59.04(1)(d)3. and 760 CMR 59.04(1)(d)4., respectively, apply proportionally to the residential portion of the Mixed-use Development Project in accordance with 760 CMR 59.04(1)(d)1. [↗](#)

Pedestrian Access. Safe, practical and continuous access for walking by means of a sidewalk, path, or a roadway with a design speed of 20 miles per hour or less. [↗](#)

Pedestrian Destination. A location that pedestrians frequently use, such as an elementary or high school; a college or university; a hospital; a Municipal office building, public library, post office, public safety facility, or other civic facility; a general or neighborhood commercial or business area with substantial employment, retail or entertainment activity; an active recreational facility open to the public; public transit or a bus stop along a route serving an Eligible Location or Adjacent Area at a minimum of hourly frequency during peak periods. [↗](#)

Plan Approval Authority or Approving Authority. A unit of Municipal government designated by the Municipality to review projects and issue approvals under M.G.L. c. 40R, § 11. See 760 CMR 59.04(1)(f). [↗](#)

Plan Review. The standards and procedures by which a proposed Project within a District is made subject to review by the Plan Approval Authority under the provisions of the 40R Zoning, in accordance with M.G.L. c. 40R, § 11 and 760 CMR 59.00. See 760 CMR 59.04(1)(f). [↗](#)

Planned Infrastructure. Infrastructure for which certification by a Municipal engineer or public works, board of health or conservation commission official or other person with similar expertise pursuant to 760 CMR 59.03(1)(j) has been submitted to establish the timing for completion of the improvements (to be within five years of the 40R Zoning Application date, or other reasonable time period approved by DHCD), the identity of the entities responsible for completing the improvements, and that the District will not be

overburdened by the build-out of the Future Zoned Units within the District as the Infrastructure exists or may be practicably upgraded. [↗](#)

Project. A residential development or Mixed-use Development undertaken within a District pursuant to the approval of a Plan Approval Authority in accordance with the requirements of the 40R Zoning. Within the boundaries of a District a developer may elect either to develop a Project in accordance with the requirements of the 40R Zoning, or to undertake development in accordance with the requirements of the Underlying Zoning. [↗](#)

Render Development Infeasible. To prevent or make physically or economically impracticable the development of residential or Mixed-use Development Projects at the As-of-right residential density set forth in the Starter Home Zoning. [↗](#)

Site Control. Fee ownership of, a long-term leasehold interest in, or a right to develop one or more sites that, in the aggregate, comprise at least 50% of the Developable Land Area of a proposed Starter Home Zoning District. Site Control shall be demonstrated, as to each such site, by means of one or more of the following: a recorded deed; a lease with a term of at least 30 years, as to which a notice of lease has been recorded; or an executed, legally enforceable purchase agreement or option to purchase. [↗](#)

Smart Growth. A principle of land development that furthers, on balance, the following goals set forth in M.G.L. c. 40R, § 1 and 760 CMR 59.00:

- (a) Increasing the availability of Affordable housing by creating a range of housing opportunities in neighborhoods;
- (b) Emphasizing mixing land uses;
- (c) Taking advantage of compact design;
- (d) Fostering distinctive and attractive communities;
- (e) Preserving open space, farmland, natural beauty and critical environmental areas;
- (f) Strengthening existing communities;
- (g) Providing a variety of transportation choices;
- (h) Making development decisions predictable, fair and cost effective; and
- (i) Encouraging community and stakeholder collaboration in development decisions. [↗](#)

Substantial Transit Access Area. A location that comprises:

(a) In the case of a Smart Growth Zoning District, part or all of the land located within ½ mile distance of any rapid transit or commuter rail station, bus or ferry terminal (measured from the entry point(s) to the passenger platforms); and

(b) In the case of a Starter Home Zoning District, part or all of the land located within a 1 mile distance of any rapid transit or commuter rail station, bus or ferry terminal (measured from the entry point(s) to the passenger platforms). [↗](#)

Unreasonably Impair. To add unreasonable costs or unreasonably diminish the economic feasibility of proposed Projects in a District by means of a provision of 40R Zoning or a Design Standard. [↗](#)

2. Housing Production Summary (see attached)

Housing Production Summary – Template

(Note: please submit in conjunction with corresponding Housing Data Profile and Basic Needs Assessment exported from [Massachusetts Housing Data Portal](#))

AFFORDABLE HOUSING PRODUCTION HISTORY			
Question	X if Yes	Number of Units/Percent Affordable	Comments/Explanation
Units on Subsidized Housing Inventory (corresponding to DHCD's most recently posted SHI)			
Homeownership – No Age Restrictions	<input type="checkbox"/>		
Homeownership – Age Restricted	<input type="checkbox"/>		
Rental – No Age Restriction	<input type="checkbox"/>		
Rental – Age Restricted	<input type="checkbox"/>		
Units Eligible to be Added to most recently posted Subsidized Housing Inventory			
Homeownership – No Age Restrictions	<input type="checkbox"/>		
Homeownership – Age Restricted	<input type="checkbox"/>		
Rental – No Age Restriction	<input type="checkbox"/>		
Rental – Age Restricted	<input type="checkbox"/>		
Local Capacity/Tools Adopted			
Question:	<i>X if Yes</i>	<i>#/% (as applicable)</i>	<i>Comments/explanation</i>
Full- or part-time planning staff	<input type="checkbox"/>		
Affordable Housing Trust	<input type="checkbox"/>		
Inclusionary Zoning	<input type="checkbox"/>		
Local Initiative Projects	<input type="checkbox"/>		
40R District	<input type="checkbox"/>		
Other By-Right Zoning for Multifamily Housing	<input type="checkbox"/>		
Expired Housing Production Plan	<input type="checkbox"/>		
Additional narrative explanation:			

HOUSING NEEDS AND HOUSING DEMAND ASSESSMENT		
Overview/Gap Analysis		
Question	\$ or %, as applicable	Directions as to Information Source (in some instances, corresponding data may also be available from the Massachusetts Housing Data Portal)
Median Home Value		Use most recent American Community Survey Selected Housing Characteristics (Table DP04), Median Home Value
Median Rent		Use most recent American Community Survey Selected Housing Characteristics (Table DP04), Median Gross Rent
Median Household Income		Use most recent American Community Survey Financial Characteristics (Table S2503), Median Household Income
Area-Wide Fair Market Rent for 2-bedroom apartment		Metropolitan Area or County Data at http://nlihc.org/oor/massachusetts
Area-Wide Annual Income Needed to Afford 2-Bedroom Apartment		Metropolitan Area or County Data at http://nlihc.org/oor/massachusetts
Area-Wide Estimated Renter Median Income		Metropolitan Area or County Data at http://nlihc.org/oor/massachusetts
Area-Wide 30% of Area Median Income		Metropolitan Area or County Data at http://nlihc.org/oor/massachusetts
Percentage of Households that are Cost-Burdened		
Percentage of Housing Units with a Mortgage Whose Selected Monthly Owner Costs Exceed 30% of Household Income		Use most recent American Community Survey Selected Housing Characteristics (Table DP04), Selected Monthly Owner Costs as a Percentage of Household Income (SMOCAPI)
Percentage of Housing Units Where Gross Rent Exceeds 30% of Household Income		Use most recent American Community Survey Selected Housing Characteristics (Table DP04), Gross Rent as a Percentage of Household Income (GRAPI)
Demographic Information		
% of Households Age 65 and Over		Use data from most recent American Community Survey Occupancy Characteristics (Table S2501)(provide aggregate of all types of households with a householder 65 and over)

ANALYSIS OF DEVELOPMENT CONSTRAINTS AND CAPACITY		
Overview of Constraints and Capacity		
Question:	Y/N	Briefly Explain:
Are there special local environmental conditions that limit development (for example, coastal conditions, wetlands, water bodies, etc.)?	Y <input type="checkbox"/> N <input type="checkbox"/>	
Are all areas of the city/town served by municipal water?	Y <input type="checkbox"/> N <input type="checkbox"/>	
Are all areas of the city/town served by municipal sewer?	Y <input type="checkbox"/> N <input type="checkbox"/>	
Are there local septic laws in addition to state requirements?	Y <input type="checkbox"/> N <input type="checkbox"/>	
Are there local water quality laws in addition to state requirements?	Y <input type="checkbox"/> N <input type="checkbox"/>	
Are there other local environmental or health-related laws in addition to state requirements?	Y <input type="checkbox"/> N <input type="checkbox"/>	
Do local subdivision control laws impose constraints on new development?	Y <input type="checkbox"/> N <input type="checkbox"/>	
Does the municipality have adequate	Y <input type="checkbox"/>	

infrastructure to meet its housing goals?	N <input type="checkbox"/>	
Does the municipality have adequate municipal staff capacity to meet its housing goals?	Y <input type="checkbox"/> N <input type="checkbox"/>	
Additional narrative explanation:		
HOUSING GOALS & STRATEGIES		
Housing Goals		
Name of Goal (add rows as necessary):	Explanation:	Measurement (e.g., total units, units per year:
Any additional information necessary to explain the municipality's housing goals (including measurable, numerical goals) in terms of the production, diversification, rehabilitation, preservation and other support with respect to the community's identified needs housing needs:		
Housing Strategies		
Name of Strategy (add rows as necessary):	Explanation:	Measurement (e.g., total units, units per year:

<p><i>Any additional information necessary to explain the municipality's housing strategies for achieving its housing goals that address its identified housing needs:</i></p>		

C. Annual Update Forms

Separate templates are included for districts in active development, future districts and mature districts that have been substantially built out.

1. Districts in Active Development (see attached)

Name of Municipality _____, MA

**Annual Update – District in Active Development
Smart Growth Zoning District-Chapter 40R**

Fiscal Year July 1, 2017-June 30, 2018

In accordance with 760 CMR 59.00, a Municipality that has received a Letter of Eligibility* from DHCD for a proposed District by the end of the previous fiscal year ending on June 30, must file an Annual Update on or before July 31 of each year. **However, if the Municipality is requesting 40S payments from the Department of Revenue, an annual update must be filed with DHCD on or before July 15 of each year.** The information provided in the Annual Update enables DHCD to undertake an annual review and prepare a report on the 40R program, and to issue a Certificate of Compliance*. A Municipality must file this Annual Update with DHCD in order to be eligible for any Density Bonus Payment*.

The Municipality must submit the following:

- (a) A cover letter to DHCD;
- (b) A list of all Districts within the Municipality;
- (c) For each District (not Sub-Districts) within the Municipality, a completed original of pages 1-4 of this form; and
- (d) For all completed 40R Projects which are not otherwise required to submit an annual monitoring report to DHCD under a state housing finance/subsidy program, attach a copy of the most recent annual report submitted to the Municipality by the respective Monitoring Agent, as required under the Smart Growth Zoning.
- (e) A completed original of page 5 of this form. (Only 1 completed page 5 per municipality.)

Each blank requires a response. N/A and 0 are acceptable responses.

_____ District
(Name of District)

A. District Land Area (in acres)

Total land area _____

Developable Land area* _____

Substantially Developed Land area* _____

Developable Land area zoned for:

single-family _____

2-3 family _____

multi-family* _____

Name of Municipality _____, MA

Substantially Developed Land area zoned for:

single-family _____
2-3 family _____
multi-family _____

B. Units

- 1) Building Permits had been issued during previous fiscal year
(July 1, 2017 through June 30, 2018):

Total Number of Units	Number of Bonus Units*
single-family _____	_____
2-3 family _____	
multi-family _____	

- 2) Units completed (issuance of occupancy permits) during the previous fiscal year
(July 1, 2017-June 30, 2018):

Total Number of Units	Number of Bonus Units
_____	_____

- 3) Units completed (issuance of occupancy permits) in total since District was
Approved

Total Number of Units	
Affordable*	Market Rate
1 bedroom _____	1 bedroom _____
2 bedrooms _____	2 bedrooms _____
3 bedrooms _____	3 bedrooms _____
Accessible	
1 bedroom _____	
2 bedrooms _____	
3 bedrooms _____	

Name of Municipality _____, MA

Total Number of Rental Units _____

Affordable _____
1 bedroom _____
2 bedrooms _____
3 bedrooms _____

Market Rate _____
1 bedroom _____
2 bedrooms _____
3 bedrooms _____

Accessible _____
1 bedroom _____
2 bedrooms _____
3 bedrooms _____

Total Number of Homeownership Units _____

Affordable _____
1 bedroom _____
2 bedrooms _____
3 bedrooms _____

Market Rate _____
1 bedroom _____
2 bedrooms _____
3 bedrooms _____

Accessible* _____
1 bedroom _____
2 bedrooms _____
3 bedrooms _____

C. Progress

Prepare a written narrative describing how the District is being developed in a manner that reasonably complies with the residential density and Affordability standards established for that District.

D. Payments

Provide the amounts of payments received during the previous fiscal year
(July 1, 2017-June 30, 2018).

Zoning Incentive Payment:* _____
Density Bonus Payment:* _____

Name of Municipality _____, MA

Provide the amounts and anticipated timing of payments to be received during the current fiscal year **(July 1, 2018-June 30, 2019)**.

Zoning Incentive Payment:	_____	anticipated timing	_____
Density Bonus Payment :	_____	anticipated timing	_____

E. Projects* subject to Plan Review* Procedure

1. Number of Projects approved for which the Plan Review procedure was completed. _____

2a Number of Projects denied for which the Plan Review procedure was completed. _____
(Attach a copy of each Plan Review decision for which a Project was denied.)

For any project denied, submit sufficient information prepared by the Town

b. Council or City Solicitor explaining why such denial was consistent with the Smart Growth Zoning.

3. Total Number of Projects currently under review: _____

Number of units proposed	_____
single-family	_____
2-3 family	_____
multi-family	_____

Signature

Date

Print Name: _____

Title: _____

2. Future Districts (see attached)

Name of Municipality _____, MA

Annual Update – Future District(s)
Smart Growth Zoning District-Chapter 40R

Fiscal Year July 1, 2017-June 30, 2018

- A. If the Municipality has a proposed District(s), provide the amounts and anticipated timing of payments to be received during the current fiscal year
(July 1, 2018-June 30, 2019).

	District
(name of Proposed District)	

Zoning Incentive Payment:		anticipated timing	
Density Bonus Payment :		anticipated timing	

- B. **An Estimate of Future Districts**

1. Number of new Districts _____

If any new Districts, size of each new District

Dist. 1: Total Land Area _____	Developed Land Area _____
Dist. 2: Total Land Area _____	Developed Land Area _____
Dist. 3: Total Land Area _____	Developed Land Area _____

2. If any new Districts, potential number of Bonus Units:

Dist. 1: _____
Dist. 2: _____
Dist. 3: _____

Signature

Date

Print Name: _____

Title: _____

3. Mature (Effectively Built-Out) Districts (see attached)

Name of Municipality _____, MA

**Annual Update – Effectively Built-Out District
Smart Growth Zoning District-Chapter 40R**

Fiscal Year July 1, 2017-June 30, 2018

In accordance with 760 CMR 59.00, a Municipality that has received a Letter of Approval or Letter of Conditional Approval from DHCD for a proposed District by the end of the previous fiscal year ending on June 30, must file an Annual Update on or before July 31 of each year.

However, if the Municipality is requesting 40S payments from the Department of Revenue, an annual update must be filed with DHCD on or before July 15 of each year.

DHCD records indicate that the Approved 40R District in your town/city is effectively built-out and no new units are anticipated. Therefore, DHCD has created a simplified Annual Update to be completed and submitted on or before the deadlines noted above.

Please complete the following:

The town/city of [Click here to enter text.](#) has an approved 40R District;

The name of the District is [Click here to enter text.](#);

There have been [Click here to enter text.](#) units completed since the District was approved;

The District is effectively built-out, no new units are anticipated for the District; and the town/city will inform DHCD of any changes within the District, new units are permitted, zoning changes, etc.

For all completed 40R Projects which are not otherwise required to submit an annual monitoring report to DHCD under a state housing finance/subsidy program, attach a copy of the most recent annual report submitted to the Municipality by the respective Monitoring Agent, as required under the Smart Growth Zoning.

[Click here to enter text.](#)

Signature

Date

[Click here to enter text.](#)

[Click here to enter text.](#)

Print Name

Title

D. Project Review

1. Affirmative Fair Housing Marketing Plan

Affordable and Income-restricted units must be subject to affirmative fair housing marketing plans consistent with the requirements of DHCD's Affirmative Fair Housing Marketing and Resident Selection Plan Guidelines, dated May 2013, as the same may be amended from time to time. Without limitation, both at initial occupancy and on turnover, units must be marketed in accordance with an Affirmative Fair Housing Marketing Plan (AFHMP) approved by DHCD as a condition of entering into the 40R AHR required pursuant to the Regulations. In addition, compliance with the AFHMP shall be subject to monitoring as described in the 40R AHR.

2. Template of Affordable Housing Restriction for Rental Projects
(Forthcoming)
3. Template of Affordable Housing Restriction for Ownership Projects
(Forthcoming)
4. Template of Affordable Housing Deed Rider for Ownership Projects
(Forthcoming)