

760 CMR 77.00: SURPLUS REAL PROPERTY

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77.01: Purpose, Program Overview

St. 2024, c. 150 (the Act) established a plain and explicit authorization for the Division of Capital Asset Management & Maintenance (DCAMM) under section 121 to convey Surplus Real Property for Housing Purposes and other Reuse Restrictions as defined by the Commissioner of DCAMM. Section 122 of the Act requires Municipalities to allow as of right Residential Development of Surplus Real Property conveyed pursuant to section 121 for Housing Purposes. EOHLIC is authorized to promulgate regulations to effectuate section 122 of the Act. These regulations, 760 CMR 77.00, establish a framework to guide Municipalities and Developers in the Residential Development of Surplus Real Property.

77.02: Definitions

Affordable Homes Act (Act). Chapter 150 of the Acts of 2024.

As-of-right. As defined in M.G.L. c. 40A, § 1A.

Building Coverage. Lot Area that that may be used for Residential Development including any building, parking structures, or accessory structures.

Bulk and Height. The total volume that a building may occupy on a Lot as expressed by the allowable number of stories, total maximum height in feet and any other restrictions on bulk, such as required step-backs above the first floor.

Commissioner. The Commissioner of the Division of Capital Asset Management and Maintenance.

Conveyance. The deed or other legally binding instrument transferring an interest in Surplus Real Property pursuant to Section 121 of the Act, together with any applicable Land Disposition Agreement and Reuse Restrictions imposed by the Commissioner pursuant to Section 121 of the Act.

Design Standards. Clear and objective standards or provisions of Municipal Regulations applicable to the exterior design of a building.

Developer. Any person, entity or governmental body that acquires an interest in Surplus Real Property, or a portion thereof, pursuant to section 121 of the Act.

Development Agreement. A legally binding agreement between the Municipality and Developer intending to pursue Residential Development of Surplus Real Property conveyed pursuant to Section 121 of the Act.

Dwelling Unit. A single unit of housing, providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

Effective Density. The actual total number of Dwelling Units that can be built on a particular parcel of Surplus Real Property, accounting for all Municipal Regulations applied to such Surplus Real Property calculated

in accordance with 760 CMR 77.05 and expressed on a Dwelling Unit per acre basis.

EOHLC. The Executive Office of Housing and Livable Communities.

Housing Purposes. As defined in Section 121 of the Act.

Land Disposition Agreement. An agreement between the Commissioner and Developer.

Lot. As defined in M.G.L. c. 40A, § 1A.

Lot Area. The area of a horizontal plane bounded by the front, side, and rear lot lines of a Lot, measured in acreage or square footage.

Mixed-use Development. The use of Surplus Real Property conveyed pursuant to Section 121 of the Act for development containing a mix of Residential Development and uses that are not Residential Development, including, without limitation, commercial, institutional, industrial or other uses and residential types.

Multi-Family Housing. As defined in M.G.L. c. 40A, § 1A.

Municipality. A city or town where Surplus Real Property is located, in whole or in part.

Municipal Regulations. Zoning, general ordinances and by-laws or other local legislative, regulatory or other actions of a Municipality, including wetlands ordinances or by-laws, subdivision and board of health rules, and other local ordinances, by-laws, codes, and regulations.

Open Space. Outdoor area not covered by any building, parking or accessory structure, including, but not limited to, yards, land to protect existing and future well fields, aquifers and recharge areas, watershed land, agricultural land, grasslands, fields, forest land, fresh and saltwater marshes and other wetlands, ocean, river, stream, lake and pond frontage, beaches, dunes and other coastal lands, lands to protect scenic vistas, land for wildlife or nature preserve and land for recreational use.

Open Space Coverage. The measure of the allowable total Open Space land coverage of a Lot calculated as a percentage of the total Lot Area.

Residential Development. The use of land and structures on Surplus Real Property by a Developer for the construction or rehabilitation of Dwelling Units.

Residential Development Type. Any sort, class, or kind of structure Residential Development may take in form, including but not limited to single-family, two-family, and Multi-Family Housing, and any form, class, or kind of Residential Development, including but not limited to, cluster development, open space residential development, condominium development, and subdivision.

Reuse Restriction. Uses, restrictions and encumbrances as defined by the Commissioner in any Conveyance including, but not limited to, a restriction for Housing Purposes pursuant to § 121(d)(4) of the Act, a restriction requiring the Developer to enter into an affordability restriction, Design Standards, including but not limited to mandating clustering of development so as to preserve portions of a parcel for conservation or recreation purposes, and any other use limitations as may be determined by the Commissioner.

Setbacks. The minimum linear distance between a boundary of a Lot and a structure located on said Lot as set by the Municipality.

Site Plan Review. The clear and objective review and approval under a municipality's zoning ordinance or by-law, by an authority other than the zoning administrator, of a proposed use of land or structures to determine whether a proposed use of land or structures is in compliance with sound site utilization principles relative to the public safety, health, and welfare, provided that Site Plan Review shall not provide discretionary review or authority to deny approval of any Residential Development.

Surplus Property Municipal Regulations. Municipal Regulations applicable to Residential Development of Surplus Real Property pertaining to any of the following: (i) Bulk and Height of structures; (ii) Lot Area; (iii) Setbacks; (iv) Open Space Coverage requirements, including yard size requirements; (v) Building Coverage requirements; and (vi) Site Plan Review.

Surplus Real Property. As defined in Section 121(a) of the Act.

Zoning. As defined in M.G.L. c. 40A, §1A.

77.03: Residential Development on Surplus Real Property

- (1) Notwithstanding any general or special law, Zoning, or general ordinance or by-law to the contrary, a Municipality shall allow and permit As-of-right Residential Development of Surplus Real Property as proposed by a Developer and may reasonably regulate such Residential Development in the following manner:
 - (a) A Municipality may impose reasonable Surplus Property Municipal Regulations pursuant to 760 CMR 77.04, provided that such regulations do not result in an Effective Density of fewer than four (4) Dwelling Units per acre based on the density calculation described in 760 CMR 77.05;
 - (b) A Municipality may enforce the terms of a Development Agreement, provided that the Development Agreement does not conflict with the terms of the Conveyance. Nothing in 760 CMR 77.00 should be construed to prevent Development Agreements from addressing Municipal Regulations beyond those allowed as Surplus Property Municipal Regulations;
 - (c) A Municipality may impose Municipal Regulations on Residential Development that are necessary to ensure the Developer's compliance with the terms of the Conveyance;
 - (d) Unless authorized pursuant to the Conveyance, Municipal Regulations that are inconsistent or in conflict with or exceed the scope of land-use controls described in section 122 of the Act or the provisions of 760 CMR 77.00, shall be unenforceable when applied to Residential Development on Surplus Real Property. Such inconsistent and conflicting Municipal Regulations include, but are not limited to, Municipal requirements for specific Design Standards and parking.
- (2) Municipally Imposed Use Restrictions. Unless imposed, required or allowed by the Commissioner in the Conveyance, a Municipality shall not require the imposition of any use restrictions on Surplus Real Property, including but not limited to, affordability restrictions and conservation restrictions pursuant to M.G.L. c. 184, §31.
- (3) Additional Uses. A Municipality may allow, but shall not require, additional non-residential uses on Surplus Real Property, such as Mixed-use Development, and may provide density bonuses, Zoning relief, or additional incentives to encourage such additional uses. The incorporation of uses that are not Residential Development shall not cause the Effective Density to be reduced to fewer than four (4) Dwelling Units per acre.

77.04: Reasonable Surplus Property Municipal Regulations

- (1) Section 122 of the Act provides that a Municipality is permitted, but not required, to impose reasonable regulations on Residential Development of Surplus Real Property. Regulations are reasonable where they are Surplus Property Municipal Regulations and are consistent with 760 CMR 77.04. The application of

such Municipal Regulations, either individually or collectively, shall not result in an Effective Density of fewer than four (4) Dwelling Units per acre.

(2) Residential Development Types. Surplus Property Municipal Regulations shall not explicitly or effectively prohibit, or require, any particular Residential Development Type or bedroom count. This provision is meant to encourage a diversity of Dwelling Unit types and sizes and to provide for Residential Development that is suitable for families with children.

(3) Building, Health, Safety, Utility, General Welfare, and Environmental Laws.

(a) Nothing contained within these regulations is intended to supersede or conflict with any federal law which may be applicable to Residential Development on Surplus Real Property.

(b) The Massachusetts state building code, 780 CMR, and all Massachusetts health, safety, utility, general welfare, and environmental laws, codes, and regulations shall apply to all Residential Development on Surplus Real Property, including but not limited to, 527 CMR 1.00: Massachusetts Comprehensive Fire Safety Code, M.G.L. c. 111, § 189A: Massachusetts Lead Law, 310 CMR 15.000: The State Environmental Code, M.G.L. c. 131 § 40: The Wetlands Protection Act, 310 CMR 10.00: Wetlands Protection Act Regulations, M.G.L. c. 40, §§81K-81GG: The Subdivision Control Law, and Title 5: Standard Requirements for the Siting, Construction, Inspection, Upgrade and Expansion of On site Sewage Treatment and Disposal Systems and for the Transport and Disposal of Septage, and Stormwater Management Standards, provided that:

1. A Municipality may not impose more than the minimum requirements established by any federal or state building, health, safety, utility, general welfare, or environmental law, code, or regulation, unless the Developer is required by the Conveyance to comply with such additional requirements;
2. Unless otherwise provided for pursuant to the Conveyance, the municipal opt-in specialized stretch energy code developed pursuant to M.G.L. c. 25A, § 6 shall be considered the minimum required by state law if the Municipality has opted in; and
3. Any additional local or regional Municipal building, health, safety, utility, general welfare, or environmental law, code, ordinance, by-law, rule, or regulation shall not apply to Residential Development on Surplus Real Property, unless the Developer is required by the Conveyance to comply with such additional requirements.

(4) Site Plan Review.

(a) A Municipal Regulation that imposes Site Plan Review on a Lot of Surplus Real Property shall only regulate: (i) aspects of a Residential Development that relate directly to the public's safety, health, and welfare, and (ii) any Surplus Property Municipal Regulations, provided, however, that Site Plan Review may regulate additional aspects of the Residential Development if they are provided for by: (1) the Developer voluntarily, (2) a Reuse Restriction, (3) a Land Disposition Agreement, or (4) a Development Agreement. Such aspects of Residential Development which may not be provided for in Surplus Property Municipal Regulations include, but are not limited to, parking requirements, affordable housing requirements, and allowable Residential Development Types.

(b) Site Plan Review shall not unreasonably delay Residential Development, nor impose conditions that make Residential Development infeasible or impractical.

77.05: Effective Density

- (1) Effective Density Calculation. Effective Density shall be calculated to determine the total number of Dwelling Units that can effectively be built per acre on the entire Lot of Surplus Real Property, provided that:
 - (a) The Effective Density calculation shall account for all Municipal Regulations, including any Surplus Property Municipal Regulations, that apply to Residential Development on Surplus Real Property;
 - (b) The Effective Density calculation shall include the entire Lot Area of the Surplus Real Property, without any exclusions. For example, all open bodies of water and any public or private rights of way in existence at the time of development or which may be constructed as part of a subdivision will be included in the entire Lot Area;
 - (c) Rounding Acreage. Municipalities may round down to the nearest quarter acre when determining the total Lot Area used for the Effective Density calculation; and
 - (d) Rounding Effective Density. Effective Density may not be rounded up to achieve the required minimum Effective Density of not fewer than four (4) Dwelling Units per acre.
- (2) The minimum Effective Density required per Lot shall not include accessory dwelling units.
- (3) A Municipality may not directly impose a maximum density or dwelling unit cap on Residential Development, unless separately provided for under the Conveyance.
- (4) In no case shall any Municipal Regulations or Reasonable Municipal Regulation(s), either individually or collectively, or the terms of any Development Agreement, either individually or collectively, result in an Effective Density of fewer than four (4) Dwelling Units per acre.
- (5) A Mixed-use Development shall provide for an Effective Density of not fewer than four (4) Dwelling Units per acre. A Mixed-use Development may be completed in phases, provided that the initial phase shall include not fewer than four (4) Dwelling Units per acre.

REGULATORY AUTHORITY

760 CMR 77.00: St. 2024, c. 150, § 122