

## 760 CMR 69.00: STARTER HOME ZONING DISTRICTS

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#### 69.01: Purpose, Program Overview

- (1) 760 CMR 69.00 establishes rules, standards, and procedures for an optional housing program for Massachusetts municipalities called the Starter Home Zoning District Program created by M.G.L. c. 40Y. EOHLC is the regulatory agency for the program and is authorized to issue regulations to explain and to provide specifics of the program and its operation.
- (2) 760 CMR 69.00 describes the process by which Municipalities may propose, for review and approval by EOHLC, new Starter Home zoning provisions that allow As-of-right development of modest-size single-family homes up to 1,850 square feet, including homes affordable to households with annual incomes less than 110% of the Area Median Income, at a minimum density of four units per net acre of Developable Land within corresponding, EOHLC-approved base or overlay zoning districts.

#### 69.02: Definitions

Additional Municipal Standards. A Municipal environmental or health ordinance, agreement, bylaw, or regulation that exceeds applicable requirements of state law or regulation.

Approved District. A District for which Starter Home Zoning has been adopted by a Municipality and for which a Letter of Approval has been issued by EOHLC, in accordance with M.G.L. c. 40Y and 760 CMR 69.00, subject to any conditions established by EOHLC.

As-of-right. Housing development allowed under the Underlying Zoning (including any overlay zoning) or Starter Home Zoning without recourse to a special permit, variance, zoning amendment, discretionary waiver, or other form of zoning relief. Units that require Site Plan Review pursuant to the Starter Home Zoning may be considered As-of-right, subject to review and approval by EOHLC of any Municipal 40Y regulations, guidelines, forms or application materials, or other requirements, including any Additional Municipal Standards, applicable to review of Projects by the Plan Approval Authority under 760 CMR 69.00.

Bonus Unit. A Starter Home developed as part of a Project within a District in excess of the number of Existing Zoned Units for the same parcel. Units proposed or developed under a comprehensive permit pursuant to M.G.L. c. 40B shall not qualify as Incentive or Bonus Units.

Capital Funds. Monies required by law to be used for capital expenditures including, without limitation, for acquisition, rehabilitation, and construction of real and personal property, including items such as

environmental remediation, park improvements, drainage and irrigation projects, and deferred maintenance projects. A determination of what constitutes capital expenditures is subject to any regulations and guidance issued by the Department of Revenue. EOHLC may issue additional guidance to assist Municipalities, but in the event of any conflict between EOHLC's guidance and Department of Revenue's regulations or guidance, Department of Revenue's regulations or guidance, as applicable, will govern.

Certificate of Revocation. A certificate issued by EOHLC to a Municipality pursuant to 760 CMR 69.06(2) if, after an adjudicatory hearing or the waiving of such hearing by the municipality, EOHLC determines that the Municipality is in substantial non-compliance with M.G.L. c. 40Y, 760 CMR 69.00.

Dedicated Open Space. Dedicated Open Space shall include, but not be limited to, 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.

Design Standards. Provisions of, or regulations adopted pursuant to, Starter Home Zoning, which are made applicable to Projects within the District, provided such Design Standards have been approved by EOHLC.

Developable Land. All land within a District that can be feasibly developed for one or more Projects, which may include Underutilized Land. Developable Land shall not include:

- (1) Substantially Developed Land, including Dedicated Open Space within such Substantially Developed Land;
- (2) The rights-of-way of existing public streets, ways, and transit lines, and, subject to EOHLC approval, new public and private roadways that would be necessary to meet minimum applicable requirements under Municipal law including the proposed Starter Home Zoning and, to the extent applicable within the proposed District, Municipal subdivision control requirements;
- (3) Land currently in use for governmental functions (except to the extent that such land qualifies as Underutilized Land); or
- (4) Areas exceeding  $\frac{1}{2}$  acre of contiguous land that are:
  - (a) protected wetland resources (including buffer zones) under federal or state laws plus any additional areas that are protected wetlands resources (including buffer zones) under applicable Additional Municipal Standards, if any, but not federal or state laws;
  - (b) rare species habitat designated under federal or state law, unless granted an exception consistent with requirements established by the Massachusetts Executive Office of Energy and Environmental Affairs and the Department of Fish and Game that all or part of such areas can accommodate development consistent with the proposed 40Y District;
  - (c) characterized by steep slopes with an average gradient of 15% or more; or
  - (d) subject to any other Municipal ordinance, by-law, or regulation that would prevent the development of Projects at the As-of-right residential densities set forth in the 40Y District.

District. A zoning district within a Municipality, of reasonable size, that is subject to Starter Home Zoning. A District may be base zoning that replaces the previous base zoning, or overlay zoning superimposed over one or more zoning districts (as defined by the Underlying Zoning). Within a District, the Starter Home Zoning shall allow residential Projects As-of-right, and, subject to EOHLC review, it may also permit

Mixed-use Development Projects As-of-right. Within the boundaries of a District, a developer may elect either to develop a Project in accordance with the requirements of the Starter Home Zoning, or where Underlying Zoning remains applicable, to undertake development in accordance with requirements of the Underlying Zoning, if any.

EOHLC. The Massachusetts Executive Office of Housing and Livable Communities.

Existing Zoned Units. For a given parcel or area of Developable Land within a District, the maximum number of housing units that could feasibly be developed As-of-right under the Underlying Zoning, including any overlay zoning, in effect prior to the adoption of Starter Home Zoning. The calculation of Existing Zoned Units shall take into consideration any existing, or recently demolished housing units within a District regardless of whether they could be developed As-of-right under currently applicable Underlying Zoning if such housing could nonetheless be rebuilt by-right as, for example, lawfully nonconforming existing housing units.

Future Zoned Units. For a given parcel or area of Developable Land within a District, the maximum number of housing units that could be developed As-of-right under the Starter Home Zoning.

Heated Living Area. Shall include all conditioned area, which is that area within a building provided with heating and/or cooling systems or appliances capable of maintaining, through design or heat loss/gain, 68°F (20°C) during the heating season and/or 80°F (27°C) during the cooling season, or has a fixed opening directly adjacent to a conditioned area. See 780 CMR 5202.

Historic District. A district in a Municipality characterized by the historic and or architectural significance of buildings, structures, and sites, and in which exterior changes to and the construction of buildings and structures are subject to regulations adopted by the Municipality pursuant to M.G.L. c. 40C.

Incentive Units. For a given parcel or area of Developable Land within a District, the number of Future Zoned Units, less the number of Existing Zoned Units for the same parcel or area of land, provided that the number of Incentive Units may be increased by the amount, if any, by which the number of housing units actually developed under the Starter Home Zoning exceeds the difference between the number of Future Zoned Units and the number of Existing Zoned Units for the same parcel or area of land.

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 but not limited to transportation facilities, public and private facilities for storm water transport, treatment and disposal, and power supply and distribution. Infrastructure shall not be required to include public sewer and/or public water supply.

Income-restricted and Income-restriction. A housing unit will be considered Income-restricted for the purposes of 760 CMR 69.00 if:

- (1) It is subject to an EOHLC-approved affordable housing restriction, as defined in M.G.L. c. 184, § 31, with a term of no less than 30 years; and
- (2) For a rental unit, it is affordable to and occupied by individuals and households whose annual income is less than 110 percent of the area median income as determined by the United States Department of Housing and Urban Development, and the monthly rent plus a reasonable allowance for applicable utilities is less than or equal to 30% of 1/12 of the area median income.
- (3) For a homeownership unit, the purchaser is required to be an individual or household whose annual

income is less than or equal to 110% of the Area Median Income and the maximum sale price at initial sale and resale is required to be less than or equal to the maximum purchase price limit which meets the standards set out in guidance issued by EOHLC.

Letter of Approval. A letter issued by EOHLC to a Municipality upon the proof of adoption of its Starter Home Zoning for a District, confirming final approval, subject to any applicable conditions, of a District under and in accordance with M.G.L. c. 40Y and 760 CMR 69.00.

Letter of Denial. A letter issued by EOHLC to a Municipality, finding that a proposed District would not meet the approval requirements set forth in 760 CMR 69.03(3), and informing the Municipality of the deficiencies in its Starter Home Zoning Application.

Letter of Eligibility. A letter issued by EOHLC to a Municipality, finding that a proposed District would meet the approval requirements set forth in 760 CMR 69.03(3).

Letter of Noncompliance. A letter from EOHLC finding that a Municipality has failed to demonstrate compliance with M.G.L. c. 40Y and 760 CMR 69.00, and that EOHLC intends to issue a Certificate of Revocation to the Municipality. A Letter of Noncompliance may establish conditions and deadline for a Municipality to correct the identified reasons for noncompliance.

Mixed-use Development. Solely for purposes of M.G.L. c. 40Y and 760 CMR 69.00, a Project containing a mix of Starter Homes with accessory commercial, or other non-residential uses as may be approved by EOHLC.

Municipality. Any Massachusetts city or town.

Permitted Use Restriction. A restriction on any person who owns or leases a Starter Home related to its use, which shall include restrictions on short-term and seasonal rentals.

Plan Approval Authority. A unit of Municipal government designated by the Municipality to review Projects and issue approvals under M.G.L. c. 40Y, §4.

Production Bonus Payment. A one-time payment to a Municipality for each Bonus Unit within a District for which a starter home has been created and for which EOHLC has determined that the applicable Income-restriction requirements have been met.

Prohibited Occupancy Restriction. A restriction on ownership, leasing, or occupancy of a Starter Home based on a protected class under state or federal law such as race, national origin, religion, disability, age, sexual orientation, or gender identity, and on other criteria as may be determined by EOHLC, such as familial relationship. Prohibited Occupancy Restrictions shall not include restrictions based on an Income-restriction.

Project. A Starter Home 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 Starter Home Zoning. Within the boundaries of a District a developer may elect either to develop a Project in accordance with the requirements of the Starter Home 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 Plan Review. The standards and procedures by which a proposed Project within a District is made subject to review under the provisions of the Starter Home Zoning, in accordance with M.G.L. c. 40Y, § 4 and 760 CMR 69.00.

Start of Construction. With respect to an Approved District, the commencement of construction activity, such as the pouring of foundations or footings, utility relocation, or the remediation of hazardous materials within an Approved District on a Project or on a Planned Infrastructure upgrade identified in the Municipality's Starter Home Zoning Application, provided that such construction is continued through to completion of a Project.

Starter Home. A single-family home not exceeding 1,850 square feet in Heated Living Area, not including any associated Starter Home Accessory Dwelling Unit.

Starter Home Accessory Dwelling Unit. For the purposes of a District, a dwelling unit, not exceeding 600 square feet, on the same lot as a Starter Home.

Starter Home Zoning. The Municipal underlying or overlay zoning requirements adopted or changed by amendment by the Municipality pursuant to M.G.L. c. 40Y § 2, in accordance with the procedures for zoning adoption and amendment set forth in M.G.L. c. 40A for communities other than the City of Boston, or by other applicable law in the case of the City of Boston, and approved by EOHLC, which provide for the development of Starter Homes pursuant to M.G.L. c. 40Y and 760 CMR 69.00 and in accordance with EOHLC guidance.

Starter Home Zoning Application. An application for a preliminary determination of eligibility of a proposed Starter Home Zoning District submitted by a Municipality to EOHLC pursuant to 760 CMR 69.04(1).

Substantially Developed Land. As determined by EOHLC, land within a District that is currently used for commercial, industrial, institutional, or governmental use, or for residential use consistent with or exceeding the densities allowable under the Underlying Zoning, and which does not qualify as Underutilized Land. Any land located within a Historic District shall be presumed to be Substantially Developed, unless the Municipality can show that all or a portion of such land qualifies as Developable Land.

Sustainable Development Standards. Provisions approved by EOHLC and applicable under the Starter Home Zoning, including, but not limited to, requirements that new development projects: (i) minimize site disturbance, (ii) permanently preserve undeveloped open space to the greatest extent practicable, and (iii) collect and manage storm water runoff in accordance with low impact development practices.

Underlying Zoning. The Municipal zoning requirements adopted pursuant to M.G.L. c. 40A, or in the case of the City of Boston, other applicable law, that are otherwise applicable to the geographic area where a District is located or proposed. The Underlying Zoning shall include all zoning including existing overlays applicable to such geographic area and shall not be limited to the base zoning layer. EOHLC may consider the Underlying Zoning in existence up to one year before the Starter Home Zoning

Application when calculating Existing Zoned Units.

Underutilized Land. As determined by EOHLC, Developable Land within a District that would otherwise qualify as Substantially Developed Land, consistent with guidance issued by EOHLC, but which:

- (1) is characterized by improvements that have a marginal or significantly declining use, as measured by such factors as vacancy rates, extent of operation, current and projected employment levels, market demand for the current uses or the uses to which the existing improvements could readily be converted, low value of improvements in relation to land value, and low floor area ratio in relation to the floor area ratio that would be permitted under the applicable Underlying Zoning; and
- (2) as demonstrated by existing or anticipated market conditions, may have reasonable potential to be developed, recycled, or converted into residential or Mixed-use Development.

Unreasonably Impair. To add unreasonable costs or unreasonably diminish the economic feasibility of proposed Projects in a District by means of a provision of Starter Home Zoning or a Design Standard.

Zoning Incentive Payment. A one-time payment to a Municipality for Incentive Units that, subject to any conditions imposed by EOHLC, is made after issuance of a Letter of Approval authorizing such payment.

#### 69.03: Starter Home Zoning Requirements

- (1) Application for Preliminary Determination of Eligibility for Starter Home Zoning. Prior to the adoption of Starter Home Zoning for a proposed District, the chief executive of a Municipality, or duly authorized designee, shall submit a complete application and any documentation as may be required by EOHLC in its forms and guidance, demonstrating that the proposed District satisfies the approval requirements of 760 CMR 69.03(3). The Starter Home Zoning Application shall include the following:
  - (a) A map showing the boundaries of the proposed starter home zoning district;
  - (b) a map and narrative description of the developable land area within the proposed starter home zoning district;
  - (c) a copy of the proposed starter home zoning district ordinance or by-law;
  - (d) narrative and exhibits as needed, and in the form required by, EOHLC to establish the elements set forth in M.G.L. c. 40Y, Section 3 and 760 CMR 69.03(3).
- (2) Letter of Eligibility. To issue a Letter of Eligibility under 760 CMR 69.04(1), or a Letter of Approval under 760 CMR 69.04(3), EOHLC must find that a proposed District satisfies each of the relevant requirements set forth in 760 CMR 69.03(3). EOHLC may approve, disapprove, or approve with conditions, a request for the determination of eligibility for a District.
- (3) Requirements. The Municipality shall establish, by form and exhibits as required by EOHLC, that a proposed District satisfies each of the following requirements.
  - (a) Land Area of All Districts. The aggregate total land area (excluding open water bodies) of all approved or proposed Districts in the Municipality does not exceed 15% of the total land area in the Municipality, unless EOHLC has approved an area waiver.
  - (b) Density. A District shall provide for a minimum allowable As-of-right density of no less than four (4) Starter Homes per net acre of Developable Land.
    1. Unless otherwise approved by EOHLC, the boundaries of a District shall follow existing parcel lines such that no portion of a parcel shall be included in a District unless the entirety of the parcel is included in the District. Accordingly, the Developable Land area

of any parcel included in the District shall be determined in relation to the gross land area of the entirety of the parcel.

2. Starter Home Zoning shall provide that at least fifty percent of the Starter Homes to be developed in a proposed District must contain three or more bedrooms.
3. Subject to EOHLC review and approval, the Starter Home Zoning may allow, but not require, limited non-residential use and/or Mixed-use Developments As-of-right in part, or all, of the District provided that the District nevertheless meets the minimum Starter Home density of four (4) units per net acre of Developable Land.

(c) Income-restricted Units.

1. The Starter Home Zoning shall provide that not less than 10% of all units constructed within any Project of more than 12 Starter Homes shall be affordable to and occupied by individuals and families whose annual income is less than 110% of the area median income as determined by the United States Department of Housing and Urban Development. Projects may not be planned to evade this requirement and at its discretion EOHLC may treat two or more Projects as one Project for purposes of this provision. Starter Home Zoning may not provide for payments in lieu of Income-restricted units. A Municipality may incentivize, but not require, additional affordability.
2. Starter Home Zoning shall require:
  - a. That all Income-restricted units are equitably integrated and dispersed throughout the District and Project (including by unit type and construction phase);
  - b. That an affordable housing restriction for each Project ensures that each 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;
  - c. That Income-restriction requirements shall be assured for a period of no less than 30 years through the use of an affordable housing restriction as defined in M.G.L. c. 184, § 31.
3. Starter Home Zoning shall also include:
  - a. Provisions to ensure that there shall be effective monitoring and enforcement of the Income-restriction requirements during the required term; and
  - b. Provisions specifying the method by which restricted rents or purchase prices shall be computed.

(d) Site Plan Review and Design Standards.

1. If the Starter Home Zoning provides for Site Plan Review of Projects within the District, the zoning shall specify:
  - a. The composition of the Plan Approval Authority;
  - b. The categories of Projects that will be subject to Site Plan Review;
  - c. The procedures for such review, including the contents of an application for approval of a Project;
  - d. The criteria upon which the Plan Approval Authority may disapprove a proposed Project, or condition its approval;
  - e. The criteria upon which the Plan Approval Authority may grant waivers from dimensional and other restrictions (other than Income-restrictions); and
  - f. Any Design Standards to which a Project will be subject. If the Design Standards are not contained within the Starter Home Zoning, such Design Standards must be approved by EOHLC prior to their adoption by the Plan Approval Authority and application to any Project or proposed Project.
2. The Site Plan Review provisions of the Starter Home Zoning and any separate Design

Standards must be clearly written, fairly and consistently applied, and allow for flexibility and creativity, consistent with the goals of M.G.L. c. 40Y, 760 CMR 69.00. The Site Plan Review provisions of the Starter Home Zoning and any separate Design Standards may only provide for denial of a proposed Project on the grounds that:

- a. The Project does not meet the conditions and requirements set forth in the Starter Home Zoning;
  - b. The Project does not ensure public safety or the safety of persons living in or visiting the proposed project;
  - c. 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
  - d. It is not possible to adequately mitigate significant adverse Project impacts on nearby properties by means of suitable conditions.
3. Provided such Design Standards are otherwise consistent with M.G.L. c. 40Y and 760 CMR 69.00, a Municipality may adopt Design Standards to ensure that, to the extent desired, the physical character of Projects within the District:
  - a. Will be complementary to nearby buildings and structures;
  - b. Will be consistent with any local housing or other municipal plan or guidelines that address design concerns related to residential or Mixed-use Development; and
  - c. Will provide for higher-density 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. Design Standards may address the scale, proportions, and exterior appearance of buildings; the placement, 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 Dedicated Open Spaces, landscaping, and exterior signs; and buffering in relation to adjacent properties, to achieve the goals of 760 CMR 69.03(3)(d)(2).
4. The Municipality must demonstrate to the satisfaction of EOHLC that its Design Standards will not add unreasonable costs to or Unreasonably Impair the development of Projects in the District. Design Standards must clearly distinguish standard requirements from recommendations or optional guiding principles. Design Standards must be articulated objectively so that compliance can be reasonably interpreted and measured. Design Standards that fail to define standard requirements that are reasonably clear, objective, and measurable will be deemed to Unreasonably Impair the development of a Project in the District. EOHLC may disapprove or conditionally approve a District on account of Design Standards for which the requisite demonstration has not been made.
5. For purposes of the Site Plan Review of a Mixed-use Development Project, provisions of the Starter Home Zoning and the Design Standards provide that that the non-residential elements of any Mixed-use Development Project are planned and designed in an integral manner to complement the residential uses, and help foster vibrant, workable, livable, and attractive neighborhoods.
6. The Starter Home Zoning may allow the Plan Approval Authority, through the Site Plan Review process, to waive specific dimensional and other standards (other than Income-restriction requirements, unless expressly approved in writing by EOHLC and permitted



under the statute) otherwise applicable to a Project, if it finds that such waiver will allow the Project to achieve the density, Income-restriction, mix of uses, or physical character allowable under the Starter Home Zoning and consistent with the Design Standards.

- (e) No Moratorium. Projects within the proposed District shall not be subject to limitation of the issuance of building permits for residential uses or a Municipal moratorium on the issuance of such permits. The Starter Home Zoning may permit the Site 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 Starter Home Zoning 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 10% of all units constructed in each phase.
- (f) Prohibited Occupancy Restrictions.
  - 1. No proposed Starter Home Zoning shall impose restrictions on age or any other forms of Prohibited Occupancy Restriction upon the District as a whole or any portion thereof or project herein.
  - 2. Proposed Starter Home Zoning shall clearly state that Prohibited Occupancy Restrictions are not permitted.
- (g) Permitted Use Restrictions. Starter Home Zoning may impose Permitted Use Restrictions in compliance with 760 CMR 69.02: Permitted Use Restrictions.
- (h) Fair Housing. Projects within the proposed District shall comply with federal, state, and Municipal fair housing laws. Income-restricted units within Projects shall be subject to an affirmative fair housing marketing plan and affordable housing restrictions that are approved by EOHLC, in accordance with EOHLC guidance.
- (i) Starter Home Zoning to Be All-inclusive. The development of a Project within a District shall be governed solely by the Starter Home Zoning, without any reference to the standards or procedures of the Underlying Zoning that would otherwise be applicable to developments within the same geographic area as the District. Without limitation, 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, open space ratios, parking ratios, parking locations, and roadway design standards. Such provisions may differ from the dimensional and other standards contained in the Underlying Zoning to allow the densities, Income-restriction, mix of uses, and physical character of Projects which are permitted As-of-right under the Starter Home Zoning. The Starter Home Zoning may allow the Plan Approval Authority, through the Site Plan Review process, to waive specific dimensional and other standards (other than Income-restriction requirements) otherwise applicable to a Project.
- (j) Sustainable Development Standards. Projects within the District shall be subject to Sustainable Development Standards.
- (k) Additional Municipal Standards. The District shall not be subject to any municipal environmental or health ordinances, by-laws or regulations that exceed applicable requirements of state law or regulation that would Render Development Infeasible, as determined by EOHLC.
- (l) Starter Home Accessory Dwelling Units. Starter Home Zoning shall not unreasonably restrict, or require a special permit or other discretionary zoning approval for, the use of land or structures for development of Starter Home Accessory Dwelling Units and shall comply with the provisions of M.G.L. c. 40A §§ 1A and 3 and any applicable regulations and guidance that may be promulgated.

(1) Preliminary Determination of Eligibility by EOHLC. Upon receipt of a Starter Home Zoning Application by a Municipality, EOHLC will make a preliminary determination, before the Municipality votes on its proposed Starter Home Zoning, whether the application satisfies the approval requirements set forth in 760 CMR 69.03(3).

(a) EOHLC shall review the complete 40Y Application to determine whether the Starter Home Zoning Application is complete and satisfies the approval requirements as set forth in 760 CMR 69.03(3). EOHLC will issue its decision upon an application within 45 days of its receipt of a complete 40Y Application. This time-period may be extended at EOHLC's discretion if the 40Y Application is incomplete or further information is needed. EOHLC shall provide the Municipality with notice of any further required information and deadline extension. If EOHLC does not act upon a complete and approvable application within the 45-day period, subject to any extension deadlines, the application for a preliminary determination of eligibility shall be deemed approved, but the Municipality must comply with the remaining requirements of 760 CMR 69.04 to receive final Starter Home Zoning approval.

(b) EOHLC may, in its discretion, treat a proposed District within proximity of another Approved District as an amendment to that existing Approved District.

(c) EOHLC will communicate its determination on a Starter Home Zoning Application to the Municipality by issuing one of the following:

1. A Letter of Eligibility, approving the application, which may contain conditions, including but not limited to conditions that may need to be satisfied before the municipality is eligible for all or a portion of the Zoning Incentive Payment for which it may otherwise become eligible for upon issuance of a Letter of Approval; or
2. A Letter of Denial.

(d) In the event of issuance of a Letter of Denial, a Municipality may re-apply for approval after addressing any deficiencies in a prior application, provided that such reapplication shall be treated as a new Starter Home Zoning Application.

(2) Municipal Adoption of Starter Home Zoning. Following receipt of EOHLC's preliminary determination of eligibility, the Municipality must formally adopt its Starter Home Zoning pursuant to M.G.L. c. 40A, § 5 and M.G.L. c. 40Y § 2(a) prior to final Starter Home Zoning approval by EOHLC. The Municipal vote to adopt the Starter Home Zoning must occur within three years of the date of the Letter of Eligibility.

(3) Final Starter Home Zoning Approval by EOHLC.

(a) Submission by Municipality. Upon adoption of the Starter Home Zoning, the Municipality shall submit to EOHLC proof of such adoption on a form provided by EOHLC.

(b) EOHLC Review. EOHLC will issue a Letter of Approval or Letter of Denial within 30 days of receipt of the complete submission.

(c) Letter of Approval. If the submission satisfies all the approval criteria set forth in 760 CMR 69.03(3), as well as all applicable conditions, in the Letter of Eligibility, EOHLC will issue a Letter of Approval which will specify the number of Incentive Units and the amount of the Zoning Incentive Payment that shall be made to the Municipality, subject to any remaining conditions.

(d) Changes to Starter Home Zoning. The Municipality shall identify in its submission for final approval of its District all differences between the proposed Starter Home Zoning that had been submitted to EOHLC for review as part of EOHLC's preliminary determination of eligibility under 760 CMR 69.03(1), and the Starter Home Zoning as adopted by the Municipality, as well as any other changes to the original application.

- (e) Constructive Approval. In the event of a constructive approval of a final submission due to EOHLC's failure to act within the specified time-period, the Municipality may request in writing the issuance of a Letter of Approval within 30 days of the date of constructive approval, and EOHLC will issue such Letter within 21 days of its receipt of the request.

(4) Amendments and Repeals.

- (a) Notice of Amendment or Repeal. Notice of any proposed amendment of the Starter Home Zoning, Design Standards, or the boundary of the District or any sub-districts, or any amendment or adoption of the Plan Approval Authority's administrative rules for an Approved District shall be provided in a written form, as determined by EOHLC, not less than forty-five (45) days before a vote is taken on said adoption, amendment, or repeal by the Municipality. Such notice shall state the number of starter homes that have been built within the district since its adoption and shall include an evaluation of the number of projected starter homes, if any, that will remain developable within the starter home district after the adoption of the proposed amendment.
- (b) Historic District. Any proposed adoption or enlargement of an Historic District within the boundary of the District, if adopted after issuance of a Zoning Incentive Payment, shall be subject to EOHLC review to determine whether the adoption or enlargement of the Historic District would cause the Approved District to fail to comply with the approval criteria set forth in 760 CMR 69.03(3).
- (c) Application for Review. Each request for review of a proposed adoption or amendment must be submitted in a form or format as directed by EOHLC. EOHLC will issue a Letter of Eligibility for a proposed adoption or amendment only if, and to the extent that, EOHLC finds in its discretion that the Approved District as amended will remain in compliance with the approval criteria set forth in 760 CMR 69.03(3).
- (d) Treatment of Proposed Amendment. An application for review of a proposed amendment to an Approved District, other than a non-substantial modification as described in 760 CMR 69.04(4)(e) shall be treated as a new Starter Home Zoning Application.
- (e) Non-substantial Modifications. EOHLC may, upon written request of the Municipality, review and approve a non-substantial modification to the Starter Home Zoning, Design Standards, Municipal Historic District regulations, or a District or sub district boundary. The Municipality shall, in its request, certify to EOHLC that the proposed modification will not have the effect of increasing or decreasing the area of an Approved District or the number of Incentive Units or Bonus Units, adopting or enlarging an Historic District or substantially modifying the requirements applicable in an Historic District within the Approved District, or Unreasonably Impairing the development of Projects within the Approved District.
- (f) Municipal Repeal. A Municipality may at any time repeal the Starter Home Zoning for an Approved District, pursuant to the following review procedure. The Municipality shall provide 45 days prior written notice to EOHLC that such repeal has been proposed for action by the Municipal legislative body under applicable law, and it shall provide subsequent written notice to EOHLC if such Municipal repeal action is taken. Such prior written notice shall include a recalculation of the number of Incentive Units still developable within the District if the Starter Home Zoning is repealed.

69.05: Payments and Repayments

- (1) Zoning Incentive Payments. A Letter of Approval shall entitle a Municipality to receive the Zoning Incentive Payment for a District in accordance with the schedule set out in M.G.L. c. 40R § 9, subject to

appropriations availability; provided that all conditions set forth in a Letter of Approval must be met before a Municipality is entitled to receipt of its Zoning Incentive Payment.

- (a) Letters of Approval shall remain valid indefinitely, unless otherwise stated in the letter, for purposes of Municipal collection of the Zoning Incentive Payment, subject only to a repeal pursuant to 760 CMR 69.04(4)(f), or payment suspension or revocation pursuant to 760 CMR 69.06(2).
  - (b) EOHLC may in its discretion, for purposes of calculating the Zoning Incentive Payment in the Letter of Approval, treat two or more simultaneously Approved Districts within proximity of each other as a single District, or treat a newly Approved District as an amendment to a nearby existing Approved District.
  - (c) EOHLC may in its discretion, issue the Zoning Incentive Payment in its entirety, or in part, after the Municipality satisfies any applicable conditions identified by EOHLC, and may require as a condition of payment that the Zoning Incentive Payment be used, in whole or in part, to further the Municipality's compliance with M.G.L. c. 40Y and 760 CMR 69.00. Any such conditions shall be included in the Letter of Approval.
  - (d) Municipalities shall request payment on an application form approved by EOHLC.
- (2) Production Bonus Payments. Subject to any associated conditions that EOHLC may have imposed as part of its approval of the District and appropriations availability, upon issuance of a building permit for a Bonus Unit within an Approved District, the Municipality may apply to EOHLC for a one-time Production Bonus Payment of \$3,000 for each Bonus Unit.
- (a) The Municipality shall submit the request for its Production Bonus Payment on an application form approved by EOHLC, and shall provide at a minimum:
    - 1. A certified copy of the building permit(s) for the Project;
    - 2. A site plan that indicates building(s) location and, if available, address(es) within the District;
    - 3. If there are Existing Zoned Units, a calculation of the number of Bonus Units for the Project (i.e., subtracting Existing Zoned Units from the Project's total number of units);
    - 4. If the Project was subject to a Plan Approval decision, a copy of the Plan Approval Authority's decision approving the Project;
    - 5. A copy of a recorded affordable housing restriction meeting the requirements of M.G.L. c. 184, § 31; and
    - 6. A copy of the approved affirmative fair housing marketing plan applicable to the Bonus Unit(s).
  - (b) Production Bonus Payment Application Review. Provided that the Municipality has submitted all the information required, EOHLC will confirm its approval of an application for payment within 30 days after receipt.
- (3) Use of Zoning Incentive Payments and Production Bonus Payments.
- (a) EOHLC may set restrictions on how Zoning Incentive Payments or Production Bonus Payments may be used by Municipalities. Municipalities receiving Zoning Incentive Payments or Production Bonus Payments shall agree in contracts with EOHLC to comply with any funding restrictions set by EOHLC and to provide reporting as required.
  - (b) If Zoning Incentive Payments and Production Bonus Payments are made from Capital Funds, Municipalities receiving such Capital Funds shall utilize such payments only for capital expenditures that would be an eligible use for a capital appropriation under chapter 29 of the general laws, and only in accordance with restrictions that may be set by EOHLC.

- (1) Annual Update by Municipality. On or before July 31<sup>st</sup> of each year, each Municipality with an approved District that had been Approved by the end of the previous fiscal year ending on June 30<sup>th</sup>, shall file its annual update with EOHLC, in a form to be prescribed by EOHLC. Unless otherwise permitted by guidance issued by EOHLC, the Municipality shall provide the following information in the annual update:
- (a) A list of all Approved Districts within the Municipality, with a tabulation for each District of the total land area, the Developable Land area and the Substantially Developed Land area, and the number of Incentive Units;
  - (b) A written narrative describing whether the Municipality has repealed or amended, or proposed to amend or repeal, any of the requirements applicable to the District(s);
  - (c) A written narrative describing any proposed Projects within each Approved District for which building permits have not yet been issued, including the total number and types of proposed total units and Bonus Units in such Projects;
  - (d) For Projects in each Approved District, the total number of Starter Homes:
    - 1. For which building permits had been issued during the previous fiscal year;
    - 2. Completed during the previous fiscal year; and
    - 3. Completed in total since the District was approved.
    - 4. Completion shall be documented by issuance of occupancy permits, with a tabulation of the types of such Starter Homes (Income-restricted, market rate, accessible, and bedroom size-);
  - (e) A written narrative for each Project describing any constructed starter homes that comply with the zoning requirements applicable to the Approved District;
  - (f) For each Approved District, the number and category of Projects for which the Site Plan Review procedure was completed during the previous fiscal year, including:
    - 1. The number of Projects both approved and disapproved; and
    - 2. The total number and types of proposed total units and Bonus Units in each category of Project. For each proposed Project that was disapproved, the annual update shall contain sufficient documentation to demonstrate that the Plan Approval Authority did not unreasonably deny its approval, and that it only denied its approval in a reasonable manner consistent with M.G.L. c. 40Y, 760 CMR 69.00 and the Starter Home Zoning;
  - (g) If no building permit has been issued for any Starter Homes in an Approved District within five years of the date of EOHLC's approval of the District, or if a building permit was issued within such five-year period, but no certificate of occupancy for such Starter Home was issued within two years after issuance of the building permit, then the Municipality must submit satisfactory documentation, in the form of certification by the Plan Approval Authority, Municipal zoning enforcement officer, or public works official, of the Start of Construction within that two-year time period of one or more Projects, or of a Planned Infrastructure upgrade identified in the Starter Home Zoning Application or a related utility relocation; and
  - (h) A list and copies of text and maps of any adopted amendments of the Starter Home Zoning, any Design Standards, or the boundary of any Districts or sub-districts; any amendment to or adoption of the Plan Approval Authority's administrative rules; or any adoption or enlargement of a Historic District within the boundary of any Approved Districts.
- (2) Letter of Noncompliance; Certificate of Revocation.
- (a) EOHLC may issue a Letter of Noncompliance to a Municipality with an Approved District at any time upon determining that:
    - 1. The Municipality has not complied with the requirements of M.G.L. c. 40Y, 760 CMR 69.00;

2. The Municipality's Starter Home Zoning no longer complies with the requirements of M.G.L. c. 40Y, 760 CMR 69.00;
  3. The Municipality's Starter Home Zoning has been repealed, or amended in such a way that reduces the number of Starter Homes that can be developed within the Starter Home District; or
  4. No building permits have been issued for any Starter Homes within the District within five years from the date of EOHLC's approval of the district.
- (b) EOHLC may establish conditions and a deadline in its Letter of Noncompliance for a Municipality to correct any such noncompliance with respect to its Approved District.
  - (c) Upon issuance of a Letter of Noncompliance, no further Zoning Incentive Payment or Production Bonus Payment will be made to that Municipality until EOHLC confirms through issuance of a Certificate of Compliance that the noncompliance has been cured.
  - (d) EOHLC shall hold an adjudicatory hearing in accordance with M.G.L. c. 30A when it intends to issue a Certificate of Revocation unless the hearing is waived by the Municipality.
  - (e) A Municipality subject to a Certificate of Revocation shall repay the Zoning Incentive Payment, or such portion thereof as EOHLC may specify, to EOHLC. All monies repaid to EOHLC under this section shall be credited to the funding source from which the payment originated.
  - (f) The issuance of a Certificate of Revocation shall not affect the validity of the applicable Starter Home Zoning or the application of any such zoning to the land, development, or proposed development within that District.

#### 69.07: Waiver

The Secretary of EOHLC may waive, in writing, any provision of 760 CMR 69.00 not required by statute on findings that such waiver is consistent with the purposes set out in M.G.L. c. 40Y and 760 CMR 69.00 and that desirable relief in the public interest will be accomplished through such waiver. A request for waiver shall be in writing to the Secretary, Executive Office of Housing and Livable Communities, 100 Cambridge Street, Suite 300, Boston, MA 02114 and shall contain a reliable showing that the waiver meets all the requirements of 760 CMR 69.08.

#### REGULATORY AUTHORITY

760 CMR 69.00: St. 2004, c. 149; St. 2016, c. 219, §§ 37 through 54; M.G.L. c. 40; M.G.L. c. 23B.