

# **M.G.L. Chapter 40Y**

## **Section 1: Definitions**

As used in this chapter, the following words shall, unless the context clearly requires otherwise, have the following meanings:

“Department”, the executive office of housing and livable communities.

“Developable land area”, that area within an approved starter home zoning district that can be feasibly developed into residential or mixed-use developments determined in accordance with regulations of the department; provided, however, that developable land area shall not include: (i) land area that is already substantially developed, including existing parks and dedicated, perpetual open space within such substantially developed land area; (ii) open space designated by the city or town as provided in section 4; or (iii) areas exceeding 1/2 acre of contiguous land that are unsuitable for development because of topographic features or for environmental reasons, such as wetlands; and provided further, that developable land area may include the land area occupied by or associated with underutilized residential, commercial, industrial or institutional buildings or uses that have the potential to be recycled or converted into residential or mixed-use developments as determined in accordance with the regulations of the department.

“Historic district”, a local historic district established under chapter 40C.

“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.

“Plan approval authority”, a board or other unit of municipal government designated by the city or town to conduct site plan review of proposed starter home projects.

“Production bonus payment”, a 1-time payment to a municipality from the trust fund for each starter home created in a starter home zoning district.

“Starter home”, a single-family home not exceeding 1,850 square feet of heated living area.

“Starter home zoning district”, a base or overlay zoning district adopted in a municipal zoning ordinance or by-law that complies with the requirements of section 3.

“Sustainable development standards”, provisions in the zoning ordinance or by-law, including, but not limited to, requirements that new development projects: (i) minimize site disturbance and permanently preserve undeveloped open space to the greatest extent

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practicable; and (ii) collect and manage storm water runoff in accordance with low impact development practices.

“Trust fund”, the Smart Growth Housing Trust Fund, established by section 35AA of chapter 10.

“Zoning incentive payment”, a 1-time payment to a municipality from the trust fund payable upon the municipality’s adoption, and the department’s approval, of an approved starter home zoning district.

### **Section 2: Starter home zoning district ordinance or by-law; adoption**

(a)

In its zoning ordinance or by-law, a city or town may adopt a starter home zoning district in any area deemed suitable by the city or town. A starter home zoning district ordinance or by-law, or any amendment thereto or repeal thereof, shall be adopted in accordance with section 5 of chapter 40A; provided, that the ordinance or by-law, or any amendment thereto or repeal thereof, shall be enacted by a simple majority vote of the members of the town council, or of the city council where there is a commission form of government or a single branch, or of each branch where there are 2 branches, or by a simple majority vote of a town meeting.

(b)

Prior to the adoption of a proposed starter home zoning district ordinance or by-law, a city or town shall request a preliminary determination by the department as to whether the proposed starter home zoning district will comply with the requirements of this chapter. A request for a preliminary determination of eligibility shall be submitted by the chief executive of a city or town on a form prescribed by the department, and shall include: (i) the boundaries of the proposed starter home zoning district; (ii) a map and description of the developable land area within the proposed starter home zoning district; (iii) a copy of the proposed starter home zoning district ordinance or by-law; (iv) narrative and exhibits as needed to establish the elements set forth in section 3; and (v) any additional information the department may require in order to make a preliminary determination of eligibility. The department shall respond to such a request within 45 days of receipt of all information required to make such a preliminary determination of compliance.

(c)

After the adoption of a proposed starter home zoning district ordinance or by-law, the city or town shall request from the department a final approval of the starter home zoning district. The department shall issue a final approval upon finding that the starter home

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zoning district as adopted complies with the requirements of this chapter, subject to any conditions imposed by the department as a condition of its approval. The department's final approval shall be required prior to the disbursement of a zoning incentive payment as set forth in section 6.

(d)

The city or town shall provide written notice to the department not less than 45 days before a vote taken to adopt any amendment to the zoning ordinance or by-law as it applies to an approved starter home zoning district. 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.

### **Section 3: Minimum requirements for compliance**

A starter home zoning district shall comply with the following minimum requirements:

(1) Starter homes shall be a use permitted as of right at a density of not fewer than 4 units per acre of developable land area. No other single-family residential uses shall be permitted as of right or by special permit in the starter home zoning district, except the zoning ordinance or by-law may permit construction of an accessory dwelling unit of not more than 600 square feet on the same lot as a starter home. Accessory commercial and other non-residential uses may be allowed in a starter home district with the approval of the department.

(2) Each starter home zoning district shall incorporate sustainable development standards that apply to all starter home developments.

(3) Not less than 50 per cent of the starter homes to be developed in a proposed starter home zoning district, excluding accessory dwelling units, shall contain not fewer than 3 bedrooms.

(4) The zoning ordinance or by-law for each proposed starter home zoning district shall provide that, for any proposed development of more than 12 starter homes, not less than 10 per cent of said starter homes shall be affordable to and occupied by individuals and families whose annual income is less than 110 per cent of the area median income as determined by the United States Department of Housing and Urban Development. The zoning ordinance or by-law shall specify the mechanism by which the city or town will ensure a project complies with such affordability requirements, when applicable, and may require the execution and recording of an affordable housing restriction, as defined in section 31 of chapter 184.

(5) A proposed starter home zoning district shall not be subject to limitation of the

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issuance of building permits for residential uses or a local moratorium on the issuance of such permits. In addition, a proposed starter home zoning 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 and would render the development contemplated under the application for such district infeasible, as determined by the department.

(6) A starter home zoning district ordinance or by-law shall not impose restrictions on age or any other occupancy restrictions on the district as a whole or any portion thereof or project therein.

(7) Housing in a starter home zoning district shall comply with federal, state and local fair housing laws.

(8) The total land area of all starter home zoning districts in a city or town shall not exceed 15 per cent of the total land area in the city or town. Upon request, the department may approve a larger land area if such approval serves the goals and objectives of this chapter.

### **Section 4: Starter home zoning district ordinance or by-law; design site plans and standards**

(a)

The starter home zoning district ordinance or by-law may require individual projects to design site plans in a manner that preserves developable land area as open space; provided, that the zoning ordinance or by-law shall allow for 4 starter homes per acre, including the developable land area preserved as open space. The zoning ordinance or by-law may provide for such open space to be preserved through a conservation restriction as defined in section 31 of chapter 184, by the grant of an easement or restriction to the municipal conservation commission or by such other means as is authorized by general or special law.

(b)

A local historic district may overlap with a starter home zoning district in whole or in part; provided, that the local historic district shall not render the city or town noncompliant with this chapter, as determined by the department.

(c)

The zoning ordinance or by-law applicable to a starter home zoning district may include reasonable design standards applicable to individual starter home projects, to ensure that the physical character of development within the starter home zoning district is complementary to adjacent buildings and structures. Such standards may address the

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scale and proportions of buildings, the alignment, the 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. A design standard shall not be adopted if it will add unreasonable costs to starter home developments or unreasonably impair the economic feasibility of proposed starter home projects.

(d)

The starter home zoning district zoning ordinance or by-law may provide for site plan review of proposed starter home projects; provided, however, that such review shall be consistent with and subject to the following limitations:

(1) The starter home zoning district ordinance or by-law may require the applicant to pay for reasonable consulting fees to provide peer review of the applications for the benefit of the plan approval authority; provided, that fees shall be held by the municipality in a separate interest-bearing account and used solely for expenses associated with the review of the development application by outside consultants. Any surplus remaining after the completion of such review, including any interest accrued, shall be returned to the applicant.

(2) The starter home zoning district ordinance or by-law may provide for the referral of the plan to municipal officers, agencies or boards other than the plan approval authority for comment; provided, that any such board, agency or officer shall provide any comments to the plan approval authority within 60 days of its receipt of a copy of the plan.

(3) Notwithstanding any provision in the zoning code or by-law to the contrary, the decision of the plan approval authority shall be made, and a written notice of the decision filed with the city or town clerk, not later than 120 days after the receipt of a complete application by the city or town clerk, unless such timeframe for decision is extended by written agreement between the applicant and the plan approval authority. Failure of the plan approval authority to take action within said 120 days or extended time, if applicable, shall be deemed to be an approval of the plan. An applicant who seeks approval of a plan by reason of the failure of the plan approval authority to act within said 120 days shall notify the city or town clerk, in writing, within 14 days after the expiration of said 120 days or extended time, if applicable. Such notice to the city or town clerk shall specify relevant details of the application timeline demonstrating the lack of decision by the plan approval authority.

(4) Notwithstanding any provision of the starter home zoning district ordinance or by-law to the contrary, the plan approval authority may approve a site plan subject only to those conditions that are necessary to: (i) ensure substantial compliance of the proposed project with the requirements of the starter home zoning district ordinance or by-law; (ii) ensure

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public safety or the safety of persons living in or visiting the proposed project; or (iii) mitigate any extraordinary adverse impacts of the project on nearby properties.

(5) The department may establish additional standards or limitations for site plan review pursuant to this section.

### **Section 5: Annual reports submitted by cities or towns with 1 or more approved starter home zoning districts**

Not less than once annually, on or before a date specified by the department, each city or town with 1 or more approved starter home zoning districts shall submit to the department the following information:

(1) whether the city or town has repealed or amended, or proposed to amend or repeal, any of the requirements applicable to the starter home zoning district or districts;

(2) whether there are any pending proposals to construct starter homes within the starter home zoning district or districts; and

(3) whether any starter homes have been constructed within the starter home zoning district or districts, and if so, whether those projects comply with the zoning requirements applicable to the district or districts.

### **Section 6: One-time zoning incentive payment**

Subject to any conditions imposed by the department as a condition of approving a starter home zoning district, each city or town with an approved starter home zoning district shall be entitled to a 1-time zoning incentive payment upon approval of the district by the department in accordance with the schedule set forth in subsection (a) of section 9 of chapter 40R and a production bonus payment of \$3,000 for each starter home created in the starter home zoning district.

### **Section 7: Revocation of approval by department**

(a)

The department may revoke its approval of an approved starter home zoning district if, at any time, the department determines that:

(1) a city or town with an approved starter home zoning district has not complied with the requirements of this chapter;

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(2) the zoning applicable to an approved starter home zoning district no longer complies with the requirements of this chapter;

(3) the zoning applicable to an approved starter home zoning district has been amended in such a way that reduces the number of starter homes that can be developed within the starter home zoning district; or

(4) no building permits have been issued for any starter homes within the starter home zoning district within 5 years from the date of the department's approval of the district.

The department may revoke the approval of an approved starter home zoning district only after conducting a hearing in accordance with chapter 30A unless the municipality waives its right to such a hearing in writing. The department's revocation of approval shall not affect the validity of the starter home zoning district ordinance or by-law, as applicable, or the application of such ordinance or by-law to land, development or proposed development within the starter home zoning district.

(b)

If the department revokes its approval of an approved starter home zoning district, the affected city or town shall repay to the department the zoning incentive payment, or such portion thereof as the department may specify. All monies repaid to the department under this section shall be credited to the funding source from which the payment originated.

### **Section 8: Regulations**

The department may promulgate regulations for the administration and enforcement of this chapter.