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Chapter 40 S

Chapter 40S and 40R Explained: Reaping the Benefits of Compact Development

[Chapter 40 S statute](#)

Chapters 40R and 40S serve to reimburse cities and towns for the additional costs of educating new school-age children in smart growth districts. The combination of 40R and 40S now tops the menu of choices available to communities seeking more efficient, fiscally stable growth.

40R

Cities and towns may establish special zoning overlay districts that allow densities of 8 units/acre for single family homes, 12 units/acre for townhouses, and 20 units/acre for condominiums and apartments. The zoning must require that 20% of the district be affordable homes, and it should allow "mixed use" – the combination of residential, office and retail within close proximity. The location of these districts helps consolidate growth and cut down on dispersal: in town centers, downtowns, near a transit station, on unused industrial land or in other locations municipalities have deemed appropriate for higher density housing. Assistance is available for writing a bylaw and for planning and design. Well-designed districts create a distinctive sense of place and fulfill a significant market demand for convenience, while reducing car trips and preserving open space elsewhere in the community. In return for adopting the zoning and streamlining the development process for 40R districts, cities and towns can get between \$10,000 and \$600,000 in state funding, plus an additional \$3,000 for every new home created.

40S

Additional state funding will also be directed to cities and towns that establish a 40R district, to cover the costs of educating any school-age children who move into such districts. This legislation was in response to the common concern that new housing was costly in terms of municipal finances, given the imbalance of tax revenues and service costs. Qualifying communities will be reimbursed for the net cost of educating students living in new housing in smart growth districts.

The reimbursement equals the cost of educating students living in new housing in smart growth districts less an amount equal to the sum of: (a) new property and excise taxes in the smart growth district multiplied by the average percent of total local spending on education across the commonwealth (about 52%), and (b) any increases in other state education funding that is directly a result of these new students. As a practical matter, foundation communities are not eligible for 40S funding. This funding is available starting in 2008.

Chapter 40R: Purpose, Program Overview: 760 CMR 59.00 establish rules, standards, and procedures for the Smart Growth Zoning Overlay District Program created by M.G.L. c.40R, added by Chapter 149 of the Acts of 2004. The Department of Housing and Community Development (the "Department") 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. It is the purpose of M.G.L. c.40R and 760 CMR 59.00 to encourage smart growth and increased housing production in Massachusetts. "Smart growth" is a principle of land development that: (a) increases the availability of affordable housing by creating a range of housing opportunities in neighborhoods; (b) emphasizes mixing land uses; (c) takes advantage of compact design; (d) fosters distinctive and attractive communities; (e) preserves open space, farmland, natural beauty and critical environmental areas; (f) strengthens existing communities; (g) provides a variety of transportation choices; (h) makes development decisions predictable, fair and cost effective; and (i) encourages community and stakeholder collaboration in development decisions.

760 CMR 59.00 describes the process by which municipalities may propose, for review and approval by the Department, new smart growth zoning provisions that allow the as-of-right development of high-density housing and mixed-use development within zoning overlay districts. To be approvable, overlay districts shall be located near transit stations, in existing city and town centers, commercial districts, and other areas of concentrated development, and in other eligible smart growth locations. The smart growth zoning for an overlay district must require that at least 20% of the housing developed will be affordable. Projects must be developable as-of-right under the smart growth zoning, subject only to the review of plans and the application of design standards by a local approving authority.

The proposed smart growth zoning shall be submitted to the Department for its preliminary approval, after which it may be adopted by the municipality. Once the municipality has adopted the smart growth zoning and received final approval from the Department, it becomes eligible for two types of payment from a trust fund administered by the

Commonwealth. First, the municipality receives an immediate incentive payment, based upon the projected number of additional new units that could be built under the smart growth zoning in excess of what would previously have been allowed as-of-right through the underlying zoning. Second, the municipality receives a bonus payment upon the issuance of a building permit for each such additional unit.

Within the boundaries of an overlay district, a developer may elect either to develop a project in accordance with the requirements of the applicable smart growth zoning adopted under M.G.L. c.40R and 760 CMR 59.00, or to develop a project in accordance with requirements of the applicable underlying zoning adopted under M.G.L. c.40A. Nothing in M.G.L. c.40R and 760 CMR 59.00 shall affect a municipality's authority under M.G.L. c.40A to amend any provision of its local zoning ordinance or by-law, including the underlying zoning applicable within any area that lies within the boundaries of the smart growth zoning district.

Chapter 40S Contact

For additional information regarding Chapter 40S, contact Rick Kingsley at the Department of Revenue, (617) 626-2376

Chapter 40R Contact

For more information contact Donald Schmidt, Department of Housing and Community Development, 617.573.1363
Donald.Schmidt@ocd.state.ma.us