



What is Chapter 40R?

Chapter 40R was passed by the State Legislature in 2004 with the purpose of encouraging cities and towns to pass zoning districts that will create higher density housing in suitable locations, based on smart growth principles. Municipalities that establish zoning districts according to the requirements of Chapter 40R are eligible to receive Chapter 40R incentive funds. The zoning districts must meet certain locational criteria such as being near a transit station, in an area of concentrated development or in an area that, based on existing site conditions, makes it a prime location as a smart growth zoning district.

Chapter 40R districts require that the zoning bylaw or ordinance allows compact residential and mixed-use development by right.

Additionally, the district must have minimum densities based on the housing allowed. For instance, an area zoned for single family homes must allow 8 units per acre. Two and three family homes must be allowed at 12 units per acre. Multi-family dwellings must be allowed at 20 units per acre. If the municipality has a population of less than 10,000 people, there are some exemptions from these density requirements.

In a 40R district, it is a requirement that twenty percent of the housing in the district be designated affordable to those earning 80% or less of the median income. Affordable units must be deed restricted. The housing provided in a 40R district must meet the needs of diverse demographics, such as households with children.

Communities concerned about the impact of new construction on the character of an historic area can utilize reasonable design standards to ensure compatibility to the existing area.

Benefits of Chapter 40R

A leading benefit of a Chapter 40R district are the financial incentives. After the municipality approves a Chapter 40R district, a zoning incentive payment is made that is based on the number of potential new housing units. An additional payment occurs when a building permit has been issued. If the new housing results in a net cost to educate students living in the new housing, an additional educational reimbursement payment is provided. Another financial benefit is that DHCD and the Executive Office of Environmental Affairs, Transportation, and Administration and Finance, when awarding discretionary funds, must give preference to those municipalities with a 40R district.

BRPC PROGRAM

Community Planning Program
berkshireplanning.org/programs

EXAMPLES

Examples of Chapter 40R Bylaws and Ordinances can be obtained from BRPC staff.

Chapter 40R in Practice

Dozens of cities and towns in Massachusetts have established a Chapter 40R district. In the Berkshires, Chapter 40R districts can be found in Adams, Great Barrington, Lee, North Adams and Pittsfield. The North Adams district was approved in late 2021 and consists of two areas, downtown and the mill subzone in the Union and Eagle Street areas.

The city of Pittsfield has successfully created over 100 40R housing units. The New Amsterdam Apartments includes a mix of new construction and building rehabilitation. The Silk Mill is a rehabilitation of a vacant mill complex into rental units that include 18 1-bedroom apartments, 22 two-bedroom apartments and 5 3-bedroom residences. Both the New Amsterdam Apartments and Silk Mill projects consist of 100% affordable units.

Great Barrington has established three 40R Smart Growth Overlay Districts. Under construction in 2022, Windrush Commons will provide 49 new units of housing, close to downtown and shopping.

Under rehabilitation, the Eagle Mill in Lee is being redeveloped with housing and other uses through their 40R Smart Growth Overlay District.

Establishing a Chapter 40R District

The first step in establishing a Chapter 40R district is applying to the Department of Housing and Community Development. DHCD will review the application and determine if the proposed location for the district meets the 40R criteria. If so, the bylaw/ordinance and design standards are also reviewed and approved by DHCD. The district is established by the local legislative body, town meeting or city council. It must be an overlay district to the underlying zoning. Following adoption by the municipality, the community receives an approval letter from DHCD and is eligible for the incentive and bonus payments.

Considerations

Concerns over the establishment of Chapter 40R Districts are sometimes present. Residents may express reservations over increased density within the neighborhood. Having extensive community outreach and listening sessions in the early planning stages of a 40R district can help respond to concerns, adjust accordingly and identify shared goals.

Chapter 40R in Berkshire County



New Amsterdam Apartments, Pittsfield



Silk Mill Apartments, Pittsfield



Eagle Mill, Lee