Commonwealth of Massachusetts
DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT
Deval L. Patrick, Governor Timothy P. Murray, Lt. Governor Tina Brooks, Undersecretary

ADOPTING AND AMENDING ZONING BYLAWS

November 30, 2009

Prepared By Donald J. Schmidt

This outline gives limited information relative to certain procedural requirements of the Zoning Act. It is intended only for informational and reference purposes. When a question of legal interpretation arises, local officials should always seek the advice of their municipal counsel.

I. ADOPTION AND AMENDMENT OF ZONING ORDINANCES AND BYLAWS

Note: The Zoning Act provides a specific procedure that a municipality must follow when adopting or amending its zoning ordinance or bylaw. For detailed information regarding this procedure, please refer to Chapter 40A, Section 5.

A. INITIATION

1. The process of adopting or changing a zoning bylaw or ordinance begins with the filing of the proposal with the City Council or Board of Selectmen. A proposal may be initiated by:

   a. a City Council

   b. a Board of Selectmen

   c. a Zoning Board

   d. an individual who owns land which would be affected by the proposal

e. ten or more registered voters for an annual town meeting, or one hundred registered voters or ten percent of the total number of registered voters, whichever is less, for a special town meeting.

f. ten registered voters in a city

g. a Planning Board

h. a Regional Planning Agency

i. other methods provided by a municipal charter.

B. SUBMISSION TO PLANNING BOARD

1. Within fourteen days of receipt, the City Council or Board of Selectmen must submit the zoning proposal to the Planning Board for their review.

2. The statute is silent as to the failure of either the Board of Selectmen or City Council to submit the proposal to the Planning Board within the required fourteen-day period. We must assume that any examination of a proposal must be completed within the fourteen days. However, in considering the Court's rationale in Vokes v. Lovell, 18 Mass. App. Ct. 471 (1984), the fourteen-day period may only be directory and not mandatory.

C. PUBLIC HEARING

1. No zoning proposal may be adopted without a public hearing. The purpose of the public hearing is to give interested persons a chance to express their views and opinions.

2. In towns, the Planning Board must hold a public hearing within sixty-five days after the zoning proposal has been submitted to the Planning Board by the Board of Selectmen. If there is no Planning Board, the Board of Selectmen must hold the public hearing within sixty-five days after the zoning proposal has been submitted to them by one of the parties authorized to initiate a proposal.

3. In cities, the Planning Board, and the City Council or committee designated or appointed by the City Council for such purpose, must hold a public hearing within 65 days after the zoning proposal has been submitted to the Planning Board by the City Council. If there is no Planning Board, the City Council or committee designated or appointed for such purpose, must hold a public hearing within sixty-five days after the zoning proposal has been submitted to the City Council by one of the parties authorized to initiate a proposal. The required public hearings by the Planning Board and City Council may be held together or separately.

CASE NOTES:

Gricus v. Superintendent & Inspector of Buildings of Cambridge, 345 Mass. 687 (1963) (purpose of public hearing is to ensure that current views of local residents are taken into account by the council when it considers a zoning proposal).

Woods v. City of Newton, 351 Mass. 98 (1966) (purpose of public hearing is to enable planning board to be informed of zoning proposal and of citizens' views and report its recommendations if it wishes to do so).

D. PUBLIC HEARING NOTICE

1. The hearing authority must give notice of the public hearing. Notice of the public hearing must be published in a newspaper of general circulation in the municipality once in each of two successive weeks. The first publication cannot be less than fourteen days before the day of the hearing. (Do not count the day of the hearing in the fourteen days.) Notices of the public hearing do not have to be published in a newspaper a full week apart, but must be published in separate calendar weeks which are successive.

2. In addition to newspaper publication, the same notice must be posted in a conspicuous place in the city or town hall for a period of not less than fourteen days before the day of the public hearing, and copies of the notice must also be sent by mail, postage prepaid, to:

   a. the State Department of Community Affairs (DHCD)

   b. the Regional Planning Agency for the area, if any

   c. the Planning Boards of all abutting cities and towns and,

   d. if the zoning ordinance or bylaw provides for notification of nonresident property owners when there is a change within a district, then notice must be sent to any such property owner who files an annual request for notice with the municipal clerk no later than January first each year and pays any required fees.

3. The Department of Community Affairs (DHCD), Region Planning Agencies, Planning Boards of abutting municipalities and certain nonresident property owners may waive rights to notice prior to legislative action on a zoning proposal.

4. The public hearing notice must contain the following information:

   a. the time, date and place of the public hearing;

   b. the subject matter of the public hearing sufficient for identification; and

   c. the place where the text and maps may be inspected.

CASE NOTES:

Crall v. City of Leominster, 362 Mass. 95 (1972) ("two successive weeks" means two successive calendar weeks).

Crall v. City of Leominster, 362 Mass. 95 (1972) (description in planning board notice giving general location of the parcel to be rezoned and referring to a petition and plan containing a detailed description on file in the planning board office satisfied requirement that notice was "sufficient for identification").

E. PLANNING BOARD REPORT

1. Following the public hearing, the Planning Board is allowed the opportunity to submit a report with recommendations to the City Council or Town Meeting. If the Planning Board fails to do so within twenty-one days after the hearing, the legislative body may proceed in the absence of such a report.

CASE NOTES:

Daly Dry Wall, Inc. V. Board of Appeals of Easton, 3 Mass. App. Ct. 700 (1975) (a planning board may finalize text after a hearing provided the board does not change the substantial character of the original proposal).

Noonan v. Moulton, 348 Mass. 633 (1965) (vote of planning board is advisory and not binding on voters so that planning board opposition to zoning amendment was no ground for invalidating town meeting vote).

Whittemore v. Town Clerk of Falmouth, 299 Mass. 64 (1937) (statement by planning board that after tie vote it was "unable at this time to make any recommendations" was not a "report with recommendations").

Shannon v. Building Inspector of Woburn, 328 Mass. 633 (1952) (where planning board reported to the city council recommending passage of a proposed zoning amendment, and subsequently, before the public hearing by the council, submitted to the council detailed reasons for such recommendations was sufficient to comply with requirements of the Zoning Enabling Act).

Caputo v. Board of Appeals of Somerville, 330 Mass. 107 (1953) (opinion of the planning board sent to aldermen stating that the planning board considered it inadvisable to recommend a zoning change was regarded as a final report with negative recommendations).

Rousseau v. Building Inspector of Framingham, 349 Mass. 31 (1965) (report that it had voted unanimously to ask town meeting to refer article back to the planning board for further study because of general study being undertaken by the board was a "final report" with negative recommendations).

Doliner v. Town Clerk of Millis, 343 Mass. 10 (1961) (the requirement that a final report with recommendations be submitted to the town meeting was satisfied when the planning board recorded its written approval of the zoning proposal and its chairman explained them at town meeting).

F. VOTE

1. After receipt of the Planning Board's report or after the lapse of the twenty-one day period without such report, the legislative body may adopt, amend and adopt, or reject the zoning proposal. The required votes to adopt or change a zoning ordinance or bylaw are as follows:

   a. a two-thirds vote of a Town Meeting;

   b. a two-thirds vote of all members of a Town Council;

   c. a two-thirds vote of all members of a City Council;

   d. a two-thirds votes of all members of each branch where there is a two branch form of government; or,

   e. for councils with less than twenty-five members, a three-fourths vote of all members when there is a written protest filed against the zoning change by the owners of twenty percent or more of the area to be included in such change or of the area of land immediately adjacent extending three-hundred feet from the boundary of the area affected by the proposal.

2. If the town meeting fails to vote to adopt the zoning proposal within six months after the hearing by the Planning Board, no action can be taken on that proposal until after a subsequent notice, another public hearing and report by the Planning Board.

3. If a City or Town Council fails to vote to adopt the zoning proposal within ninety days after the hearing by the City or Town Council, no action can be taken on that proposal until after a subsequent notice, public hearings or joint hearing and report by the Planning Board.

CASE NOTES:

Selectmen of Sudbury v. Garden City Gravel Corporation, 300 Mass. 41 (1938) (amendment to zoning bylaw adopted by majority vote and not by two-thirds did not become effective).

Kitty v. City of Springfield, 343 Mass. 321 (1962) (where zoning ordinance failed to get necessary number of votes and subsequent motion for reconsideration failed, ordinance failed of adoption and ceased to be pending).

LaBranche v. A.J. Lane & Company, Inc., 404 Mass. 725 (1989) (amendment to zoning ordinance was subject to repeal by the voters under the referendum procedure of mgl, c. 43, § 42).

Kubik v. Chicopee, 353 Mass. 514 (1968) (there can be no doubt that "all the members of the council" means the full membership).

Morgan v. Banas, 331 Mass. 694 (1954) (an amendment to a zoning ordinance was not invalid where there was a substantial change in the membership of the city council, through an election, between the time the council held a public hearing and voted to adopt).

Parisi v. City of Gloucester, 3 Mass. App. Ct. 680 (1975) (written reasons must be filed with protest vote).

G. UNFAVORABLE ACTION

1. If a City or Town acts unfavorably on a zoning proposal, such zoning proposal can not be considered by the City Council or Town Meeting within two years from the date of the unfavorable action unless the adoption of the zoning proposal is recommended in the final report of the Planning Board.

CASE NOTES:

Wood v. Milton, 197 Mass. 531 (1908) (a vote at town meeting to "indefinitely postpone" action on an article is the equivalent of complete disapproval).

Kitty v. Springfield, 343 Mass. 321 (1961) (if planning board recommends favorable action after notice and public hearing, city council could consider within the two year period a zoning proposal which had been unfavorably acted upon by the council).

H. APPROVAL OF ATTORNEY GENERAL

(Applies only to Towns)

1. After town meeting has adopted a zoning proposal, the proposal must be submitted to the Attorney General for approval as required by Chapter 40, Section 32, MGL. A statement must also be sent which explains the proposal. This statement may be prepared by the Planning Board. After the proposal has received he approval of the Attorney General, the Town must publish the proposal in a bulletin or pamphlet and post it, or publish the proposal in a newspaper pursuant to Chapter 40, Section 32, MGL.

Note: If the Town Clerk fails to submit the zoning proposal to the Attorney General within 30 days after the final adjournment of town meeting, the Board of Selectmen may submit within 15 days thereafter.

2. Chapter 40, Section 32, MGL also authorizes the Attorney General to waive defects in the procedure of adoption or amendment of any zoning law relating to the form or content of the notice of the planning board hearing or to the manner or dates that the notice is mailed, posted or published. Section 32

establishes the requirements that must be followed when the Attorney General elects to grant a waiver and the specific duties that must be performed by the town clerk.

I. CLAIMS OF INVALIDITY

1. Legal action arising out of any possible procedural defect in the adoption or amendment process must be commenced within the time period specified in Chapter 40, Section 32 and 32A, MGL which provides that such legal action must be commenced within 90 days of posting or of the second publication of the bylaw or ordinance.

2. The publication of a zoning bylaw or ordinance must include a statement that claims of invalidity by reason of any defect in the procedure of adoption must be made within 90 days of posting or of the second publication. The statement must also indicate where copies of the bylaw or ordinance may be examined or obtained.

3. If an action is commenced, a copy of the petition submitted to the court must be filed with the City or Town Clerk within 7 days after the court action is commenced.

J. COPIES OF BYLAWS AND ORDINANCES

1. A true copy of the latest effective zoning ordinance or bylaw must be kept on file and available for inspection in the office of the municipal clerk.

2. All zoning ordinances adopted by a City Council must be forwarded by the City Clerk to the Attorney General

II. AMENDING A ZONING PROPOSAL

Note: As previously discussed, one of the necessary procedural requirements when adopting a local zoning proposal is that the Planning Board give notice and hold a public hearing on the proposed zoning amendment.

A. COMMONLY ASKED QUESTIONS

1. After a Planning Board has held a public hearing on a proposed zoning proposal, how much can it change the original proposal, when making a recommendation to the Town Meeting or City Council, without holding a new hearing with a new publication of notice?

2. How far can a Town Meeting or City Council go in amending the original proposal?

B. RELEVANT GENERAL LAWS

1. The answers to these two questions revolve around the statutory requirements found in Chapter 39 of the General Laws, which deals with the issuance and contents of a town meeting warrant, and Chapter 40A, which requires notice and a public hearing by the Planning Board prior to legislative action on a zoning proposal.

C. GENERAL RULES

1. Town meeting does have the flexibility to make amendments to a zoning proposal. Obviously, if the identity of the zoning proposal is utterly changed then the Planning Board must hold a new public hearing. As has been noted by the court, a new notice, hearing and opportunity to report by the Planning Board will be required if the amendment to the zoning proposal:

   a. changes the identity or substantial character of the original zoning proposal;

   b. fundamentally departs from the original proposal; or

   c. radically differs from the original proposal.

D. RULE OF THUMB

1. Perhaps a good rule of thumb to remember is whether a reasonable person could have foreseen the final action from reading the initial notice.

CASE NOTES:

Fish v. Canton, 322 Mass. 219 (1948) (amendment to zoning bylaw reducing minimum lot area and lot frontage in certain districts and changing one zoning district to another was invalid where original proposal was to see if the town would repeal in its entirety the existing zoning bylaw).

Nelson v. Belmont, 274 Mass. 35 (1931) (where proposed zoning district boundary line described in warrant kept the front part of a certain tract of land in a business zone and the remainder of the tract would be changed from business to residential, an amendment which changed the zone line so that the entire tract would fall within a general residence district was invalid).

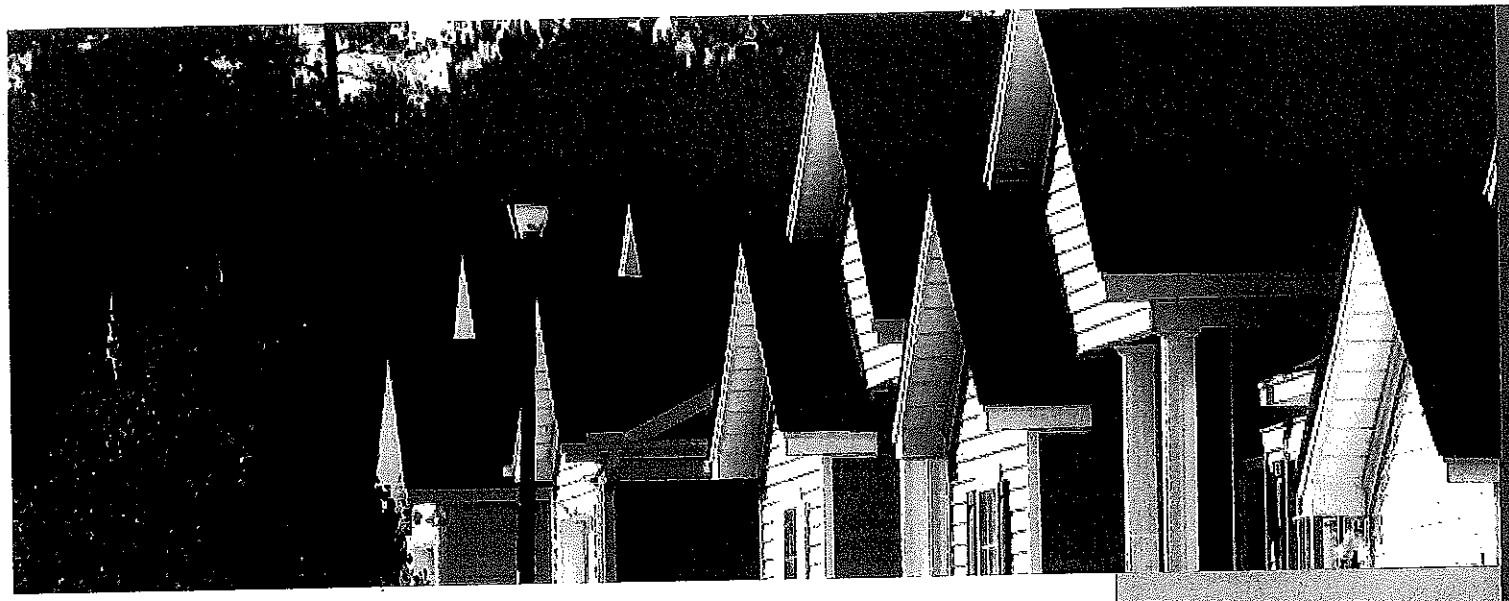
Sullivan v. Board of Selectmen of Canton, 346 Mass. 784 (1964) (where original proposal was to amend the zoning map by changing an area of land from single residence to a general residence district along a certain street for 181.6 feet, an amendment was held valid which extended the general residence zone 401.6 feet along the same street).

Morgan v. Banas, 331 Mass. 694 (1954) (where original proposal was to zone a 28 acre parcel from residential to business, an amendment was valid which only rezoned about 17 acres to business).

Johnson v. Framingham, 354 Mass. 750 (1968) (where original proposal was to see if the town would amend the zoning bylaw to permit golf clubs and tennis courts, court held valid an amendment to zoning bylaw to permit golf clubs by special permit and requiring a minimum parcel area for golf clubs of 50 acres).

Dunn v. Burlington, 318 Mass. 217 (1945) (where five map amendments to a comprehensive zoning proposal were valid).

Doliner v. Town Clerk of Millis, 343 Mass. 10 (1961) (where 13 perfecting amendments to a comprehensive zoning proposal were held valid).



H.675: AN ACT FINANCING THE PRODUCTION AND PRESERVATION OF HOUSING FOR LOW AND MODERATE INCOME RESIDENTS

Sponsored by Representative Kevin Honan & Senator Linda Dorcena Forry

The Housing Bond Bill provides a comprehensive approach to addressing the housing needs of the Commonwealth by providing resources to produce and preserve affordable housing. The Housing Bond Bill recapitalizes bond-funding programs that serve diverse populations, including working families, the elderly, people with disabilities, and the homeless.

The bill invests $1.7 billion through the capital budget to modernize our public housing, provide community-based housing options for persons with disabilities, and to strengthen our neighborhoods.

AFFORDABLE HOUSING TRUST FUND (AHTF) *$400,000,000*

The AHTF is a flexible tool administered by MassHousing to create and preserve affordable housing. It has been used to support the financial feasibility of a variety of projects, including permanent and transitional housing for the homeless and for the rehabilitation of public housing. It can serve moderate-income households, up to 110% of the area median income (AMI), though the majority of AHTF projects serving households at 60% AMI. It also supports first time homebuyers through the ONE Mortgage program.

CAPITAL IMPROVEMENT AND PRESERVATION FUND (CIPF) *$125,000,000*

CIPF assists in the preservation and improvement of existing privately owned, state or federally assisted affordable rental developments that are at risk of losing their affordability restrictions.

Program Changes: The Housing Bond Bill includes clarifying language to make the program work better with other housing preservation resources.

COMMERCIAL AREA TRANSIT NODE HOUSING PROGRAM *$50,000,000*

This program encourages smart growth by producing homeownership and rental housing in mixed-use, commercial areas served by public transit.

COMMUNITY BASED HOUSING (CBH) *$55,000,000*

CBH extends the Commonwealth's goal of providing assistance to disabled people in the least restrictive settings possible. The program provides funding for the development of integrated housing for people with disabilities, including elders, with priority for individuals who are in institutions or nursing facilities or at risk of institutionalization.

The Housing Bond Bill re-authorizes the following bond programs:

Program	Authorization
[illegible]	[illegible]
Capital Improvement & Preservation Fund	$125,000,000
[illegible]	[illegible]
Community Based Housing	$55,000,000
[illegible]	[illegible]
Home Modification Loan Program	$30,000,000
[illegible]	[illegible]
Housing Stabilization Fund	$150,000,000
[illegible]	[illegible]
Public Housing Demonstration	$50,000,000
[illegible]	[illegible]
Total	$1,700,000,000

FACILITIES CONSOLIDATION FUND (FCF) *$65,000,000*

FCF produces community-based housing for clients of the Department of Developmental Services (DDS) and the Department of Mental Health (DMH). Through the fund, DHCD works closely with DDS and DMH to provide housing for people with a wide range of disabilities.

HOME MODIFICATION LOAN PROGRAM (HMLP) *$60,000,000*

The HMLP helps persons with disabilities and the elderly make renovations to their homes through deferred payment or zero interest loans to ensure they can continue to live at home and avoid placement into more costly institutional settings, such as nursing homes.

Program Changes: The Housing Bond Bill makes several changes:

- Clarifying changes that better aligns the program language with its actual use;
- Clarifying language to explicitly allow the HMLP to be used by families to construct accessory dwelling units for persons with disabilities; and
- Authorizing a grant program to allow landlords to access the HMLP to make renovations to apartments in order to accommodate the needs of disabled tenants.

HOUSING INNOVATIONS FUND (HIF) *$100,000,000*

The HIF supports the production of innovative and alternative forms of rental housing, including single person occupancy (SPO) units, transitional and permanent housing for the homeless, shelters for survivors of domestic violence, supportive housing for seniors and veterans, and housing for substance abuse recovery. HIF projects almost always feature affordable housing units combined with extensive support services for residents.

HOUSING STABILIZATION FUND (HSF) *$150,000,000*

The HSF provides funding for the acquisition, preservation, and rehabilitation of affordable housing, including foreclosed and distressed properties. HSF has helped finance family rental, elderly housing, single room occupancies (SROs), special needs housing, and a mix of homeownership and rental.

Program Changes: The Housing Bond Bill changes the weak markets provision within the program to allow it to be used for single family homes as well multifamily housing.

PUBLIC HOUSING *$600,000,000*

This program helps modernize and rehabilitate our state's public housing stock. It allows local housing authorities to plan for and prioritize the replacement of expired components, help lower utility costs, address long-term unit vacancy, and minimize risks to the health and safety of residents.

PUBLIC HOUSING DEMONSTRATION PROGRAM *$50,000,000*

This demonstration program allows public housing authorities to use innovative public housing finance tools to leverage new funds and partners to rehabilitate public housing units and potentially reduce ongoing capital costs.

EARLY EDUCATION AND OUT OF SCHOOL TIME (EEOST) *$45,000,000*

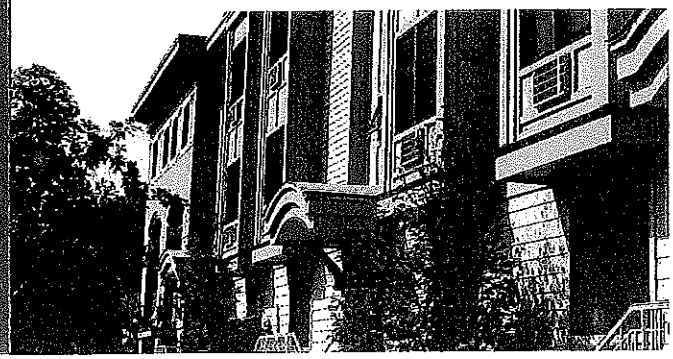
EEOST program offers grants to non-profits to help build early education and out of school time program facilities that serve low-income children. It provides flexibility to build or renovate buildings in order to provide children and teachers with safe, healthy environments that support other quality improvement efforts. The program is administered through the Children's Investment Fund at CEDAC and works closely with the Department of Early Education and Care.

Program Changes: The Housing Bond Bill:

- Increases the percentage of slots for low-income children served by early education programs supported by the program from 25% to 50%; and
- Changes eligibility requirements for the program to allow only those organizations who are currently providing early education and care to low-income children.

MASSACHUSETTS LOW INCOME HOUSING TAX CREDIT (LIHTC)

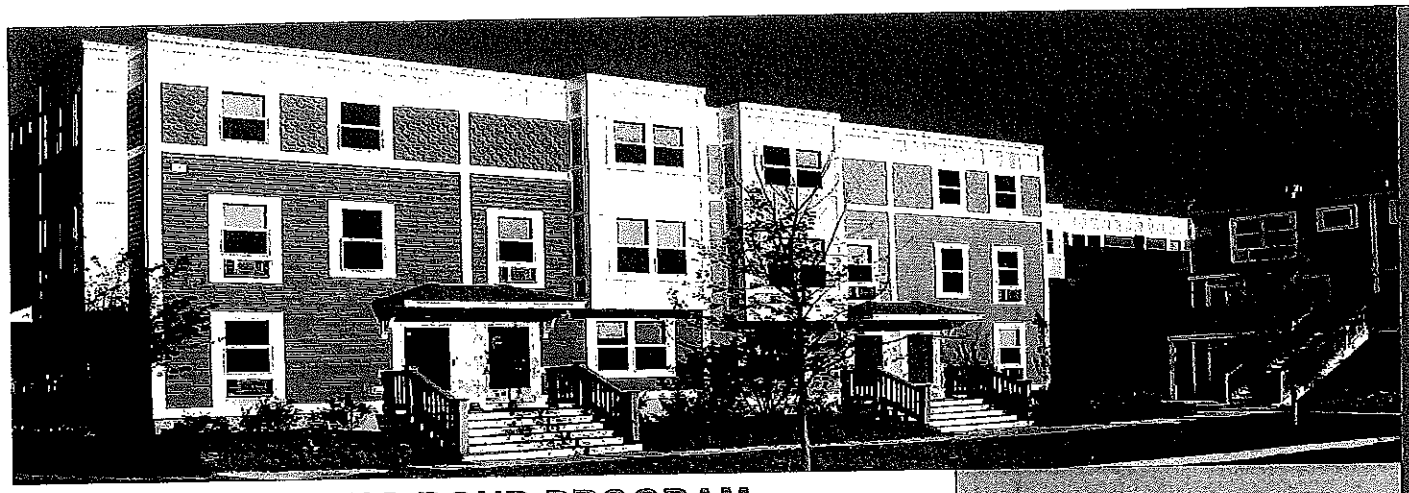
Created in 1999, the Massachusetts LIHTC awards credits to investors in multifamily rental projects that meet affordability requirements. It encourages private investment in affordable housing and allows developers to finance part of the cost of the development with equity invested by local corporations and individuals, thereby reducing the amount of debt financing and helping to keep rents low. The Housing Bond Bill extends authorization for the program until 2025. It also authorizes $5 million in additional tax credits to be used annually for the preservation and improvement of existing affordable housing.



Citizens' Housing and Planning Association, Inc.

FOR MORE INFORMATION:

Eric Shupin, Director of Public Policy
eshupin@chapa.org
(617) 742-0820 x103



HOUSING BOND PROGRAM ACCOMPLISHMENTS

in the past 5 years

Project Summary		
Total Projects	240	
Total Units	12,137	
Affordable Units	11,141	92%
Market Rate Units	996	8%
Avg. Project Size	39	

Project Characteristics		
New Production Units	6,717	55%
Preservation Units	5,420	45%
Non-Profit Sponsors	5,611	46%
For-Profit Sponsors	6,526	54%

Geographic Distribution		
Urban	8,779	72%
Gateway Cities	4,348	36%
Non-Urban	3,358	28%
Metro-Boston	5,224	43%
Transit Oriented	9,031	74%
Qualified Census Tract	3,269	27%
Opportunity Community	2,920	24%

Population Served		
Family	8,345	69%
Elderly (Non-assisted Living)	1,535	13%
Special Needs		
Homeless	1,213	10%
Assisted Living	196	2%
Transitional	113	1%
Dev. Disabled	113	1%
Mentally Disabled	68	1%

Bedroom Distribution		
0-BR	1,627	13%
1-BR	3,811	31%
2-BR	5,288	44%
3+ BR	1,411	12%

In the past 5 years, the Housing Bond Programs have helped support the following:

Program	Affordable Units	Total Units
Affordable Housing Trust Fund	9,804	10,745
Capital Improvement & Preservation Fund	1,109	1,190
Commercial Area Transit Node Housing Program	943	1,003
Community Based Housing	1,964	2,028
Facilities Consolidation Fund	1,112	1,216
Housing Innovations Fund	2,467	2,503
Housing Stabilization Fund	6,134	6,609

- The Home Modification Loan Program has closed 1,074 loans to help seniors & persons with disabilities remain in their home
- The Early Ed. & Out of School Time Fund has improved the quality of learning environments for 2,036 children
- The State Low Income Housing Tax Credit has helped create or preserve 3,400 more homes

Citizens' Housing and Planning Association, Inc

FOR MORE INFORMATION:

Eric Shupin, Director of Public Policy
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RE: 40R districts

Pete Kane <pkane@town.swampscott.ma.us>

Thu 7/13/2017 12:05 PM

To:Joseph Domelowicz Jr. <jdomelowicz@town.winthrop.ma.us>;

Hi there Joe,

The 40R process is handled through DHCD (my primary contact was Bill Reyelt - william.reyelt@state.ma.us). Here's a link to our full application materials that were submitted to DHCD as part of the process:
https://www.dropbox.com/sh/nnbdom1eb6448l0/AAALWOr7DZUPxiqfW4CMvw3La?dl=0

And here's a link to the files that we submitted to the Attorney General once Town Meeting had approved the zoning change (this includes the language you're looking for):
https://www.dropbox.com/sh/1l6fm1u2jppzm0s/AAA3JdAO_hCqG2apBnGJUu51a?dl=0

To be honest, I wasn't working here during that approval process so unfortunately I don't have much info as to how long it took and what the requirements were. I'd suggest looking over those docs in the links and maybe reaching out to Bill.

Thanks for the heads up about the upcoming RFP – I'll spread the word.

_pete

From: Joseph Domelowicz Jr. [mailto:jdomelowicz@town.winthrop.ma.us]
Sent: Thursday, July 13, 2017 11:42 AM
To: Pete Kane
Subject: 40R districts

Peter,
Good morning, I hope things are going well with you.

I am reaching out for a couple of reasons. 1) there is some interest in the town to designate the old Middle School site and associated buildings as a 40R district. Being that we don;t have a planner and I am woefully inadequate in that role, could you share with me any documents you have on Swampscott's 40R district?

Particularly the application that was filed with the state and a copy of the associated zoning allowances? I know enough to be dangerous and I am trying to get up to speed on this.

Second, the town is going to be advertising a $50k landscape architecture RFP to support our Centre Business District infrastructure project - the RFP will be advertised in the central register next Wednesday. In case you know anyone who may be interested...thanks,
Joe D

Joseph Domelowicz Jr.
Assistant to Town Manager/Grants Manager
One Metcalf Sq.
Winthrop, MA 02152