

FRANKLIN PLANNING & COMMUNITY DEVELOPMENT

355 EAST CENTRAL STREET, ROOM 120
FRANKLIN, MA 02038-1352
TELEPHONE: 508-520-4907
FAX: 508-520-4906

MEMORANDUM

TO: JAMIE HELLEN, TOWN ADMINISTRATOR
FROM: BRYAN W. TABERNER, AICP, DIRECTOR
RE: CHAPTER 40R SMART GROWTH OVERLAY ZONING DISTRICT
CC: MARK G. CEREL, TOWN ATTORNEY; AMY LOVE, TOWN PLANNER;
GUS BROWN, ZONING ENFORCEMENT OFFICER
DATE: OCTOBER 26, 2023

The Department of Planning & Community Development (DPCD) has been working with Barrett Planning to create a new section in the Town's Zoning Bylaw for permitting development projects under Chapter 40R. A preliminary draft of the proposed Section 185-52 Chapter 40R Smart Growth Overlay District is attached. The document is being provided at this time in order to continue educating the community of the requirements and benefits of 40R overlay zoning districts, and what steps are needed to create such a district.

DPCD is not recommending the Town amend the Zoning Bylaw to include a new Section 185-52 at this time. As you know we are looking at specific areas within Town that a 40R district would work for the property owners, and the community as a whole. Once a Smart Growth Overlay Zoning District is identified a description of the proposed district will be added to Section 185-52.B(2). At that time the Town Council will need to approve a zoning amendment creating Section 185-52, as well as two additional Zoning Bylaw amendments that will add several Chapter 40R related definitions to 185-3, and add the Smart Growth Overlay Zoning District to the Town's Zoning Map.

The Town can create one, two or several Smart Growth Overlay Zoning Districts. Each Smart Growth Overlay District will be added to the Zoning Map, and each will have its own design standards/guidelines that will include provisions for the types of uses allowed by right, and dimensional, density and parking requirements.

EOHLC requires a community submit their Chapter 40R zoning bylaw and Design Guidelines for approval before they are put into effect.

The proposed Section 185-52 will create the zoning structure for Smart Growth Overlay Zoning Districts, including, minimal requirements, identifies the plan approval authority, describes the plan approval process, waiver and plan amendment authority and procedures, and affordability requirements

Multifamily Housing Density. The minimum Chapter 40R allowable as-of-right density is twenty (20) units per acre for developable land zoned for multi-family residential use.

Affordable Housing. Chapter 40R requires that not less than 20% of the housing units in projects of more than twelve (12) units be "affordable". Affordable housing units are those affordable to and occupied by households earning less than 80% of the area-wide median income (Per U.S. HUD guidelines), and "countable" on the Town's Subsidized Housing Inventory.

Please note, for all housing units in a rental project to count on the Subsidized Housing Inventory, at least 25% of units must be “affordable”, therefore DPCD recommends requiring all 40R housing developments contain at least 25% affordable units.

Smart Growth Overlay Zoning Districts utilize compact design, increase affordable housing, and make development decisions predictable, fair and cost effective, while fostering new distinctive and attractive neighborhoods, strengthening existing neighborhoods, and encouraging community and stakeholder collaboration in development decisions.

Please let me know if you have questions or need additional information. We look forward to discussing the issues at the next EDC Meeting.



SPONSOR: *Town Administration*

**TOWN OF FRANKLIN
ZONING BY-LAW AMENDMENT 23-9 __
CHAPTER 40R SMART GROWTH OVERLAY DISTRICTS
A ZONING BY-LAW TO AMEND THE FRANKLIN TOWN CODE
AT CHAPTER 185, SECTION 52**

BE IT ENACTED BY THE FRANKLIN TOWN COUNCIL THAT: Chapter 185 of the Code of the Town of Franklin is hereby amended by adding a new Section at §185-52. Smart Growth Overlay Districts, to read as follows:

§185-52. Smart Growth Overlay Districts

A. Purpose and Intent. The purposes of this §185-52 are to:

- (1) Allow for the establishment of Chapter 40R Overlay Districts to promote development or redevelopment of certain areas in a form that meets the objectives of M.G.L. c. 40R;
- (2) Provide for a range of housing types, including affordable housing and housing types that meet the needs of existing and future residents;
- (3) Promote quality site planning, sustainable design, transportation management, pedestrian and bicycle accommodation, and environmental and open space enhancements in the development of housing and mixed-use projects; and
- (4) Provide opportunities for new business growth and local jobs.

B. Establishment and Delineation of Smart Growth Districts.

- (1) Generally. The specific districts established under this §185-52 are overlay districts, to be superimposed over the underlying zoning districts. The boundaries of the districts are delineated on the Zoning Map of the Town of Franklin, pursuant to Section 185-4, Districts Enumerated
- (2) Specific Districts.

Reserved.

C. Authority and Applicability. Districts established under this §185-52 are done under the authority of M.G.L. c. 40R and 760 CMR 59.00. At the option of the Applicant, development of land within a Smart Growth District created under this §185-52 may be undertaken subject to this §185-52 or in conformance with all applicable requirements of the underlying zoning districts.

- (1) Notwithstanding anything to the contrary in the Zoning Bylaw, Development Projects proceeding under this §185-52 shall be governed solely by the provisions of this Section and the standards and/or procedures of the underlying zoning shall not apply. Except as otherwise specifically provided for in this §185-52, Development Projects proposed pursuant to this §185-52 shall not be subject to any other provisions of the Zoning Bylaw.
 - (2) Where other provisions of the Zoning Bylaw are specifically referenced as applying to Development Projects, generally under this §185-52 or within the districts established under this §185-52, the provisions shall be administered as established as of the date of adoption of this §185-52, unless amendments are subsequently approved by the Executive Office of Housing and Livable Communities (EOHLC).
- D. Development Plan Approval Process. In districts established under this §185-52, Development Projects shall be subject to the Development Plan Approval Process provided below. The Plan Approval Authority under this §185-52 shall be the Planning Board. Development Projects within a Chapter 40R overlay district under this Section shall not be subject to the separate and distinct Site Plan Review process established under §185-31.
- (1). Pre-Application Review. The Applicant is encouraged to participate in a pre- Application review at a regular meeting of the Approval Authority. The purpose of pre-Application review is to minimize the Applicant's cost of engineering and other technical experts, and to obtain the advice and direction of the Approval Authority prior to filing the Development Plan Application. At the pre-Application review, the Applicant shall outline the proposal and seek preliminary feedback from the Approval Authority, other municipal review entities, and members of the public. The Applicant is also encouraged to request a site visit by the Approval Authority or its designee in order to facilitate pre-Application review.
 - (2). Development Plan Application Procedures.
 - (a) The Applicant shall file an original of the Development Plan Application with the Town Clerk for certification of the date and time of filing. The filing shall include any required forms established by the Approval Authority. The Applicant shall immediately file a copy of the Development Plan Application, including the date and time of filing certified by the Town Clerk, as well as the required number of copies of the Application with the Approval Authority.

As part of any Development Plan Application filed under this §185-52 the Applicant must submit the following documents:

 - [1] Evidence that the Development Project complies with the cost and eligibility requirements of subsection J, Housing and Housing Affordability below;
 - [2] Development Project plans and reports that demonstrate compliance with the design and construction standards of subsection J, Housing and Housing Affordability; and
 - [3] A form of Affordable Housing Restriction that satisfies the requirements of subsection J, Housing and Housing Affordability. - (b) Upon receipt by the Approval Authority or its designee, Development Plan Applications shall be distributed to the Building Commissioner, Municipal Affordable Housing

- Trust, Fire Chief, Police Chief, Health Director, Conservation Agent, Department of Public Works, and Peer Review Consultant as set forth in applicable rules and regulations. Any reports from these parties shall be submitted to the Approval Authority within thirty (30) days of filing of the Application; and
- (c) Within 30 days of filing of a Development Plan Application with the Approval Authority, the Approval Authority or its designee shall evaluate the proposal with regard to its completeness and shall advise the Applicant whether the Development Plan Application is complete or whether additional materials are required. If the Approval Authority finds that the Development Plan Application is incomplete, the Approval Authority or its designee will develop a report identifying the specific omissions and the additional materials that are required. The Approval Authority or its designee shall forward to the Applicant, with its report, copies of all recommendations received to date from other boards, commissions or departments.
 - (d) Public Hearing. The Approval Authority shall hold a public hearing and review all Development Plan Applications in accordance with G.L. c. 40R, Section 11 and 760 CMR 59.04(1)(f).
- (3). Plan Approval Decision. The Approval Authority shall make a decision on the Development Plan Application, and shall file said decision with the Town Clerk, within 120 days of the date the full Development Plan Application was received by the Town Clerk. The time limit for public hearings and taking of action by the Approval Authority may be extended by written agreement between the Applicant and the Approval Authority. A copy of such agreement shall be filed with the Town Clerk.
- (a) Failure of the Approval Authority to take action within 120 days or extended time, if applicable, shall be deemed to be an approval of the Development Plan Application.
 - (b) An Applicant who seeks approval because of the Approval Authority's failure to act on a Development Plan Application within the 120 days or extended time, if applicable, shall notify the Town Clerk in writing of the approval within 14 days from the expiration of the time limit for a decision. A copy of that notice shall be sent by the Applicant to the parties in interest by mail and that each such notice specifies that appeals, if any, shall be made pursuant to G.L. c. 40R and shall be filed within 20 days after the date the Town Clerk received such written notice from the Applicant that the Approval Authority failed to act within the time prescribed.
 - (c) The Approval Authority's findings, including the basis of such findings, shall be stated in a written decision of approval, conditional approval or denial of the Application for Development Plan Approval. The written decision shall contain the name and address of the Applicant, identification of the land affected and its ownership, and reference by date and title to the plans that were the subject of the decision. The written decision shall certify that a copy of the decision has been filed with the Town Clerk and that all plans referred to in the decision are on file with the Approval Authority.
 - (d) The decision of the Approval Authority, together with its detailed reasons, shall be filed with the Town Clerk and the Building Commissioner. A certified copy of the decision shall be mailed to the owner and to the Applicant, if other than the owner. A notice of the decision shall be sent to the parties in interest and to persons who requested a notice during the public hearing.

- (e) If 20 days have elapsed after the decision has been filed in the office of the Town Clerk without an appeal having been filed or if such appeal, having been filed, is dismissed or denied, the Town Clerk shall so certify on a copy of the decision. If the Application is approved by reason of the failure of the Approval Authority to timely act, the Town Clerk shall make such certification on a copy of the notice of Application. A copy of the decision or notice of Application shall be recorded with the title of the land in question in the Norfolk County Registry of Deeds, and indexed in the grantor index under the name of the owner of record or recorded and noted on the owner's certificate of title. The responsibility and the cost of said recording and transmittal shall be borne by the owner of the land in question or the Applicant.
- (4). Criteria for Approval. The Approval Authority shall approve the Development Project upon making the following findings:
- (a) The Applicant has submitted the required fees and information as set forth in applicable regulations;
 - (b) The proposed Development Project as described in the Application meets all of the requirements and standards set forth in this §185-52 and applicable Smart Growth District Design Guidelines, unless a waiver from them as been granted by the Approval Authority; and
 - (c) Any extraordinary adverse potential impacts of the Development Project on nearby properties can be adequately mitigated.

For a Development Project subject to the Affordability requirements of subsection J, Housing and Housing Affordability, compliance with condition (b) above shall include written confirmation by the Approval Authority that all requirements of that Section have been satisfied. Prior to the granting of Plan Approval for a Development Project, the Applicant must demonstrate to the satisfaction of the Administering Agency that the method by which such affordable rents or affordable purchase prices are computed shall be consistent with state or federal guidelines for affordability applicable to the Town of Franklin.

- (5) Criteria for Conditional Approval. The Approval Authority may impose conditions on a Development Project as necessary to ensure compliance with the Smart Growth District requirements of this §185-52 and applicable Smart Growth District Design Guidelines, or to mitigate any extraordinary adverse impacts of the Development Project on nearby properties, insofar as the conditions comply with the provisions of G.L. c. 40R and applicable regulations and do not unduly restrict (i.e. by adding unreasonable costs or by unreasonably impairing the economic feasibility of a proposed Development Project) opportunities for residential development.
- (6) Criteria for Denial. The Approval Authority may deny an Application for Plan Approval under this §185-52 only if the Approval Authority finds one or more of the following:
- (a) The Development Project does not meet the requirements and standards set forth in this §185-52 and applicable Design Guidelines; or

- (b) The Applicant failed to submit information and fees required by this §185-52 that were necessary for an adequate and timely review of the design of the Development Project or potential Development Project impacts; or
 - (c) The Development Project would result in extraordinary adverse impacts on nearby properties that cannot be mitigated by means of suitable conditions.
- (7) Time Limit. A Plan Approval decision shall remain valid and shall run with the land indefinitely provided that construction has commenced within two (2) years after the decision issues, which time shall be extended by the time required to adjudicate any appeal from such approval. The two-year limit shall also be extended if the Applicant is actively pursuing other required permits for the project or if there is good cause for the failure to commence construction, or as may be provided in an approval for a multi-phase Development Project.
- (8) Appeals. Under G.L. c. 40R Section 11, any person aggrieved by a decision of the Approval Authority may appeal to the Superior Court, the Land Court, or other court of competent jurisdiction within 20 days after the Plan Approval decision has been filed in the office of the Town Clerk.
- (9) Rules and Regulations. The Approval Authority shall adopt administrative rules relative to the Application requirements and contents for Plan Approval and shall file the administrative rules with the Town Clerk. The administrative rules, and any amendment thereto, must be approved by the Executive Office of Housing and Livable Communities.
- E. Waivers. The Approval Authority may waive the bulk and dimensional, parking, and other provisions required by any Smart Growth District created pursuant to this §185-52, and may waive specific requirements or recommendations of applicable Smart Growth District Design Guidelines upon a finding that the waiver will allow the Development Project to achieve the density, affordability, mix of uses, and/or physical character allowable under this §185-52 for a specific Smart Growth District identified in subsection B above.
- F. Project Phasing. The Approval Authority, as a condition of any Plan Approval, may allow a Development Project to be constructed in one or more phases.
- G. Change in Plans After Approval by the Approval Authority
 - (1). Minor Change. After Plan Approval, an Applicant may apply to make minor changes in a Development Project involving minor utility or building orientation adjustments, or minor adjustments to parking or other site details that do not affect the overall buildout or building envelope (i.e., general massing, height and bulk) of the site, or provision of open space, number of housing units, or housing need or affordability features. A change of 1% or less in the number of housing units in a Development Project shall constitute a minor change.

Minor changes must be submitted to the Approval Authority on redlined prints of the approved plan, reflecting the proposed change, and on application forms provided by the Approval Authority. The Approval Authority may authorize such changes at any regularly

scheduled meeting, without the need to hold a public hearing. The Approval Authority shall make its decision to approve or deny a minor change by motion and written decision, and provide a copy to the Applicant for filing with the Town Clerk.

- (2) Major Change. Plan changes the Approval Authority determines to constitute a major change in a Development Project because of the nature of the change in relation to the prior approved plan, or because such change cannot be appropriately characterized as a minor change as described above, shall be processed by the Approval Authority as a new Application for Development Plan Approval pursuant to this §185-52.

H. Smart Growth Design Guidelines. To ensure that new development shall be of high quality, and shall meet the standards envisioned by the Town of Franklin in adopting this §185-52 and any districts established under this §185-52, the Approval Authority may adopt Smart Growth District Design Guidelines governing the issuance of Plan Approval for Development Projects and shall file a copy with the Town Clerk. In addition to the standards set forth in this §185-52, the physical character of Development Projects within the districts shall comply with such Smart Growth District Design Guidelines, unless waived hereunder. In the event of any conflict between this §185-52 and the Smart Growth District Design Guidelines, this §185-52 shall govern and prevail.

I. Fair Housing Requirement. All Development Projects within the districts established herein shall comply with applicable federal, state and local fair housing laws.³

J. Housing and Housing Affordability

- (1) Number of Assisted Units. Twenty-five (25%) percent of all dwelling units constructed in a Development Project shall be maintained as Assisted Units. When the application of the 25% requirement results in a fractional number of required dwelling units, the fractional number shall be rounded up to the next whole number.
- (2) General Requirements. Assisted Units shall comply with the following requirements:
 - (a) The monthly rent payment for an Affordable Rental Unit, including utilities and parking, shall not exceed 30% of the gross monthly income permissible for an Eligible Household, assuming a family size equal to the number of bedrooms in the unit plus one, unless other affordable program rent limits approved by DHCD shall apply;
 - (b) The monthly housing payment for an Affordable Homeownership Unit, including mortgage principal and interest, private mortgage insurance, property taxes, condominium and/or homeowner's association fees, insurance, and parking, shall not exceed 30% of the gross monthly income permissible for an Eligible Household, assuming a family size equal to the number of bedrooms in the unit plus one; and
 - (c) Assisted Units required to be offered for rent or sale shall be rented or sold to and occupied only by Eligible Households.
- (3) Design and Construction
 - (a) Design. Assisted Units must be reasonably dispersed throughout any phase of a Development Project containing dwelling units and be comparable in initial

- construction quality, size, and exterior design to the Unrestricted Units. However, nothing in this section is intended to limit a homebuyer's rights to renovate a dwelling unit under applicable law. The Assisted Units must have access to all on-site amenities available to Unrestricted Units. Assisted Units shall be finished housing units; and
- (b) Timing. All Assisted Units must be constructed and occupied not later than concurrently with construction and occupancy of Unrestricted Units and, for Development Projects that are constructed in phases, Assisted Units must be constructed and occupied during the initial lease-up period, insofar as is practicable, in proportion to the number of Dwelling Units in each residential phase of the Development Project.
- (4) Unit Mix. The total number of bedrooms in the Assisted Units shall, insofar as practicable, be in the same proportion to the total number of bedrooms in the Unrestricted Units.
- (5) Affordable Housing Restriction. All Assisted Units shall be subject to an Affordable Housing Restriction which is recorded with the Norfolk County Registry of Deeds or the Land Court. The Affordable Housing Restriction shall provide for the implementation of the requirements of this §185-52. All Affordable Housing Restrictions must include, at minimum, the following:
- (a) Description of the Development Project, including whether the Assisted Unit will be rented or owner-occupied.
 - (b) A description of the Affordable Homeownership Unit, if any, by address and number of bedrooms; and a description of the overall quantity and number of bedrooms and number of bedroom types of Affordable Rental Units in a Development Project containing dwelling units or portion of a Development Project containing dwelling units which are rental. The restriction shall apply individually to the specifically identified Affordable Homeownership Unit and shall apply to a percentage of rental units of a rental Development Project containing dwelling units or the rental portion of a Development Project containing dwelling units without specific unit identification.
 - (c) The term of the Affordable Housing Restriction shall be in perpetuity, or the longest period allowed by law.
 - (d) The name and address of an Administering Agency with a designation of its power to monitor and enforce the Affordable Housing Restriction.
 - (e) Reference to a housing marketing and resident selection plan, to which the Assisted Unit is subject, and which includes an affirmative fair housing marketing program, including public notice and a fair resident selection process. The housing marketing and selection plan may provide for local preferences in resident selection to the maximum extent permitted under applicable law, subject to approval by EOHLC. The plan shall identify the household size appropriate for a unit with respect to bedroom size and provide that preference for the unit will be given to a household of the appropriate size.
 - (f) A requirement that buyers or tenants will be selected at the initial sale or initial rental and upon all subsequent sales and rentals from a list of Eligible Households compiled in accordance with the housing marketing and selection plan.

- (g) Reference to the formula pursuant to which rent of a rental unit or the maximum resale price of a homeownership unit will be set, or reference to the source of information used to set Assisted Unit rents and sale prices;
 - (h) A requirement that only an Eligible Household may reside in an Assisted Unit and that notice of any lease or sublease of any Assisted Unit to another Eligible Household shall be given to the Administering Agency.
 - (i) Provision for effective monitoring and enforcement of the terms and provisions of the Affordable Housing Restriction by the Administering Agency.
 - (j) Provision that the restriction on an Affordable Homeownership Unit shall run in favor of the Administering Agency and the Town of Franklin, in a form approved by the Town Attorney, and shall limit initial sale and resales to and occupancy by an Eligible Household.
 - (k) Provision that the restriction on Affordable Rental Units in a rental Project or rental portion of a Development Project containing Dwelling Units shall run with the rental Development Project containing Dwelling Units or rental portion of a Development Project containing Dwelling Units and shall run in favor of the Administering Agency and the Town of Franklin, in a form approved by the Town Attorney, and shall limit rental and occupancy to an Eligible Household.
 - (l) Provision that the owner(s) or manager(s) of Affordable Rental Unit(s) shall file an annual report to the Administering Agency, in a form specified by that agency, certifying compliance with the provisions of this §185-52 and containing other information as may be reasonably requested in order to ensure affordability.
 - (m) A requirement that residents in Assisted Units provide information as the Administering Agency may reasonably request in order to ensure affordability.
 - (n) Designation of the priority of the Affordable Housing Restriction over other mortgages and restrictions.
- (6) Administration.
- (a) The Administering Agency shall ensure all of the following:
 - [1] Prices of Affordable Homeownership Units are properly computed; rental amounts of Affordable Rental Units are properly computed;
 - [2] Income eligibility of households applying for Assisted Units is properly and reliably determined;
 - [3] The housing marketing and resident selection plan conforms to all requirements and is properly administered;
 - [4] Sales and rentals are made to Eligible Households chosen in accordance with the housing marketing and resident selection plan with appropriate unit size for each household being properly determined and proper preference being given; and
 - [5] Affordable Housing Restrictions meeting the requirements of this section are recorded with the Norfolk County Registry of Deeds or the Land Court.
 - (b) Housing Marketing and Selection Plan. The housing marketing and selection plan may make provision for payment by the Applicant of reasonable costs to the Administering Agency to develop, advertise, and maintain the list of Eligible Households and to monitor and enforce compliance with affordability requirements.
 - (c) Failure of the Administering Agency. If the Administering Agency cannot adequately carry out its administrative duties, upon certification of this fact by the Town or by

EOHLC, the administrative duties shall devolve to and be administered by a qualified housing entity designated by the Town or, in the absence of this designation, by an entity designated by EOHLC.

- K. Annual Update. On or before July 31 of each year, the Town shall file an Annual Update with EOHLC in a form to be prescribed by EOHLC. The Annual Update shall contain all information required in 760 CMR 59.07 and additional information as may be required under G.L. c. 40S7 and accompanying regulations. The Town Clerk of the Town of Franklin shall maintain a copy of all updates transmitted to EOHLC under this §185-52 and shall make copies available upon request for public review.
- L. Notification of Issuance of Building Permits. Upon issuing a residential building permit within any district established under this §185-52, the Building Commissioner shall file an application to EOHLC, in a form to be prescribed by EOHLC, for authorization of payment of a one-time density bonus payment for each residential building permit pursuant to G.L. 40R. The application shall contain all information required in 760 CMR 59.06(2) and additional information as may be required pursuant to G.L. c. 40S and accompanying regulations. The Town Clerk shall maintain a copy of all applications transmitted to EOHLC under this §185-52 and shall make copies available upon request for public review.
- M. Date of Effect. The effective date of this §185-52 shall be the date on which adoption is voted upon by the Franklin Town Council according to the requirements of G.L. c. 40A, Section 5 and G.L. c. 40R; provided, however, that an Applicant may not proceed with construction under this §185-52 until the Town has final approval of this Bylaw and accompanying Zoning Map by both EOHLC and the Office of the Attorney General of the Commonwealth.

The foregoing Zoning By-law Amendment shall take effect in accordance with the Franklin Home Rule Charter and Massachusetts General Law Chapter 40A, Section 5.

DATED: _____, 2023

VOTED: _____

UNANIMOUS: _____

A TRUE RECORD ATTEST:

YES: _____ **NO:** _____

ABSTAIN: _____ **ABSENT:** _____

RECUSED: _____

Nancy Danello, CMC
Town Clerk

Glenn Jones, Clerk
Franklin Town Council