



Silver Heights, Bellingham MA 40-B Project

# Zoning for Housing Affordability

*A Study Prepared for*

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## TABLE OF CONTENTS

Introduction .....	1
The Background .....	2
The State-Level Context.....	3
The Extent of Affordability Zoning .....	7
Where Does Affordability Zoning Occur? .....	10
How Effective Has Affordability Zoning Been?.....	13
Observations.....	18
Technical Notes.....	21
References .....	23
Appendix: Massachusetts Inclusionary Inventory .....	24

## TABLES

Table 1: Affordability Zoning Adoption Versus Mandates & Markets .....	6
Table 2: Affordability Zoning Adoption Versus Subsidized Housing.....	6
Table 3: Massachusetts Growth and "Affordable Housing" .....	12

## MAPS

"Affordability Zoning" in Four States .....	9
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# ZONING FOR HOUSING AFFORDABILITY

## INTRODUCTION

This study was sponsored by the Massachusetts Housing Partnership Fund to examine the use and effectiveness of local inclusionary zoning provisions in providing affordable housing in Massachusetts. It found that zoning in fully a third of all Massachusetts municipalities includes some form of explicit support for affordable housing. The adopting communities are found chiefly in the regions of the State where the disparity between market and “affordable” housing prices is widest, with only 21 of the 118 adopting communities being west of Worcester County. The adopted rules have most commonly been incentives, much less commonly mandates that affordable housing must be provided. As a result, while the number of communities adopting pro-affordability rules is large, the number of housing units developed through those provisions has apparently been modest. Perhaps 200 affordable units per year have been permitted under such provisions over the 1990-97 period studied, or 1% of total statewide housing production. Chapter 40B, the State-adopted “Anti-Snob Zoning Act,” has clearly been relied upon much more commonly.

Local successes and frustrations with using regulation for housing affordability illustrate the promise and the problem. Widespread adoption of supportive local zoning evidences how widely there is support for promoting affordability. However, local zoning incentives, even powerful ones, can do little that Chapter 40B can’t do even more powerfully to support developers seeking to develop affordable housing. Chapter 40B obliges communities to accept affordable developments, but it doesn’t oblige landowners and developers to propose them, and neither do more than a handful of locally adopted zoning rules. State law provides explicit authorization for such mandates only in narrow circumstances, but the record suggests that in its absence the adoption of incentives is a weak tool for achieving affordability. In the absence of clear legislative authorization, models, and legitimizing studies, localities are hesitant to adopt affordability mandates except for limited categories of development, which are then routinely avoided by development choosing alternatives free of such obligations.

The Massachusetts experience with affordability zoning was similar to that found in Connecticut, Rhode Island, and New Hampshire, which were also studied for comparison. The provisions of locally adopted zoning were inventoried in all four states. Comparisons were made between the production of affordable housing in the communities having such zoning and in those without it. The data analysis was supplemented with interviews with local officials, chiefly in Massachusetts but including a number in each of the other states, as well. Finally, the study looked at circumstances that appear to shape the likelihood of communities adopting such provisions and of the types of regulatory provisions that are truly effective in achieving development of affordable housing.

## THE BACKGROUND

Massachusetts has the fifth-least affordable housing in the United States, with triple the Federal minimum wage required to afford a two-bedroom apartment at fair-market rent, despite an only modestly growing economy and vigorous housing efforts both locally and at the State level.<sup>1</sup> Land use controls are widely recognized as contributing to that problem, but they can also be a positive tool for promoting affordability. A strikingly large number of Massachusetts communities have acted in the past decade to use such controls as tools for addressing housing needs. This study explores those efforts at providing mandates and incentives in land use zoning for creation of affordable housing.

Ironically, housing development sometimes makes housing problems worse rather than better. Housing construction that results only in expanding the inventory of high priced dwellings accommodates population growth without adding to the supply of affordable housing that is needed for those who can't meet market prices. For example, the Town of Mashpee added 25% to its affordable housing supply 1990-97, yet affordable housing plummeted from a reasonable 8.3% of total housing units in 1990 to only 4.8% of the total in 1997 because overall housing growth far exceeded growth in affordable housing.

Zoning is often identified as a major cause of the housing affordability problem. It is criticized for establishing rules that raise development costs, and for constraining housing production, thereby curtailing supply. On the other hand, some communities have been innovative in using zoning as a tool for assuring that affordable housing is at least part of what gets produced. This study is focused on those "affordability zoning" innovations.

Communities use an array of methods for supporting the goal of broadening housing affordability. Those methods range from community-produced housing by a local housing authority, community development corporation, or similar organization, to simply removing obstacles that may exist in local regulations, such as excessively strict requirements for street improvements. In the 1970s a new tool known as inclusionary zoning began to appear. Local inclusionary zoning either mandates that some or all residential developments are obliged to include affordable housing, or more passively encourages affordable housing by offering it such incentives as higher allowable density, or by making provision of such housing an explicit criterion in zoning decisions, such as special permits.

In 1969 Massachusetts enacted Chapter 40B of the General Laws which was, in effect, a Statewide "inclusionary zoning" law. It both facilitates and encourages the development of affordable housing by allowing subsidized developments to be approved without being subject to local regulatory limitations. In some ways, it is the ultimate incentive rule, since approval of a subsidized project only requires a determination by the local Zoning Board of Appeals that low and moderate income housing needs outweigh any valid planning objections to the proposal, such as health, design, or open space. All locally adopted regulations are laid aside, without limitation.

At the time of adoption of Chapter 40B virtually no Massachusetts communities had their own

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<sup>1</sup> National Low-Income Coalition, cited in *Architecture*, "News," November 1999.

“affordability” provisions in the form of mandates for inclusion, incentives for affordability, or other explicit provisions applicable only to affordable housing. However, in the years that followed, many cities and towns in Massachusetts adopted such provisions. Given Chapter 40B, why should localities bother to adopt local inclusionary rules? Who would adopt them? How effective have they been? This study is an exploration of those questions. The zoning laws of the 351 Massachusetts municipalities have been computer-searched for affordability provisions, and officials in many of these communities have been interviewed about them. To provide perspective, that search has been supplemented by more abbreviated examinations in Rhode Island and Connecticut, two states which later followed the Massachusetts example in adopting state-wide “inclusionary” statutes, and in New Hampshire, a similarly housing-stressed state which has no such law.

## **THE STATE-LEVEL CONTEXT**

### **MASSACHUSETTS**

Local planning boards in Massachusetts are directed by statute to prepare master plans<sup>2</sup>. The plans are to contain a housing element to provide “a balance of housing opportunities.” However, there is no sanction for failure to prepare such a plan, or to follow it in such actions as adopting zoning. The Zoning Act does not even contain the term “master plan” although outside language of the 1975 Act that rewrote the statute cites implementing the master plan as one purpose of zoning. The Massachusetts courts have given zoning consistency with a master plan little (though growing) weight in decisions.

Chapter 774 of the Acts of 1969 created the Chapter 40B “override” process. Under 40B, local zoning boards of appeals (“ZBA”) may approve comprehensive permits authorizing subsidized affordable housing developments, regardless of relationship to local zoning. The ZBA need make only a simple finding that housing needs outweigh any valid planning objections to the proposal, such as health, design, or open space. Furthermore, the statute defined “housing needs” to exist in any community having less than 10% of its year-round housing stock subsidized. Failure of the zoning board of appeals to approve a comprehensive permit, or an approval with crippling conditions, could be appealed to the State Housing Appeals Committee, which in nearly all cases has supported those appeals. Early and bitter litigation established the solid legal sustainability of the approach.

In 1982 Governor Angus King issued Executive Order 215, declaring affordable housing to be a critical need, and directing State agencies to withhold discretionary funding from communities found to be unreasonably restrictive of new housing growth. For some years that threat was viewed by many local officials as being important. Having at least 10% subsidized housing was perceived as the only “safe” way of avoiding the sanction. However, over time it became clear that the sanctions were rarely applied, in part because discretionary grants to localities were becoming less common, and in part because of competing imperatives for where funding should go.

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<sup>2</sup> Section 81-D, Chapter 41, MGL.

The count of subsidized units in Massachusetts as recognized for purposes of Chapter 40B has grown robustly during the 1990s. It has increased by 20,340 units over those seven years, from 183,000 to 203,000 units, and now represents about 9% of all housing in the State. During those seven years approximately 114,000 housing units were constructed in Massachusetts. The increase in subsidized units counted equals nearly 18% of housing production during that period. Some of that “growth” is change in recognition of units developed in earlier years but not previously counted by the State. Some reflects affordability being created through rehabilitation, subsidy, and affordability restrictions being placed on existing dwellings, without creating new units. Some units that were subsidized in 1990 are no longer being assisted or counted, since the restrictions that made them affordable have expired. It would take exhaustive study to determine a precise measure of marginal change, but it appears that the increase in subsidized units Statewide has more than equaled the policy objective of 10% of overall housing production.

The Chapter 40B definition of “subsidized,” loosely used here as synonymous with “affordable,” excludes many units that in fact are available at costs similar to the limits established by Chapter 40B definitions, but which were in no way subsidized by direct government programs. For example, a number of communities have used generous accessory apartment rules as a means of addressing housing affordability for some people. That technique is in fact effective in many cases, but the dwelling units created are not included in these tabulations because neither government subsidy programs nor long-term assurances of affordability are involved, rendering them statistically “invisible.” Yet, they are a real component of housing supply.

Finally, these figures do not reflect the growth in households not eligible for subsidies within government income and price ceilings, but severely strained in trying to compete for housing in the unrestricted market. While there are marginal gains in the share of housing under 40B-defined “subsidy,” there has been much larger growth in the share of households apparently needing help to gain decent housing. In a few communities, moderate-income inclusionary requirements are helping, but their results are not part of these tabulations.

#### RHODE ISLAND, CONNECTICUT AND NEW HAMPSHIRE

Rhode Island, Connecticut and New Hampshire have had housing pressures somewhat similar to those in Massachusetts and have somewhat similar local government structure and style. However, in other ways they differ from each other and from Massachusetts.

In 1990 Rhode Island enacted the Comprehensive Planning and Land Use Regulation Law. This law mandated that localities prepare and adopt comprehensive plans, including housing elements, and also required localities to conform local regulations to their state-approved plans<sup>3</sup>. There are substantial sanctions for non-compliance. In 1991 the “Low and Moderate Income Housing Act” was adopted. Patterned on the Massachusetts Chapter 40B, it authorizes appeals to a State Housing Appeals Board if local zoning has thwarted an affordable housing proposal<sup>4</sup>. Just as in Massachusetts, having 10% subsidized housing is defined as “consistent with housing needs,” ending such appeals. About 8% of all housing in Rhode Island is “subsidized” as defined by the law.

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<sup>3</sup> Chapter 45-22.2 Comprehensive Planning and Land Use Regulation Act.

<sup>4</sup> Chapter 45-53, Low and Moderate Income Housing Act.

In the late 1980s and early 1990s Connecticut took a number of major legislative steps regarding inclusionary zoning. They included broad authorization for local Planning and Zoning Commissions to adopt zoning and subdivision requirements mandating inclusion of affordable units, and creating the Affordable Housing Land Use Appeals Procedure, Section 8-30g.<sup>5</sup> Section 8-30g is a counterpart to the Massachusetts Chapter 40B. It authorizes appeals to a special Superior Court Justice in cases of adverse local decisions regarding affordable housing proposals, unless the community has more than 10% of its housing classified as “affordable” as defined in the statute. In Connecticut, about 11 % of all housing units are "subsidized" as defined under the law.

New Hampshire, on the other hand, has adopted no such powerful requirements. New Hampshire law makes preparation of a master plan a duty of each Planning Board and lists housing as one of the topics to be included.<sup>6</sup> However, the link of master planning with zoning and other regulations is weak<sup>7</sup>. The only statutory mandate regarding housing affordability is to require that local zoning make provisions for manufactured housing<sup>8</sup>. New Hampshire law does, however, explicitly authorize “inclusionary zoning” without requiring it<sup>9</sup>, and the New Hampshire courts have firmly obliged localities to make housing broadly accessible<sup>10</sup>.

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<sup>5</sup> PA 91-204, adopted in 1991.

<sup>6</sup> RSA 674-1.

<sup>7</sup> For example, RSA 674-18 requires only that the statement of objectives and land use sections of the master plan have been adopted by the Planning Board.

<sup>8</sup> RSA 674:32 Manufactured Housing.

<sup>9</sup> RSA 674-21 Innovative Land Use Controls.

<sup>10</sup> Three strong decisions are especially germane: *Beck v. Town of Raymond* (1978) 118 NH 793, 394A2d 847; *Soares v. Town of Atkinson* (1987) 129 NH 313, A2d 930; *Britton v Town of Chester* (1991) 134 NH 434, 595 A2d 930.

Table 1.

**AFFORDABILITY ZONING ADOPTION VERSUS MANDATES & MARKETS**

	Total Places #	Places with "affordability zoning"	
		#	Row %
<b>Massachusetts</b>			
All places	351	118	33.6%
Zoned communities	323	118	36.5%
Cape Cod	15	9	60.0%
Martha's Vineyard	6	4	66.7%
West of Worcester County	101	21	20.8%
<b>Connecticut</b>			
All places	172	74	43.0%
Zoned communities	158	74	46.8%
<b>Rhode Island</b>			
All places	39	18	46.2%
Zoned communities	38	18	47.4%
<b>New Hampshire</b>			
All places	234	44	18.8%
Zoned communities	95	44	46.3%
Rockingham County	37	17	45.9%

Source: Herr Associates survey

Table 2.

**AFFORDABILITY ZONING ADOPTION VERSUS SUBSIDIZED HOUSING**

	Total Places #	Places with "affordability zoning"	
		#	Row %
<b>Massachusetts</b>			
All places	351	118	33.6%
> 10% of units subsidized	24	11	45.8%
8 - 10% subsidized	23	7	30.4%
Under 8% subsidized	305	100	32.8%
<b>Connecticut</b>			
All places	172	74	43.0%
> 10% of units subsidized	32	11	34.4%
8 - 10% subsidized	9	2	22.2%
Under 8% subsidized	158	128	61.0%
<b>Rhode Island</b>			
All places	39	18	46.2%
> 10% of units subsidized	6	2	33.3%
8 - 10% subsidized	3	2	66.7%
Under 8% subsidized	30	14	46.7%
<b>New Hampshire</b>			
All places	234	44	18.8%

Source: Herr Associates survey

## THE EXTENT OF AFFORDABILITY ZONING

Local pro-affordability zoning in Massachusetts dates from Newton's adoption of its "10% Ordinance" in 1972, mandating that virtually all new multi-family housing make 10% of its units affordable. Adoption of such provisions spread in Massachusetts in the latter half of the 1980s. A study performed in 1989 identified such legislation having been adopted within the preceding year in nineteen communities, with about three communities having done so earlier<sup>11</sup>. In late 1999, we identified such legislation in 118 places in Massachusetts, fully a third of the municipalities in the Commonwealth.

Sixteen of Rhode Island's 39 municipalities, or 46%, have been identified as having adopted provisions for affordable housing, a slightly higher proportion than have done so in Massachusetts. An almost identical proportion of Connecticut communities has adopted such provisions, 74 of 169 municipalities, or 44%. Only 19% of New Hampshire places have adopted "affordability zoning." In the southeastern portion of the state, which has conditions similar to those of the Southern New England states, the proportion is comparable.<sup>12</sup> 46% of Rockingham County communities have such provisions. Of the 95 New Hampshire municipalities in our study that have zoning, 46% have some affordability provisions.

Our identification of "affordability provisions" is generous, extending even to communities that simply state housing affordability as a purpose for some adopted provisions, even though not made into a binding requirement or providing an explicit "bonus." Lexington exemplifies why we are so inclusive. The Lexington Zoning Bylaw softly states that providing affordable housing is a "significant public benefit" that will be weighed in considering "cluster" or "special residential development," but those simple words of intention have translated into an effective program for achieving affordability, largely because of the Town's firm policy support. In simply scanning bylaws, it is not possible to discriminate between such real intentional statements and gratuitous provisions adopted simply to ward off attack. To improve our understanding, we have then classified the provisions by the apparent firmness of their requirements and have spoken with local officials.

There are zoning provisions that make clear mandates for inclusion of affordable units under certain circumstances. For example, the original Newton law required that all housing receiving an increase above base single-family density through special permits, such as for multi-family development, make 10% of its units affordable. Mandates are sometimes designed to apply to most housing development, and sometimes to apply only in special cases, such as in cluster development, a mandate which has been widely credited with destroying developer interest in clustering. When mandates are very narrow and therefore easily sidestepped, they really become "incentives," not mandates, and may become disincentives for use of that tool to which they are attached.

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<sup>11</sup> Herr, Philip B., "Municipal Strategies to Create Affordable Housing," for the LandLaw Winter 1989 Land Use Conference, January 27, 1989; and "Partners in Housing: The Massachusetts Experience," in *Journal of Real Estate Development*, Summer, 1989.

<sup>12</sup> Here and elsewhere "places" refers to local governmental units authorized to adopt zoning, including villages and a few other categories in the various states.

Incentives offer benefits for those developments that include affordable units, without obliging anyone to avail themselves of those benefits. The most common benefit is higher density, which is sometimes authorized community-wide, sometimes only for certain districts, sometimes only for select forms of development. Since a carrot withheld becomes a stick, the distinction between mandates and incentives is not a sharp line. Arguably, Newton's rule is an incentive rather than a mandate since by developing single-family homes it can be avoided, while Lexington's density incentive consideration is only a weak incentive on paper but is virtually a mandate in practice. Our categorizations are judgmental, classifying as "mandates" rules likely to be largely unavoidable in context, and as "incentives" those likely to simply offer an option easily foregone.

In Massachusetts, exemption from growth rate controls is a common "affordability" option. Fee waivers and a handful of other special rules also are offered in a handful of communities. Finally thirteen of the 118 "affordability zoning" communities we identified simply list housing affordability as a purpose or intention. Remembering Lexington, we have not excluded them, but some might do so, leaving 105 communities with zoning that does more than state good intentions regarding affordability. That still is nearly a third of the municipalities in Massachusetts. We found five communities having adopted some completely inoperative mentions of "affordability," such as definitions of the term without use of it in the regulation, or retention of provisions beyond a "sunset" date, and nothing more. Those communities were excluded from the count, tabulations, and mapping, but are included in several of our appended listings, including that sorted by jurisdiction.

We found no strong inclusionary mandates in any of the other three states, a significant difference. No mandates at all, weak or strong, were found in Rhode Island. We found only one mandate in New Hampshire, and it was tailored to a specific development site in one New Hampshire community (Portsmouth). In Connecticut, about a dozen communities have adopted inclusionary mandates for a single specified district, in apparent response to developer proposals under the Connecticut state inclusion law, 8-30g, and we found a few other narrowly specified mandates in that state. The pattern of incentives as opposed to mandates, however, was little different among the states.

**“AFFORDABILITY ZONING”  
IN FOUR STATES**

## WHERE DOES AFFORDABILITY ZONING OCCUR?

The geographic distribution of “affordability zoning” powerfully reflects market and need conditions. Inclusionary provisions have most commonly been adopted in communities where there is both a felt need for housing efforts and market circumstances giving regulatory techniques some hope of effectiveness. They have rarely been adopted in communities where market rate housing prices are little higher than what would be defined as “affordable.” In those circumstances inclusionary zoning, designed to operate through internal cross subsidies from market units to affordable ones, simply doesn’t work.

Thus, only 21 of the 118 Massachusetts communities that have adopted affordable housing provisions lie west of Worcester County. High land values in much of eastern Massachusetts make cross subsidies possible, but in much of western Massachusetts that is not the case. The need for housing efforts is not demonstrably smaller in the west than in the east, but it is much more difficult to make inclusionary zoning work in areas of lower land values. Similarly, inclusionary rules in New Hampshire are largely confined to the southern half of the state, especially the southeast, where strong market forces produce both obvious affordability problems and land values that can conceivably help meet them. In other areas of the State, housing affordability is also a problem, but inclusionary zoning is an unlikely tool for addressing it. Interestingly, while New Hampshire has no equivalent to Chapter 40B, it does mandate that all localities allow the development of manufactured housing, a method more widely appropriate in that State than inclusionary zoning<sup>13</sup>.

Simple mapping of affordability provisions in Rhode Island reveals no such obvious pattern, perhaps because of the small area of the State and the large area of many of its municipalities, so that geography is a less apparent consideration in local patterns of adoption. However, it may also reflect that state’s strong legislative mandates. They begin with mandated local comprehensive plans that must address housing affordability, followed by the mandate that zoning be consistent with the comprehensive plan, backed by a 40B-like authorization for appeals to a State Housing Appeals Board<sup>14</sup>. In Connecticut, inclusionary adoption is most common along the coast and least common in the low-development northeast corner, but is less spatially focused than in Massachusetts and New Hampshire, for reasons not clear to us.

The impact of regional agencies on patterns of local adoption isn’t entirely clear, but may be significant. As a minimum, having regional agencies impose an inclusionary rule does not preempt local action. Both Cape Cod and Martha’s Vineyard have regional commissions that have regulatory authority, and have imposed requirements for affordable unit inclusion in all projects exceeding specified size thresholds. In both regions there are an unusually high percentage of communities that have adopted affordability provisions: four of the six towns on Martha’s Vineyard and nine of the fifteen towns on Cape Cod. That extent of local action to some degree reflects regional mandates, as well as reflecting how serious the housing affordability issues are in those communities, as well as reflecting the prevailing high land values that facilitate inclusionary efforts.

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<sup>13</sup> RSA 674:32.

<sup>14</sup> Title 45, § 45-22.5-6(C) mandates housing in a comprehensive plan, Title § 45-23-31(A) mandates zoning consistency, and Title 45 Chapter 53 authorizes developer appeals to the State..

Both regional commissions have helped establish housing affordability as an important planning consideration in their regions. By mandating inclusion in large developments, those regional agencies have reduced the impact of local provisions, perhaps making them more readily adopted than otherwise. The Cape Cod Commission offers inducements for communities to prepare and seek certification of local comprehensive plans, which involves obligations that the plan must address housing affordability, and that in time zoning must be consistent with the plan, much as in Rhode Island. That, too, has clearly had some impact.

Local zoning cannot be overridden on appeal under Chapter 40B in those communities in which more than 10% of the housing is subsidized. Eliminating that loss of autonomy is a clear incentive to communities. It would seem that the threat of that loss would encourage localities to frame their own rules as an alternative. However, a larger share of the communities having more than 10% subsidized housing than those below that line have adopted some form of affordability zoning. Eleven out of the twenty-four (46%) communities statewide having more than 10% subsidized housing have adopted inclusionary zoning provisions, compared with only 30% of those nearing that threshold (exceeding 8% “subsidized”), and 33% of those communities having even fewer than 8% subsidized units. The difference is small, but certainly does not support a conclusion that 40B is powerfully pushing communities into local action.

That same 10% level for exemption from state-level intervention is embedded in both Rhode Island and Connecticut laws. In both those cases a substantially smaller rather than larger percentage of communities above that threshold have adopted affordability provisions, the reverse of the Massachusetts experience. In Connecticut 34% of the “exempt” communities have affordability zoning, compared with 44% Statewide, suggesting a response to the “threat.” In Rhode Island 33% of the “exempt” communities have affordability zoning compared with 46% Statewide, again possibly a response to concern over future State overrides, but the small number of communities in Rhode Island makes narrow statistical inferences inappropriate.

Three states with housing “override” systems and one without is too small a sample on which to base big conclusions, but the mapping of communities in these four states having “affordability zoning” is very persuasive. It clearly reveals a pattern of such provisions commonly being adopted where housing needs and land values make them potentially useful, and not often elsewhere, regardless of state-level legislation or regional interventions. It suggests that the dominant motivation in adoption of such provisions may often be more a positive effort to address a problem than a reactive response to mandates by others.

Several considerations temper that observation, of course. First, although New Hampshire has no statutory mandates regarding housing affordability (other than those for manufactured housing), there is wide recognition in New Hampshire that courts will not uphold unreasonable restriction of housing opportunities<sup>15</sup>. Some inclusionary provisions, such as exclusion of affordable housing from growth timing rules, are a clear response to that “threat.” Based upon our own experience, the same is true in other northeastern states, such as New York, where affordability provisions clearly are commonly adopted as a result of the threat of litigation, even

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<sup>15</sup> See note 10 on page 4 for citations.

without legislative mandates<sup>16</sup>. Action in the absence of legislation demanding it isn't always based on positive motivations.

Second, there are clear evidences of where State or regional mandates *have* played a major role in local legislative outcomes. A substantial number of Connecticut ordinances contain provisions clearly adopted in response to developer or court actions reflecting 8-30g. The strong record of local action on Cape Cod is clearly owed in part to the Cape Cod Commission's policies and incentives.

Table 3.

**MASSACHUSETTS GROWTH AND "AFFORDABLE" HOUSING**

Year	Total year-round units	40B Affordable units	
		#	%
1972	1,935,000	85,600	4.4% of Herr estimate of 1972 year-round units
1980	2,140,000	165,400	7.7% of 1980 US Census year-round units.
1990	2,381,000	183,000	7.7% of 1990 US Census year-round units.
1997	2,495,000	203,100	8.1% of Herr estimate of 1997 year-round units
1990-97	114,000	20,100	17.6% of total year-round housing increase 1990-1997

Source: Herr Associates files and analysis.

<sup>16</sup> *Triglia v. Town of Cortlandt* (*New York Law Journal*, January 21, 1998), is said to be powerfully influencing local legislation in New York.

## HOW EFFECTIVE HAS AFFORDABILITY ZONING BEEN?

At least three measures of effectiveness for affordability zoning are of interest: effectiveness in expanding the supply of affordable housing, effectiveness in expanding the share of affordable housing located outside of the handful of communities having the most of such housing; and effectiveness in reducing the number of communities having no affordable housing at all.

### AFFORDABLE HOUSING SUPPLY

Affordability zoning can help expand affordable housing supply by lowering land and development costs, especially front-end costs, thus allowing subsidies to be stretched further. It can help by facilitating, providing incentives for, or mandating use of internal cross-subsidies to bring additional resources into play for expanding affordable housing supply. There is no statistical count of the affordable housing that has resulted from such zoning efforts in any of the four states studied, but some conclusions can be drawn about the effectiveness of such efforts. Rules mandating inclusion of affordable units work, and can be a supportive element of a housing strategy, but to date have been of limited effectiveness measured in dwelling units produced, since they typically apply not to all development but only to certain categories, such as developments over some threshold size. Mandates then effectively become incentives to avoid developing in that category.

Based upon interviews with local officials and analysis of zoning where subsidized units have been produced since 1990, it appears that in Massachusetts perhaps 1% of Statewide housing production since 1990 has been subsidized in developments relying on affordability zoning for approval. That represents about 200 subsidized units per year, or about 7% of the statewide production of subsidized units<sup>17</sup>. The remainder of the subsidized units produced were authorized in compliance with other local zoning provisions, or by variance, or under Chapter 40B.

Interviews and analyses in the other states studied suggest similar levels of effectiveness regarding affordable housing supply. In 1998 subsidized housing totaled 8% of housing units in Rhode Island and 11% in Connecticut, compared with 9% in Massachusetts in 1997. The share of housing in New Hampshire that is subsidized appears to be comparable in comparable regions: the Statewide total of 3% assisted units includes many communities having relatively low housing cost and demand, and excludes from the count units subsidized in any way other than through NHHFA-administered rental assistance. Anecdotal evidence in all three comparison states is very similar: occasional places having some success with local provisions, but many more having near-inconsequential outcomes, with affordable housing development being permitted either in accordance with local zoning or through variances far more often than through affordability-specific regulations.

The most potent outcomes from affordability zoning can be expected from broad mandates, rather than incentives. Perhaps the most sweeping mandates in Massachusetts are those of the Martha's Vineyard Commission, in effect since the 1980s and the Cape Cod Commission, in effect since 1991, imposing mandatory inclusion for all projects of 10 or 30 units (respectively)

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<sup>17</sup> See Technical Notes page 20.

or more. However, even those requirements to date have had relatively little impact on the production of housing. While growth in subsidized units has equaled nearly 18% of housing production Statewide since 1990, it has totaled less than 10% of total housing production on the Cape and Martha's Vineyard<sup>18</sup>. Interviews suggest that the results of regional mandates has been modest chiefly because almost all housing development has been done in projects below the threshold of applicability for those requirements. While the Cape Cod rule is applicable only for 30 or more units, the regional policy intent is that local rules would also oblige inclusion for projects as small as ten units, in time resulting in larger impact. Given time, that urging of localities to extend the mandate may well prove more important than the regional large-project rules, given the usual small scale of individual developments on the Cape.

In parts of Boston and now in all of Cambridge, West Tisbury, Southborough, and Barnstable all development over modest size thresholds must contribute to housing affordability, and while most of those provisions are relatively new, it is clear that they have the ability to be effective in those places. The only exceptions to the effectiveness of broad mandates are where the mandate applies only to projects of a size that is only rarely found in the affected communities, such as has been reported to be true for mandates in Brookline and many other communities.

Narrower mandates have more mixed success, depending upon the market dominance of the type of housing to which the mandate applies. For example, a half-dozen communities mandate affordable units in all multi-family development, but that narrow mandate has produced substantial results only in Newton, where multi-family is virtually the only feasible approach for development. In the other communities having such rules, there has been little or no multi-family development subsequent to adoption of the rule. Some communities mandate affordable units in all cluster developments, following which there commonly have been no cluster developments. Other communities limit mandates to small areas of the community, sometimes with clear positive results, especially when the zoning was adopted to facilitate a specific development project. More commonly there is little or no usage because of the narrow limitation, or because of a requirement for rezoning into the district containing the mandate.

Incentives work when they help developers do what they and the community both wanted to do anyhow. In such cases, a "friendly" Chapter 40B Comprehensive Permit process is sometimes seen as easier and better than the local incentive zoning for all parties. Where the 40B route is chosen, the actual terms of local affordability zoning are not binding, but commonly set the framework and numbers for that friendly agreement. Cambridge, Somerville, and Worcester are examples where incentives have played a role in a substantial amount of affordable housing development, both in conjunction with 40B and without it.

"Soft" policy guidelines would appear near certain to prove ineffective, given the above, but that isn't always true. Lexington zoning contains no mandates and offers no specific bonuses for housing affordability, but clearly states that affordability is one of a list of "Substantial Community Benefits" that will be weighed in all discretionary actions, including both rezoning recommendations and special permits. In a community that solidly backs the intention for affordable housing, that simple exhortation has been highly effective in gaining affordable housing components in many projects.

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<sup>18</sup> See Technical Notes page 20.

Chapter 40B plays a large role in all zoning for housing affordability in Massachusetts, even though 40B might seem to make local zoning irrelevant for affordable housing. Some communities have been motivated to adopt such zoning in order to provide a locally-controllable alternative to 40B, which is often seen as a threat to local planning. In other communities, Chapter 40B and inclusionary zoning are seen as a complementary tandem. 40B is frequently chosen for actually implementing projects, but the local zoning often sets the agreed-upon rules. Those interviewed often commented that the local inclusionary rules are too complex for developers, who choose 40B instead for its familiarity, clarity, and perceived fairness.

Several people interviewed commented on local unhappiness that the affordable units gained through local inclusionary zoning are often not “credited” towards the locality’s Chapter 40B “threshold” of 10% affordable housing. That happens since units developed without 40B commonly are not subject to long-term deeded restrictions on housing price and resident income limitations. For example, Newton’s pioneering inclusionary rules have to date produced about 440 “affordable” units, but fully half of the restrictions that initially made them affordable have now expired, leaving only 220 units with continuing affordability assurance.

#### BROADENING THE DISTRIBUTION OF AFFORDABLE HOUSING.

Given that only about 7% of all subsidized housing developed in Massachusetts over the past decade used affordability zoning, it is clear that such zoning could not have substantially altered the aggregate pattern of where affordable housing exists. The share of all subsidized housing in Massachusetts which is located in the ten “affordable-zoned” places having the largest number of such units in 1997 has been stable: 38% in 1983 and 39% in 1997. The one-third of the State’s municipalities with affordability zoning contained a disproportionate 55% of the statewide total of affordable housing in 1983. Those same communities captured 66% of the subsidized housing increase between 1983 and 1997, slightly increasing their statewide share to 57%. The concentration of affordable housing in aggregate has been essentially unchanged in recent years. Perhaps without these local “affordability zoning” efforts the concentration of affordability would have been even greater, but there is no conclusive evidence for that.

#### ELIMINATING THE NO-AFFORDABILITY COMMUNITIES

In addition to its role in facilitating expansion of affordable housing supply, Chapter 40B has been credited with helping to broaden the set of communities that have at least *some* subsidized housing. A recent study notes that the percentage of Massachusetts municipalities having no subsidized housing has fallen from 49% in 1970 to 16% in 1997<sup>19</sup>. No firm conclusions can be reached about the role of local affordability zoning on that spread. Strikingly, only three of the communities which have affordability zoning have no subsidized housing, down from ten of the current affordability-zoned places as recently as 1990. Perhaps the zoning helped produce those units, or perhaps having subsidized units helped produce the zoning. One of the remaining three affordability-zoned places without affordable units, West Tisbury, has some affordable units under development at present in a cohousing project. A second, Edgartown, has in the past

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<sup>19</sup> Verrilli, Ann, “Using Chapter 40B to Create Affordable Housing in Suburban and Rural Communities of Massachusetts,” Citizens’ Housing and Planning Association, October 1999. Page 15.

produced price-limited “Island resident lots” which facilitated low-cost housing, but that housing is not recognized in DHCD tabulations. The third place, Leverett, has among other things housing for an intentional community facilitated by local zoning, accommodating a number of chiefly young people at charges far below market, but again officially unrecognized. All three places have a climate of opinion supportive of broad housing opportunities and some accomplishments, but no “countable” units.

#### RESULTS FROM THE “PIONEERS.”

A large share of the places having affordability zoning adopted it only recently, and hopes continue that their results will become stronger over time. To explore that, we have analyzed twenty-two “pioneer” communities identified as having adopted inclusionary rules more than a decade ago<sup>20</sup>. In summary, the results seem to support the notion that with time these zoning efforts become more effective, though as always, it is difficult to separate cause and effect.

The 22 “pioneer” communities contain just fewer than 20% of the year-round housing units in Massachusetts as of 1997, but contain over 30% of the 40B subsidized units in the State. Overall, 14% of the housing in the “pioneer” communities is credited under Chapter 40B, compared with 9% Statewide. The effects over time are varied and complex.

Boston, entering the nineties with a number of district-based rules and augmenting them since then, has seen those rules produce affordable units in those locations, but the numbers are disappointingly small in a Citywide context. Recently a Citywide mandate has been established by the Mayor, following the lead of some other Massachusetts cities<sup>21</sup>. Boston gained more subsidized housing in the 90s than the next three communities combined, and that performance statistically dominates performance of the “pioneers” as a group. However, it does not appear that zoning mandates played a major role in that performance. In contrast, Cambridge early adopted mandatory inclusions in some districts, and the zoning played a significant role. Cambridge has now adopted a mandate Citywide based in significant part on the experience with the earlier district mandates, some now deleted.

More than 400 of the 1,500 affordable housing units that have been created over the years in Newton used Newton’s pioneering “10% rule,” but half of them are no longer constrained in price, so are lost to the affordable supply. The terms of that ordinance are commonly followed by projects seeking zoning relief under Chapter 40B, such as a recent proposal in compliance except for building height, and therefore using the simpler comprehensive permit route. There have been continuing efforts to make that ordinance more effective than it is, constrained as much by law and practicality as by politics.

Lexington and Amherst have seen good use made of their approaches, which remain unchanged or broadened. Burlington, Nantucket, North Adams, North Andover, Peabody and Sandwich have seen some but a disappointingly small use of their provisions, and speak of revising them to reflect that experience. Bellingham, Beverly, Bourne, Concord, Marlboro, Northborough,

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<sup>20</sup> Nineteen communities identified in earlier cited studies by Philip Herr, plus three others known to have such rules in place by 1980.

<sup>21</sup> “Wealthy Developers Make Millions,” Massachusetts Affordable Housing Alliance, September 14, 1999 (draft).

Reading, Shutesbury, Tisbury and Westwood have all apparently seen no usage of their ten or more year old provisions, but many of those communities have more recently adopted newer rules that are more promising or have already had results. Pembroke saw no use of its cluster-based mandatory rule, and no real constituency for its retention, so repealed it.

## **OBSERVATIONS**

This review of efforts at affordability zoning has resulted in a number of observations, some relevant to actions at the State and regional level, some relevant to local legislative efforts, and a few others relevant to local project actions.

### **STATE AND REGIONAL CONSIDERATIONS**

There is undeniably widespread support for municipal actions to serve housing affordability. With no mandate that they do so, a third of the communities in Massachusetts have found enough support to get inclusionary proposals onto town meeting or city council warrants or dockets, and have found the votes to get them adopted. Those Massachusetts findings are buttressed by similar results under similar circumstances in Rhode Island and Connecticut, and by similar results in dissimilar legal circumstances in southern New Hampshire. To be sure, some of the adopted provisions are so weak as to be only tokens and some, such as affordable housing exemptions from growth timing rules, were motivated in part to ward off litigation. However, there remain a strikingly high number of communities that have taken what appear to be genuine efforts to promote housing affordability, however guardedly. The breadth of locally adopted affordability zoning revealed by this survey was a startling surprise.

Where affordability zoning gets enacted clearly reflects the conjunction of perceived housing needs and a wide gap between market rate housing costs and prices eligible for subsidy. Without the perception of need there is insufficient motivation for action, and without the price gap there is little expectation of effectiveness. Many communities in western Massachusetts, northern New Hampshire, and northeastern Connecticut have housing needs that no zoning technique is likely to effectively address, and communities apparently understand that.

The role of state and regional initiatives is less clearly demonstrated by these results. Fear of being overridden by state agencies or courts exists in all four of the states we examined: the lack of legislation in New Hampshire doesn't qualify it as a "control case" as we at first thought it would, given courts willing to act strongly based upon constitutional grounds. The high incidence of local affordability zoning on the Cape and Islands, where regional mandates on large developments already exist, may be indicative, but there are many other circumstances of those areas that might play a role.

Often the support for affordable zoning effort appears to lie with a relatively small number of committed people, and that support can prove to be quite fragile. Support often disappears altogether in the heat of place-specific controversies, and can be damaged if proposals are perceived as implementing an agenda imposed from "away." However, the evidence suggests that local legislation creating broadly applicable regulatory changes benefiting housing affordability, provided with safeguards such as special permit requirements, apparently enjoy strikingly wide support as means of accomplishing the community's own objectives. That would seem to suggest that supportive efforts from state and regional positions might be more productive than more aggressive steps that would again polarize interests, the opposite of the "partnership" approach that has often been successful.

Reviewing the record, it appears that zoning only rarely prevents housing development by an affordability-committed developer in an affordability-committed municipality. In addition, affordability-committed developers are able to use Chapter 40B or its cousins in other states to gain regulatory relief in those communities that don't share their commitment. However, with few exceptions affordability-committed communities lack tools for achieving affordable housing with developers who lack that intent. Politically attainable incentives are too weak to persuade such developers or landowners: only mandates that can't be avoided will achieve the goal. Only a small handful of communities in Massachusetts have such mandates. In the remaining affordability-committed communities, the lack of zoning mandates is probably less because of politics than out of:

- concern that such mandates may not be legally sustainable, or
- concern over the analytic demands of nexus studies and legal analysis and drafting complexities presumably involved, or
- concern over being fair regarding property rights, or
- concern about administration where development takes place in tiny increments rather than large developments: what do we do with 10% of a four-lot division of land that isn't even a "subdivision," or
- concern about stepping out ahead of common practice.

Some very simple legislative steps could remedy those concerns. At present, the Zoning Act, Chapter 40A, MGL guardedly authorizes localities to provide incentives for affordable housing in acting on special permits, but does not explicitly authorize any other affordability legislation. Barnstable's initiative in going beyond explicit authorization is currently under legal attack. The Subdivision Control Law, Sections 81K - 81GG of Chapter 41, MGL makes no mention of housing needs or affordability, even in its "Purposes" section (§ 81-M). Going beyond special permit-based incentives to offer incentives without special permits or to impose mandates involves proceeding without explicit statutory authorization, and with no supportive case law to date. Municipal government is seldom a strong risk taker. If either the Zoning Act or the Subdivision Control Law were to explicitly authorize affordability mandates, and set out the principles to be followed, it would greatly diminish the perception of risk and other concerns in affordability-committed communities. If in addition there was a well-researched analysis supporting the nexus between such actions and the public purpose, and there were well drafted and widely publicized models of clear, concise regulatory language made available, the impact might well be substantial.

There is no consensus among planners and housers regarding the proportion of Massachusetts communities that are "affordability-committed." If that proportion is small, steps such as the above would have limited impact. It might then be argued that State legislation mandating inclusion would be appropriate. However, the risk of damage to the spirit of partnership and to local housing constituencies in doing that is large. It may be prudent to simply provide passive but clear authorization for local action before going beyond that to mandating action.

## LOCAL CONCERNS

These survey results should not be misread as documenting that local affordability zoning is ineffective. More than a thousand affordable units have been created in the nineties with it. Learning about the tool has been slow, and most of the strong inclusionary provisions are very new. The numerous cases of success illustrate that the tool can be highly effective when well crafted to its circumstance, and when used in a supportive context. Lacking either of those, the expectations are less confident.

No single tool stands out as the “silver bullet” for achieving housing objectives. The key ingredients to housing achievement instead seem to be a real community will to do something about broadening access to housing, and ingenuity in carrying it out. Using no legal mandates or committed incentives at all, Lexington has produced substantial gains in affordable housing. The Town of Wendell, without a strong market, used rehab support and long-term affordability commitments to leap from no housing counted as “affordable” under Chapter 40B in 1990 to being second-ranked in the Commonwealth in 1997 with almost 20% of its housing units now committed to affordability. Nantucket is turning the pressure for “tear-downs” into an affordability tool, using a “demolition delay” bylaw to provide time for the threatened structures to be bought, relocated, and rehabbed for continuing affordability. Cambridge and Somerville, with density, site shortage, and market circumstances seemingly prohibitive for housing affordability, are making real progress not with one tool but with a broad array of them, backed by strong community support. These lessons are persuasive.

## TECHNICAL NOTES

### DATA DEFINITIONS AND SOURCES

As our primary data source for local zoning we used CD-ROMs containing the zoning laws of all communities in the four states being studied.<sup>22</sup> We used search words to find the provisions: “affordable,” “moderate income,” and more than a dozen other probes, some state-specific (“40B”). We have not included “linkage” in our search. “Linkage” provisions oblige business development to pay fees to help meet the costs of making housing affordable for the expected demand locally created by that development. That, too, is a valuable zoning tool in support of housing, though not widely used. Boston, Cambridge, Somerville, Nantucket and Westwood are among Massachusetts communities having linkage provisions.

We have not included affordability devices incorporated under subdivision regulations. A cursory review detected only a handful of Massachusetts communities having adopted provisions under subdivision regulations for affordability purposes, which is no surprise. In Massachusetts under current law such regulations have relatively little capacity to do more than passively facilitate affordable housing by reducing costs, and even that risks legal challenge. Where there is local support for affordability, adopted regulations are easily varied project by project by the same Planning Board that has authority to adopt them. Statutory change could substantially alter this picture, as illustrated by the frequency of “affordable” subdivision regulations in Connecticut, where enabling statutes make provision for them.

We have not tried to identify simple “facilitation” efforts as distinct from mandates or incentives, in part because they are nearly impossible to detect without local familiarity, and in part because their impacts are so difficult to evaluate. What are included in our search are rules that mandate, provide incentives, or explicitly specify a supportive intent. We have simply accepted whatever definition of “affordability” is locally adopted, where near-universally it is either left vague or is established by reference to state rules or programs.

For information regarding where affordable housing exists we obtained listings of affordable housing totals by municipality for the three states having state overrides, and a projects listing for New Hampshire. We also used a listing of all Chapter 40B subsidized housing developments in Massachusetts, used as a reminder of the nature of what has been built<sup>23</sup>. Having identified inclusionary regulations, we then contacted local officials in a selected sampling of more than a third of the identified Massachusetts communities to inquire regarding their experience with such zoning. In the other three states we have spoken with state or regional officials. The regulatory examples were then organized by type of device, with results as appended.

The figures we show for the percentage of housing that is subsidized according to the various state systems come from the agencies administering those laws. The individual place percentages used for 1997 or 1998 are a percentage of the 1990 housing stock as shown in the

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<sup>22</sup> Munilaw, Inc., *Connecticut Zoning & Subdivision Regulations*, July, 1999; *Massachusetts Zoning By-Laws & Maps*, May, 1999; *New Hampshire Zoning & Land Use Regulations*, June, 1999; *Rhode Island Zoning & Subdivision Regulations*, March, 1999;

<sup>23</sup> MA DHCD, “Chapter 40B Subsidized Housing Inventory Through July 1, 1997.”

US Census except in New Hampshire, where the Office of State Planning estimate of 1998 housing was used. In analyzing other years for Massachusetts percentages by individual place we followed the State precedent and used the 1980 Census total housing count as the base for 1990 percentages. For the time series in Table 3, however, and for analysis of 1990 - 1997 change, we used 1980 Census for 1980, 1990 Census for 1990, and estimated the 1972 and 1997 totals based upon the most recent Census and building permit data.

#### COUNTING ON CAPE COD AND MARTHA'S VINEYARD

The Cape and the Vineyard are of special interest because they have regional mandates for including affordable units which are applicable not only on appeal but for all projects. These regional mandates apply regardless of the preference of the municipality or the developer. That contextual change is a potential influence on local regulatory efforts. Places on Cape Cod and the Vineyard are also somewhat complex to analyze because of having a dual housing market, with both seasonal and year-round residents competing for the same stock. DHCD appropriately excludes "seasonal housing" in calculating the percentage of subsidized housing in each town, making an enormous difference in some of these communities, a difference whose estimation requires care in making analyses over time. The way the US Census has treated seasonal housing has varied among decennial censuses, and for 1997, the year used for a "current" estimate, there is no reliable data on the extent of seasonal occupancy. We simply assumed that the percentage of housing units occupied year-round had not changed 1990-97, multiplying the 1990 percentage of seasonal units times our estimate of total 1997 housing to arrive at a year-round total.

#### CALCULATING INCLUSIONARY PRODUCTION

Between 1990 and 1997 Massachusetts added about 114,000 year-round housing units, based upon building permit records. About 20,000 added units were counted as "subsidized" for Chapter 40B purposes over that period. That is well above the 10% 40B objective. About 11,000 of those subsidized units were added in communities having affordability zoning provisions. Half of the subsidized units in "affordable zoning communities" were in just three cities: Boston, Cambridge, and Worcester. Two-thirds were in just nine communities: those three plus (in descending order of number of units) Newton, Salem, Somerville, Chelsea, Beverly, and Lexington. Interviews and examination of the types of provisions in those communities indicate that affordability zoning provisions played a role for perhaps 11% of the units produced within them. Less intensive review of the remaining communities suggests that affordability zoning may have been responsible for about the same percentage in them, as well. Eleven percent of the 11,000 added units in affordability-zoning communities State-wide means about 1,200 units over a seven-year period, averaging nearly 200 units a year, or about 1% of annual State-wide housing production.

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## **APPENDICES**

Connecticut

Massachusetts

New Hampshire

Rhode Island

MA ZONING FOR HOUSING AFFORDABILITY			SORTED BY 40-B % RANK				
Local Jurisdiction	Ch. 40B Units %*	# units	Affected Location			Notes	
			Affected development Regulatory type	↓	↓		
Jurisdiction	%*	# units	Description	↓	↓	↓	
Boston	19.4	#####	Review waiver	G	1	a	BRA authority
Boston	19.4	"	Broad enabling	H	1	a	Added 1987.
<b>Boston</b>	<b>19.4</b>	"	<b>District mandates</b>	<b>A</b>	<b>1</b>	<b>b</b>	<b>Many locations</b>
Wendell	19.4	72	Timing priority	I	1	d	Expired
Chelsea	16.6	1,918	PUD mandate authoriz	A	7	a	Requirement is optional
<b>Cambridge</b>	<b>15.4</b>	6,450	<b>Citywide mandate</b>	<b>A</b>	<b>1</b>	<b>a</b>	
<b>Cambridge</b>	<b>15.4</b>	"	<b>District mandate</b>	<b>A</b>	<b>1</b>	<b>c</b>	<b>Cambridgeport</b>
<b>Cambridge</b>	<b>15.4</b>	"	<b>District Mandate</b>	<b>A</b>	<b>1</b>	<b>c</b>	<b>North Point</b>
Cambridge	15.4	"	Replacement mandate	A	9	a	
Cambridge	15.4	"	Parking reduction cons	G	1	a	
Worcester	13.5	9,344	Density incentive	B	1	a	
Greenfield	13.1	1,052	Cluster criterion	C	7	a	
<b>North Adams</b>	<b>12.8</b>	921	<b>Special district</b>	<b>A</b>	<b>1</b>	<b>c</b>	
Salem	12.0	2,053	Intention - condo conve	H	9	a	
Northampton	11.9	1,379	Subreg fee reduction	G	4	a	
Amherst	11.0	963	Cluster incentive	B	7	a	
<b>Amherst</b>	<b>11.0</b>	"	<b>Timing incentive</b>	<b>E</b>	<b>1</b>	<b>a</b>	
Amherst	11.0	"	Subreg fee waiver	G	4	a	
Beverly	10.2	1,586	Congregate elderly	A	5	a	
<b>Beverly</b>	<b>10.2</b>	"	<b>Special use incentive</b>	<b>B</b>	<b>5</b>	<b>b</b>	<b>Congregate housing</b>
Lincoln	10.1	175	Density incentive	B	7	b	R-4 PCD
Framingham	9.2	2,429	PUD overlay mandate	A	7	c	
Mansfield	9.1	577	Density incentive	B	1	b	
Mansfield	9.1	"	Timing incentive option	F	1	a	
Andover	9.0	980	PUD incentive	I	7	d	Uses no longer allowed
Clinton	8.6	486	Special use mandate	A	9	b	Mill conversion.
Somerville	8.3	2,622	Density incentive	B	1	a	
Somerville	8.3	"	District density incentiv	B	2	b	
Somerville	8.3	"	Fast-track incentive	G	1	a	
Somerville	8.3	"	Fee waiver	G	1	a	
Westwood	8.3	375	MRD incentive	B	1	a	
<b>Westwood</b>	<b>8.3</b>	"	<b>Flexible density ince</b>	<b>B</b>	<b>7</b>	<b>a</b>	
Leominster	8.2	1,276	Timing exemption	D	1	a	
Orleans	8.1	242	Overlay district	B	1	c	RAH district
Brookline	7.8	1,960	Townwide mandate	A	1	a	
Burlington	7.8	622	PDD mandate	A	7	c	
<b>Burlington</b>	<b>7.8</b>	"	<b>Townwide incentive</b>	<b>B</b>	<b>2</b>	<b>a</b>	<b>10% density bonus</b>
<b>Burlington</b>	<b>7.8</b>	"	<b>OSRD density rule</b>	<b>B</b>	<b>7</b>	<b>a</b>	<b>Bonus = affordable</b>
Burlington	7.8	"	District bonus	B	7	b	R2 district
Wenham	7.6	92	Accessory unit manda	A	8	a	
Wenham	7.6	"	OSC intent	H	7	a	
Haverhill	7.6	1,612	Timing exemption	D	1	a	
Pittsfield	7.5	1,584	SP density bonus	B	2	a	
Oxford	7.5	346	Intention	H	9	c	Mobile home district
Taunton	7.3	1,469	Cluster intention	H	7	a	
Newburyport	7.1	509	MF incentive	B	3	b	
Ipswich	7.1	349	MF density incentive	B	3	b	
Melrose	7.1	796	Density incentive	C	1	a	
Peabody	7.0	1,279	Pub Hse + bonus	B	3	b	Includes private low/mod
<b>Peabody</b>	<b>7.0</b>	"	<b>Cluster density bonu</b>	<b>B</b>	<b>7</b>	<b>a</b>	
Franklin	6.9	531	MF mandate	A	3	b	
Medford	6.9	1,566	Impact fee exemption	G	1	a	
Medford	6.9	"	Unused definition	I	9	d	
Dartmouth	6.8	652	PRD density incentive	B	7	a	
Dartmouth	6.8	"	Exhortation	H	1	a	Policy
Northbridge	6.5	323	Flex intention	H	7	a	
<b>North Andove</b>	<b>6.4</b>	529	<b>PRD density incentiv</b>	<b>B</b>	<b>7</b>	<b>a</b>	
Stow	6.4	117	2F density bonus	B	9	a	

MA ZONING FOR HOUSING AFFORDABILITY			SORTED BY 40-B % RANK				
Local Jurisdiction	Ch. 40B Units %*	# units	Affected Location	↓	↓	↓	Notes
			Affected development Regulatory type				
Jurisdiction	%*	# units	Description				Notes
Georgetown	6.3	140	SP or variance manda	A	2	a	
Gloucester	6.2	766	MF mandate	A	3	b	
Gloucester	6.2	"	Cluster incentive	B	7	a	
Everett	6.2	952	Interim Overlay	I	9	d	Expired
Saugus	6.2	587	District elderly incenti	B	5	c	
Lenox	6.2	124	MF incentive option	B	3	b	
Methuen	6.0	922	Density incentive	B	1	a	
Great Barringt	6.0	179	Public housing incenti	B	9	c	
Stockbridge	5.9	61	MF density incentive	B	3	b	
<b>Lexington</b>	<b>5.8</b>	<b>629</b>	<b>Density incentive</b>	<b>C</b>	<b>2</b>	<b>a</b>	<b>Significant Public Benefit</b>
Lee	5.8	139	MF consideration	C	3	b	
Shrewsbury	5.6	559	Density incentive	B	1	a	
Bourne	5.5	375	Bonus incentive SP	B	1	a	
<b>Bourne</b>	<b>5.5</b>	<b>"</b>	<b>Timing consideration</b>	<b>F</b>	<b>1</b>	<b>a</b>	<b>Various.</b>
Brewster	5.5	199	Special use incentive	B	5	a	Elderly housing
Brewster	5.5	"	Bonus incentive MRD	B	7	a	
Sturbridge	5.4	160	PUD density incentive	B	7	a	
Watertown	5.4	792	MF mandate	A	3	b	
Watertown	5.4	"	District MF incentive	B	3	b	
South Hadley	5.3	328	Unused definition	I	9	d	
Natick	5.2	661	Special district	A	1	c	
Natick	5.2	"	Density incentive	B	2	a	
Wareham	5.1	423	District MF incentive	B	3	b	
Medfield	5.1	179	Accessory unit purpos	H	8	a	
Waltham	5.0	1,079	MF mandate	A	3	b	
<b>Newton</b>	<b>4.9</b>	<b>1,485</b>	<b>MF mandate</b>	<b>A</b>	<b>3</b>	<b>b</b>	
Mashpee	4.8	181	SP consideration	H	2	a	
Wrentham	4.8	139	District 40B exclusion	I	1	d	
<b>Bellingham</b>	<b>4.8</b>	<b>245</b>	<b>Bonus incentive SP</b>	<b>B</b>	<b>1</b>	<b>a</b>	<b>Broad lot area bonus</b>
Kingston	4.7	155	PRD density incentive	B	7	a	
<b>Reading</b>	<b>4.6</b>	<b>375</b>	<b>PRD density incenti</b>	<b>B</b>	<b>7</b>	<b>a</b>	
Bedford	4.6	210	Subdivision land optio	A	4	a	
Bedford	4.6	"	PRD incentive	B	7	a	
Marlborough	4.6	592	MF mandate	A	3	b	
<b>Marlborough</b>	<b>4.6</b>	<b>"</b>	<b>MF density incentive</b>	<b>B</b>	<b>3</b>	<b>b</b>	
Wellesley	4.5	396	Density incentive	B	3	b	
Williamstown	4.5	128	MRD incentive	B	7	a	
Ashland	4.5	216	MF density incentive	B	3	b	
Scituate	4.5	280	Special district	A	1	c	
Scituate	4.5	"	Accessory unit incenti	G	8	a	Waives various rules.
Arlington	4.4	859	Bonus incentive SP	B	1	a	
Pembroke	4.4	213	District intention	H	1	c	
<b>Pembroke</b>	<b>4.4</b>	<b>"</b>	<b>Cluster mandate</b>	<b>I</b>	<b>7</b>	<b>d</b>	<b>Deleted</b>
Barnstable	4.4	813	Comprehensive manda	A	1	a	Adopted 6/99.
Barnstable	4.4	"	District incentive	B	2	c	RAH district.
Grafton	4.3	218	Flexible mandate	A	7	a	
Easthampton	4.3	274	PRD mandate	A	7	a	
Sudbury	4.2	204	Accessory unit manda	A	8	a	
Sudbury	4.2	"	Elderly incentive	B	5	a	
Chelmsford	3.9	457	MF District use incenti	B	3	b	
Tyngsborough	3.9	116	MF density incentive	B	3	b	
Falmouth	3.8	470	PRD density incentive	B	7	a	
Falmouth	3.8	"	Subdivision timing	E	4	a	
Rockport	3.7	134	SP mandate	A	2	a	
Marblehead	3.6	311	Density incentive	B	2	a	
Millis	3.5	100	PHA density incentive	B	9	a	
Blackstone	3.5	104	Timing consideration	F	1	a	
Blackstone	3.5	"	MRD consideration	H	7	a	Exhortation only

MA ZONING FOR HOUSING AFFORDABILITY			SORTED BY 40-B % RANK				
Local Jurisdiction	Ch. 40B Units %*	# units	Affected Location	↓	↓	↓	Notes
			Regulatory type				
Jurisdiction	%*	# units	Description				Notes
Groton	3.5	93	Flexible mandate	A	7	a	Other cluster options exist.
Norfolk	3.4	84	Density incentive	B	1	a	
Pepperell	3.4	117	Timing exemption	D	1	a	
<b>Northborough</b>	<b>3.2</b>	<b>134</b>	<b>Cluster Density bonu</b>	<b>B</b>	<b>7</b>	<b>a</b>	
Provincetown	3.2	76	Timing priority	E	1	a	
Wayland	3.2	139	PDD mandate	A	7	c	
Wayland	3.2	"	IPOD exemption	D	1	c	
Wayland	3.2	"	PRD exhortation	H	7	a	
Longmeadow	3.1	172	Unused definition	I	9	d	
West Boylston	3.1	70	Accessory unit purpos	H	8	a	
West Springfie	3.0	359	District purpose	H	1	c	
Cohasset	2.8	76	Townwide SP incentive	B	2	a	SP density increase
Tisbury	2.8	47	MF SP consideration	C	3	b	
<b>Tisbury</b>	<b>2.8</b>	<b>"</b>	<b>Timing SP considera</b>	<b>F</b>	<b>1</b>	<b>a</b>	
Wilmington	2.8	159	Dwelling type incentive	B	3	a	Allows multi-family.
Southborough	2.8	66	MRD mandate	A	1	a	If over 10 units.
Bernardston	2.7	22	Bonus incentive MRD	B	1	a	Broad lot area bonus
<b>Nantucket</b>	<b>2.5</b>	<b>86</b>	<b>MCD inclusion</b>	<b>A</b>	<b>9</b>	<b>b</b>	
Nantucket	2.5	"	MRD density incentive	B	7	a	
Sandwich	2.5	150	Accessory unit manda	A	8	a	
<b>Sandwich</b>	<b>2.5</b>	<b>"</b>	<b>Cluster density incen</b>	<b>B</b>	<b>7</b>	<b>a</b>	
<b>Concord</b>	<b>2.4</b>	<b>139</b>	<b>Subdivision land opt</b>	<b>A</b>	<b>4</b>	<b>a</b>	
Concord	2.4	"	PRD mandate	A	7	a	PRD
Westford	2.2	120	Timing exemption	D	1	a	
Acton	2.1	144	Bonus district (overlay	B	1	c	AH Overlay District
Winchester	1.8	137	MF density incentive	B	3	b	
Townsend	1.7	50	Accessory unit purpos	H	8	a	
Marion	1.7	28	Cluster density incenti	B	7	a	
Marion	1.7	"	MF Intention	H	3	b	Multifamily zoning
Marion	1.7	"	Accessory unit purpos	H	8	a	
Lunenburg	1.6	54	Density incentive	B	7	b	MRD
Rutland	1.4	25	Intention	H	1	a	Cites 774 authority
Carlisle	1.2	18	Accessory unit purpos	H	8	a	
Deerfield	1.2	24	Flexible incentive	B	7	a	
Halifax	1.2	28	Timing incentive	E	1	a	
Dover	1.0	17	District mandate	A	3	c	MFRD Overlay district
Heath	0.8	2	Timing exemption	D	1	a	
Truro	0.6	5	Accessory unit manda	A	8	a	
Oak Bluffs	0.5	8	OSC incentive	B	7	a	
Oak Bluffs	0.5	"	SP criterion	H	1	a	
Chesterfield	0.3	1	Density incentive	B	1	a	Creative Development
Edgartown	0.0	0	Cluster 50% incentive.	B	7	a	
Edgartown	0.0	"	Timing incentive	D	1	a	
Leverett	0.0	0	Flexible density incenti	B	7	a	
Pelham	0.0	0	Accessory unit purpos	H	8	a	Accessory apartment.
Rehoboth	0.0	0	Timing exemption	D	1	a	
Sherborn	0.0	0	Accessory unit manda	A	8	a	
Sherborn	0.0	0	Special district	B	1	c	EA District
<b>Shutesbury</b>	<b>0.0</b>	<b>0</b>	<b>Timing exemption</b>	<b>D</b>	<b>1</b>	<b>a</b>	
Sunderland	0.0	0	MRD incentive	B	7	a	
West Tisbury	0.0	0	MRD mandate	A	1	a	If over 5 units.
Westhampton	0.0	0	MF density incentive	B	3	b	Planned MF Development
Whately	0.0	0	Timing exemption	D	1	a	
Total these pla	58.2%	#####					
Other places	41.8%	#####					
Statewide total	#####	#####					

