

# SHAPING THE FUTURE OF YOUR COMMUNITY

## CHAPTER 4

### *Zoning, Regulatory Land Use Controls, and Incentives*

**To shape a positive future for the community, local land use bylaws and ordinances should be written and implemented in such a way as to promote the desired type and patterns of development. Making desirable development quicker, easier, and cheaper than less desirable development is key to promoting well-planned growth. Citizen involvement in the regulatory realm is vital. Citizens can contribute to developing creative local land use laws and reviewing projects affected by those laws (see Section 6 of this guide for information on Project Reviews).**

#### **Local Zoning**

Under the Massachusetts Zoning Act, Act, MGL Ch.40A <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter40A> municipalities have the power to establish various districts, or “zones,” limited to specific uses. Most municipalities in Massachusetts have local zoning laws that divide communities into different zones, such as residential, commercial, industrial, and open space. Some communities allow mixed-use zones where businesses and residences mingle.



Zoning laws usually establish requirements for minimum lot size, street frontage, density, open space, parking, and the process for site plan approval. Certain uses are permitted as a matter of right; others require a special permit.

The concept underlying zoning is to promote public health, safety, and welfare and encourage the most appropriate use of land throughout the municipality. Zoning is developed, for example, to lessen congestion in the streets; provide safety from fire, floods, and other hazards; and facilitate provision for transportation, water, drainage, sewerage, schools, parks, and open space.

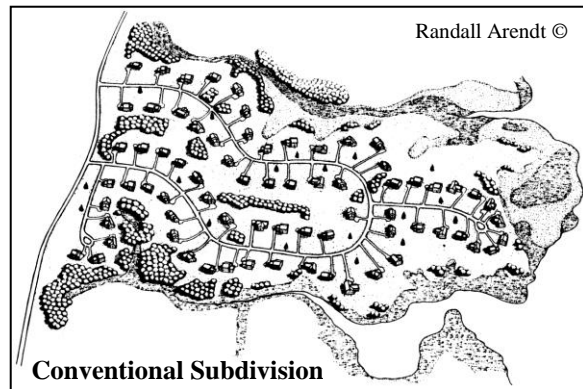
Zoning helps avoid placing incompatible uses, such as heavy industry and residential developments, in close proximity to one another. Zoning is a mechanism that allows communities to shape their own future. It is the single-most powerful land use management tool.

Creative zoning regulations and bylaws/ordinances can allow for development that meets the community’s economic and housing needs while protecting natural resources. Zoning can contribute to or help discourage sprawl. Zoning should reflect and be responsive to different communities’ needs and interests. Some communities may want to retain their agricultural heritage; others may want to promote commerce and industry; still others may choose to encourage small neighborhoods and “villages.” All changes to zoning laws must conform to state zoning standards and be approved by the community’s legislative body.

## Local Subdivision Control

The Massachusetts Subdivision Control Act, MGL Ch. 41 §81K-81GG

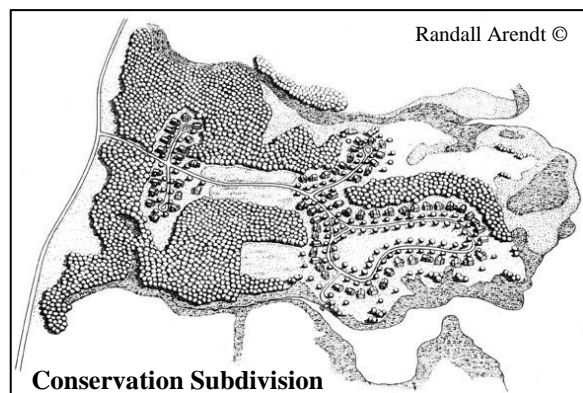
<http://www.mass.gov/legis/laws/mgl/41-81k.htm>, requires minimum frontage for the division of land into buildable lots and gives local planning boards authority over subdivision of land. Municipal planning boards can enact local subdivision control regulations that put in place more stringent requirements or restrictions to address public health, safety, and welfare. Local subdivision control is employed in close coordination with local zoning and health codes.



Conventional local subdivision regulations do not address ecological values, public access, or other public amenities—they are established solely to regulate the laying out of new roads and lots. This often results in “cookie cutter” subdivision layouts that are geometric rather than tailored to the land’s nature contours.

Conventional subdivision, especially in conjunction with large minimum lot sizes, consumes a great deal of land resulting in sprawl.

If proposed new lots meet the basic frontage requirements on an existing way, the planning board must accept the lots through the “Approval Not Required” (ANR) guidelines. If proposed new lots do not have frontage on an existing way, the planning board will employ local subdivision laws and regulations and require submission and review of a subdivision plan.



## Open Space Zoning

Many communities have implemented alternatives to conventional subdivisions, known as cluster or open space zoning. One popular version is Open Space Residential Design (OSRD), which includes a four-step process that precedes formal planning board review:

1. Identify and set aside for protection critical natural habitat and/or other features such as buffers;
2. Identify appropriate sites for the homes or businesses;
3. Locate roadways and other infrastructure;
4. Draw in the lot lines.

Density bonuses allowing construction of additional units may provide more open space and/or provide incentives to use OSRD or other open space zoning approaches or to gain affordable housing. In this way, the community’s housing needs are met without destroying as much land and natural resources as a conventional subdivision. The homeowners and often the public also receive the added benefit of shared open space.

The Green Neighborhoods Alliance <http://www.greenneighborhoods.org/> formed by Mass Audubon and other groups developed model OSRD bylaws and regulations that are being utilized successfully by many communities.

## Creative Zoning for the Future

Zoning can and should be developed by individual municipalities so as to protect the community’s most important natural assets. In most communities, changes are needed that allow creative, conservation-oriented zoning to prevail. Changes in zoning maps and regulations are overseen by the local planning board. Model zoning laws are available from several sources.

### Mixed-Use Zones

These zones are modeled after traditional New England villages that had shops, homes, and small service providers all located within walking distance of one another—allowing a mixture of compatible uses in one area. Such zones can encourage village-style developments where residences and businesses share space and open space is left intact for public use and enjoyment.

### Web Resources for Zoning:

- [Smart Growth Alliance](http://ma-smartgrowth.org/)
- [Green Neighborhoods](http://www.greenneighborhoods.org/)
- [“Growth Management Tools: A Summary for Massachusetts Planning Boards”](http://www.mass.gov/dcr/waterSupply/watershed/documents/growthmanagementtools.pdf)
- [Massachusetts Smart Growth/Smart Energy Toolkit](http://www.mass.gov/envir/smart_growth_toolkit/index.html)
- [Citizen Planner Training Collaborative](http://masscptc.org/)
- [Planning Commissioners Journal](http://www.plannersweb.com/)
- [Low Impact Development](http://www.mass.gov/envir/lid)

## **Concentrated Growth Districts**

Districts where relatively dense development is allowed can be used to encourage concentrated development around existing downtowns or other locations where infrastructure is available and the land is appropriate for intensive development. This balances districts with less concentrated uses in locations that are more sensitive.

## **Transferable Development Rights (TDRs)**

Landowners in an area within a municipality targeted for preservation can agree to “sell” their development rights to landowners in areas that are more suitable for development. This is a relatively new tool that is currently being used in several Massachusetts communities, including Plymouth and Groton.

For more information on TDRs visit the Planning Commissioners Journal website: <http://www.plannersweb.com/>.

## **Performance Zoning**

With performance zoning, restriction is placed on the impacts caused by a development, rather than on the categories of use. In this way, flexibility can be encouraged while affording maximal protection to the resources of concern. Examples include amount of traffic generated or the percentage of impervious surfaces allowed.

## **Conservation-Oriented Special Zoning, or Overlay District**

Increased protection is provided for special categories of resources, such as floodplains, wetlands, riverfront areas, areas overlying water supplies, and historically significant areas. These protections can “overlay” (on top of or in addition to) the existing, “underlying” zoning, hence the term “Overlay District.” In some cases a conservation-oriented underlying district approach can be used, for example zoning areas with prime agricultural soils for agricultural use.

## **Low Impact Development (LID)**

Low Impact Development <http://www.mass.gov/eea/waste-mgmt-recycling/water-resources/preserving-water-resources/partners-and-agencies/water-resources-commission/low-impact-development.html> addresses stormwater through small, cost-effective, landscape features located throughout the development instead of collecting water from large portions of a site and piping it to centralized retention/detention basins. LID helps replicate and retain the natural ways that rainfall is managed and distributed. It can be applied to new development as well as redevelopment and revitalization projects.

## Phased Growth and Building Moratoria

Communities experiencing rapid, unplanned, uncontrolled growth that threatens to overwhelm municipal services and degrade important aspects of the local environment and

quality of life can limit the number of building permits issued each year to “*phase their growth*” based on infrastructure capacities or to avoid excessive growth while a community is in the process of updating its master plan and zoning.

Other communities may adopt a *building moratorium* to temporarily halt the issuance of new building permits or subdivision approval. Moratoria are not meant to stop development altogether but rather to give the community time to plan and improve standards to guide growth and development. However, beware: a moratorium can backfire if developers rush to get projects approved before the moratorium goes into effect. Careful attention is also needed in adopting such bylaws and ordinances in order to ensure that they are able to withstand court challenge. It is best if a community puts such a requirement in place for a specific period of time while needed capital facilities or infrastructure is being developed.

Occasionally, communities limit new connections to water or sewer systems because of inadequate supplies or capacities or they are ordered to do so by the state Department of Environmental Protection (DEP) <http://www.mass.gov/dep>. If on-site water and septic are available, this may have little impact on overall growth.

## Wetlands Protection

Although it was not designed as a growth management tool, the Massachusetts Wetlands Protection Act (310 CMR 10.00) <http://www.mass.gov/eea/agencies/massdep/water/regulations/310-cmr-10-00-wetlands-protection-act-regulations.html> is one of the most



powerful environmental protection laws in the state and strongly influences land development patterns.

The purpose of the Wetlands Protection Act is to protect public health, safety, and welfare by preserving the ability of wetlands to absorb floodwaters, filter pollutants, recharge water supplies, and support fisheries and wildlife.

The state Act and accompanying state wetlands regulations limit development in or near wetlands, rivers, and floodplains and require filing for a permit from the local conservation commission for projects in and near these areas. While the state law provides a good foundation for wetlands protection, it does not adequately protect certain areas such as buffer strips adjacent to wetlands or small but

ecologically important vernal pools. Many communities have therefore adopted local wetland bylaws and ordinances.

Model bylaws and ordinances are available from the Massachusetts Association of Conservation Commissions <http://www.maccweb.org/>, which also provides training, advice, and support to conservation commissions. The Wetlands Protection Act and local bylaws and ordinances are administered by the local conservation commission, typically with concurrent review of both permit applications at the same time for a particular project. The Department of Environmental Protection (DEP) <http://www.mass.gov/dep> provides the state regulations <http://www.mass.gov/eea/agencies/massdep/water/watersheds/wetlands-protection.html#5> that conservation commissions apply in administering the Wetlands Protection Act. DEP also hears appeals of local decisions under the state law, provides training and guidance documents, and administers a variety of other laws that protect water resources.

## Protecting Water Supply

Zoning and regulations can ensure that new potential water source areas are protected to meet the community's future growth needs and that local zoning bylaws encourage water conservation. Open space or cluster residential development, for example, can reduce stormwater runoff by minimizing road lengths, and cut water use by minimizing lawn area. In some communities, the lot coverage in aquifer recharge areas is limited to encourage the maximum recharge rates.

DEP requires mapping of areas contributing to local water supplies, and encourages local bylaws and ordinances that restrict certain kinds of development and other activities in these areas. New water supplies from any ground or surface source require permits through the New Source Approval process. New withdrawals of over 100,000 gallons per day also require a permit from DEP under the Massachusetts Water Management Act.

## Sewage Disposal Regulations

Under Title 5, the state sanitary code, DEP established standards (such as soil percolation rates) for the siting and construction of septic systems. This code is administered by the local board of health, and municipalities often supplement it with local regulations. Some communities rely on septic regulations to limit growth, but this is not the proper purpose of such regulations and in any case is unlikely to work in the long run with the advent of alternative septic systems and the extension of sewers. Communities do need to be careful about the potential unintended growth effects of local sewer system expansions, and Title 5 now provides greater flexibility to address this concern. Other alternatives for solving a neighborhood's septic failures should also be considered, such as shared systems or small package treatment plants.

## Incentives for Better Project Design

The land use regulations described above are designed to protect individual sites, resources, or interests. The net result, however, is a complicated network of standards with which

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developers and landowners must reckon. Many developers feel overburdened by municipal permit requirements and fee structures, so they often submit project proposals that are tried-and-true (i.e., guaranteed to be approved). This strive for efficiency by developers often limits the creativity of their proposals, creativity that could promote open space and natural resource protection.

Coordination among local boards of permit application and review requirements, clarification of (and making more flexible) regulatory standards, and increases in financial incentives for

creative and environmentally appropriate project proposals can support developers' interests in efficiency and predictability, ease burdens on local officials, and be crafted to foster greater resource protection. Communities that know what type of development they want to see are more likely to be successful in communicating this to developers than those that adopt a more reactive posture.

### Useful Links

Massachusetts General Law (MGL) Ch.40A

<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter40A>

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Massachusetts Association of Conservation Commissions (MACC)

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Massachusetts Department of Environmental Protection  
<http://www.mass.gov/dep>