

PUBLIC NOTICE

DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT  
(DHCD)

Under the provisions of MGL c.30A §2 notice is hereby given of the proposed promulgation of regulation 760 CMR 66.00 – Housing Development Incentive Program – MGL c.40V. DHCD's regulatory authority for this action is provided under MGL c.23B and MGL c.40V pursuant to St. 2010, c.240 §105. In accordance MGL c.30A §5 the proposed regulation will have a small business impact on business included under NAICS 236118 namely, real estate developers who substantially rehabilitate older buildings by acquiring a site, putting together a development team, obtaining financing, etc. Developers likely to participate in this program typically have done projects with federal/state subsidies and tax incentives. DHCD will hold the following public hearings:

Tuesday, March 27, 2012 – 1:00 PM to 3:00 PM  
Department of Housing & Community Development  
100 Cambridge Street, 2<sup>nd</sup> floor  
Boston, MA 02114

Thursday, March 29, 2012 – 1:00 PM to 3:00 PM  
Springfield City Library  
220 State Street  
Springfield, MA 01103

At such time and place interested persons will be afforded an opportunity to present oral testimony. Written comments may be presented at the hearing or at any time prior to the hearing by directing the same to the DHCD, 100 Cambridge Street, Suite 300, Boston, MA 02114, ATT: Carol Wolfe or sent electronically to [Carol.Wolfe@MassMail.State.MA.US](mailto:Carol.Wolfe@MassMail.State.MA.US). Copies of the proposed regulation will be available for inspection at the offices of DHCD during regular business hours 8:45 am - 5:00 pm and are currently posted on DHCD's website at <http://www.mass.gov/dhcd> under News and Updates.

**760 CMR 66.00: HOUSING DEVELOPMENT INCENTIVE PROGRAM CHAPTER 40V**

Section

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**66.01: Background and Purpose**

760 CMR 66.00 establishes rules, standards and procedures for the Housing Development Incentive Program (“HDIP”) created by M.G.L. Chapter 40V pursuant to St. 2010, c.240, §105. The Department of Housing and Community Development (the “Department”) is the regulatory agency for the program and is authorized to issue regulations to explain and implement the program.

The HDIP is designed to increase residential growth, expand diversity of housing stock, support economic development, and promote neighborhood stabilization in designated Housing Development Zones within Gateway municipalities by providing tax incentives to rehabilitate multi-unit properties for sale or lease primarily as market rate units. The program provides two incentives for sponsors:

- (1) a local property tax exemption on the increased property value resulting from improvements, and
- (2) a state tax credit for Qualified Substantial Rehabilitation Expenditures (QSREs).

The program is only available to Gateway municipalities, and in order to participate in the program, a Municipality must designate a Housing Development (HD) Zone and adopt a HD Zone Plan, which demonstrates the need for multi-unit market rate housing in the HD Zone and details the revitalization and redevelopment proposed for the HD Zone.

**66.02: Definitions**

1. Terms used in M.G.L. c.40V and not otherwise defined in 760 CMR 66.00 shall have the meaning set forth in M.G.L. c.40V §1 and shall be capitalized in 760 CMR 66.00.

Certified Housing Development Project - (HD Project) – shall have the meaning set forth in M.G.L. c. 40V §1 and may consist of one or more buildings on one or more parcels of land that receive permitting and are financed as a single undertaking.

Commissioner - shall mean the Commissioner of Revenue.

Housing Development Zone (HD Zone) - shall have the meaning set forth in M.G.L. c. 40V §1 and may include areas in more than one Municipality provided that these areas are contiguous.

Mixed-use - use of a parcel of real property for residential use in combination with other commercial, institutional, medical, educational, recreational or other uses provided that the use is compatible with residential housing.

Municipality - a Gateway municipality as defined in M.G.L. c.23A, §3A and, for the purposes of 760 CMR 66.03 and 760 CMR 66.08, a Municipality designated as the lead Municipality pursuant to 760 CMR 66.03(5).

Qualified Substantial Rehabilitation Expenditure (QSRE) - shall have the meaning set forth in M.G.L. c. 40V §1 including hard and soft costs related to the development of the market rate units except for acquisition costs and demolition costs other than for interior demolition and roof and wall demolition associated with adding stories to, or expanding the foot print of, an existing building.

Sponsor - with respect to undertaking a proposed HD Project, shall have the meaning set forth in M.G.L. c.40V §1 provided that such entity or person is legally empowered and entitled to make commitments required to undertake and complete the proposed HD Project, and shall include any affiliated successor in interest formed to undertake the project.

Substantial Rehabilitation, Substantially Rehabilitated - shall have the meaning set forth in M.G.L. c. 40V §1 including adding stories to an existing building, expanding the foot print of an existing building by building out, and rebuilding on a site after demolition of an existing building provided that the demolition is undertaken contemporaneously with the rebuilding of the site, and excluding new construction on a vacant site.

### **66.03: Local Approval Process**

(1) Designation of HD Zone and Preparation of HD Zone Plan. The Municipality shall designate an area as a proposed HD Zone pursuant to M.G.L. c. 40V §2 and 760 CMR 66.04 and shall prepare a proposed HDIP Zone Plan meeting the requirements of 760 CMR 66.04(2).

(2) Public Hearing. The Municipality shall hold a public hearing to take comments on both the proposed HD Zone and HD Zone Plan. Notice of the hearing shall be given in a newspaper of general circulation in the Municipality in each of two successive weeks, the last publication being at least three days prior to the hearing.

(3) Local Approval. Following the hearing, comments shall be considered, and the proposed HD Zone and HD Zone Plan shall be finalized. Local approval shall be granted by the Municipality's legislative body with the concurrence of the chief executive officer, subject to the requirements and standards of the Municipality's charter and shall include the authority to implement tax increment exemptions for a period not to exceed 20 years for Certified HD Projects in accordance with section 5M of M.G.L. c. 59.

(4) Negotiation of HD Tax Increment Exemption Agreements. Following municipal approval of the proposed HD Zone and the proposed HD Zone Plan, HD Tax Increment Exemption Agreements may be negotiated with interested Sponsors.

(5) Multiple Participating Municipalities. The following requirements apply when a HD Zone includes areas in more than one Municipality.

(a) The participating Municipalities shall designate a single such Municipality to make all submissions to the Department required by 760 CMR 66.04 and to receive all communication from the Department regarding such submissions.

(b) Each Municipality shall follow the requirements for local approval set forth in 760 CMR 66.03 and 760 CMR 66.08. The designation of the lead Municipality shall be included in all materials submitted in each Municipality for local approval.

**66.04: Designation of HD Zones**

Following local approval pursuant to 760 CMR 66.03(3), the Municipality shall make an application to the Department for designation of the HD Zone. In addition to the requirements and standards of M.G.L. C.40V § 2 and certification by the Town or City Clerk of the grant of Local Approval pursuant to 760 CMR 66.03(3), each application shall contain the following materials.

(1) HD Zone.

(a) A statement identifying a name for the proposed HD Zone.

(b) The rationale for the proposed HD Zone including:

1. A statement describing the reasons for defining the boundaries of the HD Zone in the manner that is proposed;
2. Independent and verifiable documentation that demonstrates the demand for multi-unit Market Rate Residential Units in the HD Zone; and
3. Independent and verifiable data that demonstrates that the HD Zone is appropriately located to support the objectives of the HD Zone Plan, including that there is sufficient likelihood that Market Rate Residential Units will be developed.

(c) Maps depicting existing conditions of the proposed HD Zone and the immediate surrounding area, including:

1. Boundaries of the HD Zone and any significant distinct features that help define the nature and scope of the HD Zone;
2. Locus within the municipality;
3. Existing property lines and foot-print of buildings;
4. Existing use of each parcel;
5. Existing zoning of each parcel; and
6. If the HD Zone is to include areas in more than one municipality these areas shall be contiguous and the description shall delineate the entire HD Zone together with the municipal boundaries;

(2) HD Zone Plan.

(a) Objectives of the HD Zone Plan. The HD Zone Plan shall include a statement describing how implementation of the HD Zone Plan will increase residential growth, expand diversity of housing stock, support economic development, and promote neighborhood stabilization in the HD Zone.

(b) Information on who will be undertaking the described development activities, to the extent such information is known to the Municipality.

- (c) Maps depicting proposed development activities including:
1. Proposed development and redevelopment activities, public and private, including the identification of potential HD Projects, if known;
  2. Proposed changes to property lines and foot-prints of existing buildings;
  3. Proposed uses of each parcel, including identification of land in mixed uses and land in public use;
  4. Proposed zoning changes related to use; and
  5. Identification of all existing and proposed HD Zones within the municipality.
- (d) A tabular analysis comparing existing zoning requirements to proposed zoning requirements.
- (e) HD Projects. A statement that the proposed HD Projects are eligible to receive a Preliminary Certification pursuant to 760 CMR 66.05(2).
- (f) Market Rate Residential Units.
1. Area Household Median Income – The geographic area by which the Municipality shall establish the minimum pricing for Market Rate Residential Units in HD Projects. This area, which may be the proposed HD Zone or some other relevant area contiguous to and inclusive of the HD Zone, must meet the following requirements to be approved by the Department:
    - a. The median family income for this area must be at or more than 80 per cent of the median family income used by the U.S. Department of Housing and Urban Development for determining subsidy eligibility in the applicable Metropolitan Statistical Area or HUD Metro Fair Market Rent Area; and
    - b. The median household income for this area must be at a level that will allow the HD Zone Plan to increase residential growth, expand diversity of housing stock, support economic development, and promote neighborhood stabilization in the HD Zone.”
  2. Documentation that there is a reasonable likelihood that Sponsors will be successful in the sale or lease of Market Rate Residential Units in HD Projects, as such are defined at M.G.L. c. 40V, §1, including a narrative and supporting data that describes the methodology for setting the unit prices and evidences the marketability of the units.
- (g) Schedule and Duration. A schedule for implementation of the HD Zone Plan containing a description of anticipated events during each of the first five years of the HD Zone Plan, and for each five-year period thereafter, and a statement identifying the duration of the HD Zone Plan. The duration of a HD Zone Plan may not be less than five years nor more than 20 years from the date of the Department’s approval of the HD Zone Plan.
- (h) Compliance with Fair Housing Obligations. A statement of how the municipality will advance its affirmative fair housing obligations in the HD Zone.
- (i) Compliance with Local Plans. To the extent applicable, a narrative explanation of how the HD Plan conforms to other municipal or regional plans and initiatives relating to planning and development, including master plans, urban renewal plans, Gateway City initiatives, Business Improvement Districts, Urban Center Housing Tax Increment Financing Plans and Housing Production Plans.
- (j) Any other reasonable information required by the Department in its application form.

(3) Time and Effect of Department Approval.

(a) If the Department determines that a proposed HD Zone and HD Zone Plan meet the requirements of M.G.L. c.40V and 760 CMR 66.00, it shall approve the HD Zone and the HD Zone Plan. The Department's approval of a HD Zone and HD Zone Plan shall become effective only upon the recording of the Department's notice of approval with the appropriate registry of deeds and/or land court registry. Recording shall be undertaken by and at the expense of the Municipality or the Sponsor.

(b) Upon approval, the HD Zone, and HD Zone Plan shall be final and cannot be amended except as provided at 760 CMR 66.08.

(c) If the Department determines that the application for designation of a HD Zone is not complete, it shall provide the Municipality with opportunity to supplement its application.

(d) If the Department determines that the proposed HD Zone or the HD Zone Plan do not meet the requirements of M.G.L. c.40V and 760 CMR 66.00, it shall provide the Municipality written notice of such determination including the reasons for the determination.

(e) Suspension or Revocation of Approval. The following shall be grounds for the Department to suspend or revoke its approval of a HD Zone or a HD Tax Increment Exemption Agreement:

1. The Department determines that the Municipality's application for approval contained material misrepresentations; or
2. The Department determines that the Municipality has failed to adhere to material elements of its application for approval including, but not limited to, the description of public activities, the implementation schedule, and compliance with affirmative fair housing obligations.

(4) Multiple Participating Municipalities. When a HD Zone includes areas in more than one Municipality, the Department's actions pursuant to 760 CMR 66.04 shall apply to the HD Zone and the HD Zone Plan in its entirety.

**66.05 Certification of HD Projects and Qualified Substantial Rehabilitation Expenditure**

Following approval of a HD Zone and HD Zone Plan by the Department, the Department will accept applications for certification of housing development projects as HD Projects and the QSREs.

(1) General.

(a) Applications for Preliminary Certification and Conditional Certification shall be submitted jointly by the Municipality and the Sponsor.

(b) Sponsors shall submit under the pains and penalties of perjury by a person authorized to bind the sponsors.

(c) An application that provides all the information required by M.G.L. c.40V and 760 CMR 66.00 shall be considered a complete project proposal for purposes of M.G.L. c.40V, §4(c). If the Department determines that an application is not complete, it shall provide the Municipality with opportunity to supplement its application.

(2) Preliminary Certification – Site and Building.

(a) At a minimum, the application for Preliminary Certification shall contain the following information and materials related to the building(s) that comprise the housing development project:

1. A map identifying the locus of the building(s);
2. Site plan showing lot lines, building footprint and general dimensions;
3. Photographs of the building(s);
4. Evidence of the need for Substantial Rehabilitation
5. A narrative description of the proposed Substantial Rehabilitation of the building(s), including the total number of proposed units and the number of proposed Market Rate Residential Units;
6. Evidence that the Sponsor has site control; and
7. Executed agreement by the municipality that contains a tax exemption under section 5M of chapter 59 and section 4(b)(i) of M.G.L. c.40V.

(b) If the Department determines that the building meets the requirements of M.G.L. c. 40V, §4(a)(i) – (iv) and (vi), either in its present state or upon Substantial Rehabilitation, then the Department shall provide a Preliminary Certification acknowledging that the building meets the standards of a Certified Housing Development Project.

(3) Conditional Certification – Rehabilitation Plans.

(a) At a minimum, the application for Conditional Certification shall contain the following information and materials:

1. Construction plans and specifications;
2. Construction cost estimate prepared by a qualified third party;
3. Construction schedule;
4. Residential marketing strategies and plan including affirmative fair housing outreach; and
5. Materials required by M.G.L. c. 40V§4(b)(ii) and (iii).

(b) If the Department determines that the proposed housing development project continues to meet the requirements for Preliminary Certification pursuant to 760 CMR 66.05(1)(a) and that the proposed rehabilitation meets the definition of Substantial Rehabilitation at 760 CMR 66.02, then the Department shall provide a Conditional Certification acknowledging that if the project is completed as proposed, it will meet the standards for a HD Project and for Final Certification of QSREs.

(c) If the Department determines that the housing development project does not meet the requirements of 760 CMR 66.05(2)(a), it shall provide the Municipality written notice of such determination including an explanation for the denial.

(d) The application for Conditional Certification may be submitted in conjunction with the application for Preliminary Certification.

(4) Final Certification

(a) The application for Final Certification may be submitted at such time as certificates of occupancy have been issued for the entire housing development project and 95% of the market rate residential units have been leased or sold to the party who will occupy them as a primary residence. The application shall contain the following information and materials:

1. Cost certification by a certified public accountant in a form required by the Department;
2. Representative photographs of the completed work (both exterior and interior views); and
3. A certification by the Sponsor that the rehabilitation has been completed substantially in accordance with the construction plans and specifications upon which the Department relied in approving the application for Conditional Certification.

(b) Provided that a Sponsor pursues the marketing strategies and plan for the Market Rate Residential Units in a manner that is consistent with the representations made by the Sponsor in its application for Conditional Certification, and with the practices of the commercial real estate industry, then the bona fide sale or lease of residential units to unrelated households with an income of less than 110% of AMI shall not be grounds for denying Final Certification.

(c) If the Department determines that the housing development project has been completed in a manner that is consistent with the Conditional Certification and that it meets the standards of M.G.L. c. 40V, §4, the Department will issue a Final Certification. A Final Certificate shall designate the housing development project as a HD Project and state the amount of the QSRE. A Final Certificate shall have a term of not less than 5 years and not more than the term of the HD Tax Increment Exemption Agreement between the Municipality and the Sponsor.

(5) Revocation of Final Certification. After the initial bona fide sale or lease of HD Project Market Rate Residential Units to unrelated households, the subsequent sale or lease of HD Project Market Rate Residential Units to households with an income less than 110% of AMI shall not be grounds for determining that a Sponsor's conduct subsequent to the certification was materially at variance with the representations made by Sponsor in its application for Conditional Certification.

(6) Notice to Department of Revenue. Within 10 days of granting or revoking a Final Certification the Department shall provide a copy of the Final Certification or Revocation of Final Certification to the Commissioner.

**66.06 HD Tax Increment Exemptions**

In addition to the standards and requirements of M.G.L. Ch. 59, §5M, HD Tax Increment Exemptions shall meet the following requirements.

(1) Calculation of Exemption.

The amount of the HD Tax Increment Exemption to be given to a Sponsor of a HD Project shall be determined by applying the Exemption Percentage to the property tax on the Increment.

(a) The Exemption Percentage. The Exemption Percentage shall be not less than 10 per cent and not more than 100 per cent, negotiated by the Municipality and each Sponsor and shall be specified



(b) in each HD Tax Increment Exemption Agreement. The Exemption Percentage need not be the same for all Sponsors and may change from year to year during the term of the HD Tax Increment Exemption pursuant to a schedule set forth in the Tax Increment Exemption Agreement.

(c) The Increment.

1. With respect to a HD Project in which the residential portion is rental housing, the Increment is the assessed value of the residential portion of the HD Project after Substantial Rehabilitation less the Base Value, the sum of which is multiplied by the percentage of useable square footage comprising the Market Rate Residential Units to the total useable square footage of the residential portion of the HD Project.

2. With respect to a HD Project in which the residential portion is for-sale housing units, the Increment for a given Market Rate Residential Unit is the assessed value of the residential portion of the HD Project after Substantial Rehabilitation less the Base Value, the sum of which is multiplied by the percentage of useable square footage comprising all of the Market Rate Residential Units to the total useable square footage of the residential portion of the HD Project, the product of which is multiplied by the percentage of useable square footage comprising the given Market Rate Residential Unit to the total useable square footage of all Market Rate Residential Units.

3. With respect to a HD Project in which the residential portion is a mix of rental and for-sale housing, the Increment is determined as follows:

a. For the rental portion, the assessed value attributed to the rental housing less the Base Value for the rental portion, the sum of which is multiplied by the percentage of useable square footage comprising the rental Market Rate Residential Units to the total useable square footage of the rental residential portion of the HD Project.

b. For a given unit in the for-sale portion, the assessed value attributed to the for-sale portion less the Base Value for the for-sale portion, the sum of which is multiplied by the percentage of useable square footage comprising the all of the for-sale Market Rate Residential Units to the total useable square footage of the for-sale portion of the HD Project, the product of which is multiplied by the percentage of useable square footage comprising the given for-sale Market Rate Residential Unit to the total useable square footage of all for-sale Market Rate Residential Units.

(d) Base Value. The Base Value is the assessed value of the parcel of the property as of the the fiscal year in which a HD Tax Increment Exemption Agreement is executed by the Sponsor and the Municipality with respect to that parcel, and prior to the start of any Substantial Rehabilitation activities, including demolition minus the assessed value attributable to any portion of the property that was assessed as other than residential in the applicable fiscal year and remains non-residential after completion of Substantial Rehabilitation. In the case of HD Projects in which the residential housing is a mix of rental and for-sale units, the Base Value shall be apportioned between the rental and for-sale units based upon their respective proportion of the usable square footage upon the completion of Substantial Rehabilitation.

(2) HD Tax Increment Exemption Agreements.

The terms of a HD Tax Increment Exemption shall be set forth in a HD Tax Increment Exemption Agreement executed by the Sponsor and the Municipality.

- (a) Effective Date of the Agreement. HD Tax Increment Exemption Agreements shall provide that they shall not go into effect unless and until:
1. The Department approves the Tax Increment Exemption Agreement; and
  2. The Department has issued a Final Certificate for the HD Project. Upon approval by the Department, HD Tax Increment Exemption Agreements shall be made part of the appropriate HD Zone Plan.
- (b) Effective Date of Exemption. HD Tax Increment Exemption Agreements shall provide that the Tax Increment Exemption shall be effective as of the first fiscal year subsequent to the completion of Substantial Rehabilitation.
- (c) Increment and Base Value Calculations. HD Tax Increment Agreement shall contain an explanation in support of any assumptions or calculations related to the Increment and Base Value.
- (d) Department Approval. Provided that the Tax Increment Exemption meets the standards and requirements of 760 CMR 66.06 and the Department's approval of the applicable HD Agreement has not been suspended or revoked, the Department shall approve a Tax Increment Exemption Agreement.

**66.07: Housing Development Tax Credits (HDTC).**

In addition to the standards and requirements set out in M.G.L. c. 40V §5, M.G.L. c. 62 §6(q) and M.G.L. c. 63 §38BB, HDTC shall be awarded and administered as follows.

- (1) Eligible Projects. Only projects that have received a Conditional Certification pursuant to 760 CMR 66.05(2) and are located in a HD Zone for which the Department's approval of the applicable HD Agreement has not been suspended or revoked are eligible for an award of HDTC.
- (2) Prerequisites to Claiming Credit.
- (a) Project Requirement. HDTC may not be claimed by any taxpayer until the Department has issued a Final Certification for the HD Project.
- (b) Taxpayer Requirements. In order to claim the credit, a taxpayer must provide to the Commissioner the following:
1. Eligibility Statement as provided in 760 CMR 66.07(3);
  2. Allotment Certification, if applicable, as provided in 760 CMR 66.07(4);
  - Transfer Statement, if applicable, in accordance with the requirements of the Commissioner; and
  3. Massachusetts Carry Forward Agreement, if applicable, in accordance with the requirements of the Commissioner.
- (3) Eligibility Statement. The Department shall adopt a form to be issued by the Department that evidences a HD Project's eligibility for HDTC. Each taxpayer claiming any HDTC shall file a copy of the Eligibility Statement with each Massachusetts tax return on which any HDTC is claimed.

(4) Allotment of Credit among Partners, Etc. Whenever an owner of a HD Project with respect to which HDTC has been awarded is an unincorporated flow-through entity, such as a partnership, limited liability company or joint venture, the entity may allot the HDTC available to the entity among persons designated by it as partners or members in such amounts or proportions as they may agree in the organizational documents governing such entity, provided that the owner certifies to the Commissioner the amount of HDTC allotted to each member or partner on a form designated by the Commissioner. The allotment of HDTC need not follow or be consistent with the allocation of other partnership items (e.g., income, loss or deductions). Similarly, whenever HDTC is allocated with respect to a HD Project that is owned through a joint tenancy or similar ownership arrangement, the owners of such project may allot the right to claim the HDTC allocated with respect to such project among themselves in such amounts as they agree, without regard to their actual ownership interest in the project, provided that the owners certify to the Commissioner the amount of HDTC allotted to each owner on a form designated by the Commissioner.

(5) Application Process and Administrative Fees. The HDTC application process and administrative procedures and fees shall be established from time to time by the Department in the HDIP Guidelines.

#### **66.08: Amendments**

Amendments to a HD Zone, HD Zone Plan or HD Tax Increment Exemption Agreement must be approved by the Department. The incorporation of an approved HD Tax Increment Exemption Agreement into a HD Zone Plan as required by 760 CMR 66.06(2) shall not be considered to be an amendment to a HD Zone Plan.

#### (1) Application for Department Approval.

(a) The application for an amendment shall include a detailed description of the changes including:

1. The purpose of each change;
2. The effect of each change on the objectives of the HD Zone Plan and the proposed development and redevelopment activities, public and private, as set forth in the application for the Department's approval of the HD Plan;
3. The effect of each change on HD Projects;
4. Pertinent revisions of the original application for approval of the HD Zone or HD Zone, or to the HD Tax Increment Exemption Agreement, to reflect the changes; and
5. Certification by the Town or City Clerk of the grant of Local Approval pursuant to 760 CMR 66.08(3).

(b) If the Department determines that the application for approval of an amendment is not complete, it shall provide the Municipality with opportunity to supplement its application.

(2) Material Amendments. Amendments to the HD Zone or HD Zone Plan that change the HD Zone boundaries, other than technical corrections or, in the sole and reasonable judgment of the Department, have a material effect on the objectives of the HD Zone Plan or the proposed development and redevelopment activities, public and private, as set forth in the application for the Department's approval of the HD Plan, shall be considered material amendments.

(3) Local Approval.

(a) Public Hearing. The Municipality shall hold a public hearing to take comments on Material Amendments. Notice of the hearing shall be given in a newspaper of general circulation in the Municipality in each of two successive weeks, the last publication being at least three days prior to the hearing.

(b) All amendments must be approved by the Municipality's legislative body with the concurrence of the chief executive officer, subject to the requirements and standards of the Municipality's charter.

(4) Conditional Approval. Municipalities may request the Department to grant a conditional approval of a Material Amendment prior to obtaining the local approval(s) required by 760 CMR 66.09(1)(a)(2).

(5) Department Approval.

(a) The Department shall approve amendments to HD Zones and HD Zone Plans provided that it determines, in its reasonable and sole discretion, that the proposed changes will not:

1. Have a material, detrimental effect on the objectives of the HD Zone Plan and the proposed development and redevelopment activities, public and private, as set forth in the application for the Department's approval of the HD Plan; or
2. Have a material, detrimental effect on the likelihood that Sponsors will succeed in producing Market Rate Residential Units or on any HD Project.

(b) The Department shall approve amendments to HD Tax Increment Exemption Agreements provided that:

1. The amended HD Tax Increment Exemption Agreement remains in compliance with the standards and requirements of M.G.L. Ch. 40V and 760 CMR 66.00; and
2. The proposed changes would not have altered the Department's decision to award HDTCs to the Sponsor.

(c) The Department shall approve or disapprove of amendments within 60 days of receipt of a complete application.

**66.09: Reporting and Review**

(1) On or before August 1 of each year, the Municipality shall submit to the Department an annual report about actions undertaken to implement its HD Zone Plan for the prior year containing such material as may be specified by the Department including:

(a) A detailed description of the progress of the elements of the HD Zone Plan in relation to the schedule incorporated into the HD Zone Plan including all construction, reconstruction, rehabilitation and related activities, both public and private, completed or in process in connection with the HD Zone Plan;

(b) Information on the initial sale and leasing of any Market Rate Residential Unit in a HD Project; and

(c) With respect to each HD Project, the Increment used to calculate the HD Property Tax Exemption, the Exemption Percentage, and property tax revenue by the Municipality in connection with the Market Rate Residential Units.

(2) The department shall review each HD Project at least once every two years.

**66.10: Records and Documents**

(1) Municipalities shall maintain accurate records and accounts of all activities carried out pursuant to the HD Zone Plan in the any HD Zone. Such documents shall include, but not be limited to:

(a) Applications for approval of the HD Zone, HD Zone Plan, HD Tax Increment Exemption Agreements, and HD Project certifications;

(b) Requests for amendments to an existing HD Zone, HD Zone Plan or HD Tax Increment Exemption Agreement; and

(c) Orders or resolutions pertaining to any local approval for a HD Zone, HD Zone Plan, HD Tax Increment Exemption Agreements, and HD Project certifications.

(d) Documents pertaining to the application and award of HDTC.

(2) All project records shall be maintained and kept for a period of seven years following project completion or three years following the date of final resolution of all legal claims, whichever occurs later.

(3) Municipalities shall permit the Director of the Department, and staff or auditors reporting to the Director, to examine and make copies of all records and accounts of the HD Zone, the HD Zone Plan and HD Projects, as requested.

**66.11: Waiver**

(1) The Director of the Department may waive, in writing, any provision of 66.00 not required by statute provided that the Department determines that such waiver is consistent with the purposes set out in the statute and 760 CMR 66.00, and that desired relief is in the public interest.

(2) Requests for a waiver shall be in writing to the Director, Department of Housing and Community Development, 100 Cambridge Street, Suite 300, Boston, MA 02114, and shall contain a reliable showing that the waiver meets all the requirements of 760 CMR 66.13.

Regulatory Authority  
MGL. c.23B; M.G.L. c.40V; St. 2010 c.204.