

# Overlay Districts (Mass.gov)

## The Basics of Overlay Districts in Massachusetts

An Overlay District is a type of land use zoning district that "lies" on top of the existing zoning and potentially covers many underlying districts or portions thereof. The use of Overlay Districts provides communities with an opportunity to meet the unique needs of geographic areas that may either require higher levels of protection or that may not be reaching their fullest development potential. Overlay Districts provide one of the most flexible means to alter zoning as they can impose either greater restrictions or more flexible provisions depending on the goals for the district. Examples of typical overlays that are more restrictive include those for sensitive resources such as flood plains or aquifer protection districts. Examples of typical overlays that are more flexible include those for village centers, receiving zones in a Transfer of Development Right (TDR) program, or other areas designated for higher levels of density and economic development.

Overlay Districts are specified by statute and can be established with either optional or mandatory requirements upon the underlying land. Generally, once an Overlay District is established, the requirements of that district supersede provisions in the underlying zoning where standards and procedures are different. Overlay Districts with optional requirements provide incentives or disincentives to landowners and developers to encourage or discourage certain types of development. Examples of this type of zoning overlay include Village Center Overlays that could encourage certain design standards for the purposes of allowing innovative techniques such as shared parking or more coordinated placement of multiple primary structures.

Overlay Districts with mandatory requirements may supplement or preempt the underlying zoning provisions. Typical examples of these overlays are resource-based restrictions such as aquifer protection or flood plain overlay districts. Overlay districts that are mandatory generally prove to be more effective as optional provisions are generally avoided unless aggressive incentives are associated with these provisions. Also, the optional overlay approach creates a situation in which some developers may choose to follow the incentives and some may not. For example, in an optional overlay model, a Village Center Overlay District may provide some density bonuses for reduced setbacks and enhanced architectural design. If some developers take advantage of this opportunity and others do not, the resulting street line could have buildings sitting along incongruent setbacks, built at highly varied densities and appearing completely unrelated from an architectural perspective.

## Important Considerations for Local Practitioners

One characteristic of Overlay Districts that is very appealing is the geographic focus of this technique. In many communities, the unique needs of a specific area emerge over time, perhaps through the comprehensive planning process, and it may be challenging to alter the zoning in that area for two reasons. First, the area of interest may cover portions of several existing zoning districts and it may be politically and administratively difficult to develop a new district for that area. Second, changing provisions to the underlying zoning may affect other areas of the community that do not share the same needs. The Overlay approach, therefore, represents one of

the most effective ways to tailor zoning regulations to a specific neighborhood or environmental resource.

Another appealing element of an Overlay District involves an issue of perception. Quite often, Town Meeting voters, local officials, or City Council members will feel threatened by the notion of redrawing the base zoning districts or radically changing the regulations that apply to existing districts. Overlay Districts are often perceived as less threatening since they do not alter the basic fabric of a bylaw or ordinance that may have been in use for decades. Conversely, local officials should be careful not to over-use this approach as it can make a bylaw or ordinance extremely confusing. Multiple overlays can make it difficult for applicants and enforcement agents to determine if overlay or underlying provisions apply. In worst case scenarios, more than one overlay lies over a property that already has a base zoning district. This scenario can create a tangle of regulations that will serve as a deterrent to any significant redevelopment opportunities and to quick and transparent permitting.

The most common form of Overlay District in Massachusetts is often called a "Mixed-Use District" or "Village Center" overlay. Generally, the intent of these overlay districts is to retrofit existing municipal centers with clearer allowances for mixed use, more creative dimensional requirements, and other supporting mechanisms such as shared parking or design guidelines. Perhaps one of the most important considerations for these situations is whether to use an Overlay District or to simply re-zone the focus area to achieve a pattern of Traditional Neighborhood Development (TND). The issues that must be considered to best answer this question are numerous and will vary from one community to the next. Some of the more important considerations include:

- **How many underlying districts are within the target area?** From a practical standpoint, if a study area has a significant number of underlying districts, using an overlay may provide a very clean way to impose a uniform set of requirements and incentives over a wide variety of existing provisions.
- **Are there already existing overlay districts present?** Placing overlay districts on top of overlay districts should be avoided as this situation can obviously create confusion for both developers and local officials.
- **Do the goals of the district suggest that 40R is an option?** If affordable housing, specific design standards, and higher density are a major component of local planning, then municipalities may want to consider a Smart Growth Overlay District through Chapter 40R.
- **What is the political climate of the community relative to zoning?** If there is consensus within the community that the existing bylaw or ordinance is in need of major revision, local practitioners may want to consider re-districting to achieve more compact, village scale development. Conversely, if there is tremendous resistance to significant changes to the base zoning in a community, an overlay may be much more palatable.
- **How would changing existing provisions negatively affect other areas of the community?** Perhaps the easiest approach to this type of zoning change is to simply re-work the standards and regulations in an existing district. Many communities do have individual districts, such as "Central Business Districts" that cover an existing village

center. It will be important to remember, however, that this district may also exist elsewhere in the community in an area with different planning goals. Changing the provisions could therefore have unintended consequences elsewhere.

- **Are there existing permitting processes that would conflict with an overlay?** A close look at existing zoning provisions may reveal some Special Permit requirements that deserve attention. For example, an existing town center could have many "non-conformities" that require Special Permits from the ZBA for specific activities. Establishing an overlay in this context could create onerous or duplicative permitting processes that work to limit interest in redevelopment. In these cases, re-districting or revising underlying zoning may be a more effective way to achieve TND planning goals.

As with any zoning bylaw or ordinance provision, the clarity of the overlay language will play a critical role in its success or failure. With Overlay Districts, clarity is generally determined by defining what is required of applicants and how the overlay relates to the underlying zoning in a very focused "purpose and intent" section. Overlay Districts that present a wealth of optional material will generally be less successful than those that require clear standards. Unless significant flexibility and/or incentives accompany optional requirements, applicants are more likely to choose the clearest path to approval. With regard to the underlying zoning, practitioners are encouraged to draw clear lines between what the overlay controls and what provisions of the underlying zoning remain in effect. Asking applicants to cross-reference multiple subsections of an overlay against provisions associated with underlying districts invites confusion into the permitting process and can be counter-productive for smart growth implementation.

## Summary

Choosing an appropriate zoning approach for individual smart growth or smart energy techniques can be challenging, as communities will need to balance the desire for control over certain site plan elements with the desire to attract better development through flexibility or incentives. Integral to understanding which techniques will best suit a community or a particular district is a well developed Comprehensive Plan. For example, the plan will specifically address the desired uses for each district and those that have a high comfort level within the community. These uses should receive by-right privileges with a possible administrative Site Plan Review attached to the permitting process. Where the Comprehensive Plan identifies sensitive environmental areas, potentially harmful uses or areas that may require high levels of discretionary authority (such as mill complexes), a Special Permit process that includes Site Plan Review may be the best approach. Finally where the boundaries of a sensitive area include multiple districts (such as a flood plain) or a revitalization effort may be targeted to a unique setting (e.g. existing village center or mill complex), an overlay district approach may be the most efficient way to "retrofit" the zoning in that setting. Framing a zoning approach for any of these situations will become much more transparent in the wake of a comprehensive planning exercise that clearly spells out the goals for growth, environmental protection and economic development throughout the community.