

Affordable Housing Study Reports

<p>6. Major Affordable Housing Legislation in Massachusetts: Chapters 40R and 40S – Smart Growth</p>

The Massachusetts Legislature passed Chapters 40R in 2004 and 40S in 2005 to implement “smart growth” principles, to reduce urban sprawl and stimulate the production of affordable housing. They are intended to work with Ch. 40B, not replace it.

Denser or more affordable development, such as apartment buildings and small households, do not significantly increase a community’s real estate tax base and have the high probability of increasing costs of services, including education, water, sewers, and roads. Ch. 40R and 40S (also known as compensation legislation) seek to address this problem with incentives for communities that build more affordable and market-rate housing.

Enacted in 1969, Ch. 40B has been an important policy in producing affordable housing but not totally successful. Communities resist Ch. 40B because they see it as usurping local control and increasing service and school costs through higher-density developments.

Smart growth is a land development policy that emphasizes mixing land uses, increases the availability of a range of housing types in neighborhoods, preserves open space, protects natural resources, restricts urban sprawl and enhances quality of life.

Chapter 40R

In order to encourage housing production in the Commonwealth consistent with the concept of smart growth, the legislature passed Chapter 40R in 2004. This act provides financial rewards to communities that adopt special zoning districts allowing as-of-right high-density residential developments. Smart growth zoning districts can be in all or any of the following locations:

- areas near transit stations, including rapid transit, commuter rail, bus and ferry terminals.
- areas of concentrated development, including town and city centers, other existing commercial districts in cities and towns, and existing rural village districts.
- areas that by virtue of their infrastructure, transportation access, existing underutilized facilities or location make highly suitable for residential mixed-use smart growth zoning districts

Ch. 40B is the legislation under which a community can establish affordable housing and Ch. 40R is selective legislation to assist in the building of affordable housing. It is volunteer participation by a community, not a mandate. Ch. 40R provides financial incentives to communities that establish a state-approved Smart Growth Zoning District (SGZD). Density is a key factor in smart growth, and SGZDs are required to allow denser residential development: eight houses per acre for single-family homes; 12 units per acre for two- and three-family residences; and 20 units per acre for condominiums and apartment complexes. In addition;20% of housing developed in the zone must be affordable and deed restricted for 30 years.

Once the SGZD has been identified it is submitted to the Department of Housing and Community Development for preliminary approval, after which it may be adopted by the municipality. Once the municipality has adopted the smart growth zoning and received final approval from the Department it become eligible for a one-time incentive payment:

- \$10,000 for up to 20 units

- \$75,000 for 21 to 100 units
- \$200,000 for 101 to 200 units
- \$350,000 for 201 to 500 units
- \$600,000 for 501 or more units.

An additional density bonus payment of \$3,000 per housing unit is disbursed when a building permit has been issued. If the goal, defined by the designers of the legislation, of over 30,000 new units are built in the next 10 years, it is estimated that the density bonuses will cost an estimated \$14 million annually.

Chapter 40S

To address the potential impact on education costs a companion law, Ch. 40S, creates a Smart Growth School Cost Reimbursement Fund to provide full reimbursement for any net new education costs for eligible students resulting from housing units built under Ch. 40R. Eligibility is defined as children living in a SGZD and enrolled as of the prior year in an elementary or high school.

Reimbursement costs are achieved by formula; cost of educating eligible students living in an SGZD, less an amount equal to the sum of new property and excise taxes in the SGZD, multiplied by the average percent of total local spending on education across the Commonwealth (approximately 52%), and any increases in other state education funding that are directly a result of the new students. Based on a goal of approximately 30,000 new housing units over 10 years, it has been estimated that school supplement costs will be \$3.5 million annually.

Funding

Funding for Ch. 40R and 40S is unusual. Massachusetts General Law Ch. 10, Section 548 created a Smart Growth Housing Trust Fund. This fund is to be capitalized through the sale of surplus state land. While initially this is a viable source for the payment of incentive funds, there are serious questions about the stability of financing through a decreasing source of revenue.

As of August 2007, current funds have been exhausted and no future stable funding source for these programs has been found.

Concerns

The provision in Ch. 40R stating that mixed-use and affordable housing is allowed as-of-right is viewed by some municipalities as an infringement on their local zoning planning. While communities can pre-plan the types of developments that they allow as of right in SGZDs, the desire to maintain local control over the entire development process may be a stumbling block for 40R. Although there has been active interest in some communities, overall the program is still too new to analyze how effective Ch. 40R and 40S will be and time is needed to evaluate how strong the financial and zoning concerns may prove to be.

Sources

Chapter 141 of the Acts of 2005, An Act Relative to Smart Growth Zoning and Housing Production, <http://www.mass.gov/legis/laws/seslaw05/sl050141.htm>.

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Massachusetts Executive Office of Energy and Environmental Affairs. "Smart Growth Toolkit," http://www.mass.gov/envir/smart_growth_toolkit/.

Metropolitan Area Planning Council. "Summary of Chapter 40R Smart Growth Zoning Districts," MAPC, July 2004, updated April 2005, [http://www.mapc.org/whats_new/Smart Growth Zoning Summary Regs.pdf](http://www.mapc.org/whats_new/Smart_Growth_Zoning_Summary_Regs.pdf).

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