Smart Growth

Building Codes

Smart growth is a strategy to discourage development projects that harm the environment and encourage projects that enhance the quality of life in a region.

★ 2004 POLICY SUMMARY ★

Smart Growth Building Codes

Summary

- **Sprawling land development is devouring the American countryside at an alarming rate—about 365 acres per hour.**
- **Every year about 1.2 million new housing units are created in the United States, while 200,000 units are abandoned or destroyed.**
- **Smart growth is a strategy to discourage development projects that harm the environment and encourage projects that enhance the quality of life in a region.**
- **One key tactic to promote smart growth is to reform out-of-date building codes.**
- **New Jersey has led the nation in promoting smart building codes.**
- **New Jersey has successfully encouraged redevelopment in cities, while keeping land development profitable.**
- **Revitalization of existing communities is a win-win situation for developers, residents, taxpayers and the environment.**
- **Three states have followed New Jersey's success with smart building codes.**

Sprawling land development is devouring the American countryside at an alarming rate—about 365 acres per hour.

Across the nation, urban areas have expanded at approximately twice the rate of population growth.[1] In some places, like Chicago and Los Angeles, urban sprawl has advanced ten times faster than population growth. Phoenix is encroaching on the surrounding desert at a rate of one acre per hour.[2] As new development outpaces population growth, people become overly dependent on automobiles, increasing both air and water pollution. This pattern of development also destroys farmland, forests and wetlands.

Every year about 1.2 million new housing units are created in the United States, while 200,000 units are abandoned or destroyed.

The majority of these new housing units are built on the urban fringe, while older downtowns are left with underutilized and deteriorating buildings. Development on the fringe remains attractive to developers because of fewer obstacles to construction, cheaper land, and the potential to assemble large parcels.

Smart growth is a strategy to discourage development projects that harm the environment and encourage projects that enhance the quality of life in a region.

Smart growth addresses a broad range of goals, including neighborhood livability, environmental protection, mixing land uses, promoting sustainable development, and providing multiple transportation choices, while keeping open space open. It attempts to improve the quality of life by putting the needs of existing communities first, and focusing new development in areas that already have an infrastructure of roads, sewers, power lines, and schools.

One key tactic to promote smart growth is to reform out-of-date building codes.

Building codes have generally been written with an eye toward new construction. As a result, it is often much harder for developers to comply with building codes when rehabilitating existing buildings than when undertaking new construction. For this reason, inflexible building codes tend to encourage sprawl projects on undeveloped land over revitalization projects in cities and towns. States can reverse this trend by adopting rehabilitation building codes that provide greater flexibility to safely renovate existing structures.

New Jersey has led the nation in promoting smart building codes.

In 1997, New Jersey implemented new rehabilitation guidelines that have since been endorsed by the federal government and the National Association of Home Builders. These provisions encourage the redevelopment of existing buildings by ensuring that a newly renovated property meets an acceptable threshold of safety without requiring unnecessary additional measures.[3]

New Jersey has successfully encouraged redevelopment in cities, while keeping land development profitable.

Over the years, the New Jersey law has seen numerous success stories. For example, after standing vacant for eight years, a Jersey City building was renovated to provide 24 apartments for low- and moderate-income senior citizens, and a day care center. The project directors estimated that because of building code changes they saved nearly $400,000—about one-quarter of total project costs. Local governments have also enjoyed savings on publicly-funded renovations, allowing them to provide more community centers, government offices, and affordable housing units for less.[4]

Revitalization of existing communities is a win-win situation for developers, residents, taxpayers and the environment.

A growing number of American families are moving back into urban centers, seeking the community, amenities and diversity that urban life brings. Making the redevelopment of existing buildings more practical for builders doesn't simply open up new markets for developers. It benefits whole regions by encouraging mixed-income neighborhoods that raise living standards for all, expanding tax bases that bring increased funding for local schools, and preventing sprawl and pollution to help protect the environment.

Three states have followed New Jersey's success with smart building codes.

In 2000, Maryland adopted legislation modeled after the New Jersey building code. Rhode Island, whose rehabilitation code went into effect in May 2002, exempts existing commercial buildings from certain construction requirements. California's new building code promotes the preservation, rehabilitation and restoration of historic properties.

This policy summary relies in large part on information provided by the State Environmental Resource Center.

Endnotes

[1] "The State of the Cities 2000," U.S. Department of Housing and Urban Development, 2000.

[2] Charles Schmidt, "The Specter of Sprawl," National Institute of Environmental Health Sciences, 1998.

[3] National Association of Home Builders Research Center, "Nationally Applicable Recommended Rehabilitation Provisions," 1997.

[4] William Connolly, "Rules That Make Sense—New Jersey's Rehabilitation Subcode," 2003.

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For more information...

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Smart Building Rehabilitation Code Act

SECTION 1. SHORT TITLE

This Act shall be called the "Smart Building Rehabilitation Code Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. In this era of rapid population growth, while new residential and commercial development consumes agricultural land, forests and other undeveloped land, thousands of existing buildings in our communities are not being fully utilized or are abandoned.

2. The rehabilitation of existing buildings is often hampered by inflexible building codes.

3. The state should model its rehabilitation code after the Nationally Applicable Recommended Rehabilitation provisions developed by the United States Department of Housing and Urban Development and the National Association of Home Builders Research Center.

(B) PURPOSE—This law is enacted to revitalize urban areas, preserve the environment, enhance the economic vitality of the state, and protect public health, safety and welfare.

SECTION 3. SMART BUILDING REHABILITATION CODE

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

1. "Addition" means an increase in building area, aggregate floor area, height, or number of stories of a building or structure.

2. "BRC" means the [STATE] Building Rehabilitation Code.

3. "Change of occupancy" means a change in the purpose or level of activity within a structure that involves a change in application of the requirements of the local building code.

4. "Construction permit application" means any application made to a local jurisdiction for a permit or other government approval for a rehabilitation project.

5. "Department" means the Department of [Housing and Community Development].

6. "Existing building" means any building or structure that was erected and occupied or issued a certificate of occupancy at least one year before a construction permit application for that building or structure was made to a local jurisdiction.

7. "Local jurisdiction" means any county, city or municipality in [STATE].

8. "Modification" means the:
   a. Reconfiguration of any space;
   b. Addition or elimination of any door or window;
   c. Reconfiguration or extension of any system; or
   d. Installation of any additional equipment.

9. "Reconstruction" means:
   a. The reconfiguration of a space which affects an exit or element of the egress access shared by more than a single occupant;
   b. The reconfiguration of space such that the work area is not permitted to be occupied because existing means of egress and fire protection systems, or their equivalent, are not in place or continuously maintained; or
   c. Extensive modifications.

10. "Rehabilitation project" means any construction work undertaken in an existing building that includes repair, renovation, modification, reconstruction, change of occupancy, or addition.

11. "Renovation" means the change, strengthening or addition of load bearing elements; or refinishing, replacement, bracing, strengthening, upgrading or extensive repair of existing materials, elements, components, equipment or fixtures. "Renovation" does not include reconfiguration of space or interior and exterior painting.

12. "Repair" means the patching, restoration or minor replacement of materials, elements, components, equipment or fixtures for the purposes of maintaining these materials, elements, components, equipment or fixtures in good or sound condition.

(B) ADOPTION OF THE BUILDING REHABILITATION CODE

1. The Department, in cooperation with the Building Rehabilitation Code Advisory Council, the Department of [Licensing and Regulation], and the State Fire Marshal, shall adopt by regulation the [STATE] Building Rehabilitation Code. The BRC shall be modeled on the nationally applicable recommended rehabilitation provisions developed by the United States Department of Housing and Urban Development and the National Association of Home Builders Research Center.

2. The purpose of the Building Rehabilitation Code is to encourage and facilitate the rehabilitation of existing buildings by reducing the costs and constraints on rehabilitation resulting from existing procedures and standards.

3. As provided under the [Administrative Procedure Act], the Department shall:
   a. Submit to the Joint Committee on [Administrative, Executive, and Legislative Review] the proposed regulations to adopt the BRC by December 31, 2004; and
   b. Adopt the BRC as soon as possible thereafter.

4. The Department, in cooperation with the Building Rehabilitation Code Advisory Council, shall review the BRC and adopt any necessary or desirable revisions at least every three years.

5. Except as otherwise permitted in this title, and notwithstanding any relevant provisions of existing state building codes, mechanical codes, plumbing codes, fire prevention codes, and electrical codes adopted thereunder, the BRC shall apply to all rehabilitation projects for which a construction permit application is received by a local jurisdiction or Planning Commission after adoption of the BRC.

6. By October 1, 2004:
   a. The Department of [Licensing and Regulation], the State Board of [Heating, Ventilation, Air-Conditioning, and Refrigeration Contractors], the State Board of [Plumbing], and the Board of [Boiler Rules] shall submit proposed changes to their regulations to make the [Mechanical Code, the Plumbing Code, the Boiler Safety Code, and the Elevator Code] consistent with the BRC;
   b. The [State Police] and State [Fire Prevention Commission] shall submit proposed changes to their regulations to make the [State Fire Prevention Code] consistent with the BRC; and
   c. The Department shall submit proposed changes to its regulations to make the [Building Performance Standards, the Safety Glazing Code, the Energy Code, and the Accessibility Code] consistent with the BRC.

7. A local jurisdiction may adopt local amendments to the BRC that apply only to the local jurisdiction.

8. Only a local jurisdiction that does not amend the BRC shall be eligible for any funding appropriated in conjunction with this chapter.

(C) MINIMUM PROVISIONS OF THE BUILDING REHABILITATION CODE

1. The BRC shall, at a minimum:
   a. Maintain a level of safety consistent with existing codes, and provide for multiple categories of work with multiple compliance standards;
   b. Be enforceable by local officials using existing enforcement procedures;
   c. Apply to repair, renovation, modification, reconstruction, change of occupancy, or addition to an existing building;
   d. Provide an expedited review process for proposed amendments to the BRC submitted by a local government or an organization that represents local governments; and
   e. Contain provisions that provide an opportunity for a person proposing a complex rehabilitation project involving multiple codes, prior to the submission of a construction permit application, to meet with local officials or their designees responsible for permit approval and enforcement in construction related laws and regulations that may be applicable to the rehabilitation project.

2. The meeting provided under subsection 1(e) of this subsection shall, to the extent possible, include the officials responsible for permit approval and enforcement in the following areas, as may be applicable to the rehabilitation project: [building code; mechanical code; plumbing code; electrical code; fire prevention code; boiler safety code; energy code; elevator code; and local historic preservation ordinances].

3. The purpose of the meeting provided for under subsection 1(e) of this section shall be to anticipate and expedite the resolution of problems a complex rehabilitation project may have in complying with the applicable laws and regulations and the BRC.

(D) ADVISORY COUNCIL

1. There shall be a [STATE] Building Rehabilitation Code Advisory Council comprised of 28 members as follows:
   a. The Secretary of [Housing and Community Development] or designee;
   b. The Secretary of [Licensing and Regulation] or designee;
   c. The State Fire Marshal or designee;
   d. The State [Historic Preservation Officer] or designee;
   e. The Director of the [Governor's Office for Individuals with Disabilities] or designee;
   f. The Director of the [Department of the Environment] or designee; and

g. Twenty-two members appointed by the Governor, including a representative of the [State Fire Prevention Commission]; four representatives of the building trades who are directly involved in or have experience in code setting or enforcement, including plumbers, electricians, heating, ventilation, air-conditioning and refrigeration contractors, and boiler operators; two architects whose practice involves a significant portion of rehabilitation projects; a professional construction engineer; two contractors specializing in rehabilitation construction; two representatives of county government; two representatives of municipal government; two building code officials serving local government; a commercial or industrial building owner or developer; a multifamily building owner or developer; two local fire officials; and two members of the general public.

2. From among the members of the Council, the Governor shall designate a chairman. The composition of the Council should reflect the race, gender and geographic diversity of the population of the State.

3. The term of an appointed member is four years. The terms of appointed members shall be staggered. The Governor shall specify five appointed members to serve a first term of one year; five appointed members to serve a first term of two years; six appointed members to serve a first term of three years; and six appointed members to serve a first term of four years.

4. At the end of a term, a member continues to serve until a qualified successor is appointed. A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies. An appointed member may serve no more than two terms.

5. A member shall serve without compensation and shall be reimbursed for expenses in accordance with the [Standard State Travel Regulations].

6. The Council shall:
   a. Advise the Department on the development, adoption and revisions to the BRC;
   b. Provide technical advice on the interpretation of the BRC to property owners, design professionals, contractors, local jurisdiction code officials, and local jurisdiction code appeal boards;
   c. To the extent possible, develop the BRC to seek to avoid increased costs to local jurisdictions arising from implementation of the BRC;
   d. To the extent provided in the State budget, provide training on the BRC for code officials and other public and private construction-related professionals.

7. The Council shall have an Executive Director, appointed by the Secretary of [Housing and Community Development]. The Executive Director shall be a special appointee in the [State Personnel Management System].

SECTION 4. PLANNING AND ZONING AUTHORITY NOT AFFECTED

This Act does not supersede the planning, zoning or subdivision authority of local jurisdictions.

SECTION 5. SEVERABILITY

The provisions of this Act shall be severable, and if any phrase, clause, sentence or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this Act shall not be affected thereby.

SECTION 6. EFFECTIVE DATE—This Act shall take effect on July 1, 2004.