



LWVM Affordable Housing Study: Part 2

Where It All Began: Some Historical Perspective

By Jane Nash, LWVM Affordable Housing Study Committee co-chair

The first article in this series focused on the need for affordable housing in Massachusetts. This article will focus on the legislation that controls zoning.

The basis for zoning and planning in the United States “was laid by two standard state enabling acts published by the U.S. Department of Commerce in the 1920s.”¹

The two enabling acts were called “A Standard State Zoning Enabling Act” (SZE) and “A Standard City Planning Enabling Act” (SCPEA) These were not federal legislation; rather the Commerce Department, under then Secretary of Commerce Herbert Hoover, published them as models to be adopted by state legislatures to enable local governments to promote, in the words of the SZE, “the health, safety, morals, or general welfare of the community.”²

All 50 states eventually adopted the SZE, and it is still in effect, though modified, in many states.

Zoning in Massachusetts

The Massachusetts zoning enabling act is Chapter 40A,³ commonly called the Zoning Act. It was originally enacted in 1954, replaced in 1975 and amended several times since. It governs zoning throughout the Commonwealth.

Chapter 40A:

- provides for unified zoning throughout the State
- enables municipalities to create districts/zones to regulate how land is used
- gives municipalities the right to enforce their zoning laws
- requires the maintenance of a zoning map
- provides procedures for special permits and variances
- specifies public notification requirements.
- requires municipalities to establish a zoning board of appeals and sets up an appeals process

The law also limits the powers of zoning related to a variety of uses, including agriculture, educational and religious institutions and public service corporations, among other uses.

Critiques of Chapter 40A

Jeffery J. Trapani has written that “a government’s zoning laws reflect its concerns about the effect of development on its citizens, including how land should best be allotted, used, and preserved in the name of health, safety, and morality.”

However, many in the state criticize Chapter 40A, calling for changes to a number of its provisions:

- The so-called “grandfather clause,” which permits subdivisions into smaller lots along existing road ways to be subdivided by right without review by local planning boards.
- The requirement of a two-thirds majority vote to adopt or amend local zoning bylaws. Massachusetts is the only state with this requirement.
- Lack of consistency between local Master Plans and zoning regulations. Two-thirds of the states require consistency, but Massachusetts does not. This often causes Master Plans to be ignored.
- The lack of effective tools to permit local planning boards to raise affordable housing inventories.
- The fact that impact fees are not allowed. Approximately 60% of all development in the United States is subject to impact fees to offset the municipal service costs of growth. It is suggested that impact fees will lessen local resistance to new development projects.

Articles to follow will give specific information on the many Massachusetts laws that seek to encourage the development of affordable housing.

Sources:

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www.nesl.edu/csr/articles/smartgrowth.pdf

¹ www.planning.org/growingsmart/enablingacts.htm?project

² www.planning.org/growingsmart/pdf/SZEnablingAct1926.pdf

³ Text of Chapter 40A can be found at:
www.mass.gov/legis/laws/mgl/gl-40a-toc.htm