



Commonwealth of Massachusetts
**DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT**

Charles D. Baker, Governor ♦ Karyn E. Polito, Lt. Governor ♦ Chrystal Kornegay, Undersecretary

PUBLIC NOTICE

DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT (DHCD)

Under the provisions of M.G.L. c. 30A, § 2, notice is hereby given of the proposed promulgation of amendments to regulations 760 CMR 12.00 – Urban Renewal Regulations and 760 CMR 59.00 – Smart Growth Zoning Overlay District (M.G.L. c. 40R). DHCD's regulatory authority for this action is provided under M.G.L. c. 23B, c. 40R; c. 121B; §§ 45-57; St. 2004, c. 149; St. 2016, c. 219, §§ 37-54. In accordance with M.G.L. c. 30A, § 5, the proposed amendments to the regulations have a minimal or non-existent Small Business Impact.

DHCD will hold a public hearing on these proposed amendments at which time and place interested persons will be afforded an opportunity to present oral testimony on:

Monday, March 27, 2017:

1:00 PM – 760 CMR 59.00

2:30 PM – 760 CMR 12.00

MA Dept. of Housing & Community Development

100 Cambridge Street, 2nd Floor, Room A

Boston, MA 02114

Written comments on the proposed amendments may be submitted at any time prior to 5:00 pm on April 7, 2017, by directing the same to the DHCD, 100 Cambridge Street, Suite 300, Boston, MA 02114, Attn.: Lorraine Nessar, or sent electronically to Lorraine.nessar@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 posted on DHCD's website at www.mass.gov/dhcd.

Section

- 12.01: Effective Date, Applicability and Definitions
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12.01: Effective Date, Applicability and Definitions

760 CMR 12.00 supersedes Department of Housing and Community Development Urban Renewal regulations appearing at 760 CMR 12.00 ~~through 20.00~~, as previously promulgated ~~December 12, 1986~~ November 1 1996.

760 CMR 12.00 shall take effect on [insert date] ~~November 1, 1996~~ and apply to all applications for approval of Urban Renewal Plans, and all on-going projects on and after [insert date]. ~~November 1, 1996~~.

Plan approvals, conditions and waivers in effect as of the effective date of 760 CMR 12.00 shall remain in effect.

760 CMR 12.00 governs planning and program activities for both Urban Renewal projects and Urban Revitalization and Development projects.

Unless otherwise specified, the definitions in M.G.L. c.121B, § 1 shall be applicable to 760 CMR 12.00.

12.02: Urban Renewal Plans

The Department of Housing and Community Development (the Department) is charged with the responsibility for the review and decision on an application for approval of an Urban Renewal Plan. If the Department shall have made the findings set out in M.G.L. c. 121B, §48 it shall approve the plan.

Each application shall contain the following:

(1) An executive summary, outlining the operating agency's reasons for developing the plan, what it hopes to accomplish and how it will accomplish it.

(+2) Characteristics. Plans or maps of the project area and the immediately surrounding area, showing:

(a) Boundaries of the project area,

~~(b) Boundaries of areas proposed for clearance and areas proposed for rehabilitation,~~
~~(c) Property lines and the foot print of buildings and parking areas on each lot, existing and proposed,~~

~~(db) Existing uses, including identification of land in mixed uses and land in public use,~~ and the current zoning,

~~(ec) Proposed land uses, public improvements and other activities and zoning,~~

~~(f) All thoroughfares, public rights of way and easements, existing and proposed,~~

~~(gd) Parcels to be acquired,~~

~~(he) Lots to be created for disposition,~~

~~(hf) Buildings to be demolished,~~

~~(hg) Buildings to be rehabilitated,~~

~~(kh) Buildings to be constructed.~~

(23) Eligibility. Data and other descriptive material which demonstrates that the project area is a blighted open area, a decadent area, and/or a substandard area within the definitions set out in M.G.L. c. 121B, § 1. The data and other descriptive material shall also show:

(a) Where clearance is proposed, a showing that ~~more than 50% of the floor area of all buildings is~~are functionally obsolete, structurally substandard or ~~is~~not reasonably capable of being rehabilitated for productive use, and a showing that the extent of clearance proposed is justified and necessary, with particular attention paid to justifying the acquisition of individual parcels of basically sound property,

(b) Where spot clearance is proposed, a showing that the clearance is necessary in order to achieve the objectives of the plan,

~~(c) Where clearance is proposed, a showing that the extent of clearance proposed is~~

~~justified, and necessary.—Particular attention shall be paid to justifying the acquisition of individual parcels of basically sound property which involve high acquisition costs,~~

~~(dc)~~ Where rehabilitation is proposed a showing that: 7

~~—(i) a showing that~~ it is economically feasible to rehabilitate the properties in the project area, and

~~(ii) —and that~~ the existing street and land use pattern can be adapted to the objectives of the plan, and

~~(iii) the area has desirable qualities and other evidence of vitality establishing a likelihood that rehabilitation activities will restore the area over the long-term.~~

~~—(e)—Where rehabilitation is proposed, a showing that the area has desirable qualities and other evidence of vitality establishing a likelihood that rehabilitation activities will restore the area over the long-term, and~~

~~(fd)~~ The Urban Renewal Plan is based upon a local survey and conforms to any existing planning documents covering the urban renewal area as a whole, including, but not limited to, a comprehensive plan for the locality.

(34) Objectives. A statement of the objectives of the plan including:

(a) Specification and explanation of all proposed redevelopment (In any project area the reuse of which will be predominantly residential, an objective shall be the provision of housing units for low or moderate income persons),

(b) A detailed estimate of how many jobs will be retained, how many created, and how many eliminated as a result of the proposed renewal and redevelopment, and

(c) The specific provisions which exist or which will be established to control densities, land coverage, land uses, setbacks, offstreet parking and loading and building height and bulk. and

(5) Time Frame. Describe proposed time lines for completing redevelopment. All Urban Renewal plans must have a specified end date.

(46) Financial Plan.

~~(a)—The estimated cost of each parcel (or interest in a parcel) to be acquired with an attached appraisal from a licensed appraiser in private practice (appraisal services shall be procured in accordance with M.G.L. c. 30B) and identification of any property in which any officer or employee of the municipality or of the operating agency has, or is believed to have, any direct or indirect interest;~~

~~(b)—Detailed cost estimates for site preparation;~~

~~(c)—Detailed cost estimates of all proposed public improvements;~~

~~(d)—Detailed cost estimates for relocation expenses;~~

~~(e)—Detailed cost estimates establishing the gross and net project cost (Gross project cost shall consist of the total of all costs associated with the project, including but not limited to planning, acquisition and disposition of land, relocation of occupants, improvements to the site, financing and administrative costs.—Net project cost shall be the gross project cost less revenue anticipated from disposition of land and other income), and—~~

~~(f)—A project budget including administrative expenses and reserves for contingencies.~~

~~(b)~~ A project proforma/budget which shall include cost estimates for:

(a): Cost estimates for sSite preparation,

(b): Cost estimates of aAll proposed public improvements,

(c) Cost estimates for rRelocation expenses,

(d) Cost estimates of pPlanning, legal, financing and administrative costs,

(e) Acquisitions (which can be based on assessor's data)

(f) An Eestimate of the amount and source(s) of project revenues.

(57) Requisite Municipal Approvals. Evidence of a public hearing and the requisite municipal approvals specified in M.G.L. c. 121B, § 48, and an opinion of counsel to the operating agency certifying that the proposed Urban Renewal Plan was adopted in accordance with M.G.L. c. 121B §48 and —is in compliance with applicable laws.

(68) Site Preparation. Specification of all proposed site preparation, including land protection and measures to address environmental, topographic, subsoil or flood problems. Any special site preparation or land protection problems shall be identified.

(79) Public Improvements. Specification of any public improvements, a description of their general design and an explanation of how the improvements will help achieve the objectives of the plan.

(810) Relocation. A relocation plan conforming to all applicable requirements appearing in federal law, M.G.L. c.79A, and the regulations and guidelines thereunder.

(911) Redeveloper's Obligation. Specification of the obligations which have been imposed or will be imposed upon redevelopers for construction of improvements within a reasonable time and in conformity with the plan. If specific or general commitments for redevelopment exist, specification of the commitments in all pertinent detail, including copies of any contracts, plans, or proposals.

(10-2) Disposition. The plan must specify the disposition proposed for each parcel and identify any known redeveloper.

(143) Citizen Participation. A report on citizen participation describing citizen participation in the planning process and a plan for the expected continuing citizen participation during the project execution. A showing of meaningful citizen participation is necessary for approval of the plan.

(14) Massachusetts Environmental Policy Act (MEPA) – the plan must indicate: (a) if review under MEPA and implementing regulations is complete, and (b) if review of any known redevelopment project under MEPA and implementing regulations is complete and/or MEPA has issued a Phase 1 waiver with respect the such project(s). If not, DHCD's approval will be issued conditional upon completion of MEPA review.

12.03: Plan Changes

The operating agency shall submit all proposed minor and major plan changes to the Department for approval, except as specified in 760 CMR 12.03(1) below. The application for a plan change shall include a detailed description of the change, and the purpose and effect of the plan change on project activities, ~~and pertinent revisions of the original application to reflect the change.~~

(1) A minor plan change is a plan change that does not significantly affect any of the basic elements (characteristics, objectives, public improvements, redeveloper's obligations or disposition) of a previously approved Urban Renewal Plan as described in 760 CMR 12.02(2), (4), (9), (11) and (12). An application for a minor plan change shall include a resolution of the operating agency adopting the plan change. If deemed necessary for its decision, the Department may request-require additional local approvals or information.

Operating agencies need not seek DHCD approval for the following minor plan changes:

- (a) Granting or receiving easements for utilities
- (b) Confirmatory takings for the purpose of title clearing
- (c) Tax foreclosures
- (d) Conveying non-buildable lots of less than 5,000 square feet to owners of adjacent parcels
- (e) Acquiring an interest in property made available through a discontinuance of a public way
- (f) Transfer of a property interest to or from another public entity

(2) A major plan change is a significant change in any of the basic elements (characteristics, objectives, public improvements, redeveloper's obligations or disposition) of a previously approved Urban Renewal Plan, as described in 760 CMR 12.02(2), (4), (11) and (12). For example, major plan changes shall include, changing the boundaries of the plan area, changing the allowable uses within the plan area, and changing the designation of parcels from "not to be acquired" to "to be acquired." The request for a major plan change shall be accompanied by evidence of public outreach, a public hearing, a Planning Board determination that the proposed change is in conformance with the general plan for the community as a whole, and City Council or Town Selectmen approval, ~~and evidence that all affected redevelopers have been notified of the plan change, have been given an opportunity~~

~~to comment, and that any such comments have been considered.~~ If deemed necessary for its decision, the Department may ~~request~~require additional local approvals or information.

12.04: Land Acquisition

(1) Appraisals. Two independent appraisals ~~must be submitted for Department approval are required for prior to the acquisition of each any parcel. to be acquired.—The first appraisal shall provide the basis for the initial estimate of the value of the parcel to be purchased pursuant to the Urban Renewal Plan.—The second appraisal shall be prepared after the Department's approval of the Urban Renewal Plan.~~ If deemed necessary, the Department may request an additional appraisal, ~~or an update of the first or second appraisal.~~ The operating agency's determination of the proposed acquisition price shall be based on review of the appraisals. The acquisition price shall not be less than the lowest appraisal, nor more than the highest appraisal.

(2) Negotiations and Condemnation. The operating agency may negotiate for the purchase of one or more parcels after the Urban Renewal Plan has been approved by the Department. Negotiations may be performed by a member of the operating agency staff experienced in real estate matters or by a licensed broker under contract. The negotiated acquisition price shall be approved by the Department. Approval by the Department of the acquisition price for a parcel shall constitute the Department's concurrence in the institution of condemnation proceedings, provided that the operating agency shall have made every reasonable effort to acquire the property through purchase. All condemnation proceedings shall be authorized by the operating agency's governing body and shall be carried out in accordance with M.G.L. c. 79.

12.05: Land Disposition

(1) Each parcel to be sold or otherwise disposed of by the operating agency shall have an independent disposition appraisal. If deemed necessary, the Department may require an additional disposition appraisal. In cases where the cost of the appraisal will exceed the estimated value of the parcel, the Department may waive the disposition appraisal. Prior to disposition of any parcel, the operating agency shall file or record the Urban Renewal Plan or an appropriate declaration of restrictions with the appropriate registry of deeds or division of the land court.

The operating agency shall determine the disposition price for each parcel as follows:

- (a) The disposition price shall be no less than the fair market value of the land for the use specified in the Urban Renewal Plan, as determined by the disposition appraisal.
- (b) The disposition appraisal shall reflect both the advantages created by the project and the requirements and limitations on land uses to be imposed on the redeveloper by the Urban Renewal Plan,
- (c) Disposition of project land may be made by long-term lease. The operating agency shall obtain an opinion by licensed appraiser(s) of the fair market value of the parcel to be leased, the then current rate of rent at which similar long-term land leases are made, and an acceptable annual rent for the property to be leased. ~~shall be determined by the operating agency on the basis of two disposition appraisals made by licensed appraisers,~~
- (d) In instances where the operating agency has demonstrated that a significant public purpose will be served by disposing of the parcel at less than the fair market value, the Department may approve such a disposition at less than fair market value.

(2) ~~With its request for disposition approval, the operating agency shall submit to the~~ Department the following:

- (a) Identification of the proposed redeveloper
- (b) Evidence that the operating agency has determined the redeveloper possesses significant qualifications and financial resources to acquire and develop the land in accordance with the Urban Renewal Plan
- (c) The land disposition agreement (LDA), an instrument describing the terms of such sale or lease. The land disposition agreement for each parcel shall insure that the redeveloper conforms to and carries out the requirements of the Urban Renewal Plan and that the interests of the project are safeguarded. The time permitted for the performance of each obligation of the redeveloper shall be specified.

~~shall approve the disposition price, the proposed purchaser or lessee (redeveloper) and a land~~

~~disposition agreement (instrument describing the terms of such sale or lease).— The land disposition agreement for each parcel shall insure that the redeveloper conforms to and carries out the requirements of the Urban Renewal Plan and that the interests of the project are safeguarded.— The time permitted for the performance of each obligation of the redeveloper shall be specified.~~

(3) The Department must approve the disposition price and the LDA.

~~Prior to entering into a land disposition agreement, the operating agency shall determine that the redeveloper possesses significant qualifications and financial resources to acquire and develop the land in accordance with the Urban Renewal Plan.— The operating agency shall not enter into a land disposition agreement until the redeveloper has furnished satisfactory evidence that the redeveloper has the financial resources needed to complete redevelopment.—~~

(4) Members of the governing body of the operating agency or municipality and employees of the operating agency or municipality, who, acting in their official capacity, exercise or may exercise responsibility concerning the project, are ineligible to be redevelopers.

12.06: Reports Urban Revitalization Development Grant (URDG)

~~(1) As authorized by M.G.L. c. 121B, §§ 45 through 57 the Department may provide an Urban Revitalization Development Grant (URDG) to a municipality in an amount equal to half of the net project cost of a project, as determined by the Department. All grants are subject to a prior appropriation by the Legislature sufficient to fund the grant.— Approval of an Urban Renewal Plan by the Department shall be a necessary condition of such a grant, but such approval shall not guarantee that the Department will make a grant.— Such URDG projects will require detailed information regarding the redeveloper and redevelopment proposal, including the financing of the redevelopment, and the operating agency's management plan for the project site, to the extent known.— An URDG request may be submitted in conjunction with an application for approval of an Urban Renewal Plan or as a separate grant application for a project under an approved plan.— Any applicant for a grant shall provide all information requested by the Department for use in its determination of the grant request.—~~

~~(2) Grant Recipients.— Any recipient of an Urban Renewal Assistance Grant or an Urban Revitalization Development Grant shall comply with the following:~~

(a) Reports. ~~The recipient, including the municipality and the operating agency, shall comply with all requests of the Department for reports, audits of accounts, and records of the project, and other assurances that the project is being executed on schedule and in accordance with the approved Urban Renewal Plan.— Each urban renewal agency shall keep an accurate account of all its activities, receipts and expenditures in connection with the planning and execution of urban renewal projects and shall annually in the month of January make a report of such activities, receipts and expenditures to the department and the mayor of the city or to the selectmen of the town within which such authority is organized. Once a year, the recipient must submit to the Department an updated “Comparative Statement of Approved Budget to Actual Project Cost” in a form specified by the Department and a private, independent audit of the project, detailing all project income, costs and expenditures.— The Department reserves the right to suspend grant payments if actual project costs exceed the estimated costs, or such action is necessary to protect the public interest.— Upon determination of project completion by the Department, the recipient shall submit a final comparative statement and conduct a final audit.~~

~~The operating agency shall comply with all requests of the Department for any other reports, audits of accounts, and records of the project, and other assurances that the project is being executed on schedule and in accordance with the approved Urban Renewal Plan.~~

~~The recipient shall also provide all such reports as the Department may request concerning the redevelopment of the project area and shall make all pertinent documentation available for inspection by the Department.~~

(b) Retention of Project Records. 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. All such records shall be available for inspection by the Department.

~~(c) Acknowledgment of State Assistance.— State participation in the financing of an urban renewal project or activity shall be prominently acknowledged by project signs approved by the Department, and in any book, pamphlet, plan, report, or map prepared by the municipality or the operating agency concerning the project.~~

~~(d) Contracting.— The operating agency shall submit copies of all contracts involving the expenditure of \$10,000 or more to the Department immediately after execution. — The Department may require its pre-approval of some or all contracts as a condition of a grant.~~

~~(e) Final Financial Settlement.— Upon approval of the final audit at close-out of a project, the operating agency shall submit for Department approval a certificate of completion and a statement of the gross project cost and the net project cost determined in such manner as shall be specified by the Department. — The Department shall approve the certificate and statement upon its determination that all applicable requirements have been met.~~

12.07: Waiver

The Director of the Department of Housing and Community Development may waive any provision of 760 CMR 12.00 under the following circumstances:

- (1) A catastrophic event, such as a fire, flood, or other similar event, causes severe hardship to the municipality; or
- (2) There is severe economic hardship in the municipality (such as may result from loss of a major employer), an unemployment rate consistently in excess of the state average, or a high concentration of low and moderate income population; and
- (3) There is evidence that granting a waiver will produce exceptional public benefit not otherwise available.

The request for a waiver must be submitted in writing to the ~~Director~~Urban Renewal Program Specialist of the Department of Housing and Community Development, 100 Cambridge Street, Suite 300, Boston, MA ~~02202~~02114. Communities shall submit detailed evidence to support their claims of hardship and public benefit.

~~As a condition of waiver of the regulations, the Department's Chief Counsel shall render a written opinion that such a waiver accomplishes a significant public purpose not otherwise available and that the request for a waiver is consistent with statutory requirements.~~

In the event of such a waiver, the Department shall prepare a statement of facts upon which such a waiver is based. No waiver shall be made if it conflicts with any mandatory provision of any statute.

REGULATORY AUTHORITY

760 CMR 12.00: M.G.L. c. 121B, § 45 through 57; c.23B.