

The Coalition to Repeal 40B Materials, 2010

What is Chapter 40B?

Passed in 1969, Chapter 40B (the comprehensive permit law) is a Massachusetts statute that allows developers to be exempt from local zoning guidelines and to appeal any local zoning board denials or restrictions to the state Housing Appeals Committee (HAC). The HAC is a housing "court" created by this statute to hear cases. All of this is permitted if developers include a certain percentage of "affordable housing" (25% for owner-occupied and 20% for rentals). 40B defines affordable housing as something that can be afforded by households making 70-80% of the local median income, have been subsidized by certain state or federal housing subsidy programs, and have long-term deed restrictions.

The Problems:

- ▶ Developers have successfully used 40B to build *over 700* developments across the state that violate local zoning rules for density, conservation restrictions, and type of housing.
- ▶ 40B limits the definition of "affordable" so much that most people in need are not helped by it.
- ▶ The Housing "court" created by 40B is not impartial and is mandated to support more development, thus giving communities almost no fair chance for appeal even when developers act unreasonably.
- ▶ 40B developers "bait and switch" by saying one thing to get the permit and then doing differently. Once the land is 40B permitted, developers can do almost anything they want, for instance changing the plan from rentals to owner-occupied, thus boosting their profits.
- ▶ Because it helps override local control over unit density, 40B allows developers to overbid on parcels, effectively driving up the price of land and thus making all housing more expensive.
- ▶ In the decades since 40B projects have been destroying open space and local control over communities, housing affordability has grown worse, driving Massachusetts to the very bottom (49th in the country)

Summary of our petition in lay terms:

Our proposal would repeal sections 20-23 of MGL Ch. 40B. We are doing this to:

- ▶ Improve local control over communities so that the state cannot force a city/town to do what is not in its best interest.
- ▶ Eliminate the unfair housing "court" so that communities have a fair and impartial appeal and review process.
- ▶ Expand the definition of "affordable housing" to include a bigger range of people. 40B only targets 70-80% of median income, meaning that low income people aren't helped and two income families such as teachers, police, fire-fighters etc. aren't helped either.

Please help us make progress today by signing our petition to put this question on the ballot.

save Our State



40B Failures

Massachusetts ranks 49th in national housing affordability. After 38 years, 40B has failed its mandate and it is time to move forward.

The Coalition to Repeal 40B represents diverse citizens who advocate for producing affordable housing without the devastation of 40B's zoning overrides and forced growth through subsidized development of upscale, market-rate housing.

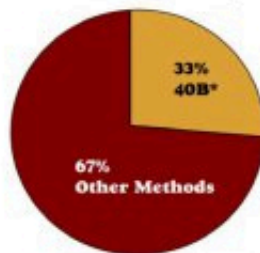
The Inspector General has called it: "the worst abuse in state history." It is obvious that 40B is being used as a tool by developers to extract huge profits at the expense of our cities and towns. Developers would have you believe it produces the affordable housing we need. They are misleading you. 40B costs hundreds of millions of tax dollars annually and has triggered skyrocketing land prices, making all housing more expensive. In total, it has only produced 3 affordable units per town, per year, in 38 years! 40B puts profits in front of people, building mostly non-affordable homes, obstructing affordable housing solutions, damaging our economy, destroying the environment and undermining sustainable planning.

Stopping 40B means restoring funding to existing affordable housing laws that actually help people. The means by which we produce affordable housing is as important as the resulting housing itself. By investing in our struggling communities, we can recover from the devastation of 40B and work towards a sustainable future and vibrant economy.

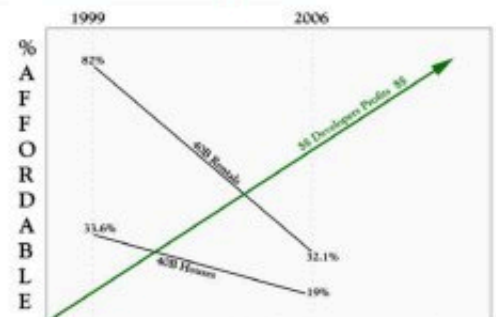
- ▶ Passed in 1969 by only one vote, 40B allows developers to be exempt from all local zoning and planning guidelines. This is permitted if developers include 20% to 25% of state-defined "affordable" housing. Since it develops non-affordable homes at three times the rate of affordable production, housing affordability continues to grow worse.
- ▶ After 38 years of 40B, Massachusetts is 49th in national housing affordability. No other state has adopted such an approach and the American Planning Association calls it "the most regressive planning legislation in the nation."
- ▶ 40B doesn't serve those that need help. It targets only the high-end of eligibility and as a result, a third of tenants in 40B "affordable" units require additional tax subsidies just to afford to live there because units are so expensive. Many units are built, but remain empty.
- ▶ Two-thirds of additions to affordable housing stock since 2000 were accomplished by programs other than 40B - programs we advocate for, but which are blocked by developer lobbyists.
- ▶ Because of 40B's weaknesses, more than half of the "affordable" units the state currently has will soon have affordability restrictions expire and become priced at expensive market-rates.

40B Forces High-Density, Market-Rate Growth *Developers Profit at the Public's Expense*

Programs that Contribute to Affordable Housing



*Includes 40B units that "count" towards affordable stock, but that aren't actually affordable.



Each year, 40B projects produce fewer percentages of affordable units while developers profits have been rising.

The Bottom Line

Our housing problems have grown worse since state agencies made it possible for 40B projects to be financed through private bank funding. This opened the floodgates for greedy out-of-state developers to flock to Massachusetts to prey on our communities.

Not surprisingly, the boards of directors of these agencies are now comprised of for-profit developers and bankers who protect their bottom-line before yours. They allow developers to violate sound land-use policy and to extract more profit from the land they invest in, regardless of whether or not developers increase the proportion of affordable housing. **Studies show that each extra housing unit constructed costs municipalities \$30-\$80k more than what each unit generates in taxes.**

We have all suffered while banks and developers make record profits on high-density, luxury housing projects. That's the bottom line.

Volunteer Today

Join us by visiting: www.Repeal40B.com

We support alternatives such as redevelopment and revitalization, inclusionary zoning and regional planning. These programs will protect our economic vitality and sustainability.

Repeal40B.com

Moving Massachusetts Forward



Sad Truth

Do you know anyone that works 130 hours per week, 52 weeks per year?

In Massachusetts that is exactly what a minimum wage worker (at \$6.75/hr) would need to do to afford a fair-market two-bedroom apartment.

According to reports, Massachusetts renters, making \$15.33/hr, would have to work 57 hours/week, 52 weeks per year just to afford an average 2 bedroom apartment.*

Despite these sad truths, 40B developers are building fewer apartments and more expensive houses even with a huge oversupply of upscale homes on the market. 40B developers are making millions churning out ill-conceived, high-density projects while destroying open space, undermining all planning and zoning efforts and negatively impacting our state's economy and sustainability despite the highest home vacancy rate in decades.

*Source: National Low Income Housing Coalition

Help Us Stop the Abuse

- ▶ State agencies are actively blocking local programs that produce affordable housing and are bullying towns into state-led 40B developments. These agencies allow developers and their banks to control profit levels and project size despite documented cases of 40B fraud exposed by the Inspector General.
- ▶ MassHousing, an agency created to promote affordable housing, recently awarded \$20 million in loans earmarked for affordable housing to a single, luxury market-rate condo complex!
- ▶ While these abuses continue, communities are being told by state agencies that there is no funding for projects that would consist entirely of 100% affordable units to lower income families (earning only 50% of median income).



“The statute [40B] is punitive, it obliterates all local land use, fiscal and planning control, it ignores the countless other critical issues facing cities and towns today, and it imposes a one size fits all policy that insults the distinctions between Cape Cod and Cape Ann, the Berkshires and the Blackstone Valley.”

How State Agencies Are Funding the Destruction of Your Community

If someone told you that zoning should be ignored and that forced, high-density growth was good, you would likely object. Yet, that is exactly what Beacon Hill is doing every single day. And they are doing it with your tax dollars.

Despite consistent reform efforts, state agencies continue to force development that hurts our state. Between 1999 and 2004, developers spent \$8.2 million on lobbyists. During that time, more than 70 reform bills aiming to improve development methods were blocked on Beacon Hill. These developers, their lobbyists and state agencies work intimately together on developments that continue to violate local zoning, generate excessive profits, destroy open space and burden struggling municipalities with negative financial impacts. We cannot afford to let this happen.

Destruction by Funding a Failed Policy

By actively blocking local control, these agencies are funding the deterioration of our quality of life. Massachusetts ranks at the bottom of national housing affordability after decades of having our "affordable housing law" used to force development of upscale market-rate units. As 40B construction has increased, housing affordability had worsened and municipalities have been left to foot the bill for this costly, ill-conceived and unplanned new growth.

Fast Facts

Massachusetts ranks 49th in housing affordability after 38 years of 40B - the same law that agencies tout as the answer to our affordability problems

In August 2007, MassHousing, an agency created to promote affordable housing, awarded \$20 million in low-interest loans earmarked for affordable housing to a single high-end market-rate condominium complex!

The Worst Offenders

- ▶ Citizens' Housing & Planning Association (CHAPA)
- ▶ MassHousing
- ▶ Department of Housing & Community Development (DHCD)

These agencies deceive the public by claiming we "need more housing," while exploiting our "affordable housing law" to produce market-rate growth. What they aren't telling you is that the state has an over-supply of single family homes and has the highest home vacancy rate in decades. When a citizen petition was initiated to encourage redevelopment instead of new development, these agencies hired high-priced lawyers in an attempt to block the petition from getting in front of voters.

Using 40B, they have forced the unnecessary construction of more than 24,145 units of upscale, luxury homes with no significant contribution of affordable housing. They allow developers to violate sound land-use policy and to extract more profit from the land they invest in, regardless of whether or not developers increase the proportion of affordable housing. Studies show that for each extra housing unit constructed, municipalities incur \$30-\$80k more in costs than what each unit generates in taxes. While our sustainability is threatened, these agencies pay little attention to redevelopment and revitalization programs that would improve existing housing and strengthen our communities.

Only through reforming a broken system can we achieve sustainability in Massachusetts based on enjoying a stable population, affordable housing, balanced budgets, employment stability, and conservation of our resources. This is the best way to move Massachusetts forward.

State Agencies are Destroying Your Quality of Life and Have Nothing to Show For It

Beacon Hill doesn't want you to know that they spend hundreds of millions of your tax dollars annually on the 40B developer law. Doing this has caused skyrocketing land prices, making all housing more expensive. These state actions have deleterious impacts on neighborhoods, the environment and local resources, resting the burden on communities and taxpayers like you.

Although record high numbers of upscale, unaffordable homes have been built by 40B, the number of "affordable" units being produced is now at record lows. Our problems have grown worse since Beacon Hill and developer lobbyists made it possible for 40B projects to be financed through private bank funding. This opened the floodgates for greedy out-of-state developers to flock to Massachusetts to prey on our communities. Not surprisingly, the boards of directors of these agencies are now comprised of for-profit developers and bankers who protect their interests before yours. We have all suffered while banks and developers make record profits on high-density, unaffordable housing projects. All of this is being actively despite the harmful results.

Environmental Costs and Impacts



- ▶ Decreased Water & Air Quality
- ▶ Lost Open Space, Wildlife Habitat and Forests
- ▶ Increased Traffic Congestion, Noise, and Crime
- ▶ Higher Cost of Housing, Land and Living



It is time for citizens to
demand that state agencies
Stop the Abuse

Publicly question what these agencies are doing: Are they proud of destroying neighborhoods while not producing the affordable housing we need? Are they satisfied spending hundreds of millions of tax dollars to force new development without a fair appeal and review process? Are they working to help residents and the future of our state or to help developers?

We support alternative policies such as redevelopment and revitalization, inclusionary zoning and regional planning. These changes represent real progress and will help us to recover from the devastation of 40B's forced growth, protecting our sustainability.

The forced development imposed on communities by 40B has left municipalities permanently scarred by rapid growth that costs more than it generates in tax revenues. These 40B projects have produced embarrassingly inadequate "affordable" housing contributions while saddling communities with traffic saturation, increasingly unaffordable housing, a lost sense of community and a degraded environment. Most communities can never recover from the negative impact on quality of life that these projects impose.

Join Us Today

Help us move forward towards a sustainable future and strong economy.



www.Repeal40B.com

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The Statistics Speak for Themselves

These agencies continue to spend your tax money on a wildly unsuccessful and destructive program while under-funding the alternative programs that work.

40B Developments		
	1969-1999	2000-2006
Total Developments	499	480
Rental Developments	387	151
Home-Owner Developments	112	320
Total Units	26,264	28,109
Total Affordable Units	19,279	8,337
Total % Affordable	73.4%	29.7%

The state's response to reform efforts: they claim to embrace reforms while supporting devastating measures that hurt communities. In the last year, they proposed a law that makes developers the actual government within their own project and supported limiting the ability of an abutter to appeal 40B proposals while forcing abutters to pay for developers' costs during the appeal. When the Investigator General discovered that developers were exaggerating land costs in order to hide 40B profits, the state's response was to disallow communities from reviewing financial information, thus preventing any ability to monitor deceptive land flips and inflated cost projections. They are protecting and expanding the aspects of 40B that need reform. They should be ashamed!

The U.S Census Reports:

- ▶ Median rent rose by 21% while median renter incomes declined by 2%.
- ▶ Half of Massachusetts renter households are paying more than a third of their income for housing in 2006 (up from 36% in 2001).
- ▶ The percentage of renter households paying *more than half* of their income for housing rose from 17% to 24% in the last five years.
- ▶ Median homeowner costs rose by 31% for those with mortgages and 40% for those without mortgages while income only rose 15.4%

Our situation grows worse as the state continues to force increased construction of 40B projects. They have already built nearly 900 developments on thousands of acres of land. We cannot build our way out of these problems. It is time for progress and we respectfully ask for your help.