

REINVEST MARYLAND (Excerpt)

Identify and Address Regulations and Policies that may Impede Reinvestment

The state and local governments should ensure that regulations and policies facilitate reinvestment through infill, redevelopment, and revitalization, while still protecting public health and safety, and our environment.

Regulations can increase costs, delay construction, reduce future revenue, or make it more difficult to accommodate a project on a particular site, or deter businesses from opening, renovating, or expanding. Alternatively, regulations can incentivize infill, redevelopment, and revitalization.

Some of the most frequently cited issues with respect to regulations and policies include:

- Lack of coordination among and within agencies
- Duration of and uncertainty related to agency reviews
- Lack of communication with the applicant
- Inflexibility on the part of permit review staff
- Inconsistency in the application and interpretation of regulations among different projects, as well as over the life of a project
- Inconsistency in the items that building inspectors require before signing off on occupancy permits, even on subsequent visits to the same site
- Conflicts among different building codes
- Redundant business licenses and fees
- Adequate public facilities ordinances, which can delay projects if adequate facilities do not exist

Identified as potential challenges to achieving the reinvestment goals are regulations related to stormwater management, forest conservation, TMDLs, the energy code, and some State and Federal Highway Administration standards, such as mid-block crossings, curb cuts and access points, and funds for sidewalk construction but not maintenance. Though the stormwater management regulations have built-in flexibility for infill and redevelopment projects, the frequency with which this was identified as a challenge means that there is still opportunity for improvement in communication, education, and implementation.

Fee structures generally do not take differences in market conditions into account. Payments that may not present much of a burden in strong markets may be insurmountable in soft markets.

Adequate public facilities ordinances (APFOs) and impact fees are designed to ensure that the public is well-served by infrastructure and public services, which are valid public purposes. Sometimes, however, these ordinances can have unintended consequences of stalling growth in areas designated for growth and where growth is rational and desirable.

Recommendations

REG 1. The Smart Growth Subcabinet must undertake and oversee improvements to state regulatory review and business permitting processes to reduce permitting costs, achieve faster and better response times, provide more certainty and greater transparency for infill, redevelopment, and revitalization projects in targeted areas. Local governments should be encouraged to do the same.

State and local agencies should:

- a. establish, publicize, and adhere to deadlines for permit review and approval
- b. assign a single point person per agency to coordinate review and ensure clear and regular communication between applicants and reviewing staff
- c. make certain that permit review staff are current on latest technology/best practices, understand state requirements and goals for revitalization, and have access to policy and technical resources when given the opportunity to consider new approaches to meeting a regulatory requirement
- d. investigate methods to expedite permit approvals including, but not limited to, additional resources for reviewing agencies and/or third party reviews
- e. review expediting processes that are designed to support reinvestment projects, including the state's Fast Track process, to ensure that they work as intended
- f. communicate better to discuss and resolve project-specific issues requiring multiple state agency approvals
- g. determine whether approvals can last longer or be extended for infill, redevelopment, and revitalization projects, to avoid permits lapsing or the need to re-apply for new entitlements for use changes over time
- h. examine the potential for tiered fees to make it is less expensive to develop inside targeted areas, and adjust for market conditions

- REG 2. To support infill and redevelopment projects, local jurisdictions should establish procedures to provide as much certainty as possible regarding specific requirements, such as stormwater management, infrastructure, forest conservation, public input, and density early in the development process. State agencies and local governments should make efforts to limit reviews of subsequent submittals to those issues identified by prior submittals, issues that arise due to material changes in the plan, or new information that has come to light. All rules should be in writing and readily accessible.
- REG 3. State agencies and local governments should encourage robust public input during the plan preparation, review and approval process and then commit to greater transparency and predictability during the review of subsequent development projects that are consistent with the adopted plan, particularly in targeted areas. State agencies and local governments should also seek public input at the very beginning of the development process to promote greater transparency and predictability. Within targeted areas, state agencies and local governments should streamline processes, particularly for by-right projects, and strive to minimize frivolous appeals. The Commission will work with amenable local governments to create model mechanisms that may be used by local governments to (a) evaluate a development proposal's consistency with smart growth goals and (b) mediate disputes.
- REG 4. DNR, MDE and MDP must work with stakeholders to evaluate and address concerns that certain requirements discourage infill and redevelopment, including stormwater management and forest conservation, using data to inform the evaluation and technical assistance where needed. Agencies should communicate existing flexibility and alternative compliance options to the development community and local agency staff to further their use in infill and redevelopment. Where action is justified, focus on creative alternatives and technical assistance to achieve compliance.
- REG 5. The Smart Growth Subcabinet must coordinate state agencies' efforts to engage a broad constituency to evaluate and address concerns that conflicts among historic preservation, green building, ADA, fire and related codes make infill, redevelopment, and revitalization more difficult. Agencies should work with interested stakeholders to identify and make every effort to resolve these conflicts.
- REG 6. State agencies should maintain and periodically publish or make available public records of variances granted for specific code issues, coupled with explanations of the justification for the variance, so that anyone involved in the rehabilitation or reuse of an existing building can access the information. Local governments should be encouraged to do the same.

- REG 7. Local governments should investigate innovative approaches to ensure adequate public facilities and, building on the Commission’s continuing work on adequate public facilities ordinances (APFOs), work with the Commission to identify ways to minimize the impact of these ordinances and impact fees on infill, redevelopment, and revitalization in targeted areas where growth is rational and desirable. For cases in which an adequate public facilities ordinance has the effect of stalling a development project in these areas, local governments should strive to rectify the problem that triggered the impediment. Develop strategies for addressing interjurisdictional school and traffic issues to achieve outcomes desired by all impacted jurisdictions. Track compliance with state law that requires local jurisdictions with APFOs to submit reports on their impacts.
- REG 8. The Commission and local governments should work together to examine possible improvements to the local development negotiation and agreement process, evaluating the enabling legislation for Developer Rights & Responsibilities Agreement (DRRA) for ways to enhance DRRAs’ ability to support infill, redevelopment, and revitalization in targeted areas.
- REG 9. The Smart Growth Subcabinet’s coordinating committee, composed of agency staff members, should develop a policy to review Priority Funding Areas law exception requests within the context of a Reinvest Maryland policy, in addition to other established considerations.