

Smart Codes

Smart Growth Tools for Main Street



Smart Codes Rehab in Baltimore

Photo:JohnsHopkins



Smart Codes Rehabilitation Project in Beaver Dam, WI

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We all know it often makes good sense to restore and reuse—rather than replace—older buildings in downtowns and established neighborhoods. But the building codes used in many states can discourage this.

Developers and property owners who wish to build an addition, change the way a building is used, or rehabilitate a vacant building must often comply with the latest building and safety codes for the entire structure, not just the parts being altered. These codes, written with new construction in mind, typically require costly and extensive changes (enlarging windows and widening hallways, for example) even when a comparable level of safety could be achieved in other, less expensive ways.

If the cost of code compliance is very high, the owner may simply decide to neglect, abandon, or demolish the building. Thus Main Street districts that might otherwise undergo physical and economic rehabilitation are left pockmarked with surface parking lots or deadened by forlorn-looking buildings amid debris-strewn, empty lots. Meanwhile, developers opt instead to create easy-to-build sprawl development outside of traditional commercial districts, thereby creating additional competition for downtowns.

But a new form of building codes, called “Smart Codes,” may change the way code inspectors view the older and historic buildings often found on Main Streets. Smart Codes recognize that while older buildings must be safe and accessible, just as new buildings are, they can be evaluated and regulated differently.

Background on Building Codes

Most states now use one or more of the following codes:

- Uniform Building Code, published by the International Conference of Building Officials (ICBO) and used heavily throughout the West and Midwest;
- Southern Building Code, published by the Southern Building Code Congress (SBCC) and used primarily in the Southeast;
- BOCA National Building Code, published by the Building Officials and Code Administrators (BOCA) and used widely in the Northeast; and
- Life Safety Code, published by the National Fire Protection Association. In contrast to the above-mentioned codes, the Life Safety Code focuses primarily on fire safety.

Building industry experts are now urging the use of a single set of codes nationwide to bring the entire design and construction industry under the same standards. A new model building code—the International Building Code (IBC)—has been created by the

International Code Council (ICC), an organization formed by ICBO, SBCC, and BOCA. This council also created an International Existing Building Code (IEBC) which deals specifically with existing buildings. States that choose to adopt this new code can amend it to add a historic preservation section or to include specific provisions to encourage the rehabilitation of older buildings.

The New Jersey Rehab Code: A Model for the Nation

New Jersey adopted a more flexible, user-friendly rehabilitation sub-code in 1998. Building rehabilitation projects that previously were unfeasible are now possible under the new sub-code. In fact, the budget of many rehabs has been cut by 25% due to the new code.

Before the new sub-code's enactment, New Jersey's rehabilitation projects had to follow the so-called "25/50 percent" rule. Under this rule, renovation projects that cost 50% or more of a building's value had to bring the entire building into compliance with standards for new buildings. Rehabilitation projects that cost between 25% and 50% of the structure's value were required to bring altered parts of the building up to new-building standards. Work that cost less than 25 percent of the building's value had to meet standards set by the local code official reviewing the project. Often the 25/50% rule required property owners to spend considerably more than necessary to provide adequate safety. The result: It was harder to fix up empty buildings in cities that were full of vacancies.

Under New Jersey's Rehab Sub-code, older buildings being renovated or altered are not automatically required to meet all modern-day standards. Instead, code requirements are based on the amount of work planned and the current and proposed use of the building. Depending on how extensive the rehabilitation work is, it falls into one of six categories. Using an easy-to-read "cookbook" format, the sub-code provides a "recipe" of code requirements listed for each category. These range from "repair," which involves almost no code compliance requirements, to "addition," which triggers the most stringent code requirements for that portion of the project. The rehab code also has a section with specific provisions for historic buildings undergoing rehabilitation.

Because of the Rehab Sub-code, rehabilitation activity has risen dramatically in New Jersey. In 1998, the first year of the sub-code's implementation, money spent on rehabilitation work in New Jersey's 16 largest cities increased by 40.6 % over the previous year. In 1999 the amount of rehab work was 62.5% higher than in 1997. Also, applications for the federal historic preservation tax credit increased five-fold following the adoption of the New Jersey Rehab Code. Rehabilitation work has increased most dramatically in New Jersey's 16 largest cities, but virtually every building in the state that undergoes a renovation benefits from the new sub-code. For additional information, visit <http://www.state.nj.us/dca/codes/rehab>.

Maryland: "Smart Codes" Mean Smart Growth

In the words of Maryland Governor Parris N. Glendening, a leader of the national Smart Growth movement, “Smart Growth cannot work if people cannot build, if people cannot reuse, if people cannot redevelop. Yes, our buildings must be safe, accessible, and fit the historic character of their surroundings. But what requirements are counterproductive?”

To address the problem of counterproductive regulations, Maryland enacted “Smart Codes” legislation in 2000. The legislation:

- established a new, statewide rehabilitation code designed to make modernizing buildings easier and cheaper; and
- created model development regulations for counties to adopt if they choose.

For its rehab code, Maryland chose to build upon the New Jersey Rehab Sub-code and the “Nationally Applicable Recommended Rehabilitation Provisions (NARRP),” a model code developed by the U.S. Department of Housing and Urban Development (HUD).

Maryland’s rehab code encourages rehabilitation and reuse of existing buildings in at least three ways:

- It merges ten codes governing construction work on existing buildings into one document.
- It separates rehabilitation requirements from those for new construction.
- It sets up an easy-to-understand, graduated scale of code requirements.

Unlike New Jersey’s mandatory program, Maryland’s program is voluntary and does not impose state building code provisions on localities. Instead, each county and municipality may adopt and amend its own building, fire, plumbing and other codes. The Maryland Smart Codes Program attempts to balance respect for local autonomy with the desire for uniformity and simplicity by architects and contractors who work in various communities. The program does this by publishing a statewide code that local jurisdictions may adopt and amend. The state also gives local jurisdictions incentives not to amend the code.

Maryland’s “smart codes” legislation also promotes cohesive, walkable development by offering a model zoning code for “infill” development. This model code grew out of a recognition that places that Marylanders love, like Historic Annapolis, could not be built today under most zoning codes. By rigidly segregating different land uses—e.g., apartments from small shops and restaurants—many modern zoning codes force people to endure long and tiresome commutes through heavy traffic.

Maryland’s “Infill” model ordinance provides model land-use regulations for new construction taking place on vacant lots or other unused land in existing communities. By addressing issues like building setbacks, height, bulk, and parking, the model ordinance attempts to promote infill development that is economically viable and harmonizes with the existing neighborhood. Maryland also has a companion model ordinance, the “Smart Neighborhood” model, that promotes compact new development in

areas designated for growth as “Priority Funding Areas” under Maryland’s Smart Growth Program.

Neither the “Infill” nor the “Smart Neighborhood” code is mandatory, but as with Maryland’s rehab code, local governments are given financial incentives to adopt and implement these codes. If communities prefer to use other codes that meet the goals set forth in these models, they may do so and still qualify for the incentives, provided the state finds that these alternative codes meet the standards of the “smart codes” legislation.

For additional information visit: <http://www.mdp.state.md.us>.

Smart Codes Across the Nation

Other states, too, have adopted special codes to foster the rehabilitation of historic buildings and zoning codes to promote compact development:

- California’s State Historical Building Code (SHBC, Health and Safety Code Section 18950-18961, enacted 1975) offers an alternative code to deal with special challenges facing historic buildings. The SHBC is a state-mandated, performance-oriented code that governs the rehabilitation of historic structures. While the code provides for a cost-effective approach to preservation, it also provides for occupant safety, encourages energy conservation, and facilitates access for people with disabilities. The Historic Building Safety Board, a 21-member committee, interprets the code and helps people use it. Since the program has no reporting requirements, no data are available on the extent to which the code has been used. However, virtually all of the major rehabilitation projects in California that qualify for federal rehabilitation tax credits have used the SHBC. The SHBC has facilitated many revitalization efforts in California, including those in the “old town” sections of San Diego and Old Sacramento. For additional information visit <http://www.dsa.dgs.ca.gov>.
- Massachusetts added “Chapter 34” to the State Building Code in 1979 to encourage building rehabilitation. Like California’s SHBC, Massachusetts’s “Chapter 34” is mandatory for local governments. “Chapter 34” accomplishes several things:
 - It sets forth performance standards for existing buildings;
 - It creates specific “compliance alternatives,” or ways for historic buildings to compensate for code deficiencies through other means;
 - It allows local historic district laws to take precedence over the state building code, insofar as exterior building features are concerned, when the two regulations conflict; and
 - It generally exempts historic buildings from complete code compliance so long as existing hazards are corrected and the building remains as safe after rehabilitation as before.
- Wisconsin enacted ambitious land use legislation in October 1999. *Smart Growth for Wisconsin* ensures that by 2010, every city, village, county and town in the state will

be guided by a local comprehensive plan. The law requires all cities and villages above 12,500 in population to adopt a model “traditional neighborhood development (TND) ordinance” that calls for pedestrian-friendly and mixed-use developments. Adoption of the ordinance does not require that communities have Traditional Neighborhood Development; it simply removes barriers to TND and offers an incentive for such development if the market calls for it. The ordinance is designed to give communities flexibility in their efforts to promote traditional types of development. To download a copy of TND ordinance, visit <http://www.wisc.edu/urpl/facultyf/ohmf/projectf/tndord.pdf>. For additional information on Wisconsin’s smart growth program, visit 1000 Friends of Wisconsin at <http://www.1kfriends.org/smartgrowth>. See also the Wisconsin Historical Society’s web site at www.shsw.wisc.edu/histbuild/smartgrowth/

On the national level, both the International Code Council and the National Fire Protection Association (NFPA) are in the process of developing model building rehabilitation codes along the lines of New Jersey and Maryland. States that have adopted the International Building Code or the NFPA fire code may be able to use these rehab codes without having to go through the code-drafting process themselves. The model rehabilitation codes are due to be published in 2003.

A Local Example: Wichita, Kansas’ Rehab Code:

Wichita, Kansas, adopted a new rehabilitation code in May 2001 that is modeled after the New Jersey Rehab Sub-Code, the Nationally Applicable Recommended Rehabilitation Provisions, and the Year 2000 Edition of the Uniform Code for Existing Buildings. Since Kansas is a “home rule” state, Wichita was empowered to adopt its own code.

To develop this code, the city created a committee of stakeholders, including local architects, engineers, historic preservationists, realtors, builders, business representatives, and others. The development of a rehab code was the major recommendation of the committee’s report on redevelopment incentives. The timeline for the development of the new rehab code was as follows:

- In July 2000, the City Council authorized \$25,000 for consultant assistance, and then approved a contract with Melvyn Green & Associates of Torrance, California.
- In April 2001, the City Manager held a workshop on the proposed final Rehab Code.
- In May 2001, the City Council adopted the new Wichita Rehab Code.
- In August 2001, the City Council provided additional funding for training and seminars on the Rehab Code.

Building code adoption and implementation varies from state-to-state and from locality-to-locality, so Main Street leaders should contact their local building and planning department for further details on how their community can make it easier to rehabilitate existing buildings.

Americans with Disabilities Act

The Americans with Disability Act (ADA) is a civil rights laws enacted in 1990. Among other things, it seeks to improve access to buildings by people with disabilities. With regard to historic buildings, the ADA explains compliance alternatives that allow state and local governments, businesses and organizations to meet their obligations. The ADA contains special provisions to address building alteration challenges facing historic buildings. However, it is the State Historic Preservation Officer, not the private business or nonprofit organization that owns the building, who determines the applicability of these provisions and to recommends the level of compliance required. For more information: www.usdog.gov/crt/ada/adahom1.htm

Conclusion

Smart codes – and building codes with special provisions to address rehabilitation issues – can make a real difference to Main Street revitalization efforts. Main Street leaders should explore the opportunities available through such codes to provide incentives for property owners and businesses to renovate downtown buildings.

Resources

- New Jersey Department of Community Affairs—
<http://www.state.nj.us/dca/codes/rehab>. Copies of New Jersey’s Rehab Code are available upon request. New Jersey also provides an introductory Information Kit that includes a summary of the Rehab Code with an explanation of how it works. For jurisdictions that rely on model codes other than BOCA, New Jersey has checklists that provide guidance on how to make other model codes more “rehab friendly.” To obtain a kit write to: Code Assistance Unit, Department of Community Affairs, Division of Codes and Standards, P.O. Box 802, Trenton, NJ 08625. Or fax a request to: (609) 984-7717
- Maryland Department of Housing and Community Development—
<http://www.mdp.state.md.us>.
- Wisconsin Smart Growth—<http://www.1kfriends.org/smartgrowth>.
- HUD’s Office of Policy Development and Research has many programs to help groups revitalize existing communities. Publications include “Nationally Applicable Recommended Rehabilitation Provisions” (the NARRP), a template for building code reforms and a “Community Guide to the NARRP and Rehabilitation Building Codes,” with step-by-step instructions on improving local codes. In addition, limited funding is available for a HUD representative to present an overview of rehabilitation

codes to state and local groups and to advise communities on how to take action. To find out more, contact Dr. Carlos Martin at carlos_e.martin@hud.gov. HUD also recently published *Smart Codes in Your Community: A Guide to Building Rehabilitation Codes*. Copies of this report can be downloaded at <http://www.huduser.org/publications/destech/smartcodes.html>.

- International Code Council web site, go to www.intlcode.org/codes/dev_sched.html

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