

# Unlocking the Commonwealth

New housing and growth policies to help  
Massachusetts realize its full potential



Massachusetts Housing Partnership

November 5, 2014



This report is respectfully submitted to the General Court pursuant to Section 33 of Chapter 30 of the Massachusetts General Laws.

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# Unlocking the Commonwealth

Massachusetts is known as one of the most forward-thinking and innovative states in the U.S. Throughout the state's history, our elected leaders have made prudent, long-term decisions to make the Commonwealth a better place for future generations.

Today, that tradition of strong political leadership and visionary legislation is needed again to enable the private sector to build enough new housing to meet the needs of our existing population and to attract and retain the next generation of young families.

The obstacles to new housing production in Massachusetts, documented in this report, have been mounting since the 1980s. It is not any one policy that has failed, but rather many factors that have made Massachusetts one of the most difficult places in the country to build new housing.

There is new evidence that the lack of good housing choices in Massachusetts is hampering the state's economy and our ability to keep pace with other regions with which we compete for jobs.

We have an opportunity to get this right. Most citizens of Massachusetts would agree that we need to:

- Allow enough housing construction to meet the needs of current and future residents and keep our state economically competitive.
- Require that new housing be developed in a manner that protects natural resources, preserves open space and enhances our quality of life.
- Plan ahead so that developers have clear guidance about what kinds of housing may be built in what locations.
- Ensure that the impacts of housing growth are equitably shared and do not unduly burden city and town budgets.
- Give cities and towns the tools to shape their own destiny and expand housing options in ways that maintain their own community character.

Right now, Massachusetts is failing to meet *any* of these objectives. It is time for more fundamental change. This report explains the consequences of our current policies and lays out several common sense approaches that would truly unlock a better Commonwealth.

# Massachusetts today:

Prices high, production low, market not responding to needs of people and the environment

There is no shortage of data indicating that our housing production system is failing to address rising housing costs, protect our natural environment or respond to changing preferences for different types of housing.

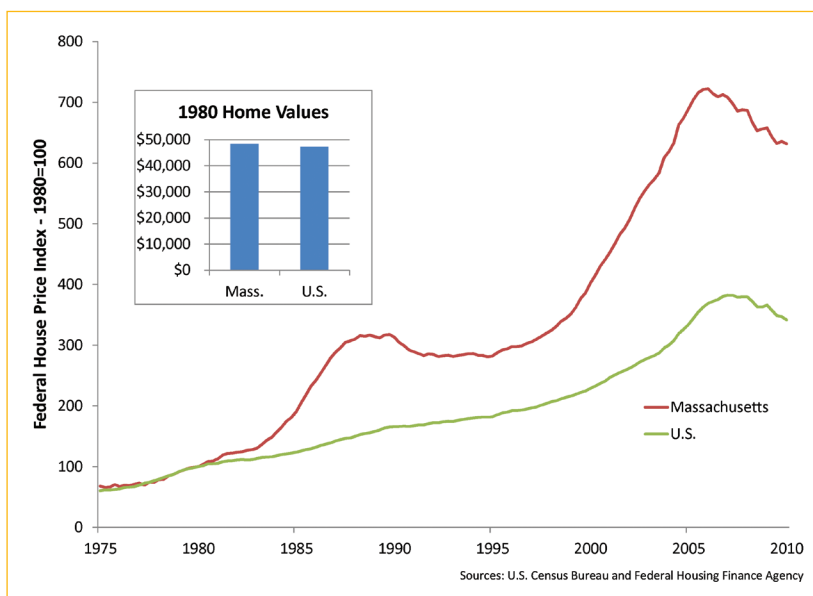


Figure 1:  
MA Home Prices Rise Faster Than Any Other State

**Rising prices:** Massachusetts home prices were once in line with the rest of the nation. Not anymore. Since 1980, when our home prices were near the national average, they have increased more than sixfold and grown faster than any other state in the U.S., according to the Federal Housing Finance Agency's House Price Index (Figure 1).

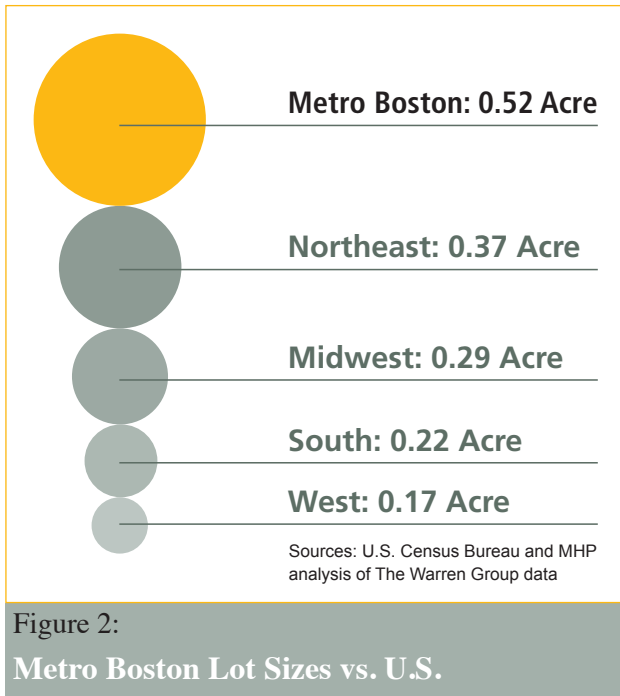
This steady climb has made the state and its primary job center, Greater Boston, one of the most expensive places to live. According to Paycheck to Paycheck, the National Housing Conference's

annual report on housing affordability, nine out of 10 metro areas in the U.S. have lower home prices and lower rents than Greater Boston. Our high housing costs set us apart from many of the regions we compete with for jobs in industries such as higher education, computer technology, financial services and biotech.

**Less production:** Instead of responding to rising prices with increased production, we have produced less housing, and shifted away from multifamily and toward more single-family homes and larger lots.

This is especially true in Greater Boston, according to data compiled by Harvard's Rappaport Institute. Annual housing production in the region dropped by 52 percent between the 1960s and the 1990s and during that same period multifamily housing production dropped by more than 80 percent. While multifamily housing rebounded to 45 percent of regional housing production over the last decade, it is still woefully short of demand, as outlined later in this report.

**Larger lot sizes:** The shift toward single-family homes has also had a huge impact on the environment. A recent MHP analysis of 155 cities and towns inside I-495 found the median lot size for new single-family homes produced from 2003 to 2012 was more than a half acre. (The *average* lot size in these communities was more than an acre, or the size of an NFL football field.) Lot sizes in metro Boston are larger than any other region in the U.S., and more than three times larger than the western U.S. (Figure 2). Not only are we building much less housing than other parts of the country, but we're also consuming much more land for the housing that does get built.



### Not building what market wants:

While our housing production system has been shifting toward single-family homes, housing market demand has been going in the opposite direction. According to the Metropolitan Area Planning Council (MAPC), the preference for single-family occupancy in Greater Boston is declining, especially among Millennials and recently retired Baby Boomers. From 2000 to 2010, occupancy of single-family homes by 25- to 34-year-olds decreased by 6.9 percent, while occupancy by 65- to 69-year-olds decreased by 4 percent.

Declining demand for single-family homes can be attributed not only to our limited housing supply, but to changing consumer preferences. In a 2013 national survey by National Association of Realtors,

55 percent of respondents would prefer a small home within walking distances to schools and services over a larger home and yard that is beyond walking distance. A 2013 survey by the Urban Land Institute also found that 61 percent prefer smaller homes with a shorter commute, and over 50 percent prefer communities with a mix of incomes, public transit, and proximity to neighborhood amenities.

The Commonwealth has used a number of strategies to promote more multifamily housing production. In 2012, the Governor set a statewide goal of permitting 10,000 multifamily units per year. Five infrastructure programs were consolidated into the Executive Office of Housing and Economic Development, renamed MassWorks and prioritized to support multifamily housing near job centers. The state has encouraged the use of incentive tools like Chapter 40R and land-use planning concepts that identify priority areas for development. Since 2007 it has financed the construction or preservation of more than 24,000 affordable housing units.

While the Commonwealth's multifamily housing production has almost tripled since 2009, it is still not at the levels necessary to meet demand. In 2013 (the first year under the multifamily housing goal), municipalities reported to the Commonwealth that they issued 8,607 building permits for multifamily units. This surge included many projects that had been stalled in the previous year. In 2014, the number is likely to be lower.

**Demographic time bomb threatens to make things worse:** The state’s aging population threatens to make our housing situation worse. More than a million Baby Boomers (those born between 1945 and 1970) are projected to leave the Massachusetts labor force by 2030, yet we do not have enough current residents to fill those jobs or enough housing production to allow those jobs to be filled.

According to projections from MAPC, we need to build 500,000 new housing units in Massachusetts between 2010 and 2040 simply to maintain our existing base of employment, without any substantial job growth. 87 percent of that projected housing need is in Greater Boston. Because many of those Baby Boomers will be downsizing and selling their single-family homes to younger families, about two-thirds of the unmet housing need projected by MAPC between now and 2040 is for multifamily housing.

**17,000 units per year needed:** Simply to keep the Massachusetts economy on an even keel, we need to increase total housing construction to about 17,000 units per year, which is still far below what we were producing through most of the 1960s, 70s and 80s (Figure 3). The greater challenge is that about

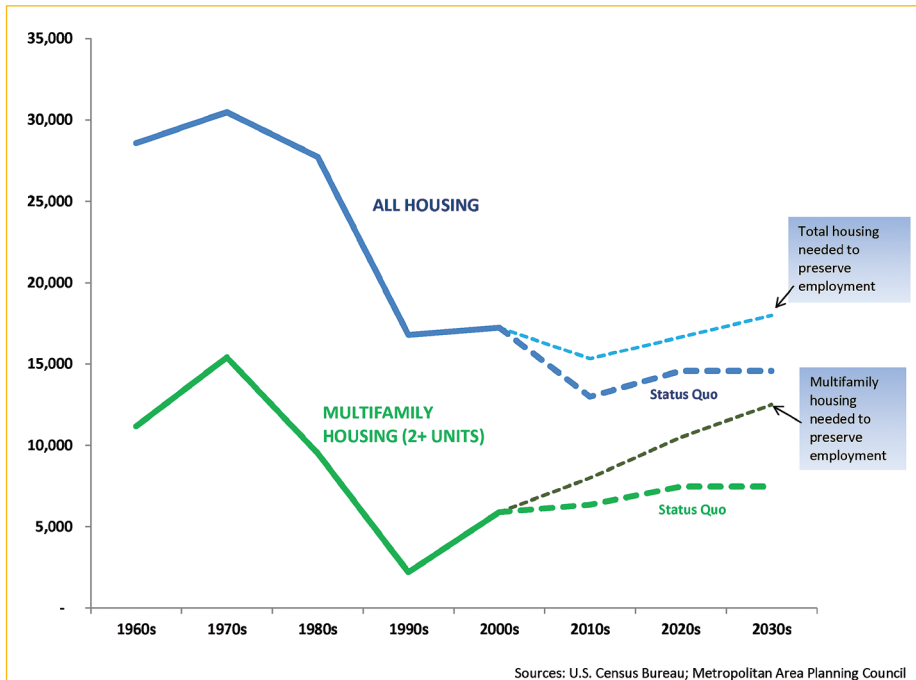


Figure 3:  
Annual Housing Production in Massachusetts by Decade  
and New Housing Needed by 2040

10,800 of the new units we produce each year need to be multifamily housing. A greater emphasis on multifamily is more responsive to consumer demand and better protects our natural resources.

The danger to our economic health goes beyond the impact of state-level demographic shifts. Workers need to *want* to move here instead of somewhere else. Our ability to attract critical new workers to Massachusetts

will depend on our ability to provide the right housing options at reasonable prices. New research by MHP indicates that our current housing production system is already hurting our ability to compete with other states.

**Innovation industries are critical to our economic success:** MHP has identified a set of “innovation industries” vital to our economy: these industries directly employ 15 percent of the Greater Boston workforce at higher-than-average wages and include healthcare research and manufacturing, higher education, technology, scientific research and development, and financial services. The presence of this core

group of innovation industries supports countless other economic activities in the Commonwealth; recent research on innovation economies by UC Berkeley economist Enrico Moretti found that each new job in the software, technology and life-science industries generates five additional new jobs in the local economy.

Continued success in these industries is not guaranteed. Other metro regions across the country have similarly strong innovation economies, and we compete for these jobs with those areas. To evaluate Greater Boston's competitive position, we examined how our region stacked up against competitors in terms of the ability to attract and retain workers in knowledge-intensive innovation industries.

**Greater Boston has a strong innovation economy:** In 2012, Greater Boston employed over 350,000 people in its innovation industries, a number only exceeded by innovation employment in the Washington, DC, Los Angeles, and New York metro areas (Figure 4). Our industry mix is well balanced among employment in higher education, computer-related fields, consulting services and financial services. As a percentage of employment, we have the second-highest concentration of innovation workers in the country after Silicon Valley, with the additional advantage that innovation jobs in Greater Boston are not heavily concentrated in just one or two industries.

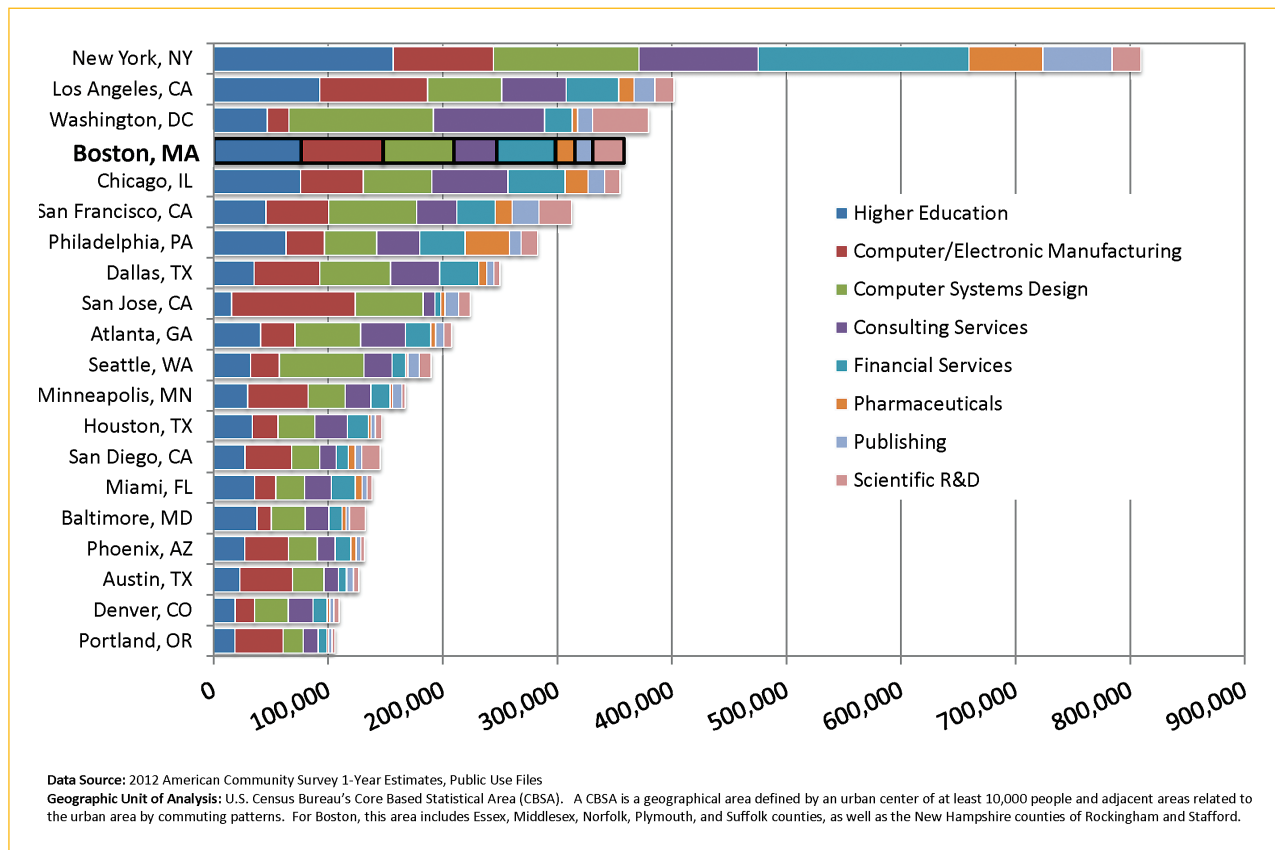
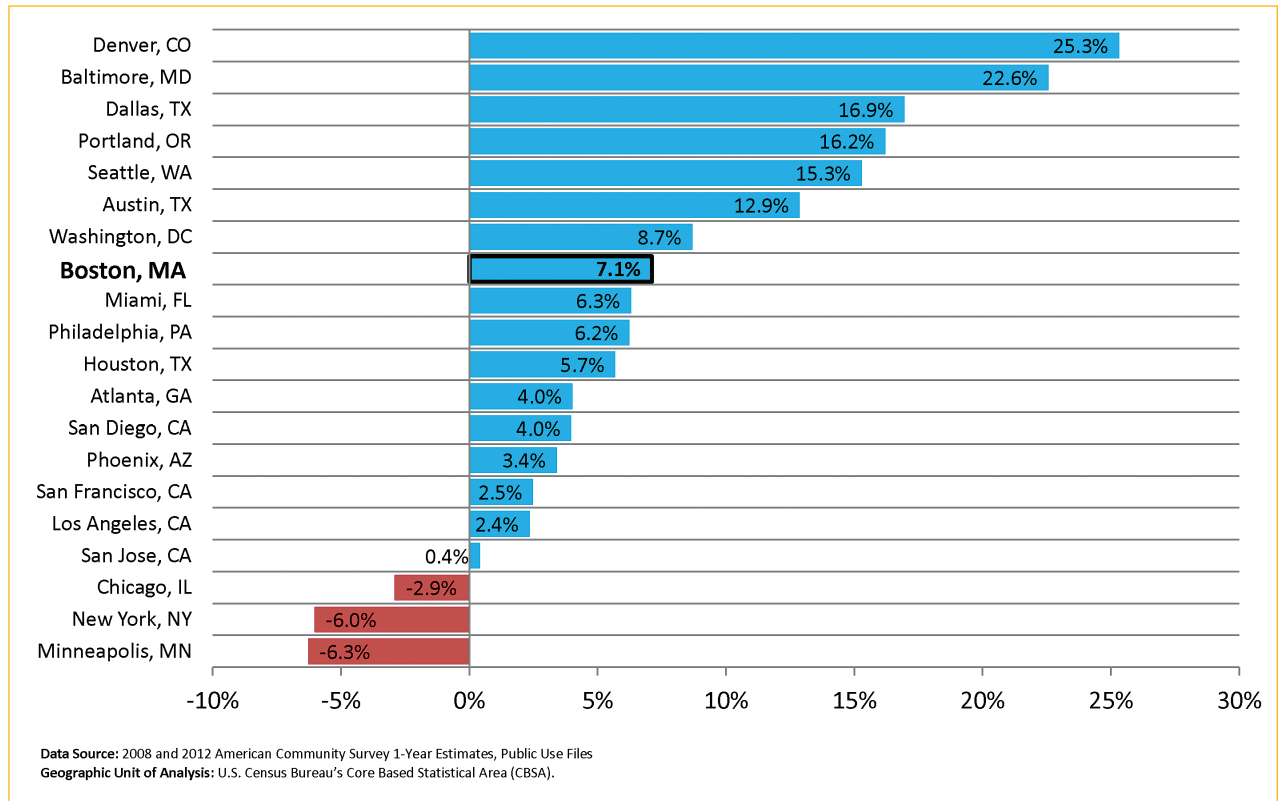


Figure 4:  
Top 20 U.S. Metropolitan Regions for Innovation Industry Employment

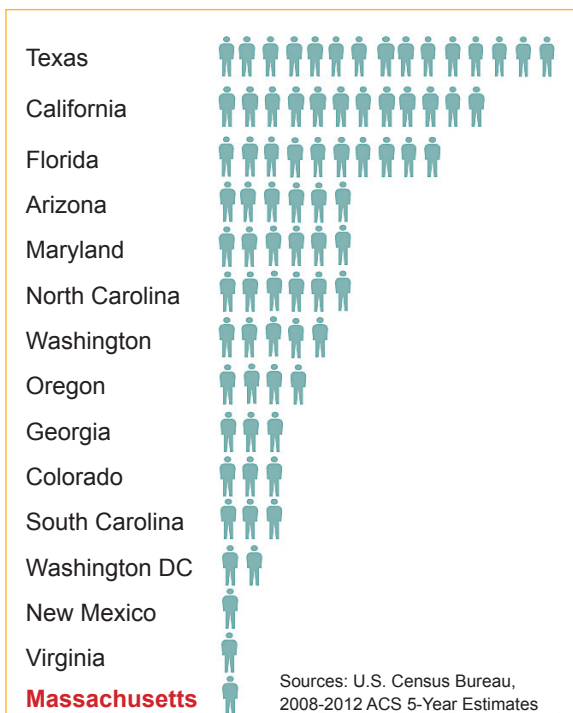
**Other cities adding workers at higher rates:** While Greater Boston still has among the largest innovation economies by size, the competition is growing, and many regions are adding innovation workers at significantly higher rates (Figure 5). From 2008 to 2012, Greater Boston’s innovation employment grew by 24,000 workers, or 7 percent. This rate placed the region eighth in growth rate among top innovation employment regions. Four of the seven fastest growing regions—Dallas, Washington D.C., Seattle and Baltimore—also gained more workers in absolute numbers than Greater Boston, and Denver was close behind, with a gain of 22,000. While some of the fastest growing regions in this time period have relatively smaller innovation economies than Greater Boston’s, their absolute employment gain is comparable to ours, suggesting that these regions are indeed becoming major markets for these industries.



**Figure 5:**  
**Top 20 U.S. Metropolitan Regions for Innovation Industry Employment**  
Growth in Innovation Industry Employment, 2008 – 2012

**Other states doing better job recruiting workers:** Our growth in innovation employment is driven by internal and external forces: individuals already residing in Massachusetts may become part of the innovation workforce, and individuals may move to Massachusetts from other states or foreign countries to work in innovation industries. The innovation workforce is highly mobile: people employed in these industries are more likely than others to have moved within the year, and their relatively high pay suggests that they have the financial resources to relocate, according to the American Community Survey for 2007–2011.

Recent data suggests that other states are doing a better job than Massachusetts of attracting and retaining innovation workers. Data on migration among innovation workers indicates that, from 2008 to 2012, 14



**Figure 6:**  
**Net In-migration of Innovation Workers Relative to Massachusetts**

other states had a higher net state-to-state migration of innovation workers than Massachusetts (Figure 6). In addition, several states saw big net gains in their innovation workforce *directly from Massachusetts*, and the imbalance is substantial: Massachusetts lost 170 innovation workers to Texas, 180 workers to Florida and 190 workers to Colorado for every 100 workers it gained from those states.

### Housing major factor in attracting

**workers:** Housing supply is undeniably a major factor in the competition among metro areas for key workers. According to a recent Census Bureau report, those who move between states are increasingly citing housing as the primary reason they decided to relocate. Metro areas in the states that have been faced with increasing demand from migrants, including workers in our innovation industries, are doing a lot more than Greater Boston to increase housing supply in order to stay competitive and to meet the rising demand.

Innovation Growth Ranking	Metro Area	% Change in Innovation Employment 2008-2012	% New Housing Production (built since 2000)	Median Rent
1	Denver, CO	25%	19.4%	\$ 1,156
2	Baltimore, MD	23%	11.3%	\$ 1,232
3	Dallas-Fort Worth, TX	17%	25.3%	\$ 987
4	Portland, OR	16%	17.8%	\$ 992
5	Seattle, WA	15%	18.5%	\$ 1,264
6	Austin, TX	13%	33.6%	\$ 1,115
7	Washington, D.C.	9%	17.5%	\$ 1,574
8	<b>Boston, MA</b>	<b>7%</b>	<b>8.9%</b>	<b>\$ 1,622</b>
9	Miami, FL	6%	14.8%	\$ 1,250
10	Philadelphia, PA	6%	9.1%	\$ 1,156
11	Houston, TX	6%	28.1%	\$ 952
12	Atlanta, GA	4%	28.3%	\$ 977
13	San Diego, CA	4%	12.8%	\$ 1,512
14	Phoenix, AZ	3%	29.5%	\$ 966
15	San Francisco, CA	2%	9.2%	\$ 2,263
16	Los Angeles, CA	2%	7.4%	\$ 1,550
17	San Jose, CA	0%	10.5%	\$ 1,965
18	Chicago, IL	-3%	12.2%	\$ 1,093
19	New York, NY	-6%	8.2%	\$ 1,638
20	Minneapolis, MN	-6%	16.1%	\$ 1,062

higher production than Boston       lower rents than Boston  
 lower production than Boston       higher rents than Boston

Sources: U.S. Census Bureau, 2008 and 2012 ACS 1-Year Estimates

**Figure 7.**  
**20 Largest Innovation Economy Metros**  
Ranked by Growth Rate in Innovation Economy Employment from 2008–2012

Not only are we producing less housing than we have historically, we are producing less housing than many of the places with which we compete for jobs and residents. In 2013, 12 of the top 20 metro areas for innovation employment permitted more new housing units than Greater Boston. Unsurprisingly, expanding metro regions in Texas, and the country's largest metro areas of New York and Los Angeles, top the list, but more built-out regions like Seattle, Washington D.C. and Minneapolis are also permitting more new units than Greater Boston, according to the annual U.S. Census Bureau Building Permits Survey.

By actively expanding their housing stock, many of these regions are achieving a better equilibrium between supply and demand than Greater Boston. This response to demand allows for growth while maintaining relatively affordable rents; all seven of the major innovation economies that are growing at a faster rate than Greater Boston have a higher percentage of new housing stock and lower median rents. Meanwhile, the metro areas with less new housing stock and higher rents than Greater Boston are languishing behind the pack in terms of growth in innovation workers (Figure 7—see previous page).

**To compete, we need to change:** Greater Boston is being out-built, out-priced and generally out-competed by several regions. These metro economies are becoming increasingly similar to ours, and these regions are successfully changing the flow of key workers in their favor. Our own inability to adequately supply housing in response to demand will eventually impede the growth of the innovation industries critical to our region's economic success.

If we want to remain a dominant player in the national innovation economy, we must engage in deliberate and aggressive planning that addresses the obstacles to housing production. Many of the places we compete with have been producing housing at a much higher rate, resulting in greater affordability and more housing choices for new residents. Many of those places offer residents a set of amenities and standard of living comparable to our own—at a lower cost. Jobs in Greater Boston generally pay more than jobs elsewhere, but our higher salaries have not kept pace with our high housing costs, and housing cost burdens in Massachusetts are among the highest in the country.

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To address the serious economic challenges outlined in this report, we urge the Legislature to consider the following recommendations. These proposals should be considered as part of larger state housing and economic growth strategy and are not intended to address housing needs at every income level or the needs of every community or region. Unlike other places that seem willing to grow at any cost, Massachusetts can once again be a national leader and take a balanced approach that allows the Commonwealth to remain the unique and vibrant place we know it to be.

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# Legislative Recommendations

## 1. Require that every zoning ordinance and bylaw in the Commonwealth provide reasonable opportunity to construct multifamily housing.

### **Proposed legislation:**

Amend Chapter 40A of the General Laws by adding the following section:

Section 3A: All zoning ordinances and by-laws shall allow multifamily housing, including housing suitable for families with children, provided that allowance of multifamily housing in appropriate districts shall not preclude the establishment of zoning districts where only low-density development is permitted in order to protect natural resources.

### **Why is it needed?**

According to recent statewide projections by the Metropolitan Area Planning Council, our current housing production is substantially less than needed to sustain a strong state economy through 2040. Two-thirds of the new housing we need to meet anticipated demand is multifamily housing such as apartments and townhouses. Against that backdrop more than a third of our cities and towns have permitted nothing but single-family homes over the last decade, and 207 of our 351 cities and towns have gone at least a decade without permitting any multifamily housing developments of five or more units. If we continue on our current path, and do not address local resistance to multifamily housing, we will weaken the state economy, generate less state aid to support local public schools and other important services, and continue land use practices that are damaging to the environment.

### **Where else has it been effective?**

Multifamily housing is a required element of local planning and zoning in many other states. Zoning in Rhode Island, for example, must conform to a local plan approved by the state Division of Planning. The local plan must address “unmet housing needs of the existing and future population” including the need for multifamily housing and housing for families with children. Local zoning in New Hampshire must create “reasonable opportunity” to build housing for households with moderate incomes, including rental housing. Every local zoning code in California must identify specific areas where multifamily housing development is allowed.

### **What are the alternatives?**

Without a multifamily requirement, a significant share of new housing in Massachusetts will continue to be single-family homes on large lots, typically far from jobs and transportation. An alternative might be to expand incentive payments for cities and towns to zone for multifamily housing by expanding the state’s smart growth zoning law, Chapter 40R. Financial incentives alone would be prohibitively expensive, however, since Chapter 40R has produced less than 2,500 permitted multifamily units in 10 years—meeting less than 3 percent of the state’s multifamily housing demand—at a cost to the Commonwealth of more than \$17 million.

## 2. Give cities and towns flexibility in meeting the multifamily zoning requirement by establishing safe harbors that reflect regional differences.

### **Proposed legislation:**

Add the following to new Section 3A of Chapter 40A of the General Laws (created pursuant to the previous recommendation):

A city or town shall be deemed to have satisfied the foregoing requirement if the Department of Housing and Community Development, acting directly or through a regional planning agency as its designee, determines that the city or town has met a safe harbor standard based upon the proportion of developable land zoned for multifamily housing and the types of multifamily housing that are allowed. The Department shall promulgate and periodically update safe harbor standards that reflect anticipated market demand for multifamily housing and differences between regions of the Commonwealth and between sizes and types of communities.

### **Why is it needed?**

While data shows that new multifamily housing is needed statewide, and while multifamily housing exists in some form in every city and town in the Commonwealth, there is no one-size-fits-all solution. Adherence to the safe harbor standards would be at local option and cities and towns that meet the standards would have assurance that their multifamily zoning complies with the requirements of the state zoning act and is protected from legal challenge. Active involvement by the state's regional planning agencies would help ensure that no city or town is held to unreasonable expectations. Unless expectations for multifamily zoning are established by administrative action, the definition of reasonable multifamily zoning would have to be established by the courts, resulting in unnecessary conflict and delay.

### **Where else has it been effective?**

Many states provide guidance to cities and towns on projected housing needs. In the state of Washington, for example, housing goals are established at the regional (county) level and local land use plans and zoning codes must be sufficient to achieve those regional housing objectives.

### **What are the alternatives?**

A stand-alone requirement that each city and town make reasonable accommodation for multifamily housing could be adopted by statute, with enforcement entirely by the courts, though without common standards the implementation would likely be protracted and difficult. Requiring each city and town to permit a specific number of units, as required in New Jersey in various forms since the 1970s, would be highly contentious and is a much less favorable alternative for Massachusetts.

### 3. Increase local aid for cities and towns that allow housing growth and allow impact fees to defray infrastructure costs.

#### **Proposed legislation:**

1. Entitle cities and towns to a recurring local aid payment for each new unit of housing that addresses the state's critical unmet housing needs (e.g., multifamily units within a half mile of schools, services or transportation or single-family homes on modest lots of 5,000 square feet or less).
2. Authorize development impact fees as recommended by the Patrick Administration's Zoning Reform Task Force in 2008.

#### **Why is it needed?**

Cities and towns have significant discretion in permitting new housing and it is unreasonable to expect local officials to take action that would have an adverse financial impact on their own communities. While the impact of housing development on local budgets is often exaggerated, the impacts may at times be significant. Local cost impacts are most likely to be a problem where the new housing is moderately priced, where the bedroom mix is attractive to families with children, and where local public schools are at or near capacity. An analysis for MHP by the UMass Donahue Institute found that more than 70 percent of the increased revenue resulting from increased housing growth would flow to state government through income and sales taxes, while less than 30 percent would flow to cities and towns through increased property taxes. The fiscal benefits of growth should be shared more equitably with the cities and town that are facilitating and bearing the impacts of that growth—particularly the growth of multifamily housing in locations with good pedestrian and transportation access. A proposed definition of qualifying housing units and a formula for the new local aid payments and the projected growth in state revenue that would support them is currently being modeled by MHP in collaboration with UMass.

Impact fees would be paid to cities and towns by housing developers in accordance with a predefined capital plan and fee schedule. State-authorized impact fees would replace open-ended negotiations about payment for off-site impacts that create needless delays and make housing development unpredictable.

#### **Where else has it been effective?**

To our knowledge, no other state provides an across-the-board local aid increase for new housing that aligns with state growth priorities. Some other states (such as Connecticut) have adopted much more narrowly tailored incentives similar to Massachusetts Chapter 40R. Development impact fees are not currently allowed in Massachusetts yet they are a widely accepted practice used by local jurisdictions in most of the U.S.

#### **What are the alternatives?**

A more narrowly tailored cost guarantee to ensure that cities and towns are compensated through local aid for the net municipal costs of new housing development is also being modeled by MHP/UMass. Similar results might be achieved by adjusting the requirements and the incentive payment standards associated with the state's smart growth zoning law, Chapter 40R. Another alternative is to modify the Chapter 70 school aid formula to be "growth neutral"—so that cities and towns are no worse off financially as a result of issuing permits for family housing. That approach may be problematic, though, because many of the communities experiencing housing growth already exceed the foundation spending levels upon which Chapter 70 is based.

## 4. Allow cities and towns to regionalize land use regulation and engage in interlocal development compacts at local option.

### **Proposed legislation:**

1. Allow any town to form a consolidated planning board, zoning board of appeals, conservation commission or board of health with contiguous communities, or to delegate those functions to a regional planning agency, upon approval of articles of organization for each such consolidated board or commission by a two-thirds vote at an annual town meeting.
2. Allow contiguous cities and towns, by majority vote of their respective legislative bodies and with the approval of the Commissioner of Revenue, to enter into an interlocal agreement to share the costs and revenues associated with real estate development, either generally or with respect to the development of a specific parcel or district.

### **Why is it needed?**

Massachusetts has some of the smallest land use jurisdictions in the U.S., with local land use boards serving a median population of less than 11,000 residents each. That not only results in 351 different land use standards across the state, but it is especially burdensome for smaller towns with volunteer boards and no professional staff. Massachusetts also makes it needlessly difficult for larger communities to collaborate to share land use planning and growth objectives. While a few of those collaborations have taken place (such as a recent agreement between the cities of Medford, Malden and Everett to share the property taxes revenues from the River's Edge development) that practice is burdensome and unpredictable because it currently requires authorization through special acts of the Legislature. Providing that legislative authorization in advance, with checks and balances to protect state and local interests, will significantly encourage collaboration and accelerate the public benefits of regionalization.

### **Where else has it been effective?**

Most states in the U.S. regulate land use at the county level or put land use planning and regulation in the hands of larger jurisdictions than most cities and towns in Massachusetts. Interlocal tax-sharing agreements are also not uncommon and have been particularly effective since the mid-1990s in Minnesota. Inter-municipal agreements for the shared purchase of goods and services by cities and towns in Massachusetts have been authorized through legislation enacted in 2008.

### **What are the alternatives?**

The alternative pursued by most other states is to regulate land use at the county or regional level. Otherwise, without a blanket statutory authorization, further efforts at regionalization and regional cooperation in Massachusetts will depend on a cumbersome, unpredictable and often lengthy legislative approval process. As a further incentive for voluntary regionalization the Commonwealth could reimburse regional planning agencies for the costs of performing local permitting functions. Increased local aid could also be provided to towns that combine their local permitting boards, similar to the state policy of providing increased reimbursement to regional school districts.

## 5. Make open space residential development (so-called cluster housing) a universal standard for single-family housing development.

### **Proposed legislation:**

Require that cluster development (as defined in the Massachusetts Zoning Act, M.G.L. c.40, section 9) be allowed as-of-right in all zoning districts that allow construction of detached single-family homes.

### **Why is it needed?**

Massachusetts needlessly consumes thousands of acres of open space each year to build single-family homes on large lots, even though sound land use planning would result in production of more homes on smaller lots, with more open space and increased natural resource protection. To meet constitutional standards, local zoning bylaws and ordinances must allow some kinds of housing development as-of-right (i.e., development that must be approved if specific conditions are met). Most communities have designated conventional “grid” subdivisions, with homes typically spaced far apart on public ways, as the by-right form of development. Some communities also allow construction of single-family homes on smaller lots, located closer together, surrounded by open space that is protected from further development. That approach is typically described as cluster development, open space residential development, or natural resource protection zoning.

In most communities, cluster developments may not be approved until the developer has first demonstrated how many homes could be developed through a conventional subdivision plan. Typically that requires engineered subdivision plans that will never be used and septic system “perc” tests on phantom lots that will never actually be developed. With cluster development allowed entirely as-of-right, developers would submit a single set of plans that meet the community’s zoning and subdivision requirements. Local adoption of cluster development as-of-right has long been recommended as a best practice by the Massachusetts Executive Office of Environmental Affairs.

### **Where else has it been effective?**

Cluster development is specifically authorized by law in other states, but to our knowledge no state has yet established cluster development as a universal, as-of-right form of single-family housing development.

### **What are the alternatives?**

A stronger policy (as adopted by the towns of Brewster, New Salem, Shutesbury, and Wendell) would make cluster subdivisions the only form of single-family development allowed as-of-right, with conventional subdivisions only allowed by special permit. Otherwise the only reasonable alternative is to continue the status quo, where cluster development is sometimes encouraged but rarely required. The current state zoning act has resulted in single-family lot sizes in Massachusetts more than double the national median.

## 6. Require that any local wetland bylaws and septic regulations that exceed state standards be based on sound environmental science.

### **Proposed legislation:**

After a two-year transition period, allow local non-zoning wetlands protection bylaws that exceed the requirements of the state Wetlands Protection Act (M.G.L. c. 131, section 4) and local septic regulations that exceed the requirements of Title 5 of the State Environmental Code (as authorized by M.G.L. c.21A, section 13) only with prior review and approval by the Commissioner of Environmental Protection. Such approval would require a finding, based on submission of technical evidence, that state regulations are inadequate to protect wetlands and groundwater quality in that city or town due to unusual physical or environmental conditions that do not exist in the Commonwealth as a whole. During the transition period, the Commissioner would be directed to evaluate what existing local regulatory practices (such as the model non-zoning wetland protection bylaw recommended by the Massachusetts Association of Conservation Commissions) would more appropriately be incorporated into unified, statewide regulations.

### **Why is it needed?**

A survey by the Rappaport Institute and Pioneer Institute found that 157 out of the 187 cities and towns in eastern Massachusetts had adopted septic regulations or wetlands bylaws that exceed state standards. There is no requirement that such regulations be based on sound environmental science, and in some cases they are thinly-disguised efforts to obstruct or stop housing growth. Some towns, for example, only allow soil tests for new construction during a few months of the year, even though state regulations permit those tests to occur at any time. Some towns establish no-build zones and buffer zones hundreds of feet wide that limit or prohibit housing in areas that are not currently recognized for protection under the state Wetlands Protection Act. If there are systemic weaknesses in the state's environmental protection laws, they should be addressed at the state level so that the same rules apply in all 351 cities and towns.

### **Where else has it been effective?**

No other state appears to have a comparable structure of state and local environmental regulations. According to data from the Environmental Law Institute, only 15 states in the U.S. have adopted broadly-applicable wetlands protection laws. Massachusetts is one of the only states that allows individual cities and towns to impose wetland regulations that exceed state standards. While it is not uncommon elsewhere for septic systems to be regulated at the local level, it is typically in accordance with state or regional standards.

### **What are the alternatives?**

The status quo is not only burdensome, but it contributes to large lot development of single-family homes. An alternative approach would allow local wetland bylaws and septic regulations that exceed state standards only if the community demonstrated to the Commonwealth that its zoning was amended to allow additional housing density elsewhere in the community to compensate for the impact. That is a strong alternative in theory, though state enforcement would be difficult since it would depend on a thorough understanding of each community's underlying zoning.

## 7. Reduce or eliminate groundless land use appeals.

### **Proposed legislation:**

Require that any appeal of a land use decision made by a planning board, zoning board of appeals or other special permit granting authority pursuant to Chapter 40A be presented to a newly created three-member permit appeal review council whose members are appointed by the state Department of Housing and Community Development, the Executive Office of Environmental Affairs, and the Massachusetts Association of Regional Planning Agencies. If the council finds that the appeal lacks “substantial merit,” the appellant would still have a right to pursue the appeal but only after posting bond and assuming responsibility for the prevailing party’s legal fees.

### **Why is it needed?**

Land use appeals without underlying merit are frequently used as a tactic to delay and obstruct housing development. These appeals have been taken all the way to the Massachusetts Supreme Judicial Court and in some cases have delayed worthwhile housing development projects for a decade or longer. In some cases developers have withdrawn permit applications because they cannot afford the cost and delay of fighting appeals. In other cases settlement of groundless abutter appeals has caused developers to needlessly downsize worthy, community-supported projects, such as the current redevelopment of the Boys and Girls Club site in Somerville’s Union Square.

### **Where else has it been effective?**

The Massachusetts Medical Malpractice Tribunal system has successfully utilized a similar approach to weed out frivolous medical malpractice suits in Massachusetts since it was established by the Legislature in 1976 (M.G.L. Chapter 231, Section 60B).

### **What are the alternatives?**

The status quo has proven to be costly and problematic. There may be merit to alternative local dispute resolution methods that have been proposed in recent state zoning reform legislation, but those methods will only be effective when residents are trying to address specific concerns in good faith and are not simply seeking to delay or obstruct development.

## 8. Restore an Office of State Planning.

### **Proposed legislation:**

Restore an Office of State Planning—with a statutory mandate to coordinate data and policy analysis across housing, economic development, environmental and transportation agencies—while allowing flexibility for future administrations to determine where that office fits within the organization of state government (i.e., whether it is located within the governor’s office or within a cabinet-level department).

### **Why is it needed?**

Most states have an interagency planning office responsible for data collection, analysis, mapping, and policy development related to economic growth, housing, transportation and environmental protection. During the 1940s and 1950s, the Massachusetts State Planning Board was instrumental in guiding the growth of our modern Commonwealth by aligning new development with highways, mass transit, and infrastructure such as public water and sewer. Massachusetts has not had an Office of State Planning since 1979.

There are many technical experts within state government on issues relating to planning and growth, but they are scattered across at least four cabinet-level departments and dozens of agencies. Most critical policy decisions about growth in Massachusetts cut across those agency lines. A new Office of State Planning would frame those questions to allow more informed decisions, would strengthen the state’s relationship to existing regional planning agencies, and be responsible for the technical analysis to develop and update state-level housing goals and economic growth projections.

### **Where else has it been effective?**

Though the agency names and organizational structures vary widely, about half the states in the U.S. have the equivalent of an office of state planning. Several other states have incorporated a planning role into their state management and budget departments. Among the best examples are the Delaware Office of State Planning Coordination, the California Office of Planning and Research, and the New Jersey Office for Planning Advocacy.

### **What are the alternatives?**

Without a statewide planning office, growth policy will continue to be piecemeal, will not always be grounded in sound data and analysis, and will be driven by the priorities of individual state agencies. While strong interagency coordination (such as the combined cabinet-level oversight of housing, transportation and environmental protection that existed between 2003 and 2006) may also have a positive impact, it will have limited effectiveness if not also supported by a strong technical staff.



For updates to this report and for additional research and analysis relating to housing supply in Massachusetts, visit [www.massgrowth.net](http://www.massgrowth.net).



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