



Meeting Agenda

The Provincetown Board of Selectmen will hold a public meeting on Monday, July 11, 2016, at 5:00 p.m. in Judge Welsh Room, Town Hall, 260 Commercial Street, Provincetown, MA 02657.

1. Joint meeting with the Planning Board to discuss:
 - a. the process for moving the Inclusionary Housing By-law forward;
 - b. Senate Bill No. 2311, An Act Promoting Housing and Sustainable Development (Zoning Reform Act).
 - c. other potential Zoning By-law and General By-law amendments, and

2. Other – Other matters that may legally come before the Board not reasonably anticipated by the Chair 48 hours before the meeting. Votes may be taken.



Provincetown Board of Selectmen
AGENDA ACTION REQUEST
Monday, July 11, 2016 @ 5:00 p.m.

1a

JOINT MEETING – PLANNING BOARD

Process to Move Inclusionary By-law Forward

Requested by: Town Manager David Panagore

Action Sought: Discussion

Proposed Motion(s)

Discussion dependent. Votes may be taken.

Additional Information

See attached draft of Inclusionary By-law.

Board Action

<i>Motion</i>	<i>Second</i>	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Disposition</i>

Section 4180 Inclusionary Housing By-Law

1. Purpose and Intent

The primary purpose of this bylaw is to:

- (a) Encourage the creation of a range of housing opportunities for households of all incomes, ages and sizes in order to support a strong, stable and diverse year round community and a viable and healthy local workforce and to prevent the displacement of Provincetown residents;
- (b) Mitigate the impact of residential development on the availability and cost of housing;
- (c) Protect the long-term affordability of such housing through appropriate, enforceable restrictions that run with the land;
- (d) Provide a mechanism by which residential development can contribute in a direct way to increasing the supply of Affordable and Community Housing in exchange for a greater density or intensity of development than is otherwise permitted as a matter of right;
- (e) Support the goals of Provincetown's December 2006 Affordable and Community Housing Action Plan and its January 2014 Update.

A secondary purpose is to create dwelling units eligible for inclusion in the Town's Chapter 40B Subsidized Housing Inventory.

2. Definitions

The term "Housing Fund" as used in this section of the Zoning Bylaw shall refer to any affordable or community housing fund that has been duly established by the Town to promote Affordable or Community Housing at the time that a payment in lieu of creating Affordable or Community Housing units as described hereunder is made.

3. Applicability

This inclusionary bylaw shall apply in all zoning districts to the following uses:

- (a) Except as identified under Section 3(c) below, any development that results in an increase in the number of dwelling units, whether by new construction or alteration, expansion, reconstruction, or change of existing residential or non-residential space or use;
- (b) Any health care-related development that includes 6 or more independent living units.
- (c) This inclusionary bylaw shall not apply to the following:

- (1) Accessory Dwelling Units
- (2) A subdivision of land under G.L. c. 41, section 81K-81GG;

4. Mandatory Provision of Affordable Units for all Development

In any development identified in Section 3(a)-(b) above, the applicant shall contribute to the local stock of Affordable and Community Housing in accordance with the following requirements:

(a) For development consisting of between 1 and 5 dwelling units, a Housing Contribution shall be made to the Housing Fund in the form of a payment in-lieu of creating a fractional unit.

(1) Payment shall be made accordance with the following:

1 unit	3% of the average value of a dwelling unit
2 units	6% of the average value of a dwelling unit
3 units	9% of the average value of a dwelling unit
4 units	12% of the average value of a dwelling unit
5 units	15% of the average value of a dwelling unit

(2) The average value of a dwelling unit shall be determined based on the average assessed value for the market rate units in the subject development and shall be payable to the Housing Fund at and upon the sale or certificate of occupancy of the final unit, whichever occurs sooner.

i. When the development consists of rental units, the payment-in-lieu may be paid in 5 equal annual installments. The first installment shall be payable upon the issuance of a certificate of occupancy of the final rental unit, and then annually thereafter, until final payment has been made, and with a notice of payment due in this manner to be recorded against the property before the first certificate of occupancy issues.

ii. When the development consists of one single-family home on its own lot and is occupied by an owner who has legally declared domicile at the same location, a lien shall be filed against the property which states that the payment-in-lieu shall be deferred for a period of up to five years with the full balance due upon the sale of the dwelling. After the fifth year of continued occupancy the payment-in-lieu shall be forgiven.

Deleted: <#>When the development consists of one single-family home on its own lot, the payment-in-lieu shall be paid in full before the issuance of the certificate of occupancy or it may be paid in 5 equal annual installments, the first installment payable before the issuance of the certificate of occupancy, and then annually thereafter until the final payment has been made, and with the full balance due upon the sale of the dwelling, and with a notice of payments due in this manner to be recorded against the property before the certificate of occupancy issues.¶

(3) The developer shall enter into a binding written agreement with the Town of Provincetown, before the issuance of the first Building Permit

and with appropriate payment surety arrangements, to provide the required payment(s) to the Housing Fund, and with a notice of the required payments to be recorded against the property before any certificate of occupancy is issued if full payment has not been made when the certificate of occupancy is applied for.

(4) The in-lieu payment shall be made into the Housing Fund, as defined hereunder, and the Board of Selectmen shall determine which fund shall receive the deposit.

(b) Development consisting of a total of 6 dwelling units or more shall require the granting of a Special Permit by the Planning Board and at least 15% of the units created shall be established as Affordable or Community Housing units in any one or combination of methods provided for below.

When the 15% calculation results in a fractional unit of .7 or greater, the developer shall provide a whole unit.

When the 15% calculation results in a fractional unit of less than .7, the developer shall provide a whole unit or make a housing contribution payment in lieu of the fractional unit in accordance with Section 3(a) above.

- (1) The Affordable or Community Housing units shall be constructed or rehabilitated on the locus subject to the Special Permit, in accordance with Section 7; or
- (2) The Affordable or Community Housing units shall be constructed or rehabilitated on a locus other than the one subject to the Special Permit, in accordance with Section 7, provided justification is provided that on-site development of units is not feasible and off-site development of units is beneficial to the Town, and Special Permits are granted contemporaneously for both developments; or
- (3) In lieu of providing such units either on- or off-site, an applicant may provide a payment of equivalent value to the Housing Fund. The payment-in-lieu shall be in accordance with subsections 4(a)(2)-(4) above and shall be calculated as follows, without rounding up or down:

(number of new dwelling units developed) x (.15) x (average value of a dwelling unit)

A payment-in-lieu of providing affordable units shall not allow an applicant to increase the number of market rate units on site; or

- (4) In lieu of providing such units either on- or off-site, an applicant may provide a donation of land to the Provincetown Affordable Housing Trust or a non-profit housing development organization approved by the Planning Board, provided that the receiving organization agrees in writing to accept the land and the applicant demonstrates to the Planning Board's satisfaction that the land serves the development of Affordable and Community Housing. The value of donated land shall be equivalent to the value of an in-lieu payment. The Planning Board may require, prior to accepting land as satisfaction of the requirements of this bylaw, that the applicant submit an appraisal of the land in question that was prepared by a licensed appraiser using professionally accepted methods, as well as other data relevant to the determination of equivalent value, and the Planning Board may obtain expert peer review of the appraisal at the applicant's expense. Closing on the land donation shall occur before the issuance of the first building permit. Land donation shall not allow an applicant to increase the number of market rate units on site.

5. Density Bonus

- (a) For developments consisting of 6 dwelling units or more, the Planning Board may provide a density bonus, which shall be made part of the Special Permit, to increase the number of dwelling units allowed on the parcel beyond the maximum number allowed under the Dimensional Schedule, the Density Schedule and Section 2550 of this Zoning Bylaw, as follows:
 - (1) For every deed restricted unit of Affordable Housing constructed or rehabilitated either on or off the site subject to the Special Permit, two market rate dwelling units may be added as a density bonus.
 - (2) For every deed restricted unit of Community Housing constructed or rehabilitated either on or off the site subject to the Special Permit, one market rate dwelling unit may be added as a density bonus.
- (b) To facilitate the objectives of the density bonus, the Planning Board shall have the authority to modify or waive any lot or dimensional regulations appropriate and necessary to accommodate the additional unit(s) on the site as part of the Special Permit relief.
- (c) Developments of 1-5 units that exceed the requirements of Section 4 above may receive the same density bonus as specified above, provided the development is approved by the Planning Board through the Special Permit process.
- (d) Any net increase in housing units through a density bonus shall not

exceed 50% of the base number of units allowed under this Zoning Bylaw.

6. Submission Requirements and Procedures

- (a) Special Permit application, review and decision procedures shall be in accordance with this Zoning Bylaw and the Planning Board's rules and regulations. Additionally, the project must comply with the provisions of Article 4, Section 4000 and 4100.
- (b) Affordable and Community Housing units created in accordance with this bylaw shall use deed restrictions that require the units to remain income restricted in perpetuity or the longest period allowed by law and for so long as any such unit does not conform to the underlying as-of-right zoning requirements. Such restriction shall also grant the Town's right of first refusal to purchase the property in the event that a subsequent qualified purchaser cannot be located.
- (c) No building permit shall be issued for any units in the development until the Planning Department receives evidence that the Affordable Housing restriction has been approved by DHCD, or the Community Housing restriction has been approved by Town Counsel.
- (d) No certificate of occupancy shall be issued for any units in the development until the Planning Department receives evidence that the housing restriction has been executed and recorded at the Barnstable County Registry of Deeds.

7. Provisions Applicable to Affordable and Community Housing Units Located both On-Site and Off-Site

- (a) Affordable and Community Housing units constructed under this by-law shall be situated within the development or off-site as approved by the Planning Board, so as not to be in less desirable locations than market rate units and shall, on average, be no less accessible to public amenities as market-rate units.
- (b) Affordable and Community Housing units shall be integrated with the rest of the development or with the off-site location, and shall be comparable to and indistinguishable from market rate units in exterior design and interior features, appearance, construction and quality of materials, and energy efficiency.
- (c) The number of bedrooms in each Affordable or Community Housing unit shall be made a part of the Special Permit and shall be based on local need as determined in consultation with the Community Housing Counsel for each project.

- (d) Owners and tenants of Affordable and Community Housing units and market rate units shall have the same rights and privileges to access and use any of the development's amenities and facilities.
- (e) The development of Affordable and Community Housing units shall take place at the same rate and timeframe as the development of market rate units.
 - (1) Building permits for any phase shall be issued at a ratio of 5 (five) market rate units to 1 (one) Affordable/Community Housing unit. Building permits for subsequent phases shall not be issued unless all the required Affordable/Community Housing units in the preceding phase are constructed and the deed restrictions recorded. The last unit permitted, constructed and occupied shall be a market rate unit.
 - (2) The project may also be constructed in its entirety with all permits issued at once, provided that the occupancy permits are issued at a ratio of 5 (five) market rate units to 1 (one) Affordable/Community Housing unit. The last certificate of occupancy to be issued shall be for a market rate unit and shall not be issued unless all Affordable/Community Housing units are occupied.

8. Distribution of Affordability

Distribution of affordability for rental or ownership units as Extremely Low, Low or Moderate Income Affordable Housing or Median or Middle Income Community Housing shall be determined by the Planning Board in consultation with the Community Housing Council and set as follows, being made a condition of the Special Permit under this Bylaw:

- (a) When the number of the Town's SHI eligible affordable housing units is below 10%, the units created shall be Extremely Low, Low or Moderate Income Affordable Housing units, unless otherwise approved by the Planning Board if adequate justification is provided that the development of Affordable Housing units is not feasible and it is beneficial to the Town that Community Housing units are provided instead, and the exception is made a part of the Special Permit.
- (b) When the number of the Town's SHI eligible affordable housing units is at or above 10%, it is encouraged that units created be Median or Middle Income Community Housing units.

9. Maximum Incomes and Selling Price; Affordable and Community Housing Inventory

Maximum incomes and sales prices and rents shall be as set forth in Article 1, Definitions, of this Zoning Bylaw.

10. Segmentation

Developments shall not be phased or segmented to avoid compliance with conditions or provisions of this bylaw. "Segmentation" shall mean development that cumulatively results in a net increase of dwelling units above the number existing 36 months earlier on any parcel or set of contiguous parcels held in common ownership or under common control on or after the effective date of this Section 4180.

11. Conflict with Other Bylaws

The provisions of this bylaw shall be considered supplemental of existing zoning bylaws. To the extent that a conflict exists between this bylaw and others, the more restrictive bylaw, or provisions therein, shall apply.

12. Severability

If any provision of this bylaw is held invalid by a court of competent jurisdiction, the remainder of the bylaw shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this bylaw shall not affect the validity of the remainder of Provincetown's zoning bylaw.

DRAFT

T



Provincetown Board of Selectmen
AGENDA ACTION REQUEST
Monday, July 11, 2016 @ 5:00 p.m.

1b

JOINT MEETING – PLANNING BOARD

Senate Bill No. 2311

Requested by: Town Manager David Panagore

Action Sought: Discussion

Proposed Motion(s)

Discussion dependent. Votes may be taken.

Additional Information

See attached documents.

Board Action

<i>Motion</i>	<i>Second</i>	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Disposition</i>

David Gardner

From: Ilana Quirk <IQirk@k-plaw.com>
Sent: Monday, June 06, 2016 1:42 PM
To: David Panagore
Cc: David Gardner; Gloria McPherson; John Giorgio
Subject: Senate to Vote on Major Housing and Zoning Bill

MEMORANDUM

TO: All Interested Parties
FROM: Jay Wickersham, Noble & Wickersham LLP, and Robert Ritchie, Massachusetts Municipal Lawyers Association, for the Massachusetts Smart Growth Alliance and Zoning Reform Working Group
DATE: July 8, 2015
RE: Summary of zoning reform bill: S. 122, as filed by Senator Daniel Wolf and Representative Stephen Kulik

Provisions of the zoning reform bill

Chapters 40A, 40X, and 41: Reforms applicable to all communities:

- 1) Allowable Zoning Techniques.** The bill adds or expands definitions and authorizations for many useful zoning techniques, including cluster development, transfer of development rights, inclusionary zoning, natural resource protection zoning, and form-based codes. [Bill sections 1, 2 and 3]
- 2) Special Permits.** Three significant changes are proposed, all of which would reduce the burden on local boards and applicants. The required vote is reduced from a super-majority to a simple majority (with local option to increase); the duration of a special permit is extended from a maximum of two years to a minimum of three years; and a process for extending a permit is established. [Bill sections 13, 14, 15, 16, 17, and 18]
- 3) Site Plan Review.** Many communities already employ a form of site plan review (SPR), but because there are no explicit standards in the Zoning Act, uncertainties have plagued the SPR process. The bill adds a new section that standardizes SPR as follows: (1) decisions must be made within 95 days, with a public hearing optional; (2) when SPR overlaps with a special permit, the reviews must coincide; (3) approval is by simple majority; (4) approvals may be subject to conditions, including off-site mitigation in limited circumstances only; (5) duration shall be a minimum of two years; and (6) appeals shall be based on the existing record, not new evidence. [Bill section 19]
- 4) Variances.** Variances offer a “relief valve” from zoning, since no local code can anticipate difficulties with every piece of land or personal circumstance. Variances are particularly helpful for small-scale residential projects involving renovations, additions, or infill development. But the current Zoning Act is overly restrictive for landowners and towns. As a result, some zoning boards approve almost no variances, while others grant them liberally but illegally. This section entirely rewrites the current variance provisions; it sets reasonable

procedures and criteria while still maintaining a community's discretion to condition or deny a variance, including on grounds of "self-created" hardship. The time within which a variance must be used is extended from one to two years, with one-year extensions allowed. [Bill section 23]

5) Vested Rights. It is appropriate and fair that when zoning changes, the law should protect development projects already in the pipeline, where a substantial investment of time and money has been made. In the Zoning Act, however, some of these protections are excessively protective, while others are unreasonably limited. The vesting loopholes for subdivisions and Approval Not Required (ANR) plans undermine thoughtful local planning and zoning modifications. Meanwhile, the vesting periods for projects seeking a building permit or special permit are difficult to obtain and unrealistically short. This section has been rewritten, based on extensive research into vested rights statutes in use around the country and American Planning Association model laws, to provide reasonable and standardized protections for development projects requiring building permits, special permits, and subdivision plans. The bill eliminates two vesting loopholes and modifies the third. The vesting periods for building permits and special permits are appropriately extended. [Bill sections 6, 7, 8, 9, 10, 11, and 12]

- Subdivision Plan Freeze: Only the proposed project is protected against zoning changes, rather than the land (as under current law). An applicant must apply for a definitive subdivision plan before the first published notice of public hearing on a proposed zoning change, and must ultimately obtain approval. But the overall length of the subdivision freeze has been maintained at eight years, unless a community seeks "opt-in" status under the new Chapter 40Y.
- ANR Plan Freeze: Under current law, the endorsement of a simple ANR plan for lots fronting on a public way – even a perimeter plan or a plan showing only a slight line change to an existing parcel – freezes any zoning use change for three years. This device was recently considered in the City of Northampton to preserve rights to build a porn store. It is eliminated.
- Three Lots in Common Ownership Dimensional Freeze: Up to three pre-existing adjoining lots under common ownership are protected against any zoning dimensional changes for five years after any zoning change. Reportedly, this was added by a legislator in the 1970s at the request of a constituent, to protect the constituent's land! It has vexed cities and towns for over 35 years. It is eliminated.
- Obtainable, Extended Freezes for Special Permits and Building Permits. All developments require building permits and most large projects require special permits – yet under current law, both the duration of such permits and the ability to protect against zoning changes, is unrealistically limited. The bill liberalizes access to zoning freeze protection; an applicant must apply for a building or special permit before the first published notice of a public hearing on a proposed zoning change. The duration and vesting period for building permits is increased from six months to two years, and for special permits from two to three years.

6) Development Impact Fees. Rationally-based impact fees are predictable for developers and can reduce local opposition to some development projects, because there is confidence that projects will bear their fair share of impacts on public facilities. This allows more types of development to be permitted as-of-right instead of undergoing the lengthy and costly special permit process. Despite being a commonly-used regulatory tool across the country, impact fees are rarely used in Massachusetts due to troublesome case law and no mention in statute. This new section in the Zoning Act authorizes development impact fees, based on in-state models (Medford and Cape Cod Commission), prevailing national practice, and federal case law. The bill clearly lists the public capital facilities for which impact fees may be assessed. Affordable housing projects and agriculture are exempted from impact fees. Fees must be paid into a dedicated trust fund and used within 10 years. [Bill section 20]

7) Inclusionary Zoning. Inclusionary housing programs that require the creation of affordable housing in development projects can increase diversity in local housing opportunities and help to meet local requirements under Chapter 40B. Although it is used by communities around the state, this essential smart growth tool is not

currently formalized in the Zoning Act. This new section is based on best current practices. Off-site units, land dedication, or funds may also be provided in lieu of on-site dwelling units. The upper limit of affordability is households earning up to 120% of the Area Median Income (AMI). Inclusionary zoning may require some or all of the affordable units to be eligible under Chapter 40B (i.e., units limited to households with incomes up to 80% of AMI). Affordable units must be price-restricted for no less than 30 years. [Bill section 21]

8) Master Planning.

- Contents of Master Plans. The section is rewritten to accomplish the following objectives: (1) plan elements reflect the language of the state's Sustainable Development Principles, including public health considerations; (2) all communities must complete five required elements (goals and objectives, housing, natural resources and energy management, land use and zoning, and implementation), but are free to choose among the other seven optional elements; (3) superfluous data collection is discouraged; (4) all elements must be assessed against a regional plan, if any; (5) a public hearing is required before adoption; and (6) the plan must be adopted by the local planning board and the local legislative body. [Bill section 27]
- Legal Effect of Master Plans. Current Massachusetts law does not require zoning to be consistent with a local master plan. As a result, many municipalities have not created or updated their plans. The bill makes master plans an option for municipalities. But to incentivize thoughtful local planning, the bill also states that if local zoning is challenged in a lawsuit, and the court finds that the challenged provision is not inconsistent with a local master plan that has been certified by the applicable regional planning agency, then the provision shall be deemed to serve a public purpose. [Bill section 43]

9) **Notice to Boards of Health.** Although local boards of health receive notices of public hearing for subdivision projects, under the current Zoning Act they do not receive notices of projects seeking zoning approvals. This has been changed, so that boards of health will receive notice and be able to comment on variances, site plan reviews, special permits, and other approvals. [Bill section 24]

10) Other Procedural Reforms.

- Land Use Dispute Avoidance. Although informal dispute resolution processes may occur now, there is no set process laid out in the Zoning Act, and no relief from either legal "discovery" or the open meeting law. This new section in the Zoning Act offers an off-line avenue for applicants, municipal officials, and the public to work with a neutral facilitator to try to resolve difficulties in a prospective development project, so that the formal approval process may later be successful for all. [Bill section 22]
- Appeals. Resolving appeals under current law is often expensive and slow, undermining the predictability and authority of the local process for officials, developers, and residents alike. The bill streamlines the appeals language for site plan review, special permits, and subdivisions; provides for a record-based decision (rather than a decision based on new evidence) by the court evaluating a local decision; and expands the jurisdiction of the Land Court permit session to include residential, commercial, industrial, and mixed-use projects. [Bill sections 19, 39, 41, 42, and 44]
- Zoning Amendments. The current super-majority requirement (two-thirds) to adopt or amend local zoning is an undue burden for Massachusetts cities and towns, one that is unique in the U.S. The bill would allow communities to lower the vote from the super-majority default anywhere down to a simple majority. And the lower threshold would be used for zoning amendments that the planning board finds to be consistent with a master plan, if any, and that are not subject to a landowner protest. Once reduced, the vote majority may subsequently be raised or lowered by the majority then in place. Any changes do not become effective until six months have passed. [Bill sections 4 and 5]

11) Consolidated Permitting. Development proposals often need multiple local permits from multiple local boards, each with its own substantive and procedural requirements. The new Chapter 40X would allow applicants for larger, more complex projects (at least 25,000 square feet or 25 dwelling units) to employ a consolidated permitting process. This would ensure that local boards receive common information about the project and that they have the opportunity to bring all decision-making bodies together at the beginning of a project review at a consolidated hearing. More efficient reviews could result, benefitting all parties to the development review process. At the same time, each board would retain the authority to make an independent decision in accordance with its own standards. [Bill sections 25 and 40]

12) Minor Subdivisions and Approval Not Required (ANR) Projects. Current Massachusetts law prevents communities from effectively planning or regulating the development of roadside land, through the uniquely permissive ANR process. No other state law allows unregulated roadside development in this fashion. At the same time, small residential subdivisions with a new road must undergo the same process as those with 50 or 100 lots. The bill permits a community to eliminate the ANR loophole if it creates a less onerous minor subdivision review process for projects with six or fewer lots. A separate procedure has been developed to address minor lot line changes. [Bill sections 28, 29, 30, 31, 34, 36, 37, and 38]

- ANR Reform. Communities wishing to retain ANR may do nothing and continue, but those desiring more control of these land divisions may now regulate them as minor subdivisions. However, until a planning board adopts rules and regulations for minor subdivision review, the old ANR process remains in effect.
- Minor Subdivisions. Minor subdivisions must be defined under local regulations to include up to six new lots (a community can raise the threshold). The time limit for review is either 65 or 95 days, compared with 135 days for a full subdivision. A public hearing is optional. Standards may not exceed those for regular subdivisions, and requirements for roadway width may typically not exceed 22 feet.
- Lot Line Changes. Because the ANR device is routinely used to make small changes to property lines, a suitable replacement mechanism was needed. A new section permits the recording of plans for minor lot line changes, subject to specific conditions.

13) Subdivisions. The bill makes two other changes to the Subdivision Control Law:

- Subdivision Roadway Standards. Many local subdivision regulations require unjustifiably excessive roadway standards. These may adversely affect aesthetics, increase stormwater runoff, and inflate housing costs by imposing undue costs on the developer. The bill establishes a rebuttable presumption that roadway standards exceeding those applicable to the construction or “reconstruction” of publicly-financed roadways are excessive, while defining a “safe harbor” for roadway widths up to 24 feet. [Bill section 32]
- Neighborhood Parks. The Subdivision Control Law is modified so that local subdivision regulations may require a dedication of up to 5% of a subdivision for park use benefitting the lots within the subdivision. This provision is not intended and can’t be interpreted to require transfer of ownership of such park areas to a governmental unit. [Bill sections 33 and 35]

Chapter 40Y, Planning Ahead for Growth Act: Specific smart-growth tools applicable on a voluntary basis to opt-in communities only:

15) Planning Ahead for Growth Act [opt-in]. Current zoning codes are not resulting in smart-growth development that creates adequate new housing and jobs across the Commonwealth, while protecting environmental resources and community character. The “town and country” landscape of Massachusetts is being lost to sprawl development patterns. The new chapter 40Y provides strong incentives for communities to allow prompt and predictable by-right housing and commercial development permitting, focused in appropriate smart-growth locations, coupled with environmental and open space protections. Participating municipalities

will get access to additional regulatory and fiscal resources and tools to realize their plans for sustainable development. To obtain "opt-in" status under Chapter 40Y, a community (or group of communities) must take the following actions, and demonstrate to the regional planning agency (RPA) that it has met the requirements of this section. Oversight, implementing regulations, and resolution of disputes would be through the Secretary of the Executive Office of Housing and Economic Development. [Bill section 26]

- Establishing a housing development district(s) in a smart-growth location(s) that can accommodate, through by-right development, a 5% increase the community's total number of existing housing units. Minimum densities are set for single-family, duplex-triplex, or multi-family housing.
- Establishing an economic development district in a smart-growth location(s) that permits prompt and predictable permitting of commercial / industrial development.
- Mandatory use of open space residential design (OSRD) for developments of 5 units or more on land zoned for a minimum lot-size of 40,000 square feet or greater per unit.
- Mandatory use of low impact development (LID) techniques for developments that disturb over one acre of land.

The following regulatory and financial tools would be authorized and available for a community's use after it has opted in:

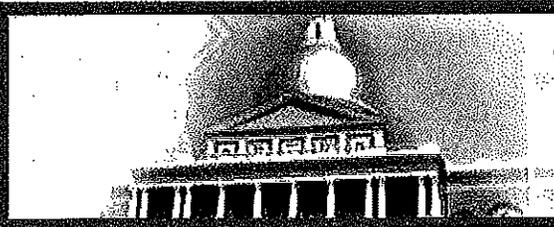
- Enhanced use of impact fees to support public schools, libraries, municipal offices, affordable housing, and public safety facilities.
- Authorization to enter into development agreements.
- Reduction of the vested rights period for subdivisions from 8 to 5 years.
- Adoption of rate of development measures (annual caps on building permit issuance) in areas inside and outside of housing development districts.
- Adoption of natural resource protection zoning (NRPZ) at area densities of five acres or more per dwelling unit to protect identified lands of high natural or cultural resource value.
- Preference for state discretionary funds and grants; priority for state infrastructure investments, such as water and sewer infrastructure, school building funds, and biking and walking facilities; and requirements that the state take into consideration regional plans and local master plans in its capital spending.

Iliana M. Quirk, Esq.
KOPELMAN AND PAIGE, P.C.
101 Arch Street, 12th Floor
Boston, MA 02110
O: (617) 556 0007
F: (617) 654 1735
iquirk@k-plaw.com
www.k-plaw.com

This message and the documents attached to it, if any, are intended only for the use of the addressee and may contain information that is PRIVILEGED and CONFIDENTIAL and/or may contain ATTORNEY WORK PRODUCT. If you are not the intended recipient, you are hereby notified that any dissemination of this communication is strictly prohibited. If you have received this communication in error, please delete all electronic copies of this message and attachments thereto, if any, and destroy any hard copies you may have created and notify me immediately.

From: Massachusetts Municipal Association <alerts@mma.org>
Date: June 2, 2016 at 4:39:25 PM EDT
To: Erik Yingling <eyingling@provincetown-ma.gov>
Subject: Senate to Vote on Major Housing and Zoning Bill
Reply-To: "vcabalan@mma.org" <vcabalan@mma.org>

Having trouble viewing this email? [Click here](#) for web version.



Act Now

Massachusetts Municipal Association

The Voice of Cities and Towns

www.mma.org

Thursday, June 2, 2016

SENATE LEADERS ADVANCE BILL TO MAKE MAJOR CHANGES IN HOUSING AND ZONING LAWS

SENATORS TO VOTE ON THE BILL ON THURSDAY, JUNE 9

S. 2311 WOULD GRANT DEVELOPERS "BY-RIGHT" BUILDING RIGHTS WITH REDUCED LOCAL REVIEW, ADD HOUSING MANDATES ON COMMUNITIES, AND MAKE SWEEPING CHANGES IN ZONING LAWS

ASK YOUR SENATORS TO EXPLAIN HOW S. 2311 WOULD IMPACT YOUR COMMUNITY BEFORE THEY VOTE!

Earlier today, Senate leaders released major legislation to make sweeping changes in the state's housing and zoning laws, a proposal that would significantly impact development and zoning in every community.

S. 2311, An Act Promoting Housing and Sustainable Development, will be voted on by the full Senate on Thursday, June 9.

Senate leaders have taken previous legislation to update the state's zoning and planning laws, and greatly expanded it by adding provisions that would override local authority in several areas, primarily on housing matters. Communities would be required to adopt "by-right" multi-family housing districts and allow accessory apartments "by-right" in residential districts, for example.

[Please click here to download a copy of S. 2311](#)

Please call your Senators today to let them know that this issue is important to your community, and ask them to tell you what is in the legislation BEFORE they vote.

They need to understand and explain how the bill would the impact your community.

As we noted in an earlier Action Alert, the MMA supports efforts to give cities and towns real

tools to improve local planning and development, and real authority to meet local affordable housing needs and goals. But the for-profit development industry has been pushing hard to preempt local decision-making authority, calling for provisions to override local zoning by mandating "as-of-right" authority for developers, even though this proposed preemption of local zoning would not address the cost of housing, or be linked to the development of more affordable housing.

KEY PROVISIONS OF S. 2311 INCLUDE:

Mandated "By-Right" Multi-Family Housing Districts – S. 2311 would mandate every city and town to establish "by-right" zoning districts for multi-family housing, removing any special permit or local approval process except normal site plan review, with NO provisions that these housing units meet the affordability needs of the community, and prohibiting communities from setting density provisions less than 8 units per acre in rural communities and 15 units per acre in all other communities. The MMA is greatly concerned that this will increase the cost of housing in cities and towns and make it harder to meet affordable housing targets, because developers will almost always pursue projects for luxury and high-end developments that yield the highest profits.

Mandated "By-Right" Accessory Apartments – S. 2311 would mandate every city and town to approve accessory apartments in all residential districts, granting homeowners "by-right" ability to add additions, separate buildings or property renovations, as long as the accessory apartment is no larger than half of the entire structure or 900 square feet, and meets building code standards, although cities and towns could cap accessory apartments to no more than 5 percent of the total non-seasonal housing units in the community.

Mandated "Open Space Residential Developments" – Every city and town would be required to approve "by-right" residential development projects with greater density, if those projects are designed to preserve open space in or adjacent to the development. These are "compact" or "cluster" developments that are designed to allow for a portion of the land to remain undeveloped.

Watered-Down Inclusionary Zoning – The MMA has been a champion of legislation to clearly authorize cities and towns to adopt inclusionary zoning bylaws and ordinances to require developers to include affordable housing as an important component of large projects. This is the only clear way that cities and towns can ensure that new developments help to expand the stock of affordable housing. S. 2311 does contain an inclusionary zoning provision, but developers have succeeded in watering down the legislation by adding language that would only allow inclusionary zoning in exchange for municipal concessions, such as allowing greater density, even if those concessions are not economically necessary for the project to advance. Communities that have already implemented inclusionary zoning ordinances would be forced to weaken their local policies to conform with S. 2311, so that these localities could only use inclusionary zoning when they make additional concessions to developers. Further, inclusionary zoning could NOT be applied to any developments that are submitted under the "by-right" multi-family districts mandated in the bill. The MMA will be asking Senators to remove any conditions or concessions on inclusionary zoning.

There are a Number of Proposals in S. 2311 that are Intended to Help Improve the Zoning Process – The MMA and local officials have been working on zoning legislation for several

years to address several problems at the local level, and S. 2311 includes several of these, including:

- Communities could charge development impact fees, to be used only for studies to review the specific project or for infrastructure improvements, but not for personnel-related costs, and all unspent money, plus interest, would need to be returned to the developer within 6 years;
- In order to better connect planning and zoning, communities would be required to develop a comprehensive master plan, and communities would be given the option to reduce the 2/3 majority legislative vote required to make zoning changes down to a simple majority or a percentage in between;
- Site plan review would be codified in statute, with a statutory deadline of 120 days for local review;
- The bill would address concerns over the "approval not required" issue by authorizing communities to adopt a minor subdivision zoning bylaw to provide for local review of subdivisions of 6 units or less. Permitting of minor subdivisions on existing rights-of-way would be required within 65 days, and approval of minor subdivisions on new rights-of-way would be required within 95 days.

The MMA is continuing to review the 46-page bill. If you have any questions about S. 2311, please contact MMA Legislative Analyst David Lakeman at 617-426-7272 or dlakeman@mna.org.

Please call your Senators today and ask that they consult with you BEFORE this far-reaching legislation is debated on Beacon Hill.

Thank You!



Massachusetts Municipal Association
One Winthrop Square, Boston, MA 02110
(617) 426-7272
All contents copyright 2015, Massachusetts Municipal Association

[Unsubscribe](#) from MMA Legislative Alerts.

David Gardner

From: Ilana Quirk <IQuirk@k-plaw.com>
Sent: Wednesday, June 08, 2016 1:54 PM
To: David Panagore
Cc: David Gardner; Gloria McPherson; John Giorgio
Subject: Zoning Reform Debate

From: State House News Service [<mailto:news@statehousenews.com>]
Sent: Wednesday, June 08, 2016 1:41 PM
To: news@statehousenews.com
Subject: SENATOR SEES LACK OF CONSENSUS ON BILL TACKLING ZONING, HOUSING

STATE HOUSE NEWS SERVICE

SENATOR SEES LACK OF CONSENSUS ON BILL TACKLING ZONING, HOUSING

By Colin A. Young and Matt Murphy
STATE HOUSE NEWS SERVICE

STATE HOUSE, BOSTON, JUNE 8, 2016.....Proponents and opponents alike can agree: zoning reform is far from the sexiest issue to be debated on Beacon Hill and is not a subject that excites very many people.

But don't mistake those sentiments for ambivalence.

Supporters and detractors of the Senate's comprehensive zoning reform bill also agree that after more than 40 years, Massachusetts needs to freshen up its zoning laws. The question, however, is exactly how to bring zoning into the 21st century.

"The main issue around the bill right now is a lack of consensus about it. I think we've all been hearing different opinions from across the state from different stakeholders," Senate Minority Leader Bruce Tarr told the News Service. "I think there is a general agreement that there needs to be an updating of the zoning laws, but it seems to me there is still a significant difference of opinion on how to move forward on that."

Senators have filed 63 amendments ahead of Thursday's planned debate on the bill (S 2144), which attempts to rein in restrictive local zoning regulations and incentivize communities to plan for sustainable growth. Additionally, the Ways and Means Committee has offered a re-drafted version of the bill (S 2311) as an amendment.

The Massachusetts Municipal Association, a powerful lobbying entity on Beacon Hill, also came out on Wednesday to express its "serious reservations" with the bill, including provisions that would mandate approval "by-right" of accessory apartments, high-density residential developments with an open space preservation component and multi-family housing districts.

"[The bill] would mandate every city and town to establish "by-right" zoning districts for multi-family housing, removing any special permit or local approval process except normal site plan review, with NO provisions that these housing units meet the affordability needs of the community, and prohibiting communities from setting density provisions less than 8 units per acre in rural communities and 15 units per acre in all other communities," the MMA wrote in a letter to senators.

The MMA called the Senate leadership bill a "sweeping departure" from previous zoning reform proposals and a "top-down weakening of local decision-making authority."

Tarr leads the Senate with 16 amendments filed, including one that would allow communities to create special zoning districts for affordable housing to help reach the requirements of the state's affordable housing law, known as Chapter 40B.

"This says a community could set aside an area for affordable housing and if it agrees to grant permits in a timely way and allows a density bonus and is trying to reach the 40B requirement of 10 percent affordable housing, that any unit created would count as 1.75 units towards the 40B requirement," Tarr said, noting that the amendment mirrors a bill he has filed for several years. "If a community wants to be proactive and create an affordable housing zone and expedite permitting, they would get extra credit towards Chapter 40B."

At least five amendments deal with a provision of the bill that would allow owners of single-family houses to build accessory apartments on their property without having to obtain special permits. Supporters have argued that the provision could generate thousands of new housing units without requiring state money.

Sen. Eileen Donoghue has put forward two amendments on the topic. One would increase the minimum lot size required to build an accessory unit from 5,000 to 7,500 square feet, and the other would stipulate that only the property owner or a member of the owner's family could reside in an accessory unit.

Sen. Patrick O'Connor filed an amendment to strike the section of the bill that deals with accessory units entirely.

The Massachusetts Smart Growth Alliance, which has banded together with the Massachusetts Association of Planning Directors, the Massachusetts Municipal Lawyers Association and others to support the bill, said it is closely watching about a half-dozen amendments that it said could further strengthen the bill.

Among those is a Sen. Sonia Chang-Diaz amendment that the Smart Growth Alliance said would add inclusionary zoning practices -- which require a certain share of new housing construction to be affordable housing -- to the state's civil right laws, making it illegal to engage in exclusionary zoning.

A Tarr amendment, though, would remove inclusionary zoning requirements from the bill entirely.

"I'm not necessarily opposed to the concept, but I want to see greater guidance and more information about what kinds of concessions would be granted in terms of density and whatnot," he said.

Similarly, Tarr filed an amendment to strike the section of the bill that would allow for the use of development impact fees, though he said he is not outright opposed to the idea.

"I could be convinced to support them if there are greater boundaries and a methodology put into the statute," he said.

The Massachusetts Municipal Association said it appreciated the inclusion of four main provisions, including development impact fees, but called the inclusionary zoning section "watered down" by a requirement that municipalities make concessions, including an allowance for greater density.

Massachusetts has an array of affordable housing laws and programs, but home ownership and affordable housing still remains beyond the reach of many despite the state's higher median income levels, compared to other states. Zoning is largely controlled at the local level in Massachusetts, which means different rules for housing development in each of the state's 351 cities and towns.

Housing and zoning issues are major priorities for some members of the Legislature, but comprehensive proposals over the years have failed to gain traction with legislative leaders.

Senate President Stanley Rosenberg on Monday called zoning reform "a key element in helping solve our housing shortage here in the commonwealth," but House Speaker Robert DeLeo was non-committal when asked if the House plans to take the issue up before formal legislative sessions end next month.

"I'd have to take a look at it," DeLeo said Monday. "I can tell you that with the word getting out that this bill was going to be taken up I heard from a number of folks, developers, builders and what not, that they'd like to talk to me and the members of the committee and other members of the House about the bill, so at this time I don't know."

June 10, 2016

S.2311 -- Question on passing the bill to be engrossed Senate -- Roll Call #364

YEAS.

Barrett, Michael J.	Jehlen, Patricia D.
Boncore, Joseph A.	Joyce, Brian A.
Brady, Michael D.	Lesser, Eric P.
Brownsberger, William N.	L'Italien, Barbara A.
Chandler, Harriette L.	Lovely, Joan B.
Chang-Diaz, Sonia	Montigny, Mark C.
Creem, Cynthia Stone	O'Connor Ives, Kathleen
DiDomenico, Sal N.	Pacheco, Marc R.
Donnelly, Kenneth J.	Rosenberg, Stanley C.
Downing, Benjamin B.	Spilka, Karen E.
Eldridge, James B.	Wolf, Daniel A. - 23.
Forry, Linda Dorcena	

NAYS.

deMacedo, Viriato M.	Moore, Michael O.
Donoghue, Eileen M.	OConnor, Patrick M.
Fattman, Ryan C.	Rodrigues, Michael J.
Flanagan, Jennifer L.	Ross, Richard J.
Gobi, Anne M.	Rush, Michael F.
Humason, Donald F., Jr.	Tarr, Bruce E.
Keenan, John F.	Timilty, James E. - 15.
Lewis, Jason M.	

ABSENT OR NOT VOTING.

McGee, Thomas M.	Welch, James T. - 2.
------------------	-----------------------------

12

SENATE No. 2311

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

SENATE, Thursday, June 2, 2016

The committee on Ways and Means, to whom was referred the Senate Bill promoting the planning and development of sustainable communities (Senate, No. 2144),-- reports, recommending that the same ought to pass with an amendment substituting a new draft entitled "An Act promoting housing and sustainable development" (Senate, No. 2311) [Estimated cost: \$500,000].

For the committee,
Karen E. Spilka

SENATE No. 2311

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act promoting housing and sustainable development.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 3 of chapter 23B of the General Laws, as appearing in the 2014
2 Official Edition, is hereby amended by inserting after clause (v) the following subsection:-

3 (w) establish, conduct and maintain an annual program of education and training for
4 members of local planning boards and zoning boards of appeals; provided, however that the
5 department shall consult with the Massachusetts Association of Regional Planning Agencies
6 regarding development of the program; provided further, the department may contract with the
7 Massachusetts Citizen Planner Training Collaborative at the University of Massachusetts to
8 provide such education and training. The department may charge a reasonable fee to board
9 members to participate in the program. To the extent practicable, the education and training
10 programs shall be offered in various locations throughout the commonwealth.

11 SECTION 2. Said chapter 23B of the General Laws is hereby amended by adding the
12 following section:-

13 Section 31. (a) The secretary of housing and economic development, in consultation with
14 the secretary of energy and environmental affairs, the secretary of transportation and the attorney
15 general following a public hearing and opportunity for stakeholder feedback, shall develop a
16 municipal opt-in program to advance the state's economic, environmental and social well-being
17 through enhanced planning for economic growth, land conservation, workforce housing creation
18 and mobility. The program shall include guidelines and criteria to evaluate municipal
19 applications. Applications meeting program guidelines and criteria shall receive status as a
20 certified community. Certified communities shall be entitled to certain privileges and powers
21 and shall be required to provide certain incentives to benefit persons seeking local permits and
22 local land use approvals.

23 (b) The executive office of housing and economic development shall develop guidelines
24 for a city or town to receive status as a certified community. The guidelines shall promote: (i)
25 prompt and predictable permitting of commercial or industrial development within economic
26 development districts that allow for an appropriate amount of development to proceed as of right
27 and within a specific reasonable time; (ii) prompt and predictable permitting of residential
28 development within residential development districts that allow for the appropriate amount of
29 development to proceed as of right and within a specific reasonable time; (iii) open space
30 residential design for certain zoning districts meeting minimum lot area thresholds for single-
31 family residential development; (iv) low impact development techniques; (v) natural resource
32 protection zoning in areas of significant natural or cultural resources; (vi) development
33 agreement contracts between a municipality and a holder of development rights to express the
34 conditions to which the development will be subject; (vii) consolidated hearings and permitting
35 for large development projects; and (viii) joint applications from 2 or more contiguous

36 municipalities who together meet the goals of the program and agree to the requirements of
37 clauses (i) to (vii), inclusive.

38 (c) A city or town may apply to the executive office of housing and economic
39 development to become a certified community. A regional planning commission shall make
40 itself available to a city or town during the application process to facilitate best practices. A
41 regional planning commission, in consultation with stakeholders and after a public hearing, shall
42 develop model by-laws, ordinances and rules and regulations which may be used or incorporated
43 by communities within the planning commission region in its application to the executive office
44 of housing and economic development or the regional planning commission may make model
45 by-laws, ordinances and rules and regulations for a specific community within the region which
46 may be used or incorporated by a city or town in its application to the department.

47 (d) The executive office of housing and economic development shall develop criteria to
48 evaluate a submission by a city or town to become a certified community. Applications from a
49 city or town with the endorsement of a regional planning agency may be presumed to meet the
50 criteria or the endorsement may be favorably factored into a determination by the department. If
51 the executive office of housing and economic development determines that it is unable to issue a
52 certification, it shall provide the applicant with a written statement of the reasons for its
53 determination and the applicant shall be allowed to reapply. A municipality's certification shall
54 be for a period of up to 10 years and may be renewed at the discretion of the executive office of
55 housing and economic development.

56 (e) The executive office of housing and economic development shall develop incentives
57 based upon program goals and guidelines in certified communities. Incentives shall benefit both

58 municipal applicants and persons seeking municipal approval for permits and development.
59 Incentives shall be based upon the program guidelines and criteria. The incentives offered to
60 municipalities may include, but shall not be limited to: (i) reducing the minimum vesting period
61 for a definitive subdivision plan under section 6 of chapter 40A; (ii) authorizing zoning
62 ordinances or bylaws that impose natural resource protection zoning that requires percentages of
63 preserved land of 80 per cent or greater; and (iii) authorizing development impact fees imposed
64 pursuant to section 9E of said chapter 40A to be applied to additional off-site public capital
65 facilities; provided, however, that all impact fees shall have a rational nexus to, and shall be
66 roughly proportionate to, the impacts created by the development.

67 (f) To advance economic, environmental and social well-being through enhanced
68 planning for economic growth, land conservation, workforce housing creation and mobility, the
69 commonwealth, when awarding discretionary funds for municipal infrastructure or other
70 discretionary funds or grants administered through the executive office of housing and economic
71 development, the executive office of energy and environmental affairs, the Massachusetts
72 department of transportation and the executive office for administration and finance, shall give
73 priority consideration to certified communities.

74 State agencies responsible for regulatory or capital spending programs that have a
75 material effect on local land use and development shall take into account the land use goals,
76 objectives and policies as set forth in master plans adopted under section 81D of chapter 41 in
77 administering the programs in certified communities.

78 When awarding discretionary funds for municipal infrastructure and land preservation
79 investments within communities for which there exists a regional plan under section 5 of chapter

80 40B, under chapter 716 of the acts of 1989 or under chapter 831 of the acts of 1977, respectively,
81 the commonwealth shall cause the awards to be consistent with the plan to the maximum extent
82 feasible.

83 (g) The executive office of housing and economic development may issue regulations
84 necessary and appropriate for the implementation of this section.

85 SECTION 3. Section 1A of Chapter 40A of the General Laws, as appearing in the 2014
86 Official Edition, is hereby amended by striking out the definition of "Permit granting authority"
87 and inserting in place thereof the following 9 definitions:-

88 "Affordable housing", a dwelling unit restricted for purchase or rent by a household with
89 an income at or below 80 per cent of the area median income for the applicable metropolitan or
90 non-metropolitan area, as determined by the United States Department of Housing and Urban
91 Development; provided, however, that affordable housing shall be subject to an affordable
92 housing restriction in accordance with sections 31 to 33, inclusive, of chapter 184 or, if ineligible
93 under said sections 31 to 33, inclusive, of said chapter 184, restricted by other means as required
94 in an ordinance or by-law.

95 "By-right" or "as of right", development that may proceed under a zoning ordinance or
96 by-law without the need for a special permit, variance, zoning amendment, waiver or other
97 discretionary zoning approval; provided, however, that "by-right" or "as of right" development
98 may be subject to site plan review under section 9D.

99 "Cluster development or open space residential development", a class of residential
100 development in which reduced dimensional requirements allow the developed areas to be

101 concentrated in order to permanently preserve open land for natural, agricultural or cultural
102 resources elsewhere on the plot.

103 “Development impact fee”, an assessment imposed by a zoning ordinance or by-law to
104 offset the impacts of a development, in an amount roughly proportionate to the impact of the
105 development, and in accordance with section 9E.

106 “Inclusionary housing”, an affordable housing unit or a housing unit restricted for
107 purchase or rent by a household with an income at or below 120 per cent of the median family
108 income determined by the United States Department of Housing and Urban Development for the
109 applicable metropolitan or nonmetropolitan area; provided, however, that a municipality may set
110 the income thresholds for inclusionary housing at a level at or below 120 per cent of median
111 income.

112 “Inclusionary zoning”, zoning ordinances or by-laws that require the creation of
113 affordable housing or inclusionary housing, in accordance with section 9F.

114 “Municipal affordable housing concessions”, measures adopted by a municipality to
115 contribute to the economic feasibility of an inclusionary-zoned residential or mixed use
116 development including, but not limited to, increases in the otherwise maximum allowable
117 density, floor-area ratio or height or reductions in otherwise applicable parking requirements,
118 permitting fees and timeframes.

119 “Natural resource protection zoning”, zoning ordinances or by-laws enacted principally
120 to protect natural resources by establishing higher underlying density divisors relative to other
121 areas, a formulaic method to calculate development rights and compact patterns of development
122 so that a significant majority of the land remains permanently undeveloped and available for

123 agriculture, forestry, recreation, watershed management, carbon sequestration, wildlife habitat or
124 other natural resource values.

125 “Permit granting authority”, the board of appeals or zoning administrator.

126 SECTION 3A. Said section 1A of said chapter 40A, as so appearing, is hereby further
127 amended by inserting after the definition of “Special permit granting authority” the following
128 definition:-

129 “Transfer of development rights”, the regulatory procedure whereby the owner of a
130 parcel may convey development rights to the owner of another parcel and where the
131 development rights so conveyed are extinguished on the first parcel and may be exercised on the
132 second parcel in addition to the development rights already existing regarding that parcel.

133 SECTION 4. Said chapter 40A is hereby further amended by inserting after section 1A
134 the following section:-

135 Section 1B. (a) This chapter shall be construed to give full effect to the home rule
136 authority of cities and towns. Nothing in this chapter shall be construed as limiting the
137 constitutional authority of cities and towns unless expressly stated by this chapter. Wherever the
138 language of this chapter purports to authorize or enable, it shall be so construed only where such
139 authority is not otherwise available to cities and towns under the constitution or laws of the
140 commonwealth, and in all other cases such language shall be considered illustrative only.

141 (b) Nothing in this chapter shall limit the authority of the regional planning agencies
142 under chapter 716 of the acts of 1989, chapter 561 of the acts of 1973 and chapter 831 of the acts
143 of 1977 or of any municipality within Barnstable or Nantucket County or the county of Dukes

144 County acting under said chapter 716, said chapter 561 and said chapter 831 including, but not
145 limited to, the designation of districts of critical planning concern, the adoption of regulations for
146 such districts, the review of developments of regional impact and the imposition development
147 impact fees. If this chapter conflicts with these special acts and any regulations, ordinances,
148 regional policy plans or decisions issued or adopted under these special acts, the latter shall
149 control.

150 SECTION 5. Section 3 of said chapter 40A, as appearing in the 2014 Official Edition, is
151 hereby amended by adding the following paragraph:-

152 No zoning ordinance or by-law shall prohibit or require a special permit for the use of
153 land or structures for an accessory dwelling unit or the rental thereof in a single-family
154 residential zoning district on a lot with 5,000 square feet or more or on a lot of sufficient area to
155 meet the requirements of title 5 of the state environmental code established by section 13 of
156 chapter 21A, if applicable, but such land or structures may be subject to reasonable regulations
157 concerning dimensional setbacks and the bulk and height of structures. The zoning ordinance or
158 by-law may require that the principal dwelling or the accessory dwelling unit be owner-occupied
159 and may limit the total number of accessory dwelling units in the municipality to a percentage
160 not lower than 5 per cent of the total non-seasonal housing units in the municipality. Not more
161 than 1 additional parking space shall be required for an accessory dwelling unit but, if parking is
162 required for the principal dwelling, that parking shall either be retained or replaced. As used in
163 this paragraph, "accessory dwelling unit" shall mean a self-contained housing unit, inclusive of
164 sleeping, cooking and sanitary facilities, incorporated within the same structure as the principal
165 dwelling or in a detached accessory structure and that: (i) is located on the same lot as the
166 principal dwelling; (ii) maintains a separate entrance, either directly from the outside or through

167 an entry hall or corridor shared with the principal dwelling; (iii) shall not be sold separately from
168 the principal dwelling; and (iv) is not larger in floor area than 1/2 the floor area of the principal
169 dwelling or 900 square feet, whichever is smaller. Nothing in this paragraph shall authorize an
170 accessory dwelling unit to violate the building, fire, health or sanitary codes or wetlands laws,
171 ordinances or by-laws.

172 SECTION 6. Said chapter 40A is hereby further amended by inserting after section 3 the
173 following section:-

174 Section 3A. (1) (a) For the purposes of this section, the following words shall have the
175 following meanings unless the context clearly requires otherwise:

176 "Department", the department of housing and community development.

177 "Eligible locations", as defined in section 2 of chapter 40R.

178 "Gross density", a units-per-acre density measurement that includes in the calculation
179 land occupied by public rights-of-way, recreational, civic, commercial and other non-residential
180 uses.

181 "Lot", an area of land with definite boundaries that are used or available for use as the
182 site of a building.

183 "Multi-family housing", a residential building with 3 or more dwelling units or 2 or
184 more residential buildings on the same lot with more than 1 dwelling unit in each building.

185 "Rural town", a municipality with a population density of less than 500 people per
186 square mile as determined by the most recent decennial federal census.

187 (b) Zoning ordinances and by-laws shall provide at least 1 district of reasonable
188 size in which multi-family housing is a permitted use as of right. For the purposes of this
189 section, "district" shall: (i) include multi-family housing without age restrictions which is
190 suitable for families with children; (ii) have a minimum gross density of 8 units per acre in rural
191 towns and a minimum gross density of 15 units per acre in all other municipalities, subject to any
192 further limitations imposed by section 40 of chapter 131 and title 5 of the state environmental
193 code established by section 13 of chapter 21A; provided, however, that multi-family housing
194 districts shall align to the extent possible with existing or planned water, sewer and
195 transportation infrastructure; and (iii) be in eligible locations.

196 A city or town may satisfy the requirement of this subsection by obtaining a
197 determination from the department, acting directly or through a regional planning agency as its
198 designee, that the multi-family provisions of its zoning ordinance or by-law are consistent with
199 the department's regulations established pursuant to subsection (c). If a city or town obtains a
200 determination from the department or regional planning agency under this section, the city or
201 town may use the determination as verification of compliance when applying for discretionary
202 funding by state agency programs that have included a preference or priority for multi-family
203 zoning pursuant to this section.

204 The department may waive or modify the requirements of this subsection for rural
205 municipalities or if a determination is made that no eligible locations exist within a municipality.

206 (c) The department shall promulgate regulations which shall be used to determine
207 if a city or town has satisfied the requirements established in this subsection.

208 (2) Zoning ordinances or by-laws shall provide for open space residential developments
209 as of right. These ordinances or by-laws shall provide that open space residential developments
210 shall be allowed either in a specific district within that district or in multiple districts through
211 overlay zoning. These ordinances or by-laws shall provide that open space residential
212 developments shall be permitted upon review and approval by a planning board pursuant to
213 section 81K to 81GG, inclusive, of chapter 41 and in accordance with a planning board's rules
214 and regulations governing subdivision control.

215 An open space residential development shall be permitted only on a plot of land of such
216 minimum size as a zoning ordinance or by-law may specify which is divided into building lots
217 with dimensional control, density, open land and use restrictions for such building lots varying
218 from those otherwise permitted by the ordinance or by-law. Such open land, when added to the
219 building lots, shall be at least equal in area to the land area required by the ordinance or by-law
220 for the total number of units or buildings contemplated in the development.

221 A municipality may require either a yield plan or a calculation that deducts for roadways,
222 wetlands and other site constraints in order to determine the yield of housing units in an open
223 space residential development. The open land may be situated to promote and protect maximum
224 solar access within the development. The open land shall either be conveyed to the city or town
225 and accepted by it for park or open space use or be conveyed to a nonprofit organization the
226 principal purpose of which is the conservation of open space or be conveyed to a corporation or
227 trust owned or to be owned by the owners of lots or residential units within the development. If
228 the corporation or trust is utilized, ownership thereof shall pass with conveyances of the lots or
229 residential units. Where the land is not conveyed to the city or town or other governmental

230 agency as dedicated open space, a restriction under sections 31 to 33, inclusive, of chapter 184
231 shall be recorded.

232 Allowance of open space residential development by right in accordance with this section
233 shall not preclude establishment of zoning districts which provide for increases in the
234 permissible density of population or intensity of a particular use within an open space residential
235 development by special permit as provided in section 9.

236 The department of housing and community development and the executive office of
237 energy and environmental affairs shall jointly publish guidelines which may be used to
238 determine if a city or town has satisfied the requirements established in this subclause.

239 (3) If a zoning ordinance or by-law fails to comply with this section, the superior court or
240 the land court may award appropriate declaratory and injunctive relief in a civil action brought
241 by the attorney general on behalf of the department or by an aggrieved applicant for a local
242 permit.

243 SECTION 7. Section 5 of said chapter 40A, as appearing in the 2014 Official Edition, is
244 hereby amended striking out, in line 78, the word "No" and inserting in place thereof the
245 following words:- Unless otherwise prescribed in a zoning ordinance or by-law, no.

246 SECTION 8. Said section 5 of said chapter 40A, as so appearing, is hereby further
247 amended by inserting after the word "meeting" in line 82, the following words:- "; provided,
248 however, that if a city or town has failed to meet the minimum requirements of clause (1) or (2)
249 section 3A, a zoning ordinance or by-law that is consistent with these requirements shall be
250 adopted by a vote of a simple majority of all members of the town council or of the city council

251 where there is a commission form of government or a single branch or of each branch where
252 there are 2 branches or by a vote of a simple majority of town meeting”.

253 SECTION 9. The fourth paragraph of said section 5 of said chapter 40A, as so appearing,
254 is hereby amended by inserting after the first sentence the following sentence:- The report shall
255 evaluate the consistency of the proposed ordinance or by-law or amendment thereto with a
256 master plan under section 81D of chapter 41, if any, in effect.

257 SECTION 10. The fifth paragraph of said section 5 of said chapter 40A, as so appearing,
258 is hereby amended by adding the following sentence:- Any change in the voting majority
259 required to adopt a zoning ordinance, by-law or amendment shall be made by the voting majority
260 then in effect and shall not become effective until 6 months have elapsed after the vote;
261 provided, however, that a voting change shall be limited to a range between a simple majority
262 and a 2/3 majority vote. A majority vote of less than 2/3 shall not be allowed for a specific
263 zoning amendment if the amendment is the subject of a landowner protest.

264 SECTION 11. Section 6 of said chapter 40A, as so appearing, is hereby amended by
265 striking out, in lines 3 to 5, inclusive, the words “or to a building or special permit issued before
266 the first publication of notice of the public hearing on such ordinance or by-law required by
267 section five,”.

268 SECTION 12. Said section 6 of said chapter 40A, as so appearing, is hereby further
269 amended by striking out, in lines 6 and 7, the words “to a building or special permit issued after
270 the first notice of said public hearing,”.

271 SECTION 13. Said section 6 of said chapter 40A, as so appearing, is hereby further
272 amended by striking out the second paragraph and inserting in place thereof the following
273 paragraph:-

274 If a complete application for a building permit or special permit is duly submitted and
275 received, including receipt of payment for any applicable fees, and written notice of the
276 submission has been given to the city or town clerk before the first publication of notice of the
277 public hearing on the ordinance or by-law as required by section 5, the permit shall be governed
278 by the applicable provisions of the zoning ordinance or by-law, if any, in effect at the time of the
279 first submission and receipt while any permit is being processed and, if the permit or an
280 amendment of the permit is finally approved, for 2 years in the case of a building permit and 3
281 years in the case of a special permit from the date of the granting of approval. The period of 2 or
282 3 years shall be extended by a period equal to the time a city or town imposes or has imposed
283 upon it by a state, a federal agency or a court, a moratorium on construction, the issuance of
284 permits or utility connections.

285 SECTION 14. The fourth paragraph of said section 6 of said chapter 40A, as so
286 appearing, is hereby amended by striking out the second sentence.

287 SECTION 15. Said section 6 of said chapter 40A, as so appearing, is hereby amended by
288 striking out the fifth paragraph and inserting in place thereof the following paragraph:-

289 If a complete application for a definitive plan, or a preliminary plan followed within 7
290 months by a definitive plan that is substantially similar to the preliminary plan, is duly submitted
291 to a planning board for approval under the subdivision control law and written notice of the
292 submission has been given to the city or town clerk before the public hearing on the ordinance or

293 by-law required by section 5, the land on the plan shall be governed by the applicable provisions
294 of the zoning ordinance or by-law, if any, in effect at the time of the first submission while any
295 plan is being processed under the subdivision control law and, if the definitive plan or an
296 amendment to the definitive plan is finally approved, for 8 years from the date of the
297 endorsement of the approval; provided, however, that in the case of a minor subdivision in a city
298 or town that has accepted section 81HH of chapter 41, the applicable provisions of the zoning
299 ordinance or by-law shall govern for 4 years from the date of the endorsement of approval. The
300 period of 8 or 4 years shall be extended by a period equal to the time which a city or town
301 imposes or has imposed upon it by a state, a federal agency or a court, a moratorium on
302 construction, the issuance of permits or utility connections.

303 SECTION 16. Section 9 of said chapter 40A, as so appearing, is hereby amended by
304 striking out the third to ninth paragraphs, inclusive.

305 SECTION 17. The twelfth paragraph of said section 9 of said chapter 40A, as so
306 appearing, is hereby amended by striking out the last sentence and inserting in place thereof the
307 following 2 sentences:- Unless a greater majority is specified in the zoning ordinance or by-law,
308 issuance of a special permit under this section shall require an affirmative vote of a simple
309 majority of the special permit granting authority. A greater majority vote requirement specified
310 in a zoning ordinance or by-law shall not exceed a vote of 2/3 of the special permit-granting
311 authority in a board with more than 5 members or a vote of 4 members in a 5-member board.

312 SECTION 18. Said section 9 of said chapter 40A, as so appearing, is hereby further
313 amended by striking out the fourteenth paragraph and inserting in place thereof the following 2
314 paragraphs:-

315 A special permit granted under this section shall state that it shall lapse within a period of
316 time specified by the special permit granting authority, which shall be not less than 3 years if a
317 substantial use thereof has not sooner commenced except for good cause or, in the case of a
318 permit for construction, if construction has not begun by the specified date except for good
319 cause. The minimum period of 3 years may, by ordinance or by-law, be increased to a longer
320 minimum period. The period of time before which a special permit shall lapse shall not include
321 the time required to pursue or await the determination of an appeal from the grant thereof, as
322 referenced in section 17.

323 Upon written application by the grantee of a special permit, the special permit-granting
324 authority, in its discretion, and after notice and a public hearing, unless under local ordinance or
325 by-law a public hearing is not required, vote by a majority to extend the time for the exercise of a
326 special permit for a period of time not to exceed the original duration of the special permit. The
327 application shall be filed not later than 65 days before the lapse of the special permit. If the
328 permit granting authority does not grant the extension within 65 days of the date of application
329 therefor, upon the lapse of the special permit, the special permit shall only be re-established
330 pursuant to the requirements of this section.

331 SECTION 19. Said section 9 of said chapter 40A, as so appearing, is hereby further
332 amended by inserting after the word "zoned", in line 201, the following word:- principally.

333 SECTION 20. Said section 9 of said chapter 40A, as so appearing, is hereby further
334 amended by inserting after the word "zoned", in line 216, the following word:- principally.

335 SECTION 21. Said chapter 40A is hereby further amended by inserting after section 9C
336 the following 4 sections:-

337 Section 9D. (a) As used in this section, "site plan" shall mean the submission made to a
338 municipality that includes documents and drawings required by an ordinance or by-law showing
339 the proposed on-site arrangement of buildings, structures, parking, pedestrian and vehicle
340 circulation, utilities, grading and other site features and improvements existing or to be placed on
341 a parcel of land in connection with the proposed use of land or structures.

342 (b) A zoning ordinance or by-law that requires site plan review for uses allowed by-right
343 shall: (i) establish the different types, scales or categories of uses of land, structures or
344 development subject to site plan review; (ii) specify the local boards or officials charged with
345 reviewing and approving site plans which may differ for different types, scales or categories of
346 uses of land or structures; (iii) set forth what shall be considered a complete application; (iv)
347 establish the process for submission, review and approval for a site plan; (v) establish standards
348 and criteria by which the project and its direct adverse impacts on that portion of properties and
349 public infrastructure located within 300 feet of the parcel boundary shall be evaluated; and (vi)
350 include provisions making the terms, conditions and content of the approved site plan
351 enforceable by the municipality which may include the requirement of performance guarantees.

352 (c) Approval of a site plan under this section, if reviewed by a board, shall require not
353 more than a simple majority vote of the full board and shall be made within the time limits
354 prescribed by ordinance or by-law not to exceed 120 days from the filing of a complete
355 application. Procedures for the administrative review and approval of a site plan by staff or other
356 municipal officials shall be as specified in the ordinance or by-law but the 120-day time limit for
357 a decision shall not be increased unless granted in writing by the person seeking the site plan
358 approval. If no decision is issued within the time limit prescribed and no written extension of the
359 time limit has been granted by the person seeking the site plan review, the site plan shall be

360 deemed constructively approved as provided in section 9; provided, however, that the petitioner
361 shall comply with the constructive approval procedures under said section 9. Copies of the
362 approved site plan submission shall be kept on file by the town or city clerk, the permit granting
363 authority and the municipal building department.

364 (d) A site plan submitted for the use of specific land or structures allowed by-right shall
365 not be denied unless: (i) the proposed site plan cannot be conditioned to meet the requirements
366 set forth in the zoning ordinance or by-law; (ii) the applicant fails to submit the information and
367 fees required by the zoning ordinance or by-law necessary for an adequate and timely review of
368 the design of the proposed land or structures; or (iii) there is no feasible site design change or
369 condition that would adequately mitigate any direct adverse impacts of the proposed
370 improvements on that portion of properties and public infrastructure located within 300 feet of
371 the parcel boundary.

372 (e) A site plan approved under this section may include reasonable conditions,
373 safeguards and limitations to mitigate the direct adverse impacts of the project on that portion of
374 properties and public infrastructure located within 300 feet of the parcel boundary. Conditions
375 may be approved that are directly related to standards and criteria described in the site plan
376 review ordinance or by-law; provided, however, that such conditions shall not conflict with or
377 waive any other applicable requirement of the zoning ordinance or by-law. The record of the
378 decision shall state the reasons for any conditions imposed. If conditions are adopted pursuant to
379 this subsection, the site plan shall be revised to include those conditions before the development
380 permit is issued.

381 (f) Site plan review may not require payment for or performance of any off-site
382 mitigation except when the site plan approval is subject to development impact fees imposed in
383 accordance with section 9E or when a site plan is required in connection with the issuance of a
384 special permit, variance or any other discretionary zoning approval.

385 (g) Except where site plan review is required in connection with the issuance of a special
386 permit, variance or other discretionary zoning approval, decisions made under this section may
387 be appealed pursuant to section 4 of chapter 249. Such civil action may be brought in the
388 superior court or in the land court and shall be commenced within 20 days after the filing of the
389 decision of the site plan review approving authority with the city or town clerk. Notice of such
390 appeal must be given to the city or town clerk so as to be received within 20 days. A complaint
391 by a plaintiff challenging a site plan approval under this section shall allege the specific reasons
392 why the project failed to satisfy the requirements of this section, the zoning ordinance or by-law
393 or other applicable law and shall allege specific facts establishing how the plaintiff is aggrieved
394 by such decision. A complaint by an applicant for site plan review challenging the denial or
395 conditioned approval of a site plan shall similarly allege the specific reasons why the project
396 properly satisfied the requirements of this section, the zoning ordinance or by-law or other
397 applicable law.

398 (h) A site plan, or any extension, modification or renewal thereof, shall not take effect
399 until a notice of site plan approval, identifying the permit granting authority and the date upon
400 which approval was granted, is recorded in the registry of deeds for the county or district in
401 which the land is located and indexed in the grantor index under the name of the owner of record
402 or is recorded and noted on the owner's certificate of title.

403 (i) Zoning ordinances or by-laws shall provide that a site plan approval for a use allowed
404 by-right shall lapse within a specified period of time, not less than 2 years from the date of the
405 filing of the approval with the city or town clerk, if a building permit has not been obtained or
406 substantial use or construction has not yet begun except where extended for good cause by the
407 permit-granting authority either with or without a public hearing, as provided in the zoning
408 ordinance or by-law. Such period of time shall not include the time required to pursue or await
409 the determination of an appeal and shall be measured from the date of the dismissal of the appeal
410 or the entry of final judgment in favor of the applicant.

411 (j) Where an ordinance or by-law provides that a variance, special permit or other
412 discretionary zoning approval shall also require site plan review, the review of the site plan shall
413 be integrated into the processing of the variance, special permit or other discretionary zoning
414 approval and shall not be made the subject of a separate proceeding, hearing or decision. In such
415 a case, the content requirements and approval criteria for a site plan as specified in the zoning
416 ordinance or by-law shall be followed but this section shall not otherwise apply.

417 Section 9E. (a) A local ordinance or by-law that requires the payment of a development
418 impact fee for a permit or approval shall comply with this section. A development impact fee
419 shall have a rational nexus to, and shall be roughly proportionate to, the impacts created by the
420 development. A development impact fee shall reasonably benefit the proposed development and
421 shall be used solely for the purposes of defraying the costs of off-site public capital facilities
422 necessary to support or compensate for the proposed development. Development impact fees
423 shall be applied in a consistent manner pursuant to a proportionate share development impact fee
424 study conducted in accordance with subsection (f).

425 (b) The development impact fee shall be imposed only on construction, enlargement,
426 expansion, substantial rehabilitation or change of use that results in a net increase of demand or
427 service. Impact fees shall be limited to mitigating the impact of the development on the
428 following capital facilities: (i) water supply, treatment and distribution, both potable and for
429 suppression of fires; (ii) wastewater treatment and sanitary sewerage; (iii) drainage, storm water
430 management and treatment; (iv) solid waste; (v) roads, intersections, traffic improvements,
431 public transportation, pedestrian ways and bicycle paths; and (vi) parks and recreational
432 facilities. Impact fees may be expended on such facilities for the payment of debt service or for
433 studies with a rational nexus to the development, including master plans made in accordance
434 with section 81D of chapter 41 and proportionate share impact fee studies under section 9F. A
435 development impact fee shall not be assessed or expended for personnel costs, normal operation
436 and maintenance costs or to remedy deficiencies in existing facilities; provided, however, that an
437 impact fee may be assessed for mitigation on a facility with a preexisting deficiency to the extent
438 that the preexisting deficiency is exacerbated and not solely to remedy the preexisting deficiency.

439 (c) No development impact fee shall be imposed on a farming or agricultural use
440 recognized in section 1A of chapter 128 or on a dwelling unit with an affordable housing
441 restriction, as defined by section 31 of chapter 184, of not less than 30 years. To the extent that a
442 development contains a nonexclusively farming or agricultural use or nonexclusively affordable
443 housing restricted unit, and the per cent of farming or agricultural use or affordable housing
444 restricted units is not trivial, the by-law or ordinance shall prorate or eliminate the development
445 impact fee.

446 Development impact fees shall be proportionately reduced to the extent that a
447 municipality imposes other fees or requirements, otherwise imposed by law, for mitigation of

448 development including, but not limited to, fees imposed under chapter 40C and section 40 of
449 chapter 131. No fee shall be assessed more than once for the same impact. If, and to the extent
450 that, a municipality receives state or federal funds for mitigation of the development impacts or
451 other grants or contributions for mitigation of development impacts, those funds shall be
452 accounted for in the development impact fee or applied to the development impact fee
453 proportional share development impact study.

454 (d) A development impact fee assessed under this section shall be due and payable not
455 earlier than the issuance of the building permit upon commencement of construction, which may
456 include site preparation work. The fee shall be deposited in a separate, segregated, interest-
457 bearing account in the city or town in which the proposed development is located and no
458 development impact fee shall be paid to the general treasury or used as general expenses of the
459 city or town.

460 Any funds not expended or encumbered by the end of the calendar quarter immediately
461 following 6 years from the date the development impact fee was paid shall be returned with
462 interest. If disagreement exists relative to who shall receive the unexpended or unencumbered
463 fees, the city or town may retain the development impact fee pending instructions given in
464 writing by the parties involved or by a court of competent jurisdiction.

465 (e) A zoning ordinance or by-law may provide that the applicant or developer may
466 construct the public capital facility or a portion thereof for which the development impact fee
467 was assessed or may enter into any other mutual agreement in lieu of paying the development
468 impact fee; provided, however, that the applicant or developer shall not be required to construct

469 the public capital facility or a portion thereof or enter into an alternative agreement if instead the
470 applicant or developer chooses to pay the assessed development impact fee.

471 (f) No development impact fee shall be assessed unless it is assessed pursuant to a valid
472 proportionate-share development impact fee study. A proportionate-share development impact
473 fee study shall establish the proportionate share development impact fee for capital facilities and
474 detail the methodology used to set the fee. The scope of the study may be jurisdiction-wide or
475 limited to a geographic area or category of public capital facilities that development impact fees
476 may be intended to address. A municipality may rely upon credible and professionally
477 recognized methodologies for the study. The study shall be updated not less than every 10 years
478 to reflect actual development activity, actual costs of infrastructure improvements completed or
479 underway, plan changes or amendments to the zoning ordinance or by-law. The study shall
480 identify any preexisting deficiencies in the public capital facilities and shall set forth a feasible
481 implementation plan for how those deficiencies shall be remedied. A proportionate share
482 development impact fee study shall not be valid and no development impact fees shall be
483 assessed if 10 years have passed since the study's creation or its most recent update.

484 An ordinance or by-law may waive or reduce the development impact fee for
485 development that furthers a public purpose as determined in a master plan adopted by the city or
486 town under section 81D of chapter 41 or other formally approved plan designed to set goals for
487 the development of land within the city or town.

488 Notwithstanding this section, a city or town authorized to impose development impact
489 fees pursuant to a special act shall comply with the standards set forth in the special act.

490 Section 9F. (a) A zoning ordinance or by-law may require the applicant for a residential
491 or mixed use development to provide inclusionary housing units in return for municipal
492 affordable housing concessions. In establishing any such ordinance or by-law, the city or town
493 shall consider the likely impacts of development on the affordable housing assets of the
494 municipality, the ability of the community to meet local and regional housing needs and the
495 economic feasibility of development.

496 (b) An inclusionary housing ordinance or by-law shall provide municipal affordable
497 housing concessions which shall be applied among affected developments in a reasonable and
498 consistent manner.

499 (c) In lieu of constructing the required inclusionary housing units onsite, the ordinance or
500 by-law may provide for the construction of such units off-site, the dedication of land for that
501 purpose or the payment of funds to a separate account created by the city or town sufficient for
502 and dedicated to inclusionary housing if the applicant demonstrates to the satisfaction of the local
503 approving authority that the units cannot be otherwise provided onsite or that an alternative
504 proposal better meets the needs of the city or town with respect to the provision of inclusionary
505 housing. Off-site units, land dedication or payment in lieu of units, in the opinion of the board or
506 official designated by ordinance or by-law to administer this section and in consideration of local
507 needs, shall provide inclusionary housing benefits substantially equivalent to the provision of
508 onsite units.

509 (d) A city or town may establish a separate dedicated account for the deposit of funds
510 received under this section, including a Municipal Affordable Housing Trust Fund account under
511 section 55C of chapter 44 or other dedicated accounts of similar purpose. These funds shall be

512 deposited with the treasurer and disbursed for inclusionary housing in accordance with the
513 ordinances, by-laws or regulations of the city or town. If the application of this section results in
514 less than a full dwelling unit, the board may accept a prorated payment of funds in lieu of unit
515 creation.

516 (e) The inclusionary housing units shall be subject to an affordable housing restriction for
517 not less than 30 years, in accordance with sections 31 to 33, inclusive, of chapter 184 or, if
518 ineligible under said sections 31 to 33, inclusive, of said chapter 184, restricted by other means
519 as required in an ordinance or by-law.

520 (f) The ordinance or by-law may require some or all of the inclusionary housing units to
521 be low-income or moderate-income housing as defined in sections 20 to 23, inclusive, of chapter
522 40B, and shall be eligible for inclusion on the local subsidized housing inventory subject to and
523 in accordance with applicable regulations and guidelines of the department of housing and
524 community development. Nothing in this section shall require the department to include
525 affordable units created under this section on the subsidized housing inventory.

526 Section 9G. No ordinance or by-law shall prohibit an owner of land or structures who
527 has applied or intends to apply for a building permit, any permit or approval required under this
528 chapter, an approval under sections 81K to 81GG, inclusive, of chapter 41 or a comprehensive
529 permit under sections 20 to 23, inclusive, of chapter 40B from requesting of the public official or
530 local board charged with acting on the application to undertake a land use dispute avoidance
531 process.

532 If the applicant and the public official or local board agree to a land use dispute
533 avoidance process, the mediator or facilitator for the dispute avoidance process may convene

534 meetings or conduct interviews that shall be confidential and privileged from discovery in
535 accordance with section 23C of chapter 233. The mediator or facilitator shall have the
536 protections provided under said section 23C of said chapter 233. To the extent that public bodies
537 are participants, their deliberations may be held in executive session to the extent permitted by
538 clause 9 of subsection (a) of section 21 of chapter 30A.

539 The applicant and the public official or local board shall, by an agreement in writing filed
540 with the city or town clerk, stipulate and agree to extend any otherwise applicable time
541 requirements of state or local law. Whether a resolution results, the applicant may proceed with
542 the application without prejudice for having participated in a conflict evaluation or resolution
543 effort and the application process shall proceed in due course as otherwise provided by law,
544 ordinance or by-law.

545 SECTION 22. Said chapter 40A is hereby further amended by striking out section 10, as
546 appearing in the 2014 Official Edition, and inserting in place thereof the following section:-

547 Section 10. Where literal enforcement of the zoning ordinance or by-law would result in
548 practical difficulty, financial or otherwise, to the petitioner, upon appeal or upon petition with
549 respect to particular land or structures, the permit-granting authority may grant a variance from
550 the terms of the applicable zoning ordinance or by-law following a public hearing for which
551 notice has been given by publication and posting as provided in section 11 and by mailing notice
552 to all interested parties. The practical difficulty necessitating the variance shall relate to the
553 physical characteristics including, but not limited to, soil conditions, shape or topography or
554 location of the site or of the structures thereon.

555 In making its determination, the permit-granting authority shall take into consideration
556 the benefit to the applicant if the variance is granted as well as the detriments to the health, safety
557 and welfare of the neighborhood or community if the variance is granted. In order to grant a
558 variance, the permit-granting authority shall make all of the following findings: (i) the benefit
559 sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue,
560 other than a variance; (ii) the variance will not have a disproportionately adverse effect on
561 nearby properties, the character of the neighborhood or the environment; (iii) the variance will
562 not nullify or substantially derogate from the intent or purpose of the ordinance or by-law or a
563 master plan under section 81D of chapter 41 if a master plan is in effect; and (iv) the claimed
564 difficulty relating to the property in question is unique and does not also apply to a substantial
565 portion of the district or neighborhood. The permit-granting authority may also take into
566 consideration the extent to which the claimed difficulty is self-created and may base a denial
567 solely upon a finding that the claimed difficulty is self-created. In the granting of variances, the
568 permit-granting authority shall grant the minimum variance that it deems necessary to relieve the
569 difficulty.

570 The permit-granting authority may impose conditions, safeguards and limitations both of
571 time and of use, including the continued existence of any particular structures, but excluding any
572 condition, safeguards or limitation based upon the continued ownership of the land or structures
573 to which the variance pertains by the applicant, petitioner or an owner.

574 Except where local ordinances or by-laws expressly permit variances for use, no variance
575 may authorize a use or activity not otherwise permitted in the district in which the land or
576 structure is located. No variance may authorize a use or activity not otherwise permitted in the
577 district in which the land or structure is located unless the permit-granting authority specifically

578 finds that owing to circumstances relating to the soil conditions, shape or topography of the land
579 or structures and especially affecting such land or structures but not affecting generally the
580 zoning district in which it is located, a literal enforcement of the ordinance or by-law would
581 involve substantial hardship, financial or otherwise, to the petitioner or appellant and that
582 desirable relief may be granted without detriment to the public good and without nullifying or
583 substantially derogating from the intent or purpose of such ordinance or by-law. Variances for
584 use shall be subject to all of this section and any more stringent criteria contained in an ordinance
585 or by-law. Variances for use properly granted prior to January 1, 1976 but limited in time, may
586 be extended on the same terms and conditions that were in effect for that variance upon the
587 effective date.

588 Once exercised, variances shall run with the land but a use variance may run with the
589 land only if determined by the permit-granting authority acting pursuant to an ordinance or by-
590 law enabling such a determination.

591 If the rights authorized by a variance are not exercised within 2 years after the date of the
592 grant of the variance, the variance shall lapse; provided, however, that upon written application
593 by the grantee of the variance, the permit-granting authority may extend, without a public
594 hearing unless so required by a zoning ordinance or by-law, the time to exercise such rights for
595 up to 1 year. The application shall be filed not later than 65 days before the lapse of the
596 variance. If the permit-granting authority does not grant the extension before the lapse of the
597 variance then, upon the lapse of the variance the variance may be reestablished only after notice
598 and a new hearing pursuant to this section.

599 SECTION 23. Section 11 of said chapter 40A, as so appearing, is hereby amended by
600 inserting after the word "town" , in line 15, the following words:- , the board of health of the city
601 or town.

602 SECTION 24. Section 17 of said chapter 40A, as so appearing, is hereby amended by
603 inserting after the sixth paragraph the following paragraph:-

604 The court, in its discretion, may require non-municipal plaintiffs in an action under this
605 section to post a surety or cash bond in an amount not to exceed \$15,000 to secure the payment
606 of costs in appeals of decisions approving special permits, variances and site plans where the
607 court finds that the harm to the defendants or to the public interest resulting from the delays of
608 appeal outweighs the burden of the surety or cash bond on the plaintiffs. When making a
609 decision regarding surety or cash bond requirements, the court may consider the relative merits
610 of the appeal and the relative financial means of the appellant and the defendants.

611 SECTION 25. Said chapter 41 is hereby further amended by striking out section 81D, as
612 so appearing, and inserting in place thereof the following section:-

613 Section 81D. (a) A planning board established in a city or town shall make a master plan
614 for the city or town in accordance with this section. The plan shall take effect upon adoption by
615 the legislative body as provided herein. The planning board shall, from time to time, not to
616 exceed 10 years from the date of adoption, conduct a comprehensive review of the plan and may
617 extend, revise or remake the plan subject to approval as provided in this section. The plan, once
618 adopted, shall be the official master plan of the city or town and shall replace any previously
619 adopted master plan.

620 (b) The plan shall be a comprehensive framework, through text, maps and illustrations
621 that provides a basis for decision-making about land use and the long-term physical development
622 of the municipality. The plan shall be internally consistent in its policies, forecasts and standards
623 and may support and provide a rationale for the municipality's zoning ordinance or by-laws,
624 subdivision regulations and other land use laws, regulations, policies and capital expenditures.

625 (c) The plan shall include the elements required by this section and may include any
626 optional subjects at the discretion of the municipality. The plan shall address the following
627 elements:

628 (i) goals and objectives statement of the municipality for its future growth,
629 development, redevelopment, conservation and preservation; provided, however, that each
630 community shall conduct a public participation process to determine community values, establish
631 goals and identify patterns of development, redevelopment, conservation and preservation
632 consistent with these goals; and provided further, that at a minimum, the goals and objectives
633 statement shall address the elements required to be included in the plan;

634 (ii) a housing element that shall include: (A) an inventory of local demographic
635 characteristics, an assessment and forecast of housing needs and a statement of local housing
636 policies; (B) an analysis of housing units by type of structure, affordable housing and subsidized
637 housing, housing available for rental, special needs housing and housing for the elderly; (C) an
638 assessment of existing local policies, programs, laws or regulations that encourage the
639 preservation, improvement and development of housing; and (D) an evaluation of zoning and
640 other land use policies designed to meet local housing needs including, but not limited to, the
641 affordable housing needs of low, moderate and median income households and the accessible

642 housing needs of people with disabilities and special needs; provided, however, that a current
643 housing production plan consistent with sections 20 to 23, inclusive, of chapter 40B or any
644 regulations thereto may fulfill the evaluation requirement of this clause;

645 (iii) a natural resources and energy management element that shall include: (A)
646 identification of the significant natural and energy resources of the municipality; (B)
647 identification of protected and unprotected wetlands and water resources, lands critical to
648 sustaining surface and groundwater quality and quantity, environmentally sensitive lands, critical
649 wildlife habitat and biodiversity, agricultural lands and forests, protection of wildlife habitat,
650 water resources, vistas and key landscapes, outdoor recreation facilities and farm and forestry
651 land; provided, however, that in cities and towns with agricultural commissions created by the
652 legislative or executive body of the city or town, those elements of the plan dealing with
653 agricultural topics shall be prepared jointly by the agricultural commission and the planning
654 board; (C) an examination of local laws, regulations, policies and strategies to address needs for
655 the protection, restoration and sustainable management of natural resources; and (D) an energy
656 component that explores locally feasible land use strategies to maximize energy efficiency and
657 renewable energy opportunities, support land, energy, water and materials conservation
658 strategies, local clean power generation, distributed generation technologies and innovative
659 industries and addresses global climate change by reducing greenhouse gas emissions, which
660 may include addressing a development's impact on carbon emissions, and reducing the
661 consumption of fossil fuels;

662 (iv) a land use and zoning element that includes: (A) an identification of historic
663 settlement patterns and present land uses and designation of the proposed distribution, location
664 and interrelationship of public and private land uses; (B) land use policies and related maps

665 which shall be based upon a land use suitability analysis identifying areas most suitable for
666 development and related transportation infrastructure and facilities; (C) growth and development
667 areas that support the revitalization of city and town centers and neighborhoods by promoting
668 development that is compact and walkable, conserves land, protects historic resources, integrates
669 uses and coordinates the provision of housing with the location of jobs, transit and services and
670 new infrastructure; (D) an identification of areas for economic development and job creation,
671 related public and private transportation and pedestrian connections and encourages the creation
672 or extension of pedestrian-accessible districts and neighborhoods that mix commercial, civic,
673 cultural, educational and recreational activities with open space and housing; (E) consideration
674 of the relationship between proposed development intensity and the capacity of land and existing
675 and planned public facilities and infrastructure; and (F) a land use map illustrating the land use
676 policies and desired future development patterns of the municipality and a proposed zoning map;
677 and

678 (v) an implementation program element that defines and prioritizes the actions
679 necessary to achieve the goals and objectives of the master plan; provided, however, that the
680 implementation program shall specify the recommended course of action by which the
681 municipality's regulatory structures, including zoning and subdivision control regulations, may
682 need to be amended in order to be consistent with the master plan.

683 (d) In addition to elements required by this section, the master plan may include,
684 depending on community characteristics, any of the following elements:

685 (i) an economic development element that includes: (A) an inventory and
686 analysis of the local economic base; (B) an assessment of opportunities and barriers to economic

687 development; (C) an assessment of opportunities and barriers to agriculture, including all
688 branches of farming and forestry; and (D) an assessment of opportunities and barriers to self-
689 employment and home-based occupations;

690 (ii) a cultural resources element that identifies the significant cultural, scenic and
691 historic structures, sites and landscapes of the municipality, including archaeological resources
692 and policies and strategies to protect and manage the community's cultural resources;

693 (iii) an open space protection and recreation element that inventories recreational
694 facilities and open space areas of the municipality and policies and strategies for the
695 management, protection and enhancement of those facilities and areas as essential public health
696 infrastructure; provided, however, that an open space and recreational plan approved by the
697 division of conservation services shall constitute the open space protection and recreation
698 element under this subsection;

699 (iv) an infrastructure and capital facilities element to identify and analyze
700 existing and forecasted needs for infrastructure and facilities used by the public; provided,
701 however, that the element shall detail scheduled expansion or replacement of public facilities,
702 infrastructure components or circulation system components and the anticipated costs and
703 revenues associated with those activities;

704 (v) a transportation element including: (A) an inventory of existing and proposed
705 circulation, parking and transportation systems; (B) an assessment of opportunities and barriers
706 to increasing access to transportation options, including land and water-based public transit,
707 bicycling, walking, and transportation services for populations with disabilities; and (C)
708 identification of strategic investment options for transportation infrastructure to encourage smart

709 growth, maximize mobility, conserve fuel and improve air quality and to facilitate the location of
710 new development where a variety of transportation modes can be made available;

711 (vi) a water management element that shall include: (A) an inventory of current
712 and potential municipal sources of water supply, including capacity and safe yield and an
713 assessment of water demand including types of water users, changes in water consumption over
714 time and water billing rate structure; (B) an assessment of the adequacy of existing and proposed
715 water supplies to meet projected demands, water quality and treatment issues, existing measures
716 for water supply protection, water conservation drought management and emergency
717 interconnections; (C) an assessment of the ability of stormwater regulations and practices to
718 limit off-site stormwater runoff to levels substantially similar to natural hydrology through
719 decentralized management practices and the protection of onsite natural features; (D) an analysis
720 of municipal need and capacity for wastewater disposal, including the suitability of sites and
721 water bodies for the discharge of treated wastewater; and (E) recommended strategies for water
722 supply provision and protection, water conservation, wastewater disposal, stormwater
723 management, drought management and emergency interconnections and needed improvements
724 to meet future water resource needs; and.

725 (vii) a public health element that shall include: (A) an inventory of conditions and
726 assets in the natural and built environment which contribute to or constitute a barrier to health,
727 including a description of conditions with a disproportionate impact on residents based on
728 geography, ethnicity, income, immigration status or other characteristics; (B) an assessment of
729 opportunities and barriers to increasing access to conditions and assets in the natural or built
730 environment that contribute to health; and (C) recommendations of available implementation

731 policies and strategies, including zoning and other local laws and regulations, affecting health
732 needs related to the natural or built environment.

733 Any elements included in a master plan shall include a self assessment against similar
734 subject matter in a regional plan adopted by the regional planning agency under section 5 of
735 chapter 40B in effect, if any, or under any special act.

736 (e) A master plan shall only be made, extended, revised or remade by a simple majority
737 vote of the planning board after a public hearing, notice of which shall be posted and published
738 in the manner prescribed for zoning amendments under section 5 of chapter 40A. Following any
739 vote of the planning board, the planning board shall transmit the plan to the chief executive
740 officer of the city or town and the plan shall be an agenda item or warrant article on a subsequent
741 legislative session of the city or town. Adoption of the plan or the extension, revision or remake
742 of the plan shall be by a simple majority vote of the legislative body of the city or town;
743 provided, however, that no vote of the legislative body to alter the plan or amendment as
744 proposed by the planning board shall be other than by a 2/3 majority. The planning board, upon
745 adoption by the legislative body of a plan or report or any change or amendment to a plan or
746 report produced under this section, shall furnish a copy of the plan or report or any change or
747 amendment to the department of housing and community development.

748 (f) A municipality in Barnstable County or the county of Dukes County may adopt a local
749 comprehensive plan pursuant to chapter 716 of the acts of 1989 or chapter 831 of the acts of
750 1977 and the regulations and regional policy plans adopted thereunder. The regional planning
751 agency shall review the local comprehensive plan solely for consistency with the governing
752 special act and any applicable regulations and regional policy plans; provided, however, that the

753 time requirements of this section shall not apply to the review of local comprehensive plans. An
754 adopted local comprehensive plan certified by the regional planning agency as consistent with
755 this section shall be deemed a master plan in compliance with this section and shall entitle the
756 municipality to any statutory benefits of having an adopted master plan.

757 SECTION 26. Section 81L of said chapter 41, as so appearing, is hereby amended by
758 inserting after the word "thereon", in line 72, the following words:- ; provided, however, that the
759 division may be deemed a minor subdivision if the city or town has adopted a minor subdivision
760 ordinance or by-law.

761 SECTION 27. Said section 81L of said chapter 41, as so appearing, is hereby further
762 amended by striking out the definition of the word "Lot" and inserting in place thereof the
763 following 2 definitions:-

764 "Lot", an area of land in 1-ownership, with defined boundaries, used or available for use
765 as the site of 1 or more buildings.

766 "Minor subdivision", in accordance with section 81HH, the division of a lot, tract or
767 parcel of land into 2 or more lots, tracts or parcels where, at the time when it is made, every lot
768 within the lot, tract or parcel so divided has frontage on: (i) a public way or a way which the
769 clerk of the city or town certifies is maintained and used as a public way; (ii) a way shown on a
770 plan approved and endorsed in accordance with the subdivision control law; or (iii) a way in
771 existence when the subdivision control law became effective in the city or town in which the
772 land lies having, in the opinion of the planning board, sufficient width, suitable grades and
773 adequate construction to provide for the needs of vehicular traffic in relation to the proposed use
774 of the land abutting thereon or served thereby and for the installation of municipal services to

775 serve the land and the buildings erected or to be erected thereon; provided, however, that the
776 frontage shall be of at least the distance as is then required by the zoning ordinance or by-law, if
777 any, of the city or town for erection of a building on the lot and, if no distance is so required, the
778 frontage shall be of at least 20 feet.

779 SECTION 28. Section 81O of said chapter 41, as so appearing, is hereby amended by
780 inserting after the word "effect", in line 2, the following words:- and a minor subdivision
781 ordinance or by-law is not in effect.

782 SECTION 29. Said section 81O of said chapter 41, as so appearing, is hereby further
783 amended by inserting after the word "feet", in line 17, the following words:- , unless the city or
784 town has adopted a minor subdivision ordinance or by-law, in which case it shall be approved
785 accordingly.

786 SECTION 30. Section 81Q of said chapter 41, as so appearing, is hereby amended by
787 inserting after the fourth sentence the following sentence:- Design and dimensional requirements
788 for total travel lane widths not greater than 24 feet shall be presumed not to be excessive.

789 SECTION 31. Section 81U of said chapter 41, as so appearing, is hereby amended by
790 striking out, in line 187, the words "for a period of not more than three years".

791 SECTION 32. Section 81X of said chapter 41, as so appearing, is hereby amended by
792 striking out the fourth paragraph and inserting in place thereof the following 2 paragraphs:-

793 Notwithstanding any other provision of this section, the register of deeds shall accept for
794 recording and the land court shall accept with a petition for registration or confirmation of title,
795 any plan bearing a professional opinion by a registered professional land surveyor that the

796 property lines shown are the lines dividing existing ownerships and the lines of streets and ways
797 shown are those of public or private streets or ways already established and that no new lines for
798 division of existing ownership or for new ways are shown.

799 The register of deeds and the land court shall accept for recording and the land court shall
800 accept with a petition for registration any plan showing a change in the line of any lot, tract or
801 parcel bearing a professional opinion by a registered professional land surveyor and a certificate
802 by the person or board charged with the enforcement of the zoning ordinance or by-law of the
803 city or town that the property lines shown: (i) do not create an additional building lot; (ii) do not
804 create, add to or alter the lines of a street or way; (iii) do not render an existing legal lot or
805 structure illegal; (iv) do not render an existing nonconforming lot or structure more
806 nonconforming; and (v) are not subject to alternative local rules and regulations for minor
807 subdivisions under section 81HH. A request for such a certificate shall be acted upon within 21
808 days and shall not be withheld unless a finding is made that the plan violates any of the aforesaid
809 criteria and the finding is stated in writing to the person making the request. Failure to so act
810 within 21 days shall be deemed an approval of the lot line change. All plans, if approved and as
811 recorded, shall be filed with the planning board and the board of assessors of the city or town.
812 The recording of such a plan shall not relieve any owner from compliance with the subdivision
813 control law or any other applicable law.

814 SECTION 33. Paragraph 1 of section 81BB of said chapter 41, as so appearing, is hereby
815 amended by striking out the second and third sentences and inserting in place thereof the
816 following 4 sentences:- Such civil action shall be in the nature of certiorari pursuant to section 4
817 of chapter 249. A complaint by a plaintiff challenging a subdivision or minor subdivision
818 approval under this section shall allege the specific reasons why the subdivision or minor

819 subdivision fails to satisfy the requirements of the board's rules and regulations or other
820 applicable law and allege specific facts establishing how the plaintiff is aggrieved by the
821 decision. A complaint by an applicant challenging a subdivision or minor subdivision denial or
822 conditioned approval under this section shall similarly allege the specific reasons why the
823 subdivision or minor subdivision properly satisfies the requirements of the board's rules and
824 regulations or other applicable law. The fourth to seventh paragraphs, inclusive, of section 17 of
825 chapter 40A shall govern the allowance of costs and the requirement of a surety or cash bond for
826 actions under this section.

827 SECTION 34. Said chapter 41 is hereby further amended by inserting after section
828 81GG the following section:-

829 Section 81HH. (a) Notwithstanding any general or special law to the contrary, a city or
830 town may, by 2/3 vote, to adopt an ordinance or by-law indicating the city's or town's intent to
831 regulate a minor subdivision consistent with this section.

832 (b) A minor subdivision shall, except as provided for in this section, be controlled by the
833 subdivision control law. An applicant for a minor subdivision may create up to 6 lots; provided,
834 however, that a local legislative body by a simple majority vote may increase the maximum
835 number of additional lots created in an application for a minor subdivision to a number greater
836 than 6.

837 (c) No application for a minor subdivision shall be: (i) subject to a public hearing if every
838 lot within the lot has frontage on an existing way; (ii) subject to the requirements of section 81S;
839 (iii) subject to requirements for the location of a way; (iv) subject to a requirement that total
840 travelled lanes' widths shall be greater than 22 feet in a residential minor subdivision; (v) subject

841 to a procedural or substantive requirement more stringent than those specified in this chapter or
842 contained in a city or town's local rules and regulations otherwise applicable to subdivisions; and
843 (vi) denied unless such denial is approved by a vote of 2/3 of the members of the planning board.

844 (d) For a minor subdivision on an existing way, the planning board shall take final action
845 and file with the city or town clerk a certificate of such action within 65 days. Failure to take
846 final action and file with the city or town clerk a certificate of such action within 65 days shall be
847 deemed an approval of a minor subdivision on an existing way.

848 (e) For a minor subdivision on a new way, the planning board shall take final action and
849 file with the city or town clerk a certificate of such final action within 95 days. Failure to take
850 final action and file such certificate within 95 days shall be deemed an approval of a minor
851 subdivision on a new way.

852 (f) Nothing in this section shall prohibit a city or town, subject to ratification by the local
853 legislative body by a simple-majority vote, from: (i) defining "minor subdivision" more broadly;
854 (ii) lessening or eliminating a requirement otherwise applicable to subdivisions; or (iii) creating a
855 means by which the planning board may, by agreement with the applicant, accept payments from
856 the applicant in lieu of otherwise required improvements to an existing way; provided, however,
857 that those improvements shall be completed by the city or town in a reasonable period of time.

858 (g) Notwithstanding any provision of this section, the owner of a parcel of land that is in
859 forest, agricultural or horticultural use and that has for at least the prior 2 years from the date of
860 application satisfied the statutory requirements for tax classification under chapter 61 or 61A,
861 may, in a 365-day period, submit to the planning board a plan of lots showing a division of the
862 parcel to create therefrom up to 2 additional lots as if the city or town had not adopted a minor

863 subdivision by-law or ordinance. The plan shall be accompanied by sufficient evidence upon
864 which the planning board shall find that the statutory requirements for tax classification of the
865 original parcel, other than the filing of an application, have been verified and that the number of
866 division lots created from the original parcel, including the lots shown on the plan, does not
867 cumulatively exceeded 6 lots. In any case where that area of the original parcel remaining after
868 any division under this paragraph would be insufficient to qualify the remaining original parcel
869 for tax classification, division lots created under this paragraph shall not exceed 2 acres or the
870 area required by the applicable zoning ordinance or by-law by more than 50 per cent, whichever
871 is greater. Where a division lot exceeds 2 acres or exceeds the area required by the applicable
872 zoning ordinance or by-law by more than 50 per cent, whichever is greater, the aggregate area of
873 all division lots shall not exceed 10 per cent of the total area of the original parcel as it existed on
874 the date of first application under this paragraph. Division lots created under this paragraph shall
875 be subject to the vested rights protections for minor subdivisions under the fifth paragraph of
876 section 6 of chapter 40A. Nothing in this paragraph shall prevent further division of any lots or
877 parcels under this chapter. Nothing in this paragraph shall be construed as a requirement to
878 retain the remainder parcel as open space to determine roll-back taxes under said chapter 61 or
879 61A. As used in this paragraph, an "original parcel" shall constitute the area of land bounded by
880 the parcel at the time of first application under this paragraph regardless of how later divided or
881 reconfigured. For the purposes of this paragraph, "original parcel" shall mean any parcel of land
882 that is in forest, agricultural or horticultural use and that has for at least 2 years prior to the date
883 of application satisfied the statutory requirements for tax classification under said chapter 61 or
884 chapter 61A, "division lots" shall mean the 2 additional lots divided from the original parcel
885 subject to the frontage requirements defined in section 81L under minor subdivisions and which

886 may be approved as if the city or town had not adopted a minor subdivision by-law or ordinance
887 and “remainder parcel” shall mean the area of the original parcel remaining after any division
888 under this paragraph.

889 SECTION 35. Section 3A of chapter 185 of the General Laws, as so appearing, is hereby
890 amended by striking out the third and fourth paragraphs and inserting in place thereof the
891 following 2 paragraphs:-

892 The permit session shall have original jurisdiction, concurrently with the superior court
893 department, over civil actions in whole or part: (1) based on or arising out of the appeal of any
894 municipal, regional, or state permit, order, certificate or approval, or the denial thereof,
895 concerning the use or development of real property for residential, commercial, or industrial
896 purposes (or any combination thereof), including without limitation appeals of such permits,
897 orders, certificates or approvals, or denials thereof, arising under or based on or relating to
898 chapter 21, sections 61 to 62H, inclusive, of chapter 30, chapters 30A, 40A to 40C, inclusive,
899 40R, 41, 43D, 91, 131, 131A, or sections 4 and 5 of chapter 249, or chapter 665 of the acts of
900 1956; or any local bylaw or ordinance; (2) seeking equitable or declaratory relief designed to
901 secure or protect the issuance of any municipal, regional, or state permit or approval concerning
902 the use or development of real property, or challenging the interpretation or application of any
903 municipal, regional, or state rule, regulation, statute, law, by-law, or ordinance concerning any
904 permit or approval; (3) claims under section 6F of chapter 231, or for malicious prosecution,
905 abuse of process, intentional or negligent interference with advantageous relations, or intentional
906 or negligent interference with contractual relations arising out of, based upon, or relating to the
907 appeal of any municipal, regional, state permit or approval concerning the use or development of
908 real property; and (4) any other claims between persons holding any right, title, or interest in land

909 and any municipal, regional or state board, authority, commission, or public official based on or
910 arising out of any action taken with respect to any permit or approval concerning the use or
911 development of real property but in all such cases of claims (1) to (4), inclusive, only if (a) the
912 action does not contain any claim of right to a jury trial, and (b) the underlying project or
913 development, in the case of a development that is residential or a mix of residential and
914 commercial components, involves either 25 or more dwelling units or the construction or
915 alteration of 25,000 square feet or more of gross floor area or both or, in the case of a
916 commercial or industrial development, involves the construction or alteration of 25,000 square
917 feet or more of gross floor area.

918 Notwithstanding any other general or special law to the contrary, any action not
919 commenced in the permit session, but within the jurisdiction of the permit session as provided in
920 this section, shall be transferred to the permit session upon the filing by any party of a notice
921 demonstrating compliance with the jurisdictional requirements of this section filed with the court
922 where the action was originally commenced with a copy to the chief justice of the land court.
923 Unless the court where the action was originally commenced receives notice within 10 days from
924 the land court that the case to be transferred does not meet the jurisdictional requirements of this
925 section, the original court shall transfer the case file to the land court permit session within 20
926 days after its receipt of the notice of transfer from the party. In the event the court receives
927 notice of noncompliance with jurisdictional requirements, the court where the action was
928 originally commenced shall decide the matter on motion filed by the party claiming
929 noncompliance. If a party to an action commenced in or transferred to the permit session claims
930 a valid right to a jury trial, then the action shall be transferred to the superior court for a jury trial.

931 SECTION 36. Section 4 of chapter 249 of the General Laws, as so appearing, is hereby
932 amended by striking out the second sentence and inserting in its place thereof the following
933 sentence:- Except as otherwise provided by law, such action shall be commenced within 60 days
934 after the proceeding complained of.

935 SECTION 37. A city or town that had adopted a zoning ordinance or by-law under
936 chapter 40A requiring a form of inclusionary zoning before the effective date of this act shall,
937 within 3 years after that effective date, revise the ordinance or by-law to conform to section 9F of
938 chapter 40A of the General Laws. Following 3 years after the effective date of this act, any
939 provision of such a preexisting inclusionary zoning ordinance or by-law that does not conform to
940 said section 9F of said chapter 40A shall only apply to the extent and in a manner consistent with
941 said section 9F of said chapter 40A.

942 SECTION 38. A master plan adopted pursuant to section 81D of chapter 41 of the
943 General Laws and in effect on or before the effective date of this act may continue in full force
944 and effect, including minor amendments to update or perfect the plan; provided, however, that
945 the plan shall be revised to conform to said section 81D of said chapter 41 within 10 years after
946 the effective date of this act.

947 SECTION 39. Any city or town that had adopted a zoning ordinance or by-law under
948 chapter 40A requiring site plan review before the effective date of this act shall, within 3 years
949 after that date, revise the ordinance or by-law to conform to section 9D of chapter 40A of the
950 General Laws. Following 3 years after the effective date of this act, any provision of a
951 preexisting site plan review ordinance or by-law that does not conform to said section 9D of said

952 chapter 40A shall only apply to the extent and manner consistent with said section 9D of said
953 chapter 40A.

954 SECTION 40. Any city or town that adopted a zoning ordinance or by-law relating to
955 zoning variances prior to the effective date of this act shall, within 3 years of the effective date of
956 this act, revise the ordinance or by-law to conform to section 10 of chapter 40A of the General
957 Laws, as amended by section 22. Three years after the effective date of this act, any provision of
958 a preexisting variance zoning ordinance or by-law that does not conform to said section 10 of
959 said chapter 40A shall only apply to the extent and manner that it is consistent with said section
960 10 of said chapter 40A.

961 SECTION 41. Any variance granted prior to the effective date of this act shall be
962 governed by the terms of the variance and shall run with the land unless a condition, safeguard or
963 limitation contained therein prescribes otherwise.

964 SECTION 42. Section 5 shall apply to local approvals submitted on or after July 1, 2017.

965 SECTION 43. Section 9E of chapter 40A, as inserted by section 21, shall take effect on
966 January 1, 2018.

967 SECTION 44. Sections 6 and 8 shall take effect on July 1, 2019.



THE 189TH GENERAL COURT OF
THE COMMONWEALTH OF MASSACHUSETTS

Print Document Close Preview

Displaying results 1 to 50 of 63

Page of Results Per Page:

List of Senate Amendments

Clerk #	Sponsor	Title	Action
1 (3rd Redraft) (S.2333)	Bruce E. Tarr	Land Use Regulations	Rejected
2	Withdrawn		
3	Eileen M. Donoghue	Minimum size for developments subject to inclusionary zoning	Rejected
4	Eileen M. Donoghue	Occupancy of accessory dwelling units	Rejected
5	Eileen M. Donoghue	Square footage threshold for accessory dwelling units	Rejected
6	Eileen M. Donoghue	Size of multi-family housing districts	Rejected
7 (Redraft)	Eileen M. Donoghue	Use variances	Adopted RC #358 [YEAS 38 - NAYS 0]
8	Withdrawn		
9 (Redraft)	Michael O. Moore	Dover Amendment Special Commission	Adopted
10	Donald F. Humason, Jr.	Ensuring Municipal Equity	Rejected
11 (Redraft)	Sonia Cheng-Diaz	Preventing Discriminatory Land Use	Adopted
12	Withdrawn		
13	William N. Brownsberger	Allowing Inclusionary Zoning Without Concessions	Adopted
14	Withdrawn		
15	Michael J. Barrett	Emissions in Certified Communities	Adopted
16 (Redraft)	Michael J. Barrett	Impact Fees 1	Adopted
17 (Redraft)	Michael J. Barrett	Impact Fees 2	Adopted
18	Michael J. Barrett	Master Plan Energy Management Element	Adopted
19	Michael J. Barrett	Master Plan Land Use Element	Adopted
20	Michael J. Barrett	Master Plan Transportation Element	Adopted
21	Michael J. Barrett	Master Plan Public Health Element	Adopted
22 (Redraft)	Linda Dorcena Forry	Multi-Family Housing	Adopted
23 (3rd Redraft)	James B. Eldridge	Municipal Opt-In Program	Adopted
24	James E. Timilty	Comprehensive Permit Moratorium and Study	Rejected
25	Withdrawn		
26	Withdrawn		
27	James B. Eldridge	Vesting	Rejected
28 (Redraft)	Patrick M. O'Connor	Relative to Accessory Dwelling Units	Rejected RC #363 [YEAS 10 - NAYS 28]
29 (Redraft)	Bruce E. Tarr	Development Impact Fees	Rejected
30	Patrick M. O'Connor	Defining Reasonable Size	Rejected
31	Patrick M. O'Connor	Town Certification Renewals	Rejected
32	Patrick M. O'Connor	Cost Certification	Rejected RC #359 [YEAS 12 - NAYS 28]
33 (Redraft)	Bruce E. Tarr	Practical Difficulty Standard	Adopted
34	Bruce E. Tarr	Inclusionary Zoning Requirements	Rejected
35	Bruce E. Tarr	Housing and Sustainable Development	Rejected
36	Bruce E. Tarr	Certified Communities	Rejected
37	Benjamin B. Downing	ANR Farm-Forest Exception	Rejected
38	Benjamin B. Downing	Adoption of Minor Subdivision	Adopted
39	Bruce E. Tarr	Proper Use Variances	Rejected
40	Bruce E. Tarr	Open Space Yield Plans and Calculations	Rejected
41	Bruce E. Tarr	Subdivision Plans	Rejected
42	Joan B. Lovely	Super Majorities	Rejected
43	Joan B. Lovely	Super Majorities - II	Rejected
44	Cynthia S. Cream	Access to appeal decisions	Rejected
45	Joan B. Lovely	Super Majorities - III	Rejected

Clerk #	Sponsor	Title	Action
46 (Redraft)	Cynthia S. Creem	Accessory Dwelling Units	Adopted
47 (Redraft)	Cynthia S. Creem	Multi-family Density	Adopted
48	Bruce E. Tarr	Zoning Freeze Protection	Rejected
49 (Redraft)	Cynthia S. Creem	Municipal opt-in relative to special permit votes	Adopted
50	Cynthia S. Creem	Relative to amending Master Plan proposals	Adopted

Page of Results Per Page:

Copyright © 2016 The General Court, All Rights Reserved

60



[Print Document](#) [Close Preview](#)

Senate Roll Call # 364 June 10, 2016

Question on passing the bill to be engrossed

Voting Summary

Yea Nay Present Absent/Not Voting Paired

23 15 0 2 0

[Download Details PDF](#)

Senate Roll Call # 363 June 09, 2016

Question on adoption of the amendment

Voting Summary

Yea Nay Present Absent/Not Voting Paired

10 28 0 1 0

[Download Details PDF](#)

Senate Roll Call # 362 June 09, 2016

Question on adoption of the amendment

Voting Summary

Yea Nay Present Absent/Not Voting Paired

19 20 0 1 0

[Download Details PDF](#)

Senate Roll Call # 359 June 09, 2016

Question on adoption of the amendment

Voting Summary

Yea Nay Present Absent/Not Voting Paired

12 26 0 1 0

[Download Details PDF](#)

Senate Roll Call # 358 June 09, 2016

Question on adoption of the amendment

Voting Summary

Yea Nay Present Absent/Not Voting Paired

38 0 0 1 0

[Download Details PDF](#)

Copyright © 2016 The General Court, All Rights Reserved

61



Provincetown Board of Selectmen
AGENDA ACTION REQUEST
Monday, July 11, 2016 @ 5:00 p.m.

1C

JOINT MEETING – PLANNING BOARD

Potential Zoning & General By-law Amendments

Requested by: Town Manager David Panagore

Action Sought: Discussion

Proposed Motion(s)

Discussion dependent. Votes may be taken.

Additional Information

Board Action

<i>Motion</i>	<i>Second</i>	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Disposition</i>



Provincetown Board of Selectmen
AGENDA ACTION REQUEST
Monday, July 11, 2016 @ 5:00 p.m.

2

OTHER

Requested by: Town Manager David Panagore

Action Sought: Discussion

Proposed Motion(s)

Discussion Dependent – votes may be taken.

Additional Information

Board Action

<i>Motion</i>	<i>Second</i>	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Disposition</i>