

SENATE No. 775

The Commonwealth of Massachusetts

PRESENTED BY:

Joseph A. Boncore

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to housing reform.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | |
|---------------------------------|--|------------------|
| <i>Joseph A. Boncore</i> | <i>First Suffolk and Middlesex</i> | |
| <i>Kevin G. Honan</i> | <i>17th Suffolk</i> | |
| <i>William N. Brownsberger</i> | <i>Second Suffolk and Middlesex</i> | <i>1/24/2019</i> |
| <i>Jack Patrick Lewis</i> | <i>7th Middlesex</i> | <i>1/25/2019</i> |
| <i>Mike Connolly</i> | <i>26th Middlesex</i> | <i>1/28/2019</i> |
| <i>Kay Khan</i> | <i>11th Middlesex</i> | <i>1/30/2019</i> |
| <i>Carmine Lawrence Gentile</i> | <i>13th Middlesex</i> | <i>1/31/2019</i> |
| <i>Daniel J. Hunt</i> | <i>13th Suffolk</i> | <i>1/31/2019</i> |
| <i>Brendan P. Crighton</i> | <i>Third Essex</i> | <i>1/31/2019</i> |
| <i>Mary S. Keefe</i> | <i>15th Worcester</i> | <i>1/31/2019</i> |
| <i>Diana DiZoglio</i> | <i>First Essex</i> | <i>1/31/2019</i> |
| <i>Joanne M. Comerford</i> | <i>Hampshire, Franklin and Worcester</i> | <i>1/31/2019</i> |
| <i>Thomas M. Stanley</i> | <i>9th Middlesex</i> | <i>2/1/2019</i> |
| <i>James B. Eldridge</i> | <i>Middlesex and Worcester</i> | <i>2/1/2019</i> |
| <i>Sal N. DiDomenico</i> | <i>Middlesex and Suffolk</i> | <i>2/1/2019</i> |
| <i>Harriette L. Chandler</i> | <i>First Worcester</i> | <i>2/1/2019</i> |
| <i>Jason M. Lewis</i> | <i>Fifth Middlesex</i> | <i>2/7/2019</i> |
| <i>Edward J. Kennedy</i> | <i>First Middlesex</i> | <i>3/5/2019</i> |

| | | |
|-----------------------|----------------------|------------------|
| <i>Nick Collins</i> | <i>First Suffolk</i> | <i>3/5/2019</i> |
| <i>David Biele</i> | <i>4th Suffolk</i> | <i>4/9/2019</i> |
| <i>Tram T. Nguyen</i> | <i>18th Essex</i> | <i>5/22/2019</i> |
| <i>José F. Tosado</i> | <i>9th Hampden</i> | <i>9/27/2019</i> |

SENATE No. 775

By Mr. Boncore, a petition (accompanied by bill, Senate, No. 775) of Joseph A. Boncore, Kevin G. Honan, William N. Brownsberger, Jack Patrick Lewis and other members of the General Court for legislation relative to housing reform. Housing.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act relative to housing reform.

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 4A of chapter 40 of the General Laws, as appearing in the 2016
2 Official Edition, is hereby amended by adding the following paragraph:-

3 By a majority vote of their legislative bodies, and with the approval of the mayor, board
4 of selectmen or other chief executive officer, any contiguous cities and towns may enter into an
5 agreement to allocate public infrastructure costs, municipal service costs and local tax revenue
6 associated with the development of an identified parcel or parcels or development within the
7 contiguous communities generally, provided that said agreement is approved by the department
8 of revenue.

9 SECTION 2. Section 1A of chapter 40A of the General Laws, as so appearing, is hereby
10 amended by inserting after the introductory paragraph the following 9 definitions: -

11 "Accessory dwelling unit", a self-contained housing unit, inclusive of sleeping, cooking
12 and sanitary facilities on the same lot as the principal dwelling, subject to otherwise applicable

13 dimensional and parking requirements, that (i) maintains a separate entrance, either directly from
14 the outside or through an entry hall or corridor shared with the principal dwelling sufficient to
15 meet the requirements of the state building code for safe egress; (ii) is not larger in floor area
16 than ½ the floor area of the principal dwelling or 900 square feet, whichever is smaller; and (iii)
17 is subject to such additional restrictions as may be imposed by a municipality, including but not
18 limited to additional size restrictions, owner-occupancy requirements, and restrictions or
19 prohibitions on short-term rental of accessory dwelling units.

20 “As of right”, development may proceed under a zoning ordinance or by-law without the
21 need for a special permit, variance, zoning amendment, waiver, or other discretionary zoning
22 approval.

23 “Department”, the department of housing and community development.

24 “Lot”, an area of land with definite boundaries that is used or available for use as the site
25 of a building or buildings.

26 “Gross density”, a units-per-acre density measurement that includes in the calculation
27 land occupied by public rights-of-way, recreational, civic, commercial and other non-residential
28 uses.

29 “MBTA community,” A city or town that is enumerated in one of the following: (i) “51
30 cities and towns”, as defined in section 1 of chapter 161A of the General Laws; (ii) “Fourteen
31 cities and towns”, as defined in section 1 of chapter 161A of the General Laws; or (iii) “Other
32 served communities”, as defined in section 1 of chapter 161A of the General Laws; and such
33 other municipalities as may be added in accordance with section 6 of chapter 161A of the
34 General laws or in accordance with any special act to the area constituting the authority.

35 “Mixed-use development”, development containing a mix of residential uses and non-
36 residential uses, including, without limitation: commercial, institutional, industrial, or other uses;
37 all conceived, planned and integrated to create vibrant, workable, livable and attractive
38 neighborhoods.

39 “multi-family housing”, a building with 3 or more residential dwelling units or 2 or more
40 buildings on the same lot with more than 1 residential dwelling unit in each building.

41 “Natural resource protection zoning”, zoning ordinances or by-laws enacted principally
42 to protect natural resources by promoting compact patterns of development and concentrating
43 development within a portion of a parcel of land so that a significant majority of the land remains
44 permanently undeveloped and available for agriculture, forestry, recreation, watershed
45 management, carbon sequestration, wildlife habitat or other natural resource values.

46 “Open space residential development”, a residential development in which the buildings
47 and accessory uses are clustered together into one or more groups separated from adjacent
48 property and other groups within the development by intervening open land. An open space
49 residential development shall be permitted only on a plot of land of such minimum size as a
50 zoning ordinance or by-law may specify which is divided into building lots with dimensional
51 control, density and use restrictions for such building lots varying from those otherwise
52 permitted by the ordinance or by-law and open land. Such open land shall either be conveyed to
53 the city or town and accepted by it for park or open space use, or be made subject to a recorded
54 use restriction enforceable by the city or town or a non-profit organization the principal purpose
55 of which is the conservation of open space, providing that such land shall be kept in an open or

56 natural state and not be built for residential use or developed for accessory uses such as parking
57 or roadway.

58 SECTION 3. Said section 1A of said chapter 40A, as so appearing, is hereby further
59 amended by inserting after the definition of “Special permit granting authority” the following 2
60 definitions: -

61 “TDR zoning”, Zoning that authorizes transfer of development rights by permitting
62 landowners in specific preservation areas identified as sending areas to sell their development
63 rights to landowners in specific development districts identified as receiving areas.

64 “Transfer of development rights”, the regulatory procedure whereby the owner of a
65 parcel may convey development rights, extinguishing those rights on the first parcel, and where
66 the owner of another parcel may obtain and exercise those rights in addition to the development
67 rights already existing on the second parcel.

68 SECTION 4. Section 5 of said chapter 40A, as so appearing, is hereby amended by
69 striking out the fifth paragraph and inserting in place thereof the following paragraph:-

70 Except as provided herein, no zoning ordinance or by-law or amendment thereto shall be
71 adopted or changed except by a two-thirds vote of all the members of the town council, or of the
72 city council where there is a commission form of government or a single branch, or of each
73 branch where there are two branches, or by a two-thirds vote of a town meeting; provided,
74 however, the following shall be adopted by a vote of a simple majority of all members of the
75 town council or the city council where there is a commission form of government or a single
76 branch or of each branch where there are two branches or by a vote of a simple majority of town
77 meeting:

78 (1) An amendment to a zoning ordinance or by-law to allow any of the following as of
79 right: (a) multifamily housing or mixed-use development in a location that would qualify as an
80 eligible location for a smart growth district under section 2 of chapter 40R of the general laws;
81 (b) accessory dwelling units; or (c) open-space residential development.

82 (2) An amendment to a zoning ordinance or by-law to allow by special permit: (a) multi-
83 family housing or mixed –use development in a location that would qualify as an eligible
84 location for a smart growth zoning district under section 2 of chapter 40R of the general laws; (b)
85 an increase in the permissible density of population or intensity of a particular use in a proposed
86 development pursuant to section 9 of chapter 40A of the general laws; or (c) a diminution in the
87 amount of parking required for residential or mixed-use development pursuant to section 9 of
88 chapter 40A of the general laws;

89 (3) Zoning ordinances or by-laws or amendments thereto that (a) provide for TDR zoning
90 or natural resource protection zoning in instances where the adoption of such zoning promotes
91 concentration of development in areas that the municipality deems most appropriate for such
92 development, but will not result in a diminution in the maximum number of housing units that
93 could be developed within the municipality; or (b) modify regulations concerning the bulk and
94 height of structures, yard sizes, lot area, setbacks, open space, parking and building coverage
95 requirements to allow for additional housing units beyond what would otherwise be permitted
96 under the existing ordinance or by-law;

97 (4) The adoption of a smart growth zoning district or starter home zoning district in
98 accordance with section 3 of chapter 40R of the general laws.

99 Provided, further, that any amendment that requires a simple majority vote shall not be
100 combined with amendments that require a two-thirds majority vote. Provided, further, that if in a
101 city or town with a council of fewer than twenty-five members there is filed with the clerk prior
102 to final action by the council a written protect against a zoning change under this section, stating
103 the reasons duly signed by owners of fifty per cent or more the area of the land proposed to be
104 included in such change or of the area of the land immediately adjacent extending three hundred
105 feet therefrom, no change of any such ordinance shall be adopted except by a two-thirds vote of
106 all members.

107 SECTION 5. Section 9 of said chapter 40A, as so appearing, is hereby amended by
108 inserting after the word “interests,” in line 34, the following words:-

109 Provided, however, that nothing herein shall prohibit a zoning ordinance or by-law from
110 allowing transfer of development rights to be permitted as of right, without the need for a special
111 permit or other discretionary approval.

112 SECTION 6. Said section 9 of said chapter 40A, as so appearing, is hereby further
113 amended by striking out, in line 39, the word “cluster” and inserting in place thereof the
114 following words:-- open space residential.

115 SECTION 7. Said section 9 of said chapter 40A, as so appearing, is hereby further
116 amended by striking out, in line 35, the word “cluster” and inserting in place thereof the
117 following words: -- open space residential.

118 SECTION 8. Said section 9 of said chapter 40A, as so appearing, is hereby further
119 amended by inserting, after the word “control,” in line 43, the following words:- Provided,
120 however, that nothing herein shall prohibit a zoning ordinance or by-law from allowing open

121 space residential developments to be permitted as of right, without the need for a special permit
122 or other discretionary zoning approval.

123 SECTION 9. Said section 9 of said chapter 40A, as so appearing, is hereby further
124 amended by striking out the 7th paragraph and inserting in place thereof the following paragraph:

125 -

126 Zoning ordinances or by-laws may also provide that special permits may be granted for
127 reduced parking space to residential unit ratio requirement after a finding by the special permit
128 granting authority that the public good would be served and that the area in which the
129 development is located would not be adversely affected by such diminution in parking.

130 SECTION 10. Section 9, of chapter 40A, as appearing in the 2016 official edition, is
131 hereby further amended after the last sentence on line 127 by inserting the following:-

132 However, a special permit issued by a special permit granting authority shall require a
133 simple majority vote for any of the following:

134 (a) multifamily housing that is located within .5 miles of a commuter rail station, subway
135 station, ferry terminal, or bus station, provided, not less than 10 per cent of the housing is
136 affordable to and occupied by households whose annual income is less than 80 per cent of the
137 area wide median income as determined by the United States Department of Housing and Urban
138 Development and affordability is assured for a period of not less than 30 years through the use of
139 an affordable housing restriction as defined in section 31 of chapter 184.

140 (b) mixed-use development in centers of commercial activity within a municipality,
141 including town and city centers, other commercial districts in cities and towns, and rural village

142 districts, provided, not less than 10 per cent of the housing is affordable to and occupied by
143 households whose annual income is less than 80 per cent of the area wide median income as
144 determined by the United States Department of Housing and Urban Development and
145 affordability is assured for a period of not less than 30 years through the use of an affordable
146 housing restriction as defined in section 31 of chapter 184.

147 (c) A reduced parking space to residential unit ratio requirement, pursuant to this section,
148 provided that a reduction in the parking requirement will result in the production of additional
149 housing units.

150 SECTION 11. Section 3 of chapter 40R of the general laws, as so appearing, is hereby
151 amended by inserting after the figure “40A,” in line 10, the following words:- ; provided,
152 however, that a smart growth zoning district or starter home district ordinance or by-law shall be
153 adopted by a simple majority vote of all members of the town council, or of the city council
154 where there is a commission form of government or a single branch, or of each branch where
155 there are two branches, or by a simple majority vote of a town meeting.

156 SECTION 12. Section 1 of chapter 40S of the general laws, as so appearing, is hereby
157 amended by striking out the word “properties” in line 51 and inserting in place thereof the
158 following words:- buildings.

159 SECTION 13. Said section 1 of said chapter 40S, as so appearing, is hereby further
160 amended by inserting after the figure “40R,” in line 61, the following words:- including without
161 limitation smart growth zoning districts and starter home zoning districts as defined in section 1
162 of said chapter 40R.

163 SECTION 14. The secretary of housing and economic development shall report annually
164 to the clerks of the house of representatives and the senate, who shall forward the report to the
165 house of representatives and the senate, the chairs of the joint committee on housing, and the
166 chairs of the senate and house committee on ways and means, on the activities and status of the
167 Housing Choice Initiative, as described by the governor in a message to the general court dated
168 December 11, 2017. The report also shall include a list of all cities and towns that qualify as
169 “housing choice” communities and a list and description of grant funds disbursed to such cities
170 and towns and a description of how the funds were used to support the production of new
171 housing.

172 The report shall also include progress made towards the goal of producing 427,000 new
173 units of housing in Massachusetts by 2040. The housing production goal shall also include a goal
174 of having 85,400 units of housing be created by 2040 that are affordable to households earning
175 less than 80% of the Area Median Income, with at least 8,500 of these units affordable to
176 households earning less than 30 percent of the Area Median Income. The report shall include a
177 breakdown of market-rate units created; units created that are accessible or adaptable for persons
178 with disabilities; units created for persons over the age of 55; and units created by deed restricted
179 affordable housing available to households earning less than 80% Area Median Income, less than
180 60% Area Median Income, and less than 30% Area Median Income.

181 SECTION 14. Said chapter 40A, as so appearing, is hereby further amended by inserting
182 after section 3 the following new section: -

183 Section 3A.

184 (a) Zoning ordinances and by-laws of a city or town that is an MBTA community, as
185 defined in this chapter, shall provide at least one district of reasonable size in which multi-family
186 housing is a permitted use as of right. For the purposes of this paragraph, a “district of reasonable
187 size” shall include: (i) multi-family housing without age restrictions which is suitable for
188 families with children; (ii) have a minimum gross density of 15 units per acre, subject to any
189 further limitations imposed by section 40 of chapter 131 and title 5 of the state environmental
190 code, established by section 13 of chapter 21A; and (iii) be in a location as described in
191 subsection (b) of this section.

192 If a city or town that is an MBTA community fails to comply with this section, that city
193 or town shall be ineligible for funds from the so-called Housing Choice Initiative as described by
194 the governor in a message to the general court dated December 11, 2017, and the Local Capital
195 Projects Fund under Section 2EEEE of Chapter 29 of the General Laws. If a city or town
196 receives funds from the Housing Choice Initiative or the Local Capital Projects Fund and fails to
197 comply with this section within three years, all funds to the city or town shall be repaid to the
198 general fund.

199 (b) Districts shall be in the following locations:

200 (i) located within .5 miles of a commuter rail station, subway station, ferry terminal, or
201 bus station.

202 (ii) located within .25 miles of a stop along a local bus route, key bus route, commuter
203 bus route, rapid transit route, commuter rail route, or boat route, as defined in the Massachusetts
204 Bay Transportation Authority Service Delivery Policy as approved by the MBTA Fiscal and

205 Management Control Board on January 23, 2017, and as it may be updated and approved from
206 time to time.

207 (c) A city or town may satisfy the requirement of subsection (a) of this section by
208 obtaining a determination from the department, acting directly or through a regional planning
209 agency as its designee, that the multi-family provisions of its zoning ordinance or bylaw are
210 consistent with the department's guidelines, or no locations as described in subsection (b) exist.
211 If a city or town obtains a determination from the department under this section, the city or town
212 may use the determination as verification of compliance with subsection (a) in order to establish
213 eligibility as a so-called housing choice community to receive funds from the Housing Choice
214 Initiative or the Local Capital Projects Fund under Section 2EEEE of Chapter 29 of the general
215 laws.

216 (d) The department, in consultation with the Massachusetts Bay Transit Authority and the
217 Massachusetts Department of Transportation, shall promulgate guidelines which shall be used to
218 determine if a city or town has satisfied the requirements established in this section.

219 SECTION 15. Section 17 of chapter 40A of the General Laws, as appearing in the 2012
220 Official Edition, is hereby amended by inserting after the second paragraph the following two
221 paragraphs:-

222 The court, in its discretion, may require non-municipal plaintiffs in an action under this
223 section to post a surety or cash bond in an amount not to exceed \$15,000 to secure the payment
224 of costs in appeals of decisions approving special permits, variances and site plans where the
225 court finds that the harm to the defendants or to the public interest resulting from the delays of
226 appeal outweighs the burden of the surety or cash bond on the plaintiffs. When making a

227 decision regarding surety or cash bond requirements, the court may consider the relative merits
228 of the appeal and the relative financial means of the appellant and the defendants.