SENATE DOCKET, NO. 574 FILED ON: 1/19/2011

SENATE . . . . . No. 1019

The Commonwealth of Massachusetts

PRESENTED BY:

James B. Eldridge

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 passage of the accompanying:

An Act relative to comprehensive land use reform and partnership.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
James B. Eldridge	☐ *[District]* ☐
Stephen Kulik	*1st Franklin*
Paul J. Donato	*35th Middlesex*
Marc R. Pacheco	☐ *[District]* ☐
Patricia D. Jehlen	☐ *[District]* ☐
Benjamin B. Downing	*Berkshire, Hampshire, and Franklin*
Daniel A. Wolf	☐ *[District]* ☐
Kenneth J. Donnelly	☐ *[District]* ☐

Denise Andrews	*2nd Franklin*
William N. Brownsberger	□ *[District]* □
Jennifer E. Benson	*37th Middlesex*
Jay R. Kaufman	*15th Middlesex*
Frank I. Smizik	*15th Norfolk*
John W. Scibak	*2nd Hampshire*
Sarah K. Peake	*4th Barnstable*
Viriato Manuel deMacedo	*1st Plymouth*
Alice Hanlon Peisch	*14th Norfolk*
Cory Atkins	*14th Middlesex*
James Arciero	*2nd Middlesex*
James M. Cantwell	*4th Plymouth*
Jonathan Hecht	*29th Middlesex*
Kay Khan	*11th Middlesex*
Denise Provost	*27th Middlesex*
Ellen Story	*3rd Hampshire*
Chris Walsh	*6th Middlesex*

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SENATE . . . . . No. 1019

By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 1019) of James B. Eldridge, Stephen Kulik, Paul J. Donato, Marc R. Pacheco and other members of the General Court for legislation relative to comprehensive land use reform and partnership. Municipalities and Regional Government.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
SENATE
, NO. *2482* OF 2009-2010.]

The Commonwealth of Massachusetts

An Act relative to comprehensive land use reform and partnership.

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

SECTION 1. Chapter 40A of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out the chapter in its entirety and inserting in place thereof the following Chapter 40A:-

CHAPTER 40A

ZONING

1. Title, Authority, and Purposes
2. Definitions
3. Consistency with Master Plan
4. Powers of Cities and Towns
5. Exemptions from Zoning, Limitations on Local Authority
6. Nonconformities and Vested Rights
7. Adoption and Amendment of Zoning Ordinances and By-laws

8. Boards of Appeal, Zoning Administrators

9. Permits and Approvals, Procedures, and Zoning Tools

10. Enforcement

11. Judicial Review Procedures and Standards

12. Transition Provisions

40A:1. Title, Authority, and Purposes

A. Title of Chapter

This chapter shall be known and may be cited as "The Zoning Act".

B. Authority

The authority of cities and towns to act with respect to land use planning, zoning, and regulation is contained in Article 89 of the Articles of Amendment to the Constitution of the Commonwealth, also known as the "Home Rule Amendment." This chapter shall be construed to give full effect to the home rule authority of cities and towns. Nothing in this chapter shall be construed as limiting the constitutional authority of cities and towns unless the language in this chapter expressly so states. Wherever the language of this chapter purports to authorize or enable, it shall be so construed only where such authority is not otherwise available to cities and towns under the constitution or laws of the commonwealth, and in all other cases such language shall be deemed illustrative only.

C. Purposes of the Zoning Act

The purposes of this Zoning Act are:

1. To reaffirm that all local powers established under Article 89 of the Articles of Amendment to the Constitution of the Commonwealth fully exist, except as expressly limited by this statute or other laws, and that all powers purportedly enabled in prior zoning statutes are continued without the necessity of specifically enumerating them.

2. To impose certain limits on the exercise of home rule authority in order to promote overriding state interests.

3. To confer explicit authority on cities and towns in furtherance of the purposes of this act where such powers are not explicitly or implicitly conferred by said Article 89 or by any general or special law.

4. To establish uniform procedures and standards for the issuance of certain types of approvals that apply throughout the commonwealth.

5. To protect legitimate property rights and investment-backed expectations created prior to the enactment of new land use laws and regulations.

6. To ensure that constitutional principles of due process and equal protection are not violated by local land use laws and regulations.

D. Purposes of Zoning Ordinances and By-laws

The authority of cities and towns to adopt zoning ordinances and by-laws for the protection of the public health, safety, and general welfare includes, without limitation, all of the purposes listed below as well as any other purposes not limited by section 7 or reserved to the commonwealth by section 8 of said Article 89, subject to any limitations contained in this Zoning Act or in any other law.

1. The Implementation of a plan adopted by the city or town under section 81D of chapter 41 or other plan designed to set goals for the development of land within the city or town.

2. The orderly and sustainable growth, development, redevelopment, conservation, and preservation of a city or town that promotes the types, patterns, and intensities of land use contained in a plan adopted by the city or town under section 81D of chapter 41 or other plan designed to set goals for the development of land within the city or town.

3. The efficient, fair, and timely review of development proposals, including standardized procedures for administration of zoning ordinances or by-laws.

4. The efficient resolution of planning and regulatory conflicts involving public and private interests.

5. The use of planning and zoning laws, regulations, and practices such as development agreements, development impact fees, design review, intra- and inter-municipal transfers of development rights, form-based zoning, rate-of-development measures, agricultural zoning, natural resource protection zoning, cluster zoning, planned-unit-development zoning, special district overlays, village districts, urban growth boundaries, dispute resolution, mediation, and inclusionary zoning provisions which require, or provide incentives for, the creation of inclusionary housing units.

6. The delineation, differentiation, and balancing of urban and rural development.

7. The achievement of a balance of housing choices, types, and opportunities for all income levels and groups, including the creation of affordable housing, the preservation of existing housing stock, and the preservation of affordability in housing.

8. The provision of an energy-efficient, convenient, and safe transportation infrastructure with as wide a choice of modes as practical, including, wherever possible, maximal access to public transit systems and non-motorized modes.

9. The integration of residential, commercial, civic, cultural, governmental, recreational, and other compatible land uses at locations that maximize efficiencies in transportation energy use and minimize environmental impact.

10. The adequate provision and distribution of educational, health, social service, cultural, and recreational facilities.

11. The preservation or enhancement of community amenities or features of significant architectural, historical, cultural, visual, aesthetic, scenic, or archaeological interest.

12. The protection of the environment and the conservation of natural resources, including those qualities of the environment and natural resources set forth in Article 97 of the Constitution of the Commonwealth.

13. The retention of open land for agricultural production, forest products, horticulture, aquaculture, tourism, outdoor recreation, and freshwater and marine fisheries.

14. The protection of public investment in infrastructure systems.

15. The efficient use of energy and the reduction of pollution from energy generation, including the promotion of renewable energy sources and associated technologies, protection of solar access, and reduced dependence on fossil fuel energy generation.

16. The adequate provision of employment opportunities within the city or town and the region, including redevelopment of pre-existing sites, home-based occupations, sustainable natural-resource-based occupations, and housing to support the employment opportunities within the city or town and the region.

17. The conservation of the value of land and buildings, including the elimination of blight and the rehabilitation of blighted areas.

18. The accommodation of regional growth in a fair, equitable, and sustainable manner among municipalities, including coordination of land uses with contiguous municipalities, other municipalities, the state, and other agencies, as appropriate, especially with regard to resources and facilities that extend beyond municipal boundaries or have a direct impact on other municipalities.

19. The implementation of a plan adopted by a regional planning agency under section 5 of chapter 40B.

40A:2. Definitions

110 As used in this chapter the following words shall have the following meanings:

111 "Affordable housing", A dwelling unit restricted for purchase or rent by a
112 household with an income at or below 80 percent of the median family income for the applicable
113 metropolitan or non-metropolitan area, as determined by the U.S. Department of Housing and
114 Urban Development (HUD). Affordable housing shall be subject to an affordable housing
115 restriction in accordance with sections 31 and 32 of chapter 184, or, if ineligible under said
116 sections, restricted by other means as required in an ordinance or by-law.

117 "By-right", refers to an approval not requiring a variance, special permit,
118 zoning amendment, waiver, or other discretionary zoning approval. Examples of by-right
119 approvals are building permits and site plan reviews.

120 "Chief administrative officer", when used in connection with the operation of
121 municipal governments, shall include the mayor of a city and the board of selectmen in a town
122 unless some other local office is designated to be the chief administrative officer under the
123 provisions of a local charter.

124 "Chief executive officer", when used in connection with the operation of
125 municipal governments shall include the mayor in a city and the board of selectmen in a town
126 unless some other municipal office is designated to be the chief executive officer under the
127 provisions of a local charter.

128 "Cluster development" means a class of residential development in which
129 reduced dimensional requirements allow the developed areas to be concentrated in order to
130 permanently preserve natural or cultural resources elsewhere on the plot. This general class of
131 development may also be referred to in local zoning by other names such as open space design,
132 open space residential design, natural resource protection zoning, conservation
133 design/development, or flexible development.

134 "Development agreement", a contract entered into between a municipality or
135 municipalities and a holder of property development rights, the principal purpose of which is to
136 establish the development regulations that will apply to the subject property during the term of
137 the agreement and to establish the conditions to which the development will be subject including,
138 without limitation, a schedule of development impact fees.

139 "Form-based zoning", text and graphics in a zoning ordinance or by-law that
140 specify the built form of the community, general intensity of use, and the relationship between
141 buildings and the outdoor public spaces they shape. Notwithstanding any provision of any
142 general or special law, form-based codes may regulate building type, exterior building materials,
143 minimum and maximum building heights, frontage type, build-to lines, street type, street and
144 streetscape design, public open spaces, and any other parameter of the built or natural
145 environment which gives form to the exterior of buildings and the spaces between them. Form-

146 based codes may combine in a single document standards for new subdivision streets, existing
147 and new public streets and sidewalks, and use and dimensional standards. Such combined
148 standards may be in the form of a "regulating plan" that integrates building, dimensional, use,
149 street, sidewalk, and parking requirements. Form-based codes may also specify lot-by-lot in a
150 detailed regulating plan, building forms and allowed use mixes, even if such specification is not
151 uniform throughout a zoning district, provided that it is based upon a plan for the area subject to
152 the code. Form-based codes may specify prescribed future lot division lines which will be
153 allowed as a matter of right in any future division of land.

154 "Inclusionary housing units", affordable housing units or housing units
155 restricted for purchase or rent by a household with an income at or below 120 percent of the
156 median family income for the applicable metropolitan or non-metropolitan area, as determined
157 by the U.S. Department of Housing and Urban Development.

158 "Inclusionary zoning", zoning ordinances or by-laws that require, or provide
159 incentives for, the creation of affordable housing units or housing units restricted for purchase or
160 rent by a household with an income at or below 120 percent of the median family income for the
161 applicable metropolitan or non-metropolitan area, as determined by the U.S. Department of
162 Housing and Urban Development, or the payment of funds dedicated to the provision of such
163 housing as a condition of approval of a development and in accordance with the provisions of
164 section 9E of this chapter.

165 "Legislative body", when used in connection with the operation of municipal
166 governments shall include that agency of the municipal government which is empowered to
167 enact ordinances or by-laws, adopt an annual budget and other spending authorizations, loan
168 orders, bond authorizations, and other financial matters, whether styled a city council, board of
169 aldermen, town council, town meeting or by any other title.

170 "Permit granting authority", the board of appeals, zoning administrator, or
171 planning board as designated by zoning ordinance or by-law for the issuance of permits, or as
172 otherwise provided by charter, ordinance, or by-law.

173 "Site plan", the submission made to a municipality that includes documents
174 and drawings required by an ordinance or by-law to determine whether a proposed use of land or
175 structures or development is in compliance with applicable local ordinances or by-laws, to
176 evaluate the impacts of the proposed use of land or structures on the neighborhood and/or
177 community, and to evaluate and propose site or structural design modifications or required
178 conditions that will lessen those impacts. Such site plan may be required independently of or as
179 a required component of a special permit, variance, or other discretionary zoning approval.

180 "Site plan review," the review and approval of a site plan by a designated
181 municipal board pursuant to section 9B of this chapter. Site plan review may be required

182 independently for specified uses permitted by-right, or as a required component of a special
183 permit, variance, or other discretionary zoning approval.

184 "Solar access," the access of a solar energy system to direct sunlight.

185 "Solar energy system," a device or structural design feature, a substantial
186 purpose of which is to provide daylight for interior lighting or provide for the collection, storage
187 and distribution of solar energy for space heating or cooling, electricity generating, or water
188 heating.

189 "Special permit", a discretionary approval for a use that satisfies conditions
190 prescribed in a zoning ordinance or by-law in accordance with section 9A of this chapter.

191 "Special permit granting authority", Chief executive officer, board of appeals,
192 planning board, or zoning administrator as designated by zoning ordinance or by-law for the
193 issuance of special permits, or as otherwise provided by charter, ordinance, or by-law.

194 "Transfer of Development Rights", the procedure whereby the owner of a
195 parcel may convey development rights to the owner of another parcel, and where the
196 development rights so conveyed are extinguished on the first parcel and may be exercised on the
197 second parcel in addition to the development rights already existing regarding that parcel.

198 "Unified development ordinance or by-law", An ordinance or bylaw that
199 combines in a single document standards and procedures for land use approvals that derive from
200 different chapters of the General Laws, including but not limited to chapters 40A, 40B, 40C, and
201 41, combining procedures for subdivision, comprehensive permits, historic districts, streets and
202 sidewalks, as well as the use and dimensional standards typically found in zoning.

203 "Variance", an exemption from a zoning ordinance or regulation in accordance
204 with section 9C of this chapter permitting an aspect of zoning that would not otherwise be
205 allowed.

206 "Zoning", ordinances and by-laws, adopted by cities and towns to regulate the
207 use of land, buildings, and structures to the full extent of the independent constitutional powers
208 of cities and towns to protect the health, safety, and general welfare of their present and future
209 inhabitants.

210 "Zoning administrator", a person designated by the board of appeals pursuant
211 to section 8 of this chapter to assume certain duties of said board.

212 "Zoning enforcement officer", the inspector of buildings, building
213 commissioner, or local inspector, or if there are none, the chief executive officer, or as otherwise
214 provided by charter, ordinance, or by-law.

215 40A:3. Consistency with Master Plan

A. Requirement: After January 1, 2017, no zoning ordinance or by-law may be inconsistent with a plan adopted in compliance with section 81D of chapter 41. No zoning ordinance or by-law shall be deemed inconsistent with the plan if it furthers, or at least does not impede, the achievement of the plan's goals and policies, and if it is not incompatible with the plan's proposed land uses and development patterns.

B. Rebuttable Presumption: After the effective date of the plan, a zoning ordinance or by-law shall enjoy a rebuttable presumption in any action, suit, or administrative proceeding that its provisions are not inconsistent with the plan. If the presumption is rebutted, inconsistency may serve as the basis upon which a court or administrative agency may declare any relevant zoning ordinance or by-law provision to be invalid as applied to the property which is the subject of the action, suit, or administrative proceeding. For any amendment to a plan adopted after January 1, 2017, no such declaration of invalidity may be made in any action, suit, or administrative proceeding for a period of 12 months after the effective date of such plan amendment.

C. Alternate Plan: For the purposes of this section only, a city or town without a current local plan under section 81D of chapter 41 may adopt an existing regional plan under section 5 of chapter 40B. Such adoption shall be by the same process specified in section 81D of chapter 41.

40A:4. Powers of Cities and Towns

A. Powers Enumerated: To resolve uncertainty regarding the authority of cities and towns to assert powers conferred by Article 89 of the Articles of Amendment to the Constitution of the Commonwealth and by general or special laws, this chapter confers or confirms the following zoning powers:

1. to impose development impact fees, as defined herein, subject to the requirements set forth in Section 9F;

2. to use inclusionary zoning techniques, subject to the requirements set forth in Section 9E;

3. to enact unified development ordinances or by-laws and form-based zoning, as defined herein, which are based upon multiple sources of statutory authority to regulate land use; and

4. to provide for the transfer of development rights, including the inter-municipal transfer of development rights between or among municipalities with complementary ordinances or by-laws. Such authorization may be by special permit or by other methods, including, but not limited to, the applicable provisions of sections 81K to 81GG, inclusive, of chapter 41, and in accordance with a planning board’s rules and regulations governing

251 subdivision control. Any inter-municipal transfer of development rights plan must be reviewed
252 by the Department of Housing and Community Development prior to adoption to ensure that it is
253 consistent with federal and state fair housing laws, provided that a plan shall be deemed
254 consistent unless the Department makes a written finding of inconsistency within 30 days of
255 submission.

256 5. to provide for cluster development, which may proceed by right or by other
257 methods, including, but not limited to, the applicable provisions of sections 81K to 81GG,
258 inclusive, of chapter 41, and in accordance with a planning board's rules and regulations
259 governing subdivision control.

260 B. Rule of Construction: To the extent that the powers enumerated in this
261 section are construed to be inherent in the constitutional and existing statutory authority of cities
262 and towns and not pre-empted by other state laws, such enumeration is hereby deemed to be
263 merely confirmatory or illustrative.

264 40A:5. Exemptions from Zoning, Limitations on Local Authority

265 A. Building Code: No zoning ordinance or by-law shall regulate or restrict the
266 use of materials, or methods of construction of structures regulated by the state building code.
267 This shall not prevent the regulation of exterior materials on existing or new buildings under
268 form-based codes or in zones specifically identified by statute, ordinance, or by-law as having
269 historic or architectural significance.

270 B. Flood Plain, Wetlands: No zoning ordinance or by-law shall exempt land or
271 structures from flood plain or wetlands regulations established pursuant to general law.

272 C. Agriculture:

273 1. No zoning or general ordinance or by-law regulating the use of agricultural
274 lands, shall prohibit, unreasonably regulate, or require a special permit for the use of land for the
275 primary purpose of commercial agriculture, nor prohibit, unreasonably regulate or require a
276 special permit for the use, expansion, reconstruction, or construction of structures thereon for the
277 primary purpose of commercial agriculture; provided, however, that all such activities may be
278 limited to parcels of 5 acres or more in area not zoned for commercial agriculture and to parcels
279 of any size in areas zoned for commercial agriculture. For such purposes, land divided by a
280 public or private way or a waterway shall be construed as one parcel.

281 2. No zoning or general ordinance or by-law shall prohibit, unreasonably
282 regulate, or require a special permit for those facilities used for the sale of agricultural products,
283 provided that one of the following two sales-ratio tests is met:

284 a. Seasonally at least 25 percent of such products for sale, based on either
285 gross sales dollars or volume, have been produced by the owner or lessee of the land on which
286 the facility is located; or

287 b. Annually at least 25 percent of such products have been produced by the
288 owner or lessee of the land on which the facility is located, and at least an additional 50 per cent
289 of such products shall have been produced in Massachusetts on land, other than that on which the
290 facility is located, used for the primary purpose of commercial agriculture, whether by the owner
291 or lessee of the land on which the facility is located or by another.

292 3. For the purposes of this subsection 5.C the following definitions shall apply:

293 "commercial agriculture" shall be as defined in section 1A of chapter 128, and
294 shall include aquaculture, silviculture, horticulture, floriculture and viticulture; it shall further
295 include those facilities for the primary purpose of processing agricultural products produced by
296 the farm operation and those alternative energy generating facilities for the primary purpose of
297 producing energy to be used by or transmitted for use by farms for agricultural purposes;

298 "seasonally" shall mean either the months of June, July, August, and
299 September of every year or the harvest season of the primary crop raised on land of the owner or
300 lessee;

301 "horticulture" shall include the growing and keeping of nursery stock and the
302 sale thereof; and

303 "nursery stock produced by the owner or lessee of the land" shall mean said
304 nursery stock that is nourished, maintained, and managed while on the premises.

305 D. Interior Area: No zoning ordinance or by-law shall require a minimum
306 interior area of a single family residential building, but may restrict the maximum interior area of
307 a single family residential building.

308 E. Religious, Educational Purposes: No zoning ordinance or by-law shall
309 prohibit, regulate or restrict the use of land or structures for religious purposes or for educational
310 purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions, or
311 bodies politic, or by a religious sect or denomination, or by a nonprofit educational corporation.
312 However, such land or structures may be subject to reasonable regulations concerning the bulk
313 and height of structures and determining yard sizes, lot area, setbacks, open space, parking, and
314 building coverage requirements.

315 F. Public Service Corporation: Lands or structures used, or to be used by a
316 public service corporation, may be exempted in particular respects from the operation of a
317 zoning ordinance or by-law if, upon petition of the corporation, the Department of Public
318 Utilities shall, after notice given pursuant to section 9D. and public hearing in the town or city,

319 determine the exemptions required and find that the present or proposed use of the land or
320 structure is reasonably necessary for the convenience or welfare of the public; provided,
321 however, that if lands or structures used or to be used by a public service corporation are located
322 in more than one municipality such lands or structures may be exempted in particular respects
323 from the operation of any zoning ordinance or by-law if, upon petition of the corporation, the
324 Department of Public Utilities shall after notice to all affected communities and public hearing in
325 one of said municipalities, determine the exemptions required and find that the present or
326 proposed use of the land or structure is reasonably necessary for the convenience or welfare of
327 the public.

328 G. Child Care Facility:

329 1. As used in this paragraph, the term "child care facility" shall mean a child
330 care center or a school-aged child care program, as defined in section 1A of chapter 15D.

331 2. No zoning ordinance or by-law in any city or town shall prohibit, or require
332 a special permit for, the use of land or structures or the expansion of existing structures for the
333 primary, accessory, or incidental purpose of operating a child care facility. Such land or
334 structures may be subject to reasonable regulations concerning the bulk and height of structures
335 and determining yard sizes, lot area, setbacks, open space, parking, and building coverage
336 requirements.

337 3. When any zoning ordinance or by-law in any city or town limits the floor
338 area of any structure, such floor area shall be measured exclusive of any portion of such structure
339 in which a child care facility is to be operated as an accessory or incidental use, and the
340 otherwise allowable floor area of such structure shall be increased by an amount equal to the
341 floor area of such child care facility up to a maximum increase of 10 percent. In any case where
342 the otherwise allowable floor area of a structure has been increased pursuant to the provisions of
343 this section, the portion of such structure in which a child care facility is to be operated as an
344 accessory or incidental use shall not be used for any other purpose unless, following the
345 completion of such structure, the board authorized to grant variances under such zoning
346 ordinance or by-law shall have determined, with the written concurrence of the office for
347 children, that the public interest and convenience do not require the operation of such facility.
348 The procedures governing the granting of variances, including all rights of appeal, shall apply to
349 any such determination.

350 H. Child Care Homes: Family child care home and large family child care
351 home, as defined in section 1A of chapter 15D, shall be an allowable use unless a city or town
352 prohibits or specifically regulates such use in its zoning ordinances or by-laws.

353 I. Disabled Persons, Congregate Living Arrangements: Notwithstanding any
354 general or special law to the contrary, local land use and health and safety laws, regulations,
355 practices, ordinances, by-laws, and decisions of a city or town shall not discriminate against a

356 disabled person. Imposition of health and safety laws or land-use requirements on congregate
357 living arrangements among unrelated persons with disabilities that are not imposed on families
358 and groups of similar size of other unrelated persons shall constitute discrimination. The
359 provisions of this paragraph shall apply to every city or town, including, but not limited to the
360 City of Boston and the City of Cambridge.

361 J. Manufactured Homes: No zoning ordinance or by-law shall prohibit the
362 owner and occupier of a residence which has been destroyed by fire or other natural holocaust
363 from placing a manufactured home on the site of such residence and residing in such home for a
364 period not to exceed 18 months immediately after such event. Any such manufactured home
365 shall be subject to the provisions of the state sanitary code.

366 K. Handicapped Access Ramps: No dimensional lot requirement of a zoning
367 ordinance or by-law, including, but not limited to, set back, front yard, side yard, rear yard, and
368 open space shall apply to access ramps on private property used solely for the purpose of
369 facilitating ingress or egress of a physically handicapped person, as defined in section 13A of
370 chapter 22.

371 L. Solar Energy Systems: No zoning ordinance or by-law shall prohibit or
372 unreasonably regulate the installation of solar energy systems or the building of structures that
373 facilitate the collection of solar energy, except where necessary to protect the public health,
374 safety, or welfare.

375 M. Amateur Radio Antennas: No zoning ordinance or by-law shall prohibit the
376 construction or use of an antenna structure by a federally licensed amateur radio operator.
377 Zoning ordinances and by-laws may reasonably regulate the location and height of such antenna
378 structures for the purposes of health, safety, or aesthetics; provided, however, that such
379 ordinances and by-laws reasonably allow for sufficient height of such antenna structures so as to
380 effectively accommodate amateur radio communications by federally licensed amateur radio
381 operators and constitute the minimum practicable regulation necessary to accomplish the
382 legitimate purposes of the city or town enacting such ordinance or by-law.

383 N. Renewable Energy, Agricultural Land: No zoning or general ordinance or
384 by-law shall prohibit or unreasonably regulate the installation or operation of renewable energy
385 generating structures and equipment, as defined in 220 CMR 18.00, on land primarily in
386 agricultural use, except where necessary to protect the public health, safety or welfare; provided,
387 however, that:

388 1. not less than 75 percent of the energy generated thereby shall be used or
389 transmitted for use in agricultural operations on land and in structures in agricultural use or to
390 serve the energy needs of educational facilities of the commonwealth or any of its agencies,
391 subdivisions or bodies politic, or of a religious sect or denomination, or of a nonprofit
392 educational corporation, or of municipally owned or controlled facilities, whether directly or

393 under a net-metering arrangement approved by the Commissioner of the Department of
394 Agricultural Resources;

395 2. the location and design of all renewable energy generating structures and
396 equipment have been approved by the Commissioner of the Department of Agricultural
397 Resources to assure the least possible impact on agricultural resources;

398 3. the renewable energy capacity on any single parcel of land in agricultural
399 use is limited to 2 megawatts (2,000 kilowatts) , unless waived by the Commissioner of
400 Agricultural Resources; and

401 4. the land on which the renewable energy generating structure and equipment
402 is located remains primarily in agricultural use.

403 The Department of Agricultural Resources shall promulgate regulations
404 governing the siting, construction, and operation of such facilities, which may include
405 prescription or approval of the commercial relationships created to own and operate such
406 facilities.

407 O. Hazardous Waste Facilities: A hazardous waste facility as defined in
408 section 2 of chapter 21D shall be permitted to be constructed as of right on any locus presently
409 zoned for industrial use pursuant to the ordinances and by-laws of any city or town provided that
410 all permits and licenses required by law have been issued to the developer and a siting agreement
411 has been established pursuant to sections 12 and 13 of chapter 21D. Following the submission of
412 a notice of intent, pursuant to section 7 of chapter 21D, a city or town may not adopt any zoning
413 change which would exclude the facility from the locus specified in said notice of intent. This
414 section shall not prevent any city or town from adopting a zoning change relative to the proposed
415 locus for the facility following the final disapproval and exhaustion of appeals for permits and
416 licenses required by law and by chapter 21D.

417 P. Solid Waste Disposal Facilities: A facility, as defined in section 150A of
418 chapter 111, which has received a site assignment pursuant to said section 150A, shall be
419 permitted to be constructed or expanded on any locus zoned for industrial use unless specifically
420 prohibited by the ordinances and by-laws of the city or town in which such facility is proposed to
421 be constructed or expanded, in effect as of July 1, 1987; provided, however, that all permits and
422 licenses required by law have been issued to the proposed operator. A city or town shall not
423 adopt an ordinance or by-law prohibiting the siting of such a facility or the expansion of an
424 existing facility on any locus zoned for industrial use, or require a license or permit granted by
425 said city or town, except a special permit imposing reasonable conditions on the construction or
426 operation of the facility, unless such prohibition, license or permit was in effect on or before July
427 1, 1987. A city or town may adopt and enforce a zoning or non-zoning ordinance or by-law of
428 general application that has the effect of prohibiting the siting or expansion of a facility in the
429 following areas: recharge areas of surface drinking water supplies as shall be reasonably defined

430 by rules and regulations of the Department of Environmental Protection, areas subject to section
431 40 of chapter 131, and the regulations promulgated thereunder; and areas within the zone of
432 contribution of existing or potential public supply wells as defined by said department. No
433 special permit authorized by this section may be denied for any such facility by any city or town;
434 provided, however, that a special permit granting authority may impose reasonable conditions on
435 the construction or operation of the facility, which shall be enforceable pursuant to the provisions
436 of section 10.

437 Q. Exclusionary Zoning: All cities and towns shall, in their zoning ordinances
438 and by-laws, provide opportunities for the creation of at least their municipality's fair share of
439 housing for households of median income, with due regard for regional housing needs as
440 established by the regional planning agency and/or the Department of Housing and Community
441 Development. This shall not preclude the establishment of zoning districts where only low-
442 density development is permitted in order to protect natural and cultural resources, provided that
443 the city or town has made adequate accommodation for a range of housing types and income
444 levels in other zoning districts.

445 40A:6. Nonconformities and Vested Rights

446 A. Nonconforming Lots, Structures and Uses

447 1. Nonconforming Residential Lots:

448 a. Any increases in lot area, frontage, width, depth, yard, or setbacks of a
449 zoning ordinance or by-law shall not apply to a lot for single- or two-family residential use
450 which on the date of the first publication of notice of the public hearing on such ordinance or by-
451 law required by section 7 that renders the lot nonconforming:

452 (i) is shown or described as a separate lot on a recorded plan or deed;

453 (ii) has at least 5,000 square feet of area and 50 feet of frontage in the case of a
454 single-family residential use and at least 7,500 square feet of area and 75 feet of frontage in the
455 case of two-family residential use; and

456 (iii) at the time of recording or endorsement, whichever occurred sooner,
457 conformed to the lot requirements then in effect, and was not then or thereafter held in common
458 ownership with any adjoining land.

459 b. A lot described in 1.a above shall have vital access to and frontage on a way.
460 Access to the lot shall be over such frontage unless the ordinance or by-law provides otherwise.

461 c. Whenever the lines of a lot described in 1.a above are changed in any way
462 that renders the lot more conforming, the resulting boundaries of the lot shall be governed by this
463 section.

464 d. Whenever any lot described in 1.a above comes into common ownership
465 with adjacent land, such lot and adjacent land shall be merged and combined for the purposes of
466 this section. Common ownership shall include lots held by separate legal entities, persons, or
467 trusts under common control or having common beneficial interests.

468 2. Nonconforming Structures and Uses:

469 a. A nonconforming structure or use shall mean a structure or use lawfully in
470 existence on the date of the first publication of notice of the public hearing on such ordinance or
471 by-law required by section 7 rendering such structure or use nonconforming. For the purposes of
472 this section, a nonconforming structure or use lawfully in existence shall not include a structure
473 or use in violation of the zoning ordinance or by-law, nor a structure built without a legally
474 required building permit.

475 b. Adoption or amendment of a zoning ordinance or by-law shall not apply to
476 any existing nonconformity of:

477 i) an existing nonconforming structure or use; and

478 ii) structures and uses lawfully begun prior to the first publication of notice of
479 the public hearing on the adoption or amendment of the relevant zoning ordinance or by-law
480 required by section 7.

481 c. A zoning ordinance or by-law may regulate a nonconforming structure or
482 use if abandoned or discontinued for a period of 2 years or more. Abandonment shall consist of
483 any overt act, or failure to act, that would indicate that the owner neither claims nor retains any
484 intent to continue the nonconforming structure or use, unless the owner can demonstrate the
485 intent not to abandon it. An involuntary interruption of a nonconforming structure or use, such
486 as by fire and natural catastrophe, does not establish the intent to abandon such structure or use.

487 d. This subsection A.2 shall not apply to establishments which display live
488 nudity for their patrons, as defined in section 9A, adult bookstores, adult motion picture theaters,
489 adult paraphernalia shops, or adult video stores subject to the provisions of section 9A.

490 3. Alteration, Reconstruction, Extension, or Structural Change of
491 Nonconforming Structures and Uses:

492 a. A zoning ordinance or by-law shall not prohibit the alteration,
493 reconstruction, extension, or structural change of a nonconforming single- or two-family
494 residential structure, provided all such construction satisfies the applicable dimensional
495 requirements of the current zoning ordinance or by-law other than lot area or frontage.

496 b. A zoning ordinance or by-law may permit, by right or by special permit,
497 nonconforming structures to be altered, reconstructed, extended, or structurally changed, and

498 nonconforming uses to be extended or changed, provided, in either case, that such actions do not
499 increase the specific nonconformity of the structure or use.

500 c. A zoning ordinance or by-law may permit, by special permit,
501 nonconforming structures to be altered, reconstructed, extended, or structurally changed, or
502 nonconforming uses to be extended or changed, in a manner that increases the specific
503 nonconformity of the structure or use, provided, in either case, that the special permit granting
504 authority finds that such actions are not substantially more detrimental to the neighborhood than
505 the existing nonconforming structure or use.

506 d. A zoning ordinance or by-law may regulate nonconforming structures
507 differently than nonconforming uses.

508 e. A zoning ordinance or by-law may vary by zoning district(s) the
509 requirements for the alteration, reconstruction, extension or structural change of nonconforming
510 structures, and for the extension or change of nonconforming uses.

511 B. Vested Rights: Effective Date of Zoning Amendments

512 1. Building Permits, Special Permits, and Subdivision Plans:

513 a. Adoption or amendment of a zoning ordinance or by-law shall not apply to
514 the development proposed in a building permit, special permit, or definitive subdivision plan
515 duly applied for prior to the adoption or amendment required by section 7, provided that:

516 (i) the building permit, special permit, or definitive subdivision plan is
517 ultimately approved; and

518 (ii) the period of time during which the ordinance or by-law does not apply
519 shall extend after such approval for 2 years in the case of a building permit, 3 years in the case of
520 a special permit, and 8 years in the case of a definitive subdivision plan.

521 2. General Provisions:

522 a. The provisions of B.1 above shall apply to approved modifications or
523 amendments of a building permit, special permit, or definitive subdivision plan made under
524 section 81W of chapter 41, or other applicable state or local provisions provided there is no
525 required application for a new building permit, special permit, or definitive subdivision plan.
526 Modification or amendment shall not itself serve to lengthen the period of time when the
527 ordinance or by-law shall not apply.

528 b. The vested rights provisions of this section 6B shall be extended for a period
529 of time equal to the duration of:

530 (i) extensions granted by the applicable local board or authority;

531 (ii) the period between the filing of an appeal or commencement of litigation
532 from the decision of an applicable local board or authority and the final disposition thereof,
533 provided final adjudication is in favor of the owner of the lot; and

534 (iii) a moratorium upon permitting or construction imposed by any government
535 entity.

536 c. The minimum periods of time when the ordinance or by-law shall not apply
537 in 1.a(ii) above may be lengthened by ordinance or by-law.

538 d. The record owner of the land shall have the right, at any time, by an
539 instrument duly recorded in the registry of deeds for the district in which the land lies, a copy of
540 which shall be filed with the building inspector and city or town clerk, to waive all of the
541 provisions of this section 6B, in which case the zoning ordinance or by-law then or thereafter in
542 effect shall apply.

543 e. For the purposes of this section the term definitive subdivision plan shall
544 include a minor subdivision under section 81L and 81P of chapter 41, provided the planning
545 board has adopted rules and regulations for minor subdivisions under section 81Q of said
546 chapter. In such cases, the period of time during which the ordinance or by-law does not apply
547 shall extend after approval of the minor subdivision for 3 years.

548 40A:7. Adoption and Amendment of Zoning Ordinances and By-
549 laws

550 Zoning ordinances or by-laws shall be adopted and from time to time changed
551 by amendment, addition or repeal only in the manner hereinafter provided.

552 A. Initiation: Adoption or change of zoning ordinances or by-laws may be
553 initiated by the chief administrative officer of the city or town, or by submission to the chief
554 administrative officer of a proposed zoning ordinance or by-law by the chief executive officer, if
555 different, by the board of appeals, by an individual owning land to be affected by change or
556 adoption, by request of registered voters of a town pursuant to section 10 of chapter 39, by 10
557 registered voters in a city, by a planning board, by a regional planning agency, or by other
558 methods provided by municipal charter, ordinance, or by-law. The chief administrative officer
559 shall within 14 days of receipt of such zoning ordinance or by-law submit it to the planning
560 board for review, unless the proposal had been initiated by the planning board itself.

561 B. Hearings Required: No zoning ordinance or by-law or amendment thereto
562 shall be adopted until after the planning board in a city or town, and the legislative body of a city
563 or a committee designated or appointed for the purpose by said legislative body, has each held a
564 public hearing thereon, together or separately, at which interested persons shall be given an
565 opportunity to be heard. Said public hearing shall be held within 65 days after the proposed

566 zoning ordinance or by-law is submitted to the planning board by the legislative body or if there
567 is no planning board, within 65 days after the proposed zoning ordinance or by-law is submitted
568 to the chief administrative officer.

569 C. Notice: Notice of the time and place of such public hearing, of the subject
570 matter, sufficient for identification, and of the place where texts and maps thereof may be
571 inspected shall be published in a newspaper of general circulation in the city or town once in
572 each of 2 successive weeks, the first publication to be not less than 14 days before the day of said
573 hearing, and by posting such notice in a conspicuous place in the city or town hall for a period of
574 not less than 14 days before the day of said hearing. Notice of said hearing shall also be sent by
575 mail, postage prepaid to the regional planning agency, if any, and to the planning board of each
576 abutting city and town. The regional planning agency, the planning boards of all abutting cities
577 and towns, and nonresident property owners who may not have received notice by mail as
578 specified in this section, may grant a waiver of notice or submit an affidavit of actual notice to
579 the city or town clerk prior to action by the legislative body on a proposed zoning ordinance, by-
580 law or change thereto. Zoning ordinances or by-laws may provide that a separate, conspicuous
581 statement shall be included with property tax bills sent to nonresident property owners, stating
582 that notice of such hearings under this chapter shall be sent by mail, postage prepaid, to any such
583 owner who files an annual request for such notice with the city or town clerk no later than
584 January first, and pays a reasonable fee established by such ordinance or by-law. In cases
585 involving boundary, density or use changes within a district, notice shall be sent to any such
586 nonresident property owner who has filed such a request with the city or town clerk and whose
587 property lies in the district where the change is sought. No defect in the form of any notice
588 under this chapter shall invalidate any zoning ordinances or by-laws unless such defect is found
589 to be misleading.

590 D. Notice to Farmland Advisory Board: Prior to the adoption of any zoning or
591 general ordinance or by-law or amendment thereto which seeks to further regulate matters
592 established by section 40 of chapter 131 or regulations authorized thereunder relative to
593 agricultural and aquacultural practices, the city or town clerk shall, not later than 7 days prior to
594 the legislative body's public hearing relative to the adoption of said new or amended zoning
595 ordinances or by-laws, give notice of the said proposed zoning or general ordinances or by-laws
596 to the Farmland Advisory Board established pursuant to section 40 of chapter 131 and to the
597 Commissioner of the Department of Agricultural Resources.

598 E. Planning Board Report: No vote to adopt any such proposed ordinance or
599 by-law or amendment thereto shall be taken until a report with recommendations by a planning
600 board has been submitted to the legislative body, or 21 days after said hearing has elapsed
601 without submission of such report. After such notice, hearing and report, or after 21 days shall
602 have elapsed after such hearing without submission of such report, the legislative body may
603 adopt, reject, or amend and adopt any such proposed ordinance or by-law.

F. Failure to Vote: If legislative body of a city fails to vote to adopt any proposed ordinance within 90 days after the legislative body's hearing, or if the legislative body of a town fails to vote to adopt any proposed by-law within 6 months after the planning board hearing, no action shall be taken thereon until after a subsequent public hearing is held with notice and report as provided.

G. Vote Required for Adoption: No zoning ordinance or by-law or amendment thereto shall be adopted or changed except by a two-thirds vote of the legislative body of the city or town. A lesser majority vote may be prescribed in a zoning ordinance or by-law adopted by a two-thirds vote of the local legislative body, except that such lesser majority shall not become effective until 6 months have elapsed after the vote.

H. Unfavorable Action, Repetitive Petitions: No proposed zoning ordinance or by-law which has been unfavorably acted upon by the legislative body of a city or town shall be considered by the legislative body within 2 years after the date of such unfavorable action unless the adoption of such proposed ordinance or by-law is recommended in the final report of the planning board.

I. Review by the Attorney General: When zoning by-laws or amendments thereto are submitted to the attorney general for approval as required by section 32 of chapter 40, the attorney general shall also be furnished with a statement which may be prepared by the planning board explaining the by-laws or amendments proposed, which statement may be accompanied by explanatory maps or plans.

J. Effective Date: The effective date of the adoption or amendment of any zoning ordinance or by-law shall be the date on which such adoption or amendment was voted upon by the legislative body, provided, however, that in towns the posting and publication requirements of section 32 of chapter 40 have been satisfied. If, in a town, said by-law is subsequently disapproved, in whole or in part, by the attorney general, the previous zoning by-law, to the extent that such previous zoning by-law was changed by the disapproved by-law or portion thereof, shall be deemed to have been in effect from the date of such vote. In a municipality which is not required to submit zoning ordinances to the attorney general for approval pursuant to section 32 of chapter 40, the effective date of such ordinance or amendment shall be the date established by charter or ordinance.

K. Official Copy: A true copy of the zoning ordinance or by-law with any amendments thereto shall be kept on file available for inspection in the office of the clerk of such city or town.

L. Claim of Invalidity: No claim of invalidity of any zoning ordinance or by-law arising out of any possible defect in the procedure of adoption or amendment shall be made in any legal proceedings and no state, regional, county, or municipal officer shall refuse, deny, or revoke any permit, approval, or certificate because of any such claim of invalidity, unless legal

641 action is commenced within the time period specified in sections 32 and 32A of chapter 40 and
642 notice specifying the court, parties, invalidity claimed, and date of filing, is filed together with a
643 copy of the petition with the town or city clerk within 7 days after commencement of the action.

644 M. Zoning Districts: Zoning districts shall be shown on a zoning map in a
645 manner sufficient for identification. Such maps shall be part of zoning ordinances or by-laws.
646 Assessors' or property plans may be used as the basis for zoning maps. If more than four sheets
647 or plates are used for a zoning map, an index map showing districts in outline shall be part of the
648 zoning map and of the zoning ordinance or by-law.

649 N. Zoning District Boundary Lines: No provision of a zoning ordinance or by-
650 law shall be valid which sets apart districts by any boundary line which may be changed without
651 adoption of an amendment to the zoning ordinance or by-law.

652 O. Uniformity: No zoning ordinance or by-law shall regulate uses or structures
653 in a manner that is not uniformly applicable within a zoning district except where such
654 regulations are supported by a valid planning or zoning basis rationally related to the
655 distinguishing characteristics of such structures or uses.

656 40A:8. Boards of Appeal, Zoning Administrators

657 A. Zoning Board of Appeals: Zoning ordinances or by-laws shall provide for a
658 zoning board of appeals, according to the provisions of this section, unless otherwise provided by
659 charter.

660 B. Membership: The board shall consist of 3 or 5 members who shall be
661 appointed by the chief executive officer of a town, and by the chief executive officer of a city
662 subject to confirmation by the legislative body, unless otherwise provided by charter, and who
663 shall serve for terms of such length and so arranged that the term of one member shall expire
664 each year.

665 C. Chairman, Clerk: The board shall annually elect a chairman from its own
666 number and a clerk, and may, subject to appropriation, employ experts and clerical and other
667 assistants.

668 D. Removal of Member: Any member may be removed for cause by the
669 appointing authority upon written charges and after a public hearing.

670 E. Vacancies: Vacancies shall be filled for unexpired terms in the same manner
671 as in the case of original appointments.

672 F. Associate Members: Zoning ordinances or by-laws may provide for the
673 appointments in like manner of associate members of the board of appeals; and, if provision for
674 associate members has been made, the chairman of the board may designate any such associate

member to sit on the board in case of absence, inability to act or conflict of interest on the part of any member thereof, or in the event of a vacancy on the board until said vacancy is filled in the manner provided in this section.

G. Powers: A board of appeals shall have the following powers:

1. To hear and decide appeals in accordance with this section.

2. To hear and decide applications for special permits upon which the board is empowered to act under said ordinance or by-laws.

3. To hear and decide petitions for variances as set forth in section 9C.

4. To hear and decide appeals from decisions of a zoning administrator, if any, in accordance with this section.

In exercising the powers granted by this section, a board of appeals may, in conformity with the provisions of this chapter, make orders or decisions, reverse or affirm in whole or in part, or modify any order or decision, and to that end shall have all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit.

H. Procedures:

1. Meetings: Meetings of the board shall be held at the call of the chairman or when called in such other manner as the board shall determine in its rules. The board of appeals shall hold a hearing on any appeal, application, or petition within 65 days from the receipt of notice by the board of such appeal, application or petition. The board shall cause notice of such hearing to be published and sent to parties in interest as provided in section 9D. The chairman, or in his absence the acting chairman, may administer oaths, summon witnesses, and call for the production of papers.

2. Votes: The concurring vote of all members of the board of appeals consisting of 3 members, and a concurring vote of 4 members of a board consisting of 5 members, shall be necessary to reverse an order or decision of an administrative official under this chapter or to effect a variance in the application of an ordinance or by-law.

3. Hearings, Decisions, and Appeals: All hearings of the board of appeals shall be open to the public and held in accordance with section 9D. The decision of the board shall be made and recorded with the municipal clerk within 114 days after the date of the filing of an appeal, application or petition, except in regard to special permits, as provided for in section 9A. The required time limits for a public hearing and said action may be extended by written agreement between the applicant and the board of appeals. A copy of such agreement shall be filed in the office of the city or town clerk. Failure by the board to take final action within said 114 days or extended time, if applicable, shall be deemed to be the grant of the appeal,

application, or petition. The petitioner who seeks such approval by reason of the failure of the board to take final action within the time prescribed shall notify the city or town clerk, in writing, within 14 days from the expiration of said 114 days or extended time, if applicable, of such approval and that notice has been sent by the petitioner to parties in interest. The petitioner shall send such notice to parties in interest, by mail and each notice shall specify that appeals, if any, shall be made pursuant to section 11 and shall be filed within 20 days after the date the city or town clerk received such written notice from the petitioner that the board failed to take final action within the time prescribed. After the expiration of 20 days without notice of appeal pursuant to section 11, or, if appeal has been taken, after receipt of certified records of the court in which such appeal is adjudicated, indicating that such approval has become final, the city or town clerk shall issue a certificate stating the date of approval, the fact that the board failed to take final action and that the approval resulting from such failure has become final, and such certificate shall be forwarded to the petitioner. The board shall, within the 114 day time limit, cause to be made a detailed record of its proceedings, indicating the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and setting forth clearly the reason for its decision and of its official actions, copies of all of which shall be filed in the office of the city or town clerk and shall be a public record. Notice of the decision shall be mailed forthwith to the petitioner, applicant or appellant, to the parties in interest designated in section 9D, and to every person present at the hearing who requested that notice be sent to him and stated the address to which such notice was to be sent. Each notice shall specify that appeals, if any, shall be made pursuant to section 11 and shall be filed within 20 days after the date of filing of such notice in the office of the city or town clerk.

I. Appeals to the Zoning Board of Appeals: An appeal to the zoning board of appeals may be taken by any person aggrieved by reason of the appellant's inability to obtain a permit or an enforcement action from any administrative officer under the provisions of this chapter, by the regional planning agency in whose area the city or town is situated, or by any person including an officer or board of the city or town, or of an abutting city or town aggrieved by an order or decision of the inspector of buildings, or other administrative official, in violation of any provision of this chapter or any ordinance or by-law adopted thereunder.

1. Any appeal shall be taken within 30 days from the date of the order or decision which is being appealed. The petitioner shall file a notice of appeal specifying the grounds thereof, with the city or town clerk, and a copy of said notice, including the date and time of filing certified by the town clerk, shall be filed forthwith by the petitioner with the officer or board whose order or decision is being appealed, and to the permit granting authority, specifying in the notice grounds for such appeal. Such officer or board shall forthwith transmit to the board of appeals all documents and papers constituting the record of the case in which the appeal is taken.

2. Any appeal to a board of appeals from the order or decision of a zoning administrator, if any, appointed in accordance with this section shall be taken within 30 days of

748 the date of such order or decision or within 30 days from the date on which the appeal,
749 application or petition in question shall have been deemed denied in accordance with said section
750 8J, as the case may be, by having the petitioner file a notice of appeal, specifying the grounds
751 thereof with the city or town clerk and a copy of said notice including the date and time of filing
752 certified by the city or town clerk shall be filed forthwith in the office of the zoning administrator
753 and in the case of an appeal under this subsection 8I with the officer whose decision was the
754 subject of the initial appeal to said zoning administrator. The zoning administrator shall forthwith
755 transmit to the board of appeals all documents and papers constituting the record of the case in
756 which the appeal is taken.

757 J. Zoning Administrator: A zoning ordinance or by-law may authorize the
758 appointment of a zoning administrator, who, unless otherwise provided by charter, shall be
759 appointed by the board of appeals, subject to confirmation by the city council or board of
760 selectmen, to serve at the pleasure of the board of appeals pursuant to such qualifications as may
761 be established by the city council or board of selectmen. The board of appeals may delegate to
762 said zoning administrator some of its powers and duties by a concurring vote of all members of
763 the board of appeals consisting of 3 members, and a concurring vote of all except one member of
764 a board consisting of 5 members. Any person aggrieved by a decision or order of the zoning
765 administrator, whether or not previously a party to the proceeding, or any municipal office or
766 board, may appeal to the board of appeals, as provided in this section, within 30 days after the
767 decision of the zoning administrator has been filed in the office of the city or town clerk. Any
768 appeal, application or petition filed with said zoning administrator as to which no decision has
769 issued within 35 days from the date of filing shall be deemed denied and shall be subject to
770 appeal to the board of appeals as provided in this section 8.

771 K. Rules: The board of appeals shall adopt rules, not inconsistent with the
772 provisions of the zoning ordinance or by-law for the conduct of its business and for purposes of
773 this chapter and shall file a copy of said rules with the city or town clerk. If a board of appeals
774 has appointed a zoning administrator in accordance with subsection 8J, said rules shall set forth
775 the fact of such appointment, the identity of the persons from time to time appointed to such
776 position, the powers and duties delegated to such individual and any limitations thereon.

777 40A:9. Permits and Approvals, Procedures, and Zoning Tools

778 A. Special Permits

779 1. Requirements:

780 a. General: Any zoning ordinance or by-law that provides for the issuance of
781 special permits shall state the types of land uses and development for which special permits are
782 required and the districts where such special permits are required. Special permits shall be
783 issued only for uses which are in harmony with the general purpose and intent of the ordinance

784 or by-law, and shall be subject to general or specific provisions set forth therein; and such
785 permits may also impose conditions, safeguards, and limitations on time or use.

786 b. Special Permit Granting Authority: Zoning ordinances or by-laws may
787 provide that certain classes of special permits shall be issued by one special permit granting
788 authority and others by another special permit granting authority as provided in the ordinance or
789 by-law. Such special permit granting authority shall adopt and from time to time amend rules
790 relative to the issuance of such permits, and shall file a copy of said rules in the office of the city
791 or town clerk. Such rules shall prescribe a size, form, contents, style and number of copies of
792 plans and specifications, which may include the requirement of submission of a site plan, and the
793 procedure for a submission, review, and approval of such permits.

794 c. Increases in Density or Intensity: Any zoning ordinance or by-law that
795 provides for special permits authorizing increases in permissible density of population or
796 intensity of a particular use shall provide that the petitioner or applicant shall, as a condition for
797 the grant of the special permit, provide improvements or amenities in the public interest. Such
798 zoning ordinances or by-laws shall state the specific types of improvements or amenities
799 required, and the maximum increases in density of population or intensity of use which may be
800 authorized by such special permits.

801 2. Procedures:

802 a. Application, Hearing, and Vote Majorities: Each application for a special
803 permit shall be filed by the petitioner with the city or town clerk and a copy of said application,
804 including the date and time of filing certified by the city or town clerk, shall be filed forthwith by
805 the petitioner with the special permit granting authority. The special permit granting authority
806 shall hold a public hearing, for which notice has been given as provided in subsection 9D, on any
807 application for a special permit within 65 days from the date of filing of such application;
808 provided, however, that a city council having more than 5 members designated to act upon such
809 applications may appoint a committee of such council to hold the public hearing. The decision of
810 the special permit granting authority shall be made within 90 days following the date of the close
811 of such public hearing. The required time limits for a public hearing and said action may be
812 extended by written agreement between the petitioner and the special permit granting authority.
813 A copy of such agreement shall be filed in the office of the city or town clerk. Unless a lesser
814 majority is specified in the zoning ordinance or by-law, issuance of a special permit under this
815 section shall require a vote of two-thirds of the entire special permit granting authority in the
816 case of an authority with more than 5 members, the vote of at least 4 members of a 5-member
817 authority, or the vote of all members of an authority comprised of fewer than 5 members.

818 b. Review of Special Permit by Other Boards and Agencies: Zoning
819 ordinances or by-laws may provide that petitions for special permits shall be submitted to and
820 reviewed by any other town agency or board and may further provide that such reviews may be

821 held jointly. Any such board or agency to which petitions are referred for review shall make such
822 recommendations as they deem appropriate and shall send copies thereof to the special permit
823 granting authority and to the applicant; provided, however, that failure of any such board or
824 agency to make recommendations within 35 days of receipt by such board or agency of the
825 petition shall be deemed lack of opposition thereto.

826 c. Final Action, Failure to Take Final Action, Appeal: The special permit
827 granting authority shall cause to be made a detailed record of its proceedings, indicating the vote
828 of each member upon each question, or if absent or failing to vote, indicating such fact, and
829 setting forth clearly the reason for its decision and of its official actions, copies of all of which
830 shall be filed within 14 days in the office of the city or town clerk and shall be deemed a public
831 record, and notice of the decision shall be mailed forthwith to the petitioner, applicant or
832 appellant, to the parties in interest designated in section 9D, and to every person present at the
833 hearing who requested that notice be sent to him and stated the address to which such notice was
834 to be sent. Each such notice shall specify that appeals, if any, shall be made pursuant to section
835 11 and shall be filed within 20 days after the date of filing of such notice in the office of the city
836 or town clerk. Failure by the special permit granting authority to take final action within said 90
837 days or extended time, if applicable, shall be deemed to be a grant of the special permit. The
838 petitioner who seeks such approval by reason of the failure of the special permit granting
839 authority to act within such time prescribed, shall notify the city or town clerk, in writing within
840 14 days from the expiration of said 90 days or extended time, if applicable, of such approval and
841 that notice has been sent by the petitioner to parties in interest. The petitioner shall send such
842 notice to parties in interest by mail and each such notice shall specify that appeals, if any, shall
843 be made pursuant to section 11 and shall be filed within 20 days after the date the city or town
844 clerk received such written notice from the petitioner that the special permit granting authority
845 failed to act within the time prescribed. After the expiration of 20 days without notice of appeal
846 pursuant to section 11, or, if appeal has been taken, after receipt of certified records of the court
847 in which such appeal is adjudicated, indicating that such approval has become final, the city or
848 town clerk shall issue a certificate stating the date of approval, the fact that the special permit
849 granting authority failed to take final action and that the approval resulting from such failure has
850 become final, and such certificate shall be forwarded to the petitioner.

851 d. Recordation of Special Permit: A special permit, or any extension,
852 modification or renewal thereof, shall not take effect until a copy of the decision bearing the
853 certification of the city or town clerk that 20 days have elapsed after the decision has been filed
854 in the office of the city or town clerk is recorded in the registry of deeds for the county and
855 district in which the land is located and indexed in the grantor index under the name of the owner
856 of record or is recorded and noted on the owner's certificate of title.

857 The certification shall include either:

858 (i) a statement that no appeal has been filed or that if such appeal has been
859 filed, that it has been dismissed or denied, or;

860 (ii) if it is a special permit which has been approved by reason of the failure of
861 the special permit granting authority to act thereon within the time prescribed, a copy of the
862 petition for the variance accompanied by the statement of the city or town clerk stating the fact
863 that the special permit granting authority failed to act within the time prescribed, and no appeal
864 has been filed, and that the grant of the petition resulting from such failure to act has become
865 final or that if such appeal has been filed, that it has been dismissed or denied.

866 The fee for recording or registering shall be paid by the owner or applicant.

867 The person exercising rights under a duly appealed special permit does so at
868 risk that a court will reverse the permit and that any construction performed under the permit
869 may be ordered undone. This section shall in no event terminate or shorten the tolling, during the
870 pendency of any appeals, of the time periods provided under section 6B.

871 e. Lapse, Extension: A special permit granted under this section shall state that
872 it will lapse within a period of time specified by the special permit granting authority, not less
873 than 3 years, if a substantial use thereof has not sooner commenced except for good cause due to
874 circumstances beyond the control of the petitioner or, in the case of a special permit for
875 construction, if construction has not begun by such date except for good cause due to
876 circumstances beyond the control of the petitioner. The period of time before which a special
877 permit shall lapse shall not include the time required to pursue or await the determination of an
878 appeal from the grant thereof referred to in section 11. Upon written application by the grantee of
879 a special permit, the special permit granting authority in its discretion and without a public
880 hearing may, by the same vote majority originally required to approve the special permit, extend
881 the time for the exercise of such special permit for a period of time not to exceed the original
882 duration of the special permit. Such application must be filed no later than 65 days prior to the
883 lapse of the special permit. If the permit granting authority does not grant the extension within
884 65 days of the date of application therefor, upon the lapse of the special permit, the special
885 permit may be re-established only after notice and a new hearing pursuant to the provisions of
886 this section.

887 3. Special Permits for Specific Uses:

888 a. Shared Elderly Housing: Any zoning ordinance or by-law that provides for
889 the use of structures as shared elderly housing upon the issuance of a special permit shall specify
890 the maximum number of elderly occupants allowed, not to exceed a total number of 6, any age
891 requirements, and any other conditions deemed necessary for the special permits to be granted

892 b. Adult Uses, Live Nudity: Any zoning ordinance or by-law that provides for
893 special permits authorizing the establishment of adult bookstores, adult motion picture theaters,

894 adult paraphernalia stores, adult video stores or establishments which display live nudity for their
895 patrons as hereinafter defined may state the specific improvements, amenities or locations of
896 proposed uses for which such permit may be granted and may provide that the proposed use be a
897 specific distance from any district designated by zoning ordinance or by-law for any residential
898 use or from any other adult bookstore or adult motion picture theatre or from any establishment
899 licensed under the provisions of section 12 of chapter 138. Such zoning ordinance or by-law
900 shall prohibit the issuance of such special permits to any person convicted of violating the
901 provisions of section 63 of chapter 119 or section 28 of chapter 272.

902 As used in this section, the following words shall have the following
903 meanings:

904 "Adult bookstore", an establishment having as a substantial or significant
905 portion of its stock in trade, books, magazines, and other matter which are distinguished or
906 characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual
907 excitement as defined in section 31 of chapter 272.

908 "Adult motion picture theatre", an enclosed building used for presenting
909 material distinguished by an emphasis on matter depicting, describing, or relating to sexual
910 conduct or sexual excitement as defined in section 31 of chapter 272.

911 "Adult paraphernalia store," an establishment having as a substantial or
912 significant portion of its stock devices, objects, tools, or toys which are distinguished or
913 characterized by their association with sexual activity, including sexual conduct or sexual
914 excitement as defined in section 31 of chapter 272.

915 "Adult video store," an establishment having as a substantial or significant
916 portion of its stock in trade, videos, movies, or other film material which are distinguished or
917 characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual
918 excitement as defined in said section 31 of said chapter 272.

919 "Establishment which displays live nudity for its patrons", any establishment
920 which provides live entertainment for its patrons, which includes the display of nudity, as that
921 term is defined in section 31 of chapter 272. Any existing adult bookstore, adult motion picture
922 theater, adult paraphernalia store or establishment which displays live nudity for its patrons, or
923 adult video store shall apply for such permit within 90 days following the adoption of said
924 zoning ordinance or by-law by a municipality.

925 Nothing contained herein shall be construed as limiting the power and authority of cities
926 and towns to regulate the use of land, structures or buildings through zoning ordinances or by-
927 laws.

928 B. Site Plan Review

929 1. Requirements: Any ordinance or by-law that requires site plan review for
930 uses allowed by-right shall:

931 a. establish which uses of land or structures or development are subject to site
932 plan review;

933 b. specify the local boards or officials charged with reviewing and approving
934 site plans, which may differ for different types, scales, or categories of uses of land or structures;

935 c. set forth what constitutes a complete application;

936 d. establish the submission, review, and approval process, which may or may
937 not include a requirement for a public hearing under section 9D. Approval of a site plan under
938 this section, if reviewed by a board, shall require no greater than a simple majority vote of the
939 full board and shall be made within the time limits prescribed by ordinance or by-law, not to
940 exceed 95 days from the filing of a complete application. Approval of a site plan by staff or
941 other municipal official or officials shall be as specified in the ordinance or by-law. If no
942 decision is issued within the time limit prescribed and no written extension of the time limit has
943 been granted by the person seeking the site plan review, the site plan shall be deemed
944 constructively approved as provided in section 9A.2.c of this chapter;

945 e. establish standards and criteria by which the use of land or structures and its
946 impact on the neighborhood shall be evaluated; and

947 f. contain provisions that make the terms, conditions, and content of the
948 approved site plan enforceable by the municipality, which may include the requirement of
949 performance guarantees.

950 2. Approval Criteria for Uses Allowed By-right: This section does not allow a
951 permit granting authority, in a decision on a site plan, to prohibit or deny a use that is permitted
952 by-right in the applicable zoning district. A site plan submitted for the use of specific land or
953 structures allowed by-right shall be approved if the site plan:

954 a. satisfies the procedural and submission requirements of the site plan review
955 process applicable to the specific land or structures;

956 b. complies with the regulations applicable to such land or structures in the
957 local zoning ordinance or by-law; and

958 c. meets such standards and criteria as the local zoning ordinance or by-law
959 provides by which the use of land or structures and its impact on the neighborhood shall be
960 evaluated, or may be conditioned to meet such standards and criteria.

961 3. Conditions, Safeguards, and Limitations:

962 a. A site plan approved hereunder may include reasonable conditions,
963 safeguards, and limitations to mitigate the impacts of a specific use of land or structures on the
964 neighborhood. The permit granting authority may adopt such conditions which, in its opinion,
965 are directly related to standards and criteria described in the site plan review ordinance or by-
966 law, provided such conditions do not conflict with or waive any other applicable requirement of
967 the zoning ordinance or by-law. The permit granting authority shall base any conditions it
968 adopts on competent, credible evidence it shall incorporate into the record of its decision. If the
969 permit granting authority adopts conditions pursuant to this paragraph, the site plan shall be
970 revised to include such conditions before the development permit is issued.

971 b. Site plan review may not require the payment or performance of any off-site
972 mitigation, except to mitigate any extraordinary adverse impacts of the project on adjacent
973 properties or public infrastructure, or when the site plan approval is subject to development
974 impact fees imposed in accordance with the provisions of section 9F of this chapter, or when a
975 site plan is required in connection with the issuance of a special permit or variance.

976 4. Appeals: Decisions on uses allowed by-right shall be appealable as specified
977 in the ordinance or by law, which may include direct judicial review pursuant to section 11.

978 5. Duration, Lapse, Extensions: Zoning ordinances or by-laws shall provide
979 that a site plan approval for a use allowed by-right shall lapse within a specified period of time,
980 not less than 2 years from the date of the filing of such approval with the city or town clerk, if a
981 building permit has not been obtained or substantial use or construction has not yet begun, except
982 as extended for good cause by the permit granting authority. Such period of time shall not
983 include time required to pursue or await the determination of an appeal under subsection 4,
984 above.

985 6. Consultant Fees: The board designated by ordinance or by-law to review site
986 plans under this section may, by rules and regulations adopted by such board, provide for the
987 imposition of reasonable fees for the employment of outside consultants in the same manner as
988 set forth in section 53G of chapter 44.

989 7. Discretionary Approvals: Where an ordinance or by-law provides that a
990 variance, special permit, or other discretionary zoning approval shall also require site plan
991 review, the review of the site plan shall be integrated into the processing of the variance, special
992 permit, or other discretionary zoning approval and not made the subject of a separate proceeding,
993 hearing, or decision. In such case, the content requirements and approval criteria for a site plan
994 as specified in the zoning ordinance or by-law shall be followed, but this section 9B shall not
995 otherwise apply.

996 8. Transition Provision: In cities or towns that adopted a zoning ordinance or
997 by-law requiring some form of site plan review or site plan approval prior to the effective date of

998 this act, the provisions of this Section 9B. shall not be effective with respect to such zoning
999 ordinance or by-law until the date 2 years after the effective date of this act.

1000 C. Variances

1001 1. Authority: Where a literal enforcement of the provisions of the zoning
1002 ordinance or by-law would cause substantial hardship to the petitioner, upon appeal or upon
1003 petition with respect to particular land or structures, the permit granting authority shall have the
1004 discretionary authority to grant a variance from the terms of the applicable zoning ordinance or
1005 by-law following a public hearing for which notice has been given by publication and posting as
1006 provided in section 9D and by mailing to the planning board and all parties in interest.

1007 2. Standards: In making its determination, the permit granting authority shall
1008 take into consideration the benefit to the applicant if the variance is granted, as weighed against
1009 the detriment to the health, safety and welfare of the neighborhood or community by such grant.
1010 The permit granting authority may also take into consideration the extent to which the claimed
1011 hardship is self-created. In order to grant a variance the permit granting authority shall make all
1012 of the following findings:

1013 a. the benefit sought by the applicant cannot be achieved by some method, feasible for
1014 the applicant to pursue, other than a variance;

1015 b. the variance will not have a substantial undesirable effect on nearby
1016 properties, or the character of the neighborhood, or on the environment;

1017 c. the variance will not nullify or substantially derogate from the intent or
1018 purpose of such ordinance or by-law or the master plan under section 81D of chapter 41 upon
1019 which the ordinance or by-law is based; and

1020 d. the claimed hardship relating to the property in question is unique, and does
1021 not apply to a substantial portion of the district or neighborhood.

1022 In the granting of variances, the permit granting authority shall grant the
1023 minimum variance that it shall deem necessary to relieve the hardship.

1024 3. Use Variances: Use variances are not included within the scope of this
1025 section unless expressly so authorized by an ordinance or by-law. If so authorized, use variances
1026 shall be subject to all the provisions of this section and to any additional more stringent criteria
1027 contained in the ordinance or by-law.

1028 4. Conditions, Safeguards, and Limitations: The permit granting authority may
1029 impose conditions, safeguards and limitations both of time and of use, including the continued
1030 existence of any particular structures.

5. Duration: Variances shall run with the land, except that a use variance may run with land only if so determined by the permit granting authority acting pursuant to an ordinance or by-law enabling such a determination.

6. Recordation of Variance: No variance, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the city or town clerk that 20 days have elapsed after the decision has been filed in the office of the city or town clerk is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title.

The certification shall include either:

a. a statement that no appeal has been filed or that if such appeal has been filed, that it has been dismissed or denied, or;

b. if it is a variance which has been approved by reason of the failure of the permit granting authority to act thereon within the time prescribed, a copy of the petition for the variance accompanied by the statement of the city or town clerk stating the fact that the permit granting authority failed to act within the time prescribed, and no appeal has been filed, and that the grant of the petition resulting from such failure to act has become final or that if such appeal has been filed, that it has been dismissed or denied.

The fee for recording or registering shall be paid by the owner or applicant.

7. Lapse, Extension: If the rights authorized by a variance are not exercised within two years of the date of the grant of the variance such variance shall lapse; provided, however, that upon written application by the grantee of such variance, the permit granting authority in its discretion may extend the time for exercise of such rights for a period not to exceed one year. Such application must be filed no later than 65 days prior to the lapse of the variance. If the permit granting authority does not grant the extension within 65 days of the date of application therefor, upon the lapse of the variance, the variance may be re-established only after notice and a new hearing pursuant to the provisions of this section.

D. Procedures for Applications, Hearings, and Decisions

Unless otherwise provided for in this chapter, applications, hearings, and decisions shall be in accordance with this section 9D.

1. Applications: An application for a special permit or site plan review, or petition for a variance or appeal shall be filed by the applicant or petitioner with the city or town clerk, and a copy of said appeal, application, or petition, including the date and time of filing, certified by the city or town clerk, shall be transmitted forthwith by the applicant or petitioner to the permit granting authority or special permit granting authority as the case may be.

2. Public Hearings:

Notice of Hearing: In all cases where notice of a public hearing is required notice shall be given by publication in a newspaper of general circulation in the city or town once in each of 2 successive weeks, the first publication to be not less than 14 days before the day of the hearing and by posting such notice in a conspicuous place in the city or town hall for a period of not less than 14 days before the day of such hearing. In all cases where notice to individuals or specific boards or other agencies is required, notice shall be sent by mail, postage prepaid. "Parties in interest" as used in this chapter shall mean the petitioner, abutters, owners of land directly opposite on any public or private street or way, and abutters to the abutters within 300 feet of the property line of the petitioner as they appear on the most recent applicable tax list, notwithstanding that the land of any such owner is located in another city or town, the planning board of the city or town, and the planning board of every abutting city or town. The assessors maintaining any applicable tax list shall certify to the permit granting authority or special permit granting authority the names and addresses of parties in interest and such certification shall be conclusive for all purposes. The permit granting authority or special permit granting authority may accept a waiver of notice from, or an affidavit of actual notice to any party in interest or, in his stead, any successor owner of record who may not have received a notice by mail, and may order special notice to any such person, giving not less than 5 nor more than 10 additional days to reply.

b. Content of Notice: Publications and notices required by this section shall contain the name of the petitioner, a description of the area or premises, street address, if any, or other adequate identification of the location, of the area or premises which is the subject of the petition, the date, time and place of the public hearing, the subject matter of the hearing, and the nature of action or relief requested if any. No such hearing shall be held on any day on which a state or municipal election, caucus or primary is held in such city or town.

c. Consolidated Public Hearing on Special Permit for Subdivision: When a planning board or department is also the special permit granting authority for a special permit applicable to a subdivision plan, the planning board or department may hold the special permit public hearing together with a public hearing required by sections 81K to 81GG inclusive of chapter 41 and allow for the publication of a single advertisement giving notice of the consolidated hearing.

3. Decisions:

a. Notice of Decision: Upon the granting of a variance, special permit, site plan review, or any extension, modification or renewal thereof, the permit granting authority or special permit granting authority shall issue to the owner and to the applicant if other than the owner a copy of its decision, certified by the permit granting authority or special permit granting authority, containing the name and address of the owner, identifying the land affected, setting

1103 forth compliance with the statutory requirements for the issuance of such variance, special
1104 permit, or site plan review and certifying that copies of the decision and all plans referred to in
1105 the decision have been filed with the planning board and city or town clerk.

1106 b. Final Unfavorable Decisions, Reconsideration: No appeal, application or
1107 petition which has been unfavorably and finally acted upon by the special permit granting or
1108 permit granting authority shall be acted favorably upon within 2 years after the date of final
1109 unfavorable action unless said special permit granting authority or permit granting authority
1110 finds, by a unanimous vote of a board of 3 members or by a vote of 4 members of a board of 5
1111 members or two-thirds vote of a board of more than 5 members, specific and material changes in
1112 the conditions upon which the previous unfavorable action was based, and describes such
1113 changes in the record of its proceedings, and unless all but one of the members of the planning
1114 board consents thereto and after notice is given to parties in interest of the time and place of the
1115 proceedings when the question of such consent will be considered. The aforesaid restriction
1116 upon reconsideration shall not apply to applications for site plan review for uses allowed by-
1117 right.

1118 c. Withdrawal of Petition or Application: Any petition for a variance or
1119 application for a special permit or a site plan review which has been transmitted to the permit
1120 granting authority or special permit granting authority may be withdrawn, without prejudice by
1121 the petitioner prior to the publication of the notice of a public hearing thereon, but thereafter may
1122 be withdrawn without prejudice only with the approval of the special permit granting authority or
1123 permit granting authority.

1124 E. Inclusionary Zoning

1125 1. Authority: In furtherance of the purposes of zoning ordinances and by-laws
1126 stated in section 1 of this chapter and in the exercise of their home rule powers, a city or town, by
1127 ordinance or by-law, may require or provide incentives for the applicant for a residential
1128 development to provide inclusionary housing units within such development.

1129 2. Off-Site Units, Land Dedications, Payment of Funds: In lieu of constructing
1130 the required inclusionary housing units on-site, the ordinance or by-law may provide for the
1131 construction of such units off-site, the dedication of land for such purpose, or the payment of
1132 funds to a separate account created by the city or town sufficient for and dedicated to the
1133 provision of inclusionary housing, provided the applicant demonstrates to the satisfaction of the
1134 local approving authority that the units cannot be otherwise provided on-site or that an
1135 alternative proposal better meets the needs of the city or town with respect to the provision of
1136 inclusionary housing. Off-site units, land dedication, or payment in-lieu of units shall, in the
1137 opinion of the board or official designated by ordinance or by-law to administer the provisions of
1138 this section 9E and in consideration of local needs, provide inclusionary housing benefits roughly
1139 equivalent to the provision of on-site units.

1140 3. Dedicated Accounts: Cities and towns are authorized to establish a separate
1141 dedicated account for the deposit of funds received under this section, including Municipal
1142 Housing Trust Fund accounts under section 55C of chapter 44 or other dedicated accounts of
1143 similar purpose. Said funds shall be deposited with the treasurer and disbursed for inclusionary
1144 housing purposes in accordance with the ordinances, by-laws, or regulations of the city or town.
1145 Where the application of this section results in less than a full dwelling unit, the board may
1146 accept a prorated payment of funds, in lieu of unit creation.

1147 4. Price or Rent Restriction: The inclusionary housing units shall be subject to
1148 an affordable housing restriction in accordance with sections 31 and 32 of chapter 184 or, if
1149 ineligible under said sections, restricted by other means as required in an ordinance or by-law for
1150 a period of not less than 30 years.

1151 5. Eligibility for Subsidized Housing Inventory: The ordinance or by-law may
1152 further require some or all of the inclusionary housing units to be low- or moderate-income
1153 housing as defined in section 20-23 of chapter 40B, and be eligible for inclusion on the local
1154 subsidized housing inventory subject to and in accordance with applicable regulations and
1155 guidelines of the Department of Housing and Community Development or successor agency.
1156 Nothing in this section shall be construed to require the Department of Housing and Community
1157 Development to include affordable units created hereunder on the subsidized housing inventory.

1158 6. Nothing in this section shall limit the authority of a planning board under
1159 section 81Q of chapter 41, the Subdivision Control Law.

1160 F. Development Impact Fees

1161 1. Authority:

1162 a. Any city or town that adopts a local ordinance or by-law requiring the
1163 payment of a development impact fee as a requirement of any permit or approval otherwise
1164 required for any proposed development having development impacts as defined in the ordinance
1165 or by-law, shall do so only in accordance with this section or any authority conferred by a special
1166 act. The development impact fee may be imposed only on construction, enlargement, expansion,
1167 substantial rehabilitation, or change of use of a development. The development impact fee shall
1168 be used solely for the purposes of defraying the costs of off-site public capital facilities to be
1169 provided or paid for by the city or town and which are either caused by and necessary to support
1170 or compensate for the proposed development, or, in the case of a city or town authorized to
1171 impose such fees under the provisions of a special act, then such fees may be used for the
1172 purposes set forth in the special act.

1173 b. Such off-site public capital facilities may include the provision of
1174 infrastructure, facilities, land, or studies associated with the following:

1175 (i) water supply, treatment, and distribution, both potable and for suppression
1176 of fires;

1177 (ii) wastewater treatment and sanitary sewerage;

1178 (iii) stormwater management and treatment;

1179 (iv) solid waste;

1180 (v) roads, public transportation, pedestrian ways, and bicycle paths; and

1181 (vi) parks, open space, and recreational facilities.

1182 c. Nothing in this section shall prohibit a city or town from imposing other fees
1183 or requirements for mitigation of development impacts which it may otherwise impose under
1184 state or local law and that are consistent with the constitution and laws of the Commonwealth.

1185 2. Limitations:

1186 a. No development impact fee under this section shall be imposed upon any
1187 affordable housing dwelling unit, regardless of how created or permitted, which is subject to a
1188 restriction on sale price or rent under the provisions of sections 31 and 32 of chapter 184 as
1189 amended ensuring that the unit will remain affordable for a period of at least 30 years. The
1190 foregoing limitation shall not apply to cities and towns imposing development impact fees under
1191 a special act.

1192 b. The fee shall not be expended for personnel costs, normal operation and
1193 maintenance costs, or to remedy deficiencies in existing facilities, except where such deficiencies
1194 are exacerbated by the new development, in which case the fee may be assessed only in
1195 proportion to the deficiency so exacerbated.

1196 3. Requirements:

1197 a. Prior to the imposition of development impact fees under this section, a city
1198 or town shall complete a study that:

1199 (i) analyzes any existing capital improvement plans and the infrastructure and
1200 capital facilities subject matter of a plan adopted under section 81D of chapter 41 or the capital
1201 facilities planning element of a local comprehensive plan adopted pursuant to Chapter 716 of the
1202 Acts of 1989, as amended;

1203 (ii) estimates future development based on the then current zoning ordinance
1204 or by-law;

1205 (iii) assesses the impacts related to such development;

1206 (iv) determines the need for capital facilities required to address the impacts of
1207 the estimated development including excess facility capacity, if any, currently planned to
1208 accommodate future development;

1209 (v) develops cost projections for the needed capital facilities and documents
1210 costs of existing facilities with planned excess capacity; and

1211 (vi) establishes the amount of any development impact fee authorized under
1212 this section in accordance with a methodology determined pursuant to the study.

1213 b. The scope of the study may be limited to a geographic area and/or the
1214 category or categories of public capital facilities that development impact fees may be intended
1215 to address. A municipality may rely upon a recognized methodology for the study as approved
1216 by the Interagency Planning Board under chapter 40U.

1217 c.. The study shall be updated periodically, at intervals of not greater than 10
1218 years, to reflect actual development activity, actual costs of infrastructure improvements
1219 completed or underway, plan changes, or amendments to the zoning ordinance or by-law.

1220 d. A development impact fee shall have a rational nexus to, and shall be
1221 roughly proportionate to, the impacts created by the development as determined by said study
1222 evaluating said impacts, and it shall be applied to affected development in a consistent manner.
1223 Notwithstanding the foregoing, a city or town authorized to impose development impact fees
1224 pursuant to a special act shall comply with the standards set forth in such special act.

1225 e. The purposes for which the fee is expended shall reasonably benefit the
1226 proposed development.

1227 f. The fee may not be assessed more than once for the same impact, nor may
1228 the fee be assessed for impacts, or portions thereof, offset by other dedicated means, including
1229 state or federal grants or contributions made by the applicant undertaking the development.

1230 4. Administration:

1231 a. The ordinance or by-law may provide for a waiver or reduction of the
1232 development impact fee for any development that furthers an overriding public purpose as set
1233 forth in a plan adopted by the city or town under section 81D of chapter 41 or other plan
1234 designed to set goals for the development of land within the city or town.

1235 b. If the proposed development is located in more than one municipality, the
1236 impact fee shall be apportioned among the municipalities in accordance with the land area or
1237 other equitable measure of the impacts of the proposed development in each city or town.

1238 c. Any development impact fee assessed under this section shall be payable no
1239 sooner than the issuance of a building permit, or in the case of a phased development, for a

1240 building permit for any phase thereof. The fee shall be deposited to a separate, interest bearing
1241 account in the city or town in which the proposed development is located. Unless subject to
1242 section 4.d below, no development impact fee shall be paid to the general treasury or used as
1243 general revenues of the city or town subject to the provisions of section 53 of chapter 44.

1244 d. Any funds not expended or encumbered by the end of the calendar quarter
1245 immediately following 10 years from the date the development impact fee was paid shall, upon
1246 request of the applicant or its assigns, be returned with interest provided that an application for a
1247 refund prescribed in the ordinance or by-law has been submitted within one 180 calendar days
1248 prior to the expiration of the 10 year period. If no application for refund is received by the city
1249 or town within said period, any funds not expended or encumbered by the end of the calendar
1250 quarter shall then revert to and become part of the general fund under section 53 of chapter 44.
1251 In the event of any disagreement relative to who shall receive the refund, the city or town may
1252 retain said development impact fee pending instructions given in writing by the parties involved
1253 or by a court of competent jurisdiction. Notwithstanding the foregoing, a city or town authorized
1254 to impose development impact fees pursuant to a special act shall comply with the requirements
1255 set forth in such special act.

1256 e. The applicant and the municipality may agree that the applicant shall
1257 construct the public capital facility or a portion thereof for which the development impact fee
1258 was assessed in lieu of paying the development impact fee to the municipality, provided that the
1259 applicant shall not be required to construct such improvement if it chooses to pay the assessed
1260 development impact fee.

1261 G. Land Use Dispute Avoidance

1262 1. Applicability: As an optional means of avoiding or minimizing land use
1263 disputes, the owner of land or structures who has applied or intends to apply for a building
1264 permit, any permit or approval required under this chapter, an approval under sections 81K-GG
1265 of chapter 41, or a comprehensive permit under sections 20-23 of chapter 40B, may request of
1266 the public official or local board charged with acting on the application to undertake a land use
1267 dispute avoidance process as hereinafter provided.

1268 2. Initial Conflict Evaluation: The dispute avoidance process may include an
1269 initial conflict evaluation to determine if a further resolution effort is advisable, and if so,
1270 whether there should be subsequent resolution efforts to avoid or minimize disputes relating to
1271 the application.

1272 3. Participation: Both the conflict evaluation and any later resolution effort
1273 shall be voluntary for those participating requiring the joint written agreement of both the
1274 applicant and public official or local board which shall be filed with the city or town clerk.

1275 4. Neutral Facilitator: The conflict evaluation and any later resolution effort
1276 may be conducted by a neutral facilitator as defined in section 23C of chapter 233, selected from
1277 a list prepared by the Massachusetts Office of Dispute Resolution or its successor agency or its
1278 designee, or as chosen jointly by the applicant and the public official or local board. The
1279 facilitator and any associate assisting the facilitator shall comply with the standards of conduct of
1280 the Association for Conflict Resolution or as promulgated by the Massachusetts Office of
1281 Dispute Resolution or its successor agency or its designee.

1282 5. Costs: Funding for any conflict evaluation or resolution effort under this
1283 section may be as the applicant and the public official or local board may agree, or the public
1284 official or local board may provide for the imposition of reasonable fees for the employment of
1285 outside consultants, including the facilitator, in the same manner as set forth in section 53G of
1286 chapter 44.

1287 6. Rules: Public officials or local boards may adopt, and from time to time
1288 amend, after a public hearing, rules to implement the conflict evaluation or resolution efforts
1289 undertaken pursuant to this section. Notice of the hearing on the proposed rules, including the
1290 location, date, and time of the hearing shall be filed with the city or town clerk and published
1291 once in a newspaper of general circulation in the city or town at least 14 days before the public
1292 hearing.

1293 7. Process of Conflict Evaluation: As part of the conflict evaluation, the
1294 facilitator may solicit information and opinions relating to the application, and may identify and
1295 notify those members of the public likely to be interested in or affected by the application. The
1296 facilitator may clarify the issues and investigate the willingness of all interested parties to work
1297 together with the applicant to resolve those issues. The facilitator may identify measures or
1298 community-enhancing features that would benefit the neighborhood, the larger community, and
1299 the project itself. Based upon the evaluation, the facilitator may determine whether further
1300 resolution effort would be productive in reaching a consensus of those participating, with the
1301 understanding that the outcome may be the withdrawal or substantial modification of the
1302 application.

1303 8. Special Provisions, Meetings: The facilitator may convene meetings or
1304 conduct interviews that shall be confidential and privileged from discovery under section 23C of
1305 chapter 233. The facilitator shall have the protections provided under section 23C of chapter
1306 233. To the extent that public agencies are participants, their deliberations shall be subject to the
1307 provisions of section 21(b) (9) of chapter 30A.

1308 9. Report on Conflict Evaluation: In preparing a report on conflict evaluation,
1309 or on a later resolution effort, the facilitator shall not attribute statements, positions, ideas, or
1310 interests to specific individuals, organizations, or persons interviewed, and shall distribute copies
1311 of the report to those participating without prior review or approval of any participant. The

1312 conflict evaluation report shall indicate whether and how a subsequent resolution effort might be
1313 appropriate for the application involved, including elaborating on how it might be undertaken
1314 and by whom.

1315 10. Conflict Resolution: Based upon the conflict evaluation, the applicant and
1316 the public official or local board may determine if a further resolution effort regarding an
1317 application is worth undertaking in accordance with the procedures set out in this section, or as
1318 they may otherwise in writing jointly agree. The applicant and the public official or local board
1319 may, by an agreement in writing filed with the city or town clerk, stipulate and agree to extend
1320 any otherwise applicable time requirements of state or local law.

1321 11. Conclusion of Process: At the conclusion of any conflict evaluation or
1322 resolution efforts, the application which initiated the conflict evaluation and resolution efforts
1323 may go forward in the ordinary course in accordance with the applicable statute, ordinance, or
1324 by-law, reflecting if possible the result of any resolution effort, including the opportunity for
1325 public hearing and comment if so provided by the applicable statute, ordinance, or by-law. If the
1326 parties so agree, any resolution may be incorporated into the action taken by the local board or
1327 official. Whether or not a resolution results, the applicant may nevertheless proceed with the
1328 application without prejudice for having participated in a conflict evaluation or resolution effort,
1329 and the application process shall proceed in due course as otherwise provided by statute,
1330 ordinance, or by-law.

1331 40A:10. Enforcement

1332 A. Zoning Enforcement Officer: The zoning enforcement officer shall be
1333 charged with the enforcement of the zoning ordinance or by-law.

1334 B. Compliance with Zoning: The zoning enforcement officer shall withhold a
1335 permit for the construction, alteration, or moving of any building or structure if the building or
1336 structure as constructed, altered or moved would be in violation of any zoning ordinance or by-
1337 law.

1338 C. Compliance with Zoning, New Uses: No permit or license shall be granted
1339 for a new use of a building, structure, or land which use would be in violation of any zoning
1340 ordinance or by-law.

1341 D. Enforcement Procedures: If the zoning enforcement officer is requested in
1342 writing to enforce such ordinances or by-laws against any person allegedly in violation of the
1343 same, said officer shall notify, in writing, the party requesting such enforcement of any action or
1344 refusal to act, and the reasons therefor, within 14 days of receipt of such request.

1345 E. Penalties for Violations: Notwithstanding any other provision of general or
1346 special law, zoning ordinances and by-laws may provide a penalty of up to 1,000 dollars per

1347 violation; provided, however, that nothing herein shall be construed to prohibit such laws from
1348 providing that each day such violation continues shall constitute a separate offense.

1349 F. Limits to Enforcement: No action, suit, or proceeding shall be maintained in
1350 any court, nor any administrative or other action taken to recover a fine or damages or to compel
1351 the removal, alteration, or relocation of any structure or part of a structure or alteration of a
1352 structure by reason of any violation of any zoning by-law or ordinance except in accordance with
1353 the provisions of this section, section 8, and section 11.

1354 G. Duration of Ability to Enforce, Building Permit: If real property has been
1355 improved and used in accordance with the terms of the original building permit issued by a
1356 person duly authorized to issue such permits, no action, criminal or civil, the effect or purpose of
1357 which is to compel the abandonment, limitation or modification of the use allowed by said
1358 permit or the removal, alteration or relocation of any structure erected in reliance upon said
1359 permit by reason of any alleged violation of the provisions of this chapter, or of any ordinance or
1360 by-law adopted thereunder, shall be maintained, unless such action, suit or proceeding is
1361 commenced and notice thereof recorded in the registry of deeds for each county or district in
1362 which the land lies within 6 years next after the commencement of the alleged violation of law.
1363 Such structures shall not be deemed to be protected nonconforming structures under section 6A
1364 of this chapter unless such status is specifically conferred in the zoning ordinance or by-law.

1365 H. Duration of Ability to Enforce, Variance or Special Permit: No action,
1366 criminal or civil, the effect or purpose of which is to compel the removal, alteration, or relocation
1367 of any structure by reason of any alleged violation of the provisions of this chapter, or any
1368 ordinance or by-law adopted thereunder, or the conditions of any variance or special permit, shall
1369 be maintained, unless such action, suit or proceeding is commenced and notice thereof recorded
1370 in the registry of deeds for each county or district in which the land lies within 10 years next
1371 after the commencement of the alleged violation. Such notice shall include names of one or more
1372 of the owners of record, the name of the person initiating the action, and adequate identification
1373 of the structure and the alleged violation. Such structures or uses shall not be deemed to be
1374 protected nonconforming structures or uses under section 6A of this chapter unless such status is
1375 specifically conferred in the zoning ordinance or by-law.

1376 I. Judicial Review: The superior court and the land court shall have the
1377 jurisdiction to enforce the provisions of this chapter, and any ordinances or by-laws adopted
1378 thereunder, and may restrain by injunction violations thereof.

1379 40A:11. Judicial Review Procedures and Standards

1380 A. Appeals: Any person aggrieved by a decision of the board of appeals or any
1381 permit granting authority or special permit granting authority or by the failure of the board of
1382 appeals to take final action concerning any appeal, application, or petition within the required
1383 time or by the failure of any permit granting authority or special permit granting authority to take

final action concerning any application for a site plan review or special permit within the required time, whether or not previously a party to the proceeding, or any municipal officer or board may appeal to the land court department, the superior court department in which the land concerned is situated or, if the land is situated in Hampden county, either to said land court or, superior court department or to the division of the housing court department for said county, or if the land is situated in a county, region or area served by a division of the housing court department either to said land court or superior court department or to the division of said housing court department for said county, region or area, or to the division of the district court department within whose jurisdiction the land is situated except in Hampden county, by bringing an action within 20 days after the decision has been filed in the office of the city or town clerk. If said appeal is made to said division of the district court department, any party shall have the right to file a claim for trial of said appeal in the superior court department within 25 days after service on the appeal is completed, subject to such rules as the supreme judicial court may prescribe. Notice of the action with a copy of the complaint shall be given to such city or town clerk so as to be received within such 20 days. The complaint shall allege that the decision exceeds the authority of the board or authority, and any facts pertinent to the issue, and shall contain a prayer that the decision be annulled. There shall be attached to the complaint a copy of the decision appealed from, bearing the date of filing thereof, certified by the city or town clerk with whom the decision was filed. If the complaint is filed by someone other than the original applicant, appellant or petitioner, such original applicant, appellant, or petitioner and all members of the board of appeals, permit granting authority, or special permit granting authority shall be named as parties defendant with their addresses.

B. Notice of Filing of Complaint: To avoid delay in the proceedings, instead of the usual service of process, the plaintiff shall within 14 days after the filing of the complaint, send written notice thereof, with a copy of the complaint, by delivery or certified mail to all defendants, including the members of the board of appeals, permit granting authority, or special permit granting authority and shall within 21 days after the entry of the complaint file with the clerk of the court an affidavit that such notice has been given. If no such affidavit is filed within such time the complaint shall be dismissed.

C. Filing of Answer to Complaint: No answer shall be required but an answer may be filed and notice of such filing with a copy of the answer and an affidavit of such notice given to all parties as provided above within 7 days after the filing of the answer.

D. Intervening Parties: Other persons may be permitted to intervene, upon motion.

E. Hearing: The clerk of the court shall give notice of the hearing as in other cases without jury, to all parties whether or not they have appeared. The court shall hear all evidence pertinent to the authority of the board, permit granting authority, or special permit granting authority and determine the facts, and, upon the facts as so determined, annul such

1422 decision if found to exceed the authority of such board, permit granting authority, or special
1423 permit granting authority or make such other decree as justice and equity may require. The
1424 foregoing remedy shall be exclusive, notwithstanding any defect of procedure or of notice other
1425 than notice by publication, mailing or posting as required by this chapter, and the validity of any
1426 action shall not be questioned for matters relating to defects in procedure or of notice in any
1427 other proceedings except with respect to such publication, mailing or posting and then only by a
1428 proceeding commenced within 90 days after the decision has been filed in the office of the city
1429 or town clerk, but the parties shall have all rights of appeal and exception as in other equity
1430 cases.

1431 F. Special Provisions for Appealing Site Plan Review Decisions:
1432 Notwithstanding the foregoing, and except where a site plan is required in connection with the
1433 issuance of a special permit or variance, decisions made under site plan review pursuant to
1434 section 9B of this chapter, whether made pursuant to statutory or home rule authority, may be
1435 appealed by a civil action in the nature of certiorari pursuant to section 4 of chapter 249, and not
1436 otherwise. All issues in any proceeding under this subsection shall have precedence over all
1437 other civil actions and proceedings. A complaint by a plaintiff challenging a site plan approval
1438 shall allege the specific reasons why the project fails to satisfy the requirements of section 9B,
1439 the zoning ordinance or by-law, or other applicable law and allege specific facts establishing
1440 how the plaintiff is aggrieved by such decision. A complaint by an applicant for site plan review
1441 challenging the denial or conditioned approval of a site plan shall similarly allege the specific
1442 reasons why the project properly satisfies the requirements of section 9B, the zoning ordinance
1443 or by-law, or other applicable law. The permit granting authority's decision in either case shall
1444 be affirmed unless the court concludes the permit granting authority abused its discretion under
1445 Section 9B, the zoning ordinance or by-law, or other applicable law in approving the project,
1446 approving with conditions, or denying the project.

1447 G. Appeals by Cities or Towns: A city or town may provide any officer or
1448 board of such city or town with independent legal counsel for appealing, as provided in this
1449 section, a decision of a board of appeal, permit granting authority, or special permit granting
1450 authority and for taking such other subsequent action as parties are authorized to take.

1451 H. Costs: Costs shall not be allowed against the board, permit granting
1452 authority, or special permit granting authority unless it shall appear to the court that the board,
1453 permit granting authority, or special permit granting authority in making the decision appealed
1454 from acted with gross negligence, in bad faith or with malice. Costs shall not be allowed against
1455 the party appealing from the decision of the board, permit granting authority, or special permit
1456 granting authority unless it shall appear to the court that said appellant or appellants acted in bad
1457 faith or with malice in making the appeal to the court.

1458 I. Requirement to Post Bond: The court shall require nonmunicipal plaintiffs to
1459 post a surety or cash bond in a sum of not less than 2,000 nor more than 15,000 dollars to secure
1460 the payment of such costs in appeals of decisions approving subdivision plans.

1461 J. Precedence: All issues in any proceeding under this section shall have
1462 precedence over all other civil actions and proceedings.

1463 K. Mediation of Land Use Appeals:

1464 1. Initiation, Time Periods: After the filing of an appeal hereunder, the parties
1465 may agree to mediate the decision appealed. In all cases, the parties shall file with the court a
1466 statement advising the court that the dispute has been submitted for mediation. If the parties
1467 agree to mediation, the mediation shall begin within 60 days of the date such statement was filed,
1468 or such other period as the parties may agree or the court may allow upon application by any
1469 party. The mediation shall conclude not later than 180 days after filing, provided that such
1470 period may be extended for an additional 180 days by joint written agreement of the parties, or
1471 for such other additional period as the court may allow upon application by any party.

1472 2. Selection of Mediator, Compensation, and Withdrawal from Mediation: The
1473 parties may select the mediator from a list provided by the court or otherwise as the parties may
1474 determine. The mediator shall be compensated by the parties as they may agree, or in the
1475 absence of agreement, as the court may determine. A party may withdraw from mediation at any
1476 time after written notification to the other parties and to the court, but shall remain responsible
1477 for that party's share of the costs of mediation until the time of withdrawal.

1478 3. Special Provisions: During the mediation, any appeal otherwise pending
1479 shall be stayed. The mediator shall have the protections provided under section 23C of chapter
1480 233. To the extent that public agencies are participants in the mediation, their deliberations shall
1481 be subject to the provisions of section 21(b) (9) of chapter 30A.

1482 4. Conclusion of Mediation: At the conclusion of the mediation, the mediator
1483 shall file with the court a statement describing whether the parties have come to agreement. If
1484 unresolved, the appeal will then go forward; if the matter has been resolved, the appeal will be
1485 dismissed with prejudice. The cost of mediation shall be distributed among the parties as a cost
1486 of the appeal as the parties may agree, or in the absence of agreement, as the court may
1487 determine. Mediation hereunder shall not be the only method of resolving a zoning appeal.

1488 40A:12. Transition Provisions

1489 Any rights under section 6 of chapter 40A and any zoning ordinance or by-law
1490 relating thereto that were finally acquired prior to [Date] shall continue in full force and effect
1491 for the periods of time specified in said statute and local zoning law.

1492 SECTION 2. Section 81D of chapter 41 of the General Laws, as appearing in
1493 the 2008 Official Edition, is hereby amended by striking out section 81D and inserting in place
1494 thereof the following section 81D:-

1495 41:81D. Master Plan

1496 1. Requirement to Plan: A planning board established in any city or town shall
1497 make a master plan for such city or town. The plan shall take effect upon adoption by the
1498 legislative body as provided in subsection 6, below. For a plan to remain in effect, from time to
1499 time not to exceed 10 years from the date of adoption, the planning board shall conduct a
1500 comprehensive review of the plan and may extend, revise, or remake the plan, and the plan or
1501 amendment thereto shall thereafter be re-adopted as provided in this section. The plan, once
1502 adopted, shall be the official master plan of the city or town, replacing any previously adopted
1503 master plans.

1504 2. General Description of Plan:

1505 a. The plan shall be a comprehensive framework, through text, maps, and
1506 illustrations that provides a basis for decision making about land use and the long term physical
1507 development of the municipality. Other completed and current plans, reports, and studies may
1508 be incorporated by reference to fulfill in whole or in part the requirements of each subject listed
1509 below, provided that such material will then be considered part the plan, including its
1510 implementation. The master plan shall be internally consistent in its policies, forecasts and
1511 standards, and shall support and provide a coherent rationale for the municipality's zoning
1512 ordinance or bylaws, subdivision regulations, and other laws, regulations, policies, and capital
1513 expenditures.

1514 b. The plan shall include the required subjects identified in subsection 3, any
1515 optional subjects in subsection 4 at the discretion of the municipality, and the regional plan self
1516 assessment in subsection 5. The plan subjects may be written as separate elements or organized
1517 and integrated as deemed appropriate by the planning board. Due to the wide range of
1518 community types, characteristics, and planning needs in the commonwealth it is recognized that
1519 the subjects addressed with a particular city or town in mind may be expanded upon or
1520 contracted as appropriate, and may vary greatly among communities in the focus and depth of
1521 their analysis.

1522 3. Required Subjects: The plan shall address the following 5 required subjects,
1523 described below in a general manner:

1524 a. Goals and Policies: A goals and policies statement that identifies the goals
1525 and policies of the municipality for its future growth, development, redevelopment, conservation,
1526 and preservation. Each community shall conduct a citizen participation process to determine
1527 community values, to establish goals, and to identify patterns of development, redevelopment,

1528 conservation, and preservation consistent with these goals. The goals and policies statement
1529 shall address the required and selected optional plan elements

1530 b. Housing:

1531 (i) An inventory of local housing and population characteristics, an assessment
1532 and forecast of housing needs; a statement of local housing goals, objectives, policies; and
1533 implementing measures. Where applicable, existing local housing plans and studies may be
1534 included by reference.

1535 (ii) An analysis of housing units by type of structure (e.g. single family, two
1536 family, multi-family); affordable housing and subsidized housing; housing available for rental;
1537 special needs housing; and housing for the elderly, including assisted living residences.

1538 (iii) An analysis of existing local policies, programs, laws, or regulations that
1539 encourage the preservation, improvement, and development of such housing, including an
1540 assessment of their adequacy.

1541 (iv) An evaluation of zoning and other policies to provide a variety of housing
1542 that meets a broad range of housing needs, including but not limited to the affordable housing
1543 needs of low, moderate, and median income households and the accessible housing needs of
1544 people with disabilities and special needs. The evaluation shall include specific measures for
1545 implementing the master plan in order to address these needs, including strategies, programs, and
1546 assistance for the preservation or rehabilitation of existing housing; the construction of new
1547 housing; and the adoption or amendment of local ordinances or bylaws and regulations
1548 permitting, encouraging, or requiring diversity in housing locations, types, designs, and area
1549 densities that offer alternatives to single family detached housing. A current housing production
1550 plan consistent with M.G.L. 760 CMR 56.03(4) shall constitute the subject matter relative to
1551 housing under this subsection b.

1552 c. Natural Resources and Energy:

1553 (i) A general overview of the significant natural and energy resources of the
1554 municipality.

1555 (ii) Identification of protected and unprotected wetlands and water resources,
1556 lands critical to sustaining surface and groundwater quality and quantity, environmentally
1557 sensitive lands, critical wildlife habitat and biodiversity, agricultural lands and forests. Priorities
1558 for protection of wildlife habitat, water resources, vistas and key landscapes, outdoor recreation
1559 facilities, and farm and forestry land shall be identified.

1560 (iii) An outline of local laws, regulations, policies, and strategies to address
1561 needs for the protection, restoration, and sustainable management of these resources, including
1562 wetlands and water resources, environmentally sensitive lands, critical wildlife habitat and

1563 biodiversity, agricultural lands, and forests; and to promote development that respects and
1564 enhances the state's natural resources.

1565 (iv) An energy component that explores locally feasible land use strategies to:
1566 maximize energy efficiency and renewable energy opportunities; support land, energy, water,
1567 and materials conservation strategies, local clean power generation, distributed generation
1568 technologies, and innovative industries; and address climate change by reducing greenhouse gas
1569 emissions and the consumption of fossil fuels.

1570 d. Land Use and Zoning:

1571 (i) An identification of historic settlement patterns and present land uses, and
1572 designation of the proposed distribution, location, and inter-relationship of public and private
1573 land uses in a general manner sufficient to guide the development of zoning ordinances or by-
1574 laws, and maps.

1575 (ii) Land use policies and related maps, which shall be based upon a land use
1576 suitability analysis identifying areas most suitable for development and related transportation
1577 infrastructure and facilities. Preservation, growth and development areas shall support the
1578 revitalization of city and town centers and neighborhoods by promoting preservation and
1579 development that is compact, conserves land, protects historic resources, integrates uses, and
1580 coordinates the provision of housing with the location of jobs, transit and services, and new
1581 infrastructure. The plan shall also identify areas for economic development and job creation,
1582 related public and private transportation and pedestrian connections, and encourage the creation
1583 or extension of pedestrian-friendly districts and neighborhoods that mix commercial, civic,
1584 cultural, educational, and recreational activities with open space and housing.

1585 (iii) A consideration of the relationship between proposed development
1586 intensity and the capacity of land and existing and planned public facilities and infrastructure.

1587 (iv) A mapped land use plan illustrating the general land use policies and
1588 desired future development patterns of the municipality, and a proposed zoning map.

1589 e. Implementation: An implementation program that defines and schedules the
1590 specific municipal actions necessary to achieve the objectives of the master plan. This program
1591 may be separately written or integrated into the required and selected subject matter. This
1592 implementation program shall specify the course of action by which the municipality's
1593 regulatory structures, including zoning and subdivision control regulations, may need to be
1594 amended in order not to be inconsistent with the master plan. This element shall examine the
1595 current land use permitting process in a community and, if necessary, make recommendations for
1596 the development of clear, predictable, coordinated, and timely procedures thereunder, including
1597 an assessment of the adequacy and effectiveness of the existing structure of local government,

including the roles and responsibilities of elected and appointed boards, officers, and personnel, to implement the master plan through land use ordinances, by-laws, and regulations.

4. Optional Subjects: The following 6 subjects are optional, and described below in a general manner:

a. Economic Development:

(i) An inventory and analysis of the local economic base, including: employment; local industries and business clusters; labor force characteristics; land and buildings used for nonresidential purposes, including vacant space; and office, retail, and industrial market conditions.

(ii) An assessment of opportunities and barriers to economic development, including but not limited to identification of land use policies and available locations that: support the growth of jobs, the retention of existing businesses, and the provision of space for new businesses; encourage the reuse and rehabilitation of existing infrastructure, including brownfields, rather than the construction of new infrastructure in undeveloped areas; and facilitate larger-scale economic redevelopment or development in industry clusters consistent or compatible with the regional and local economy.

(iii) An assessment of opportunities and barriers to agriculture, including all branches of farming and forestry, where applicable.

(iv) An assessment of opportunities and barriers to self-employment and home occupations, including but not limited to consideration of land use policies, infrastructure and utilities, and technology.

b. Cultural Resources:

(i) An inventory of the significant cultural, scenic, and historic structures, sites, and landscapes of the municipality, including archaeological resources.

(ii) An assessment of policies and strategies to protect and manage the community's cultural resources, including but not limited to a community-wide preservation plan, ordinances or bylaws and incentives for historic preservation, and land use policies to facilitate the reuse of historic structures, where appropriate.

c. Open Space and Recreation: An inventory of recreational facilities and open space areas of the municipality, and policies and strategies for the management, protection, and enhancement of such facilities and areas. A current Open Space and Recreational Plan approved by the Division of Conservation Services shall constitute the subject matter relative to open space and recreation hereunder.

1631 d. Infrastructure and Capital Facilities: An identification and analysis of
1632 existing and forecasted needs for infrastructure and facilities used by the public. Scheduled
1633 expansion or replacement of public facilities, infrastructure components such as water and sewer
1634 systems or circulation system components and the anticipated costs and revenues associated with
1635 accomplishment of such activities shall be detailed. This subject shall be required in a master
1636 plan if development impact fees are to be assessed under section 9F of chapter 40A. The master
1637 plan may be updated at any time to include this subject matter provided the requirements in
1638 subsections 5 and 6 are met.

1639 e. Transportation:

1640 (i) An inventory of existing and proposed circulation and transportation
1641 systems.

1642 (ii) An assessment of opportunities and barriers to increasing access to
1643 available or feasible transportation options, including land and water based public transit,
1644 bicycling, walking, and transportation services for populations with disabilities.

1645 (iii) Identification of strategic investment options for transportation
1646 infrastructure to encourage smart growth, maximize mobility, conserve fuel, and improve air
1647 quality; and to facilitate the location of new development where a variety of transportation
1648 modes can be made available.

1649 f. Partnership Planning: This subject shall be known as the "partnership plan,"
1650 and shall be required in a master plan if a city or town wishes to accept the provisions of chapter
1651 40U. The partnership plan shall be consistent with this section 81D and the requirements set
1652 forth in chapter 40U relative thereto. A master plan may be updated at any time to include this
1653 subject matter provided the requirements in subsections 5 and 6 are met.

1654 5. Regional Plan, Self Assessment: Any required or selected optional subjects
1655 above shall include a self assessment against similar subject matter in a regional plan adopted by
1656 the regional planning agency under section 5 of chapter 40B and in effect, if any.

1657 6. Adoption of Plan:

1658 a. Proposal of the Plan: The plan shall only be made, extended, revised, or
1659 remade from time to time by a simple majority vote of the planning board after a public hearing,
1660 notice of which shall be posted and published in the manner prescribed for zoning amendments
1661 under section 7 of chapter 40A,

1662 b. Adoption of the Plan: Adoption of the plan, or the extension, revision, or
1663 remake of the plan, shall be by a simple majority vote the legislative body of the city or town;
1664 however, no vote of the legislative body to alter the plan or amendment as proposed by the
1665 planning board shall be other than by a two-thirds vote.

1666 c. The planning board shall, upon completion of any plan or report, or any
1667 change or amendment to a plan or report produced under this section, furnish a copy of such plan
1668 or report or amendment thereto, to the Department of Housing and Community Development.

1669 7. Regional Planning Agency, Optional Review and Certification of Plans:

1670 a. Review of Master Plan: Prior to local legislative adoption of a master plan
1671 under this section, the plan may, at the election of the planning board and chief executive officer,
1672 be referred to the applicable regional planning agency for review and certification. The regional
1673 planning agency may, at its election, review the plan for certification, but must provide written
1674 notice to the city or town within 15 days from receipt of the plan if it intends not to review the
1675 plan. If the regional planning agency has elected to review the plan it shall act within 90 days of
1676 receipt of the plan. Failure to act within 90 days shall be deemed a plan certification by the
1677 regional planning agency. The 90 day review period shall be extended by not longer than 90
1678 days by the regional planning agency upon written request by the planning board of the city or
1679 town.

1680 b. Scope of Review of Master Plan: Review and certification by the regional
1681 planning agency shall be limited to an assessment of plan compliance with those requirements of
1682 this section that are applicable to the city or town with due regard for the regional context of the
1683 city or town. The review process may be interactive and iterative between the regional planning
1684 agency and the planning board; changes to the plan mutually agreed upon may be made by
1685 simple majority vote of the planning board during the review period or extensions thereof. Once
1686 the review is completed by the regional planning agency, with or without certification,
1687 comments, or outstanding issues, it may be brought to the local legislative body for adoption if
1688 the planning board so votes by a simple majority. A plan that has been certified by the regional
1689 planning agency and adopted by the city or town shall be presumed to be in compliance with this
1690 section. A plan that has not been so certified, for any reason including non-referral to the
1691 regional planning agency, shall not for that reason alone be presumed to be out of compliance
1692 with this section.

1693 c. Review of Partnership Plan: Review and certification by the regional
1694 planning agency of a partnership plan pursuant to Chapter 40U shall be in accordance with
1695 subsection 7.a, above, and shall consider whether a proposed partnership plan is: (i) complete ;
1696 and (ii) consistent with the commonwealth's land use objectives as set forth in Chapter 40U. A
1697 partnership plan shall be determined to be complete if, in addition to the requirements for
1698 required subjects set forth in subsection 3 above of this section 81D it also contains all the
1699 elements required in section 4 of chapter 40U. A partnership plan shall be determined to be
1700 consistent with the commonwealth's land use objectives if it satisfies the minimum standards for
1701 consistency in accordance with section 5 of chapter 40U. The review process may be interactive
1702 and iterative between the regional planning agency and the planning board; changes to the
1703 partnership plan mutually agreed upon may be made by simple majority vote of the planning

1704 board during the review period or extensions thereof. Once the review is completed by the
1705 regional planning agency and the partnership plan is certified as complete and consistent, it may
1706 be brought to the local legislative body for adoption if the planning board so votes by a simple
1707 majority. A partnership plan that has been certified by the regional planning agency and adopted
1708 by the city or town shall be presumed to be in compliance with this section 81D and chapter
1709 40U. A partnership plan that has not been so certified, for any reason including non-referral to
1710 the regional planning agency, shall not be in compliance with this section 81D and chapter 40U.

1711 d. Consolidated Review of Master Plan and Partnership Plan: For the purposes
1712 of this subsection 7, and to meet the planning requirements of a partnership community under
1713 chapter 40U, a master plan containing a partnership plan may be submitted to the regional
1714 planning agency for review and certification in a consolidated manner,

1715 provided the requirements of each plan are met.

1716 SECTION 3. Section 81L of chapter 41 of the General Laws, as appearing in
1717 the 2008 Official Edition, is hereby amended by striking out, in lines 52-78 inclusive, the
1718 definition of "Subdivision" and inserting in place thereof the following definition:-

1719 "Subdivision" shall mean the division of a lot, tract, or parcel of land into 2 or
1720 more lots, tracts, or parcels of land and shall include re-subdivision. When appropriate to the
1721 context, subdivision shall include the process of subdivision or the land or territory subdivided.
1722 A change in the line of any lot, tract, or parcel created by recorded deed or shown on a recorded
1723 plan may be defined as a minor subdivision and, in such case, be governed by the provisions of
1724 section 81P.

1725 SECTION 4. Section 81L of said chapter 41, as so appearing, is hereby
1726 amended by inserting the following definition:-

1727 "Minor Subdivision" shall mean a subdivision created in accordance with
1728 section 81P, provided however that until rules and regulations are adopted by a planning board
1729 under 81P therefor, "minor subdivision" shall solely mean the division of a lot, tract, or parcel of
1730 land into 2 or more lots, tracts, or parcels where, at the time when it is made, every lot within the
1731 lot, tract or parcel so divided has frontage on: a) a public way or a way which the clerk of the city
1732 or town certifies is maintained and used as a public way; b) a way shown on a plan theretofore
1733 approved and endorsed in accordance with the subdivision control law; or c) a way in existence
1734 when the subdivision control law became effective in the city or town in which the land lies,
1735 having, in the opinion of the planning board, sufficient width, suitable grades and adequate
1736 construction to provide for the needs of vehicular traffic in relation to the proposed use of the
1737 land abutting thereon or served thereby, and for the installation of municipal services to serve
1738 such land and the buildings erected or to be erected thereon. Such frontage shall be of at least
1739 such distance as is then required by the zoning ordinance or by-law, if any, of said city or town

1740 for erection of a building on such lot, and if no distance is so required, such frontage shall be of
1741 at least 20 feet.

1742 SECTION 5. Section 81M of said chapter 41, as so appearing, is hereby
1743 amended by inserting, after the word “systems”, in line 23, the words:- , and for those aspects of
1744 a plan adopted by the city or town under section 81D of this chapter which are particular to the
1745 subdivision of land.

1746 SECTION 6. Section 81O of said chapter 41, as so appearing, is hereby
1747 amended by striking out the second sentence in the first paragraph and inserting in place thereof
1748 the following sentences:- After the approval of a plan, the location and width of ways, and the
1749 number, shape, and size of the lots shown thereon, may not be changed unless the plan is
1750 amended as provided in section 81W. In the alternative, a planning board may adopt rules and
1751 regulations under sections 81P and 81Q of this chapter defining and regulating such changes as
1752 minor subdivisions.

1753 SECTION 7. Said section 81O of said chapter 41, as so appearing, is hereby
1754 amended by striking out the second paragraph and inserting in place thereof the following
1755 paragraph:-

1756 For the purposes of the time within which a planning board must act, a plan
1757 shall be deemed submitted under this section as of the date of the next regularly scheduled
1758 meeting of the planning board, provided that during posted business hours the plan is both
1759 received by the planning board and filed with the town clerk no later than 7 calendar days prior
1760 to said meeting date, or 35 calendar days after such receipt by the planning board and filing with
1761 the town clerk, whichever shall first occur. An incomplete submission or one not in accordance
1762 with submittal requirements may be the basis upon which the planning board may deny approval
1763 of the plan. Notwithstanding the foregoing, a planning board or its designee may give notice to
1764 the applicant of how the application is incomplete or not in accordance with said submittal
1765 requirements and may grant to the applicant additional time to effect corrective measures.

1766 SECTION 8. Said chapter 41, as so appearing, is hereby amended by striking
1767 out section 81P and inserting in place thereof the following section 81P:-

1768 41:81P. Minor Subdivisions

1769 1) Applicability: Minor subdivisions, as defined in this chapter, and as may be
1770 further defined in the local subdivision rules and regulations, shall be governed by this section.
1771 Section 81S and the public hearing requirements in section 81Tof this chapter shall not apply to
1772 minor subdivisions. Except as provided below, all other sections of the subdivision control law
1773 that apply to subdivisions shall apply to minor subdivisions in so far as apt.

1774 2) Rules and Regulations, Transition Provision: A planning board may adopt
1775 alternative rules and regulations under section 81Q of this chapter relative to minor subdivisions,
1776 but in no case may such rules and regulations impose a procedural or substantive requirement
1777 more stringent than those specified in this chapter, this section 81P, or contained in the local
1778 rules and regulations otherwise applicable to subdivisions. Until such rules and regulations are
1779 adopted, the procedures under subsection 6 below shall apply to minor subdivisions.

1780 3) Rules and Regulations, Required Provisions: The rules and regulations for
1781 minor subdivisions shall: a) specify that an application for a minor subdivision may create up to
1782 6 additional residential lots within the meaning of the subdivision control law, either on ways
1783 described in the definition of minor subdivision or on new ways; b) set forth the reasonable
1784 requirements and standards of the board for those existing ways described in the definition of
1785 minor subdivision, provided that no requirements shall be made for the location of such ways or
1786 for a roadway width of greater than 22 feet; c) set forth the reasonable requirements and
1787 standards of the board for the proposed ways shown on a plan, provided that no requirement may
1788 be made for a roadway width of greater than 22 feet; and d) establish a time period for the
1789 planning board to take final action and to file with the city or town clerk a certificate of such
1790 action within 65 days or less in the case of an existing way, or 95 days or less in the case of a
1791 new way.

1792 4) Rules and Regulations, Optional Provisions The rules and regulations for
1793 minor subdivisions may: a) notwithstanding subsection 1), above require a public hearing under
1794 Section 81T of this chapter for minor subdivisions served by a new way; b) require that
1795 applications for minor subdivisions from the same lot, tract, or parcel from which the first minor
1796 subdivision was created not create more than the maximum number of additional lots in a set
1797 period of years; c) lessen or eliminate any requirement of section 81U of this chapter otherwise
1798 applicable to subdivisions; and d) lessen or eliminate any local rule or regulation adopted under
1799 section 81Q of this chapter otherwise applicable to subdivisions.

1800 5) Rules and Regulations, Optional Provisions Requiring Ratification by
1801 Legislative Body: Subject to ratification by the local legislative body by a simple-majority vote,
1802 the rules and regulations for minor subdivisions may: a) increase the maximum number of
1803 additional lots created in an application for a minor subdivision to a number greater than 6; and
1804 b) define “minor subdivision” more broadly than in section 81L of this chapter.

1805 6) Alternate Procedures for Minor Subdivisions Until Rules and Regulations
1806 Adopted: Until such rules and regulations are adopted, any person wishing to cause to be
1807 recorded a plan of land situated in a city or town in which the subdivision control law is in effect,
1808 who believes that his plan does not require approval under the subdivision control law, may
1809 submit his plan to the planning board of such city or town in the manner prescribed in section
1810 81T, and, if the board finds that the plan does not require such approval, it shall forthwith,
1811 without a public hearing, endorse thereon or cause to be endorsed thereon by a person authorized

1812 by it the words “approval under the subdivision control law not required” or words of similar
1813 import with appropriate name or names signed thereto, and such endorsement shall be conclusive
1814 on all persons. Such endorsement shall not be withheld unless such plan shows a subdivision. If
1815 the board shall determine that in its opinion the plan requires approval, it shall within 21 days of
1816 such submittal, give written notice of its determination to the clerk of the city or town and the
1817 person submitting the plan, and such person may submit his plan for approval as provided by law
1818 and the rules and regulations of the board, or he may appeal from the determination of the board
1819 in the manner provided in section 81BB. If the board fails to act upon a plan submitted under this
1820 section or fails to notify the clerk of the city or town and the person submitting the plan of its
1821 action within 21 days after its submission, it shall be deemed to have determined that approval
1822 under the subdivision control law is not required, and it shall forthwith make such endorsement
1823 on said plan, and on its failure to do so forthwith the city or town clerk shall issue a certificate to
1824 the same effect. The plan bearing such endorsement or the plan and such certificate, as the case
1825 may be, shall be delivered by the planning board, or in case of the certificate, by the city or town
1826 clerk, to the person submitting such plan. The planning board of a city or town which has
1827 authorized any person, other than a majority of the board, to endorse on a plan the approval of
1828 the board or to make any other certificate under the subdivision control law, shall transmit a
1829 written statement to the register of deeds and the recorder of the land court, signed by a majority
1830 of the board, giving the name of the person so authorized.

1831 SECTION 9. Section 81Q of said chapter 41, as so appearing, is hereby
1832 amended by inserting, after the second sentence, in line 22, the sentence:- Without limiting the
1833 foregoing, there shall be a rebuttable presumption that requirements for a roadway width of
1834 greater than 24 feet are unlawfully excessive.

1835 SECTION 10. Said section 81Q of said chapter 41, as so appearing, is hereby
1836 amended by inserting after the word “thereof,” in line 69, the following words:- “except that the
1837 rules and regulations may require the plan to show a park or parks suitably located for
1838 playground or recreation purposes benefiting the lots in the subdivision or for providing light and
1839 air, and not exceeding 5 percent of the land being subdivided.”

1840 SECTION 11. Said section 81Q of said chapter 41, as so appearing, is hereby
1841 amended by inserting after the first paragraph the following paragraphs:-

1842 After January 1, 2017, no subdivision rule or regulation may be inconsistent
1843 with a plan adopted in compliance with section 81D of chapter 41. No subdivision rule or
1844 regulation shall be deemed inconsistent with the plan if it furthers, or at least does not impede,
1845 the achievement of the plan's goals and policies, and if it is not incompatible with the plan's
1846 proposed land uses and development patterns.

1847 After the effective date of the plan, a subdivision rule or regulation shall enjoy
1848 a rebuttable presumption in any action, suit, or administrative proceeding that its provisions are

1849 not inconsistent with the plan. If the presumption is rebutted, inconsistency may serve as the
1850 basis upon which a court or administrative agency may declare any relevant zoning ordinance or
1851 by-law provision to be invalid as applied to the property which is the subject of the action, suit,
1852 or administrative proceeding. For any amendment to a plan adopted after January 1, 2017, no
1853 such declaration of invalidity may be made in any action, suit, or administrative proceeding for a
1854 period of 12 months after the effective date of such plan amendment.

1855 For the purposes of this section only, a city or town without a current local
1856 plan under section 81D of chapter 41 may adopt an extant regional plan under section 5 of
1857 chapter 40B. Such adoption shall be by the same process specified in section 81D of chapter 41.

1858 SECTION 12. Section 81T of said chapter 41, as so appearing, is hereby
1859 amended by striking out, in lines 2-3 inclusive, the following words "or for a determination that
1860 approval is not required".

1861 SECTION 13. Said section 81U of said chapter 41, as so appearing, is hereby
1862 amended by striking out, in lines 173-174 inclusive, the words "for a period of not more than
1863 three years".

1864 SECTION 14. Section 81X of said chapter 41, as so appearing, is hereby
1865 amended by striking out, in lines 12-13 inclusive, the following words "such plan bears the
1866 endorsement of the planning board that approval of such plan is not required, as provided in
1867 section eighty-one P, or (3)".

1868 SECTION 15. Said section 81X of said chapter 41, as so appearing, is hereby
1869 amended by striking out, in lines 17-20 inclusive, the following words "or that it is a plan
1870 submitted pursuant to section eighty-one P and that it has been determined by failure of the
1871 planning board to act thereon within the prescribed time that approval is not required,".

1872 SECTION 16. Said section 81X of said chapter 41, as so appearing, is hereby
1873 amended by striking out the fourth paragraph and inserting in place thereof the following
1874 paragraphs:-

1875 Perimeter Plans: Notwithstanding the foregoing provisions of this section, the
1876 register of deeds shall accept for recording, and the land court shall accept with a petition for
1877 registration or confirmation of title, any plan bearing a professional opinion by a registered
1878 professional land surveyor that the property lines shown are the lines dividing existing
1879 ownerships, and the lines of streets and ways shown are those of public or private streets or ways
1880 already established, and that no new lines for division of existing ownership or for new ways are
1881 shown.

1882 Lot Line Changes: The register of deeds and the land court shall accept for
1883 recording or registration any plan showing a change in the line of any lot, tract, or parcel bearing

1884 a professional opinion by a registered professional land surveyor and a certificate by the person
1885 or board charged with the enforcement of the zoning ordinance or by-law of the city or town that
1886 the property lines shown: do not create an additional building lot; do not create, add to, or alter
1887 the lines of a street or way; do not render an existing legal lot or structure illegal; do not render
1888 an existing nonconforming lot or structure more nonconforming; and are not subject to
1889 alternative local rules and regulations for minor subdivisions under section 81P of this chapter.
1890 The recording of such plan shall not relieve any owner from compliance with the provisions of
1891 the Subdivision Control Law or of any other applicable provision of law.

1892 SECTION 17. Said section 81BB of said chapter 41, as so appearing, is
1893 hereby amended by striking out the first paragraph and inserting in place thereof the following
1894 paragraph:-

1895 Section 81BB. Any person, whether or not previously a party to the
1896 proceedings, or any municipal officer or board, aggrieved by a decision of a board of appeals
1897 under section 81Y, or by any decision of a planning board concerning a plan of a subdivision or
1898 minor subdivision of land, or by the failure of such a board to take final action concerning such a
1899 plan within the required time, may appeal to the superior court for the county in which said land
1900 is situated or to the land court; provided, that such appeal is entered within 20 days after such
1901 decision has been recorded in the office of the city or town clerk or within 20 days after the
1902 expiration of the required time as aforesaid, as the case may be, and notice of such appeal is
1903 given to such city or town clerk so as to be received within such 20 days. A complaint by a
1904 plaintiff challenging a subdivision or minor subdivision approval under this section shall allege
1905 the specific reasons why the subdivision or minor subdivision fails to satisfy the requirements of
1906 the board's rules and regulations or other applicable law and allege specific facts establishing
1907 how the plaintiff is aggrieved by such decision. A complaint by an applicant challenging a
1908 subdivision or minor subdivision denial or conditioned approval under this section shall allege
1909 the specific reasons why the subdivision or minor subdivision properly satisfies the requirements
1910 of the board's rules and regulations or other applicable law. The board's decision in either case
1911 shall be affirmed unless the court concludes the board abused its discretion in approving,
1912 approving with conditions, or denying the subdivision or minor subdivision, as the case may be.

1913 SECTION 18. Section 53G of chapter 44 of the General Laws, as appearing in
1914 the 2008 Official Edition, is hereby amended by inserting after the number "9", in line 2, the
1915 following numbers and letters:- A, 9B, 9G,

1916 SECTION 19. The General Laws are hereby amended by inserting after
1917 Chapter 40T the following chapter: -- CHAPTER 40U LAND USE PARTNERSHIP ACT

1918 CHAPTER 40U

1919 LAND USE PARTNERSHIP ACT

1920 1. Preamble; Statement of the Commonwealth's Land Use Objectives

1921 2. Definitions

1922 3. Preparation, Adoption, and Certification of a Partnership Plan

1923 4. Elements of a Partnership Plan

1924 5. Minimum Standards for Consistency with Commonwealth's Land Use
1925 Objectives

1926 6. Preparation, Adoption, Review, and Certification of Implementing
1927 Regulations

1928 7. Partnership Community Effective Date

1929 8. Effect of Partnership Plan Status on Zoning and Land Use Regulation

1930 9. Review of Certification by Regional Planning Agency

1931 10. Expiration; Renewal of Certified Partnership Community Status;
1932 Amendments

1933 11. Priority for Infrastructure Funding

1934 12. Consideration Under State Programs

1935 40U:1. Preamble; Statement of the Commonwealth's Land Use
1936 Objectives

1937 The sections herein this chapter shall be known and may be cited as the "Land
1938 Use Partnership Act." The purposes of the act shall be to advance the commonwealth's land use
1939 objectives, which are as follows:

1940 A) Support the revitalization of city and town centers and neighborhoods by
1941 promoting development that is compact, conserves land and integrates uses;

1942 B) Support the construction and rehabilitation of homes near jobs,
1943 infrastructure and transportation options to meet the needs of people of all abilities, income
1944 levels, and household types;

1945 C) Attract businesses and jobs to locations near housing, infrastructure, and
1946 transportation options;

1947 D) Protect environmentally sensitive lands, natural resources, agricultural
1948 lands, critical habitats, wetlands and water resources, and cultural and historic structures and
1949 landscapes;

1950 E) Construct and promote developments, buildings, and infrastructure that
1951 conserve natural resources by reducing waste and pollution through efficient use of land, energy
1952 and water;

1953 F) Support transportation options that maximize mobility, reduce congestion,
1954 conserve fuel and improve air quality;

1955 G) Maximize energy efficiency and renewable energy opportunities to reduce
1956 greenhouse gas emissions and consumption of fossil fuels;

1957 H) Promote equitable sharing of the benefits and burdens of development;

1958 I) Make regulatory and permitting processes for development clear,
1959 predictable, coordinated, and timely in accordance with smart growth and environmental
1960 stewardship; and

1961 J) Support the development and implementation of local and regional plans
1962 that have broad public support and are consistent with these purposes.

1963 40U:2. Definitions

1964 As used in this chapter, the following words shall, unless the context clearly
1965 requires otherwise, have the following meanings:

1966 "Affordable housing" shall have the definition found in Chapter 40A.

1967 "By-right" shall have the definition found in Chapter 40A.

1968 "Chief executive officer" shall have the definition found in Chapter 40A.

1969 "Constructively approved" means deemed approved by the failure of the
1970 granting authority to issue a decision or determination within the time prescribed, as it may be
1971 extended by written agreement between the applicant and the granting authority; provided that an
1972 applicant who seeks approval by reason of the failure of the granting authority to act within such
1973 time prescribed, shall so notify the city or town clerk, and parties in interest, in writing within 14
1974 days from the expiration of the time prescribed or extended time, if applicable, of such approval.

1975 "Development agreement", a contract entered into between a municipality or
1976 municipalities and a holder of property development rights, the principal purpose of which is to
1977 establish the development regulations that will apply to the subject property during the term of
1978 the agreement and to establish the conditions to which the development will be subject including,
1979 without limitation, a schedule of development impact fees.

1980 "Economic development district" shall mean a zoning district that: permits or
1981 allows commercial and/or industrial use; or permits or allows mixed use including commercial
1982 and/or industrial use; and is an eligible location.

1983 "Eligible location" shall mean an area that by virtue of its physical and
1984 regulatory suitability for development, the adequacy of transportation and other infrastructure
1985 and the compatibility of proximate land uses is, in the determination of the regional planning
1986 agency, a suitable location for development of the type contemplated by a partnership plan. Any
1987 area that would qualify as an "eligible location" under chapter 40R shall automatically qualify as
1988 an "eligible location" for a residential development district.

1989 "Housing target number" shall mean a number equal to 5 percent of the total
1990 number of year-round housing units enumerated for the municipality in the latest available
1991 United States census as of the date on which the plan was submitted to the regional planning
1992 agency.

1993 "Implementing regulations" shall mean the local zoning ordinances or by-laws,
1994 subdivision rules and regulations, and other local land use regulations, or amendments thereof,
1995 necessary to effectuate the minimum standards for consistency with the commonwealth's land
1996 use objectives established or required by a partnership plan.

1997 "Interagency planning board" shall mean a board comprised of the secretary of
1998 Housing and Economic Development, the secretary of Energy and Environmental Affairs, and
1999 the state permit ombudsman, or their designees, together with a representative designated by the
2000 Massachusetts Association of Regional Planning Agencies (the "regional representative"), a
2001 representative designated by the Massachusetts Municipal Association (the "municipal
2002 representative"), and a representative designated by the Massachusetts Association of Planning
2003 Directors (the "planning representative"). The state permit ombudsman shall serve as the chair
2004 of the board and shall vote only in the case of a tie.

2005 "Low impact development techniques" shall mean stormwater management
2006 techniques appropriate to the size, scale, and location of the development proposal that limit off-
2007 site stormwater runoff (both peak and non-peak flows) to levels substantially similar to natural
2008 hydrology (or, in the case of a redevelopment site, that reduce such flows from pre-existing
2009 conditions), by emphasizing decentralized management practices and the protection of on-site
2010 natural features.

2011 "Minimum area density" shall mean the land area required for a given unit of
2012 development, which shall not necessarily be expressed as a lot size requirement.

2013 "Natural resource protection zoning" shall mean the power to protect natural
2014 resources by limiting development in areas designated by the state, a regional planning agency,

2015 or by a city or town as having significant natural or cultural resource values by requiring
2016 minimum area densities of one dwelling unit per ten or more acres.

2017 "Open space residential design" shall mean a process for the cluster
2018 development of land that: requires identification of the significant natural features of the land and
2019 concentrates development by use of reduced dimensional requirements in order to preserve those
2020 natural features; preserves at least 50 percent of the land's developable area in a natural, scenic
2021 or open condition or in agricultural, farming or forestry use; and permits the development of a
2022 number of new housing units at least equal to the quotient of the land's developable area divided
2023 by the minimum lot area per housing unit required by the zoning ordinance or by-law. For the
2024 purposes of this definition, the land's developable area shall be determined pursuant to
2025 applicable state and local land use and environmental laws and regulations, and the zoning
2026 ordinance or by-law, without regard in either case to the suitability of soils or groundwater for
2027 on-site wastewater disposal.

2028 "Other local land use regulations" shall mean all local legislative, regulatory,
2029 or other actions which are more restrictive than state requirements, if any, including subdivision
2030 and board of health rules and regulations, local wetlands ordinances or by-laws, and other local
2031 ordinances, by-laws, codes, and regulations.

2032 "Partnership community" shall mean a community for which a partnership
2033 plan and implementing regulations have been certified by the applicable regional planning
2034 agency, adopted by the municipality, and remain in effect.

2035 "Partnership plan" shall mean the subject matter contained in section 81D.4.f
2036 of chapter 41 prepared by the planning board in accordance with sections 4 and 5 of this chapter
2037 40U and which has been certified by the applicable regional planning agency.

2038 "Prompt and predictable permitting" shall mean that zoning and other local
2039 land use regulations allow development to proceed by right by means of permitting processes
2040 that are designed to result in final written decisions on all local permits and approvals in less than
2041 180 days from the date of the filing of a complete application. For commercial and industrial
2042 development, local permitting pursuant to chapter 43D shall also be deemed prompt and
2043 predictable permitting.

2044 "Rate of development", local legislative or regulatory measures adopted by
2045 cities and towns under this chapter to regulate the number of permits for new construction or
2046 approvals of new building lots issued in a defined period of time or otherwise in accordance with
2047 defined standards and criteria.

2048 "Regional planning agency" shall mean the regional or district planning
2049 commission established pursuant to chapter 40B for the region within which a municipality is
2050 located. The term shall also mean the Martha's Vineyard Commission, as described in Chapter

2051 831 of the Acts of 1977, the Nantucket Planning and Economic Development Commission, as
2052 described in Chapter 561 of the Acts of 1973, the Cape Cod Commission, as described in
2053 Chapter 716 of the Acts of 1989, the Franklin Regional Council of Governments, as described in
2054 Chapter 151 of the Acts of 1996, and the Northern Middlesex Council of Governments, as
2055 described in Chapter 420 of the Acts of 1989.

2056 "Residential development district" shall mean a zoning district that: permits or
2057 allows residential use at a density of not less than 4 units per acre of developable land for single-
2058 family residential use, not less than 8 units per acre of developable land for two- and three-
2059 family and attached townhouse residential use, and not less than 12 units per acre of developable
2060 land for multi-family residential use, or permits or allows mixed use including residential use at
2061 such density; is in an eligible location; and does not impose other requirements that add
2062 unreasonable costs or otherwise unreasonably impair the economic feasibility of residential
2063 development at such density. A zoning district that permits or allows mixed use may qualify as
2064 both an economic development district and a residential development district, if the standards for
2065 both districts are met. The implementing regulations for any residential development district that
2066 permits or allows mixed use shall contain adequate provisions to ensure that any contemplated
2067 contribution towards the housing target number to be provided by such district will be achieved.
2068 To achieve the minimum densities and housing target number, the implementing regulations may
2069 employ zoning techniques such as infill development, cottage zoning, transfer of development
2070 rights, and accessory dwelling units. The foregoing minimum density for single-family
2071 residential use may be reduced to not less than 2 units per acre of developable land upon a
2072 determination by the regional planning agency that the lack of adequate water supply and/or
2073 wastewater infrastructure within the municipality prevents full compliance with the minimum
2074 density standard. If there is no public water supply or public wastewater infrastructure existing
2075 anywhere within the municipality, then the minimum density for single-family residential use
2076 may be reduced to not less than 2 units per acre of developable land without the need for a
2077 determination by the regional planning agency.

2078 40U:3. Preparation, Adoption, and Certification of a Partnership
2079 Plan

2080 A. A planning board may prepare, and from time to time amend or renew, a
2081 proposed partnership plan for a municipality.

2082 B. The partnership plan shall be reviewed, certified, and adopted pursuant to
2083 the requirements of subsections 4-7 of section 81D of chapter 41.

2084 40U:4. Elements of a Partnership Plan

2085 A partnership plan shall be consistent with section 81D of chapter 41and in
2086 addition shall address at least the following five areas: economic development, housing, open
2087 space protection, water management, and energy management.

2088 The partnership plan shall contain:

2089 A. an overall statement of the land use goals and objectives of the municipality
2090 for its future growth and development, including specific reference to each of the five areas;

2091 B. a description of the zoning and other land use regulation policies that will
2092 be used to implement those goals and objectives, including with respect to each of the five areas;

2093 C. an assessment of the infrastructure improvements needed to support the
2094 implementation policies and strategies identified in B, above;

2095 D. an overall assessment of the plan's consistency with the commonwealth's
2096 land use objectives set forth in section 1 herein; and

2097 E. an assessment of the plan's specific compliance with the minimum
2098 standards for consistency set forth in section 5, below.

2099 The partnership plan may include materials prepared within the last 5 years as
2100 part of a local planning document, including a master plan prepared pursuant to section 81D of
2101 chapter 41.

2102 The partnership plan shall be established and implemented in ways that protect
2103 and affirmatively promote equal opportunity and diversity, consistent with stated goals of the
2104 commonwealth. Each municipality, in preparing and implementing its partnership plan, shall
2105 consider the likely effects that the plan will have on achieving non-discrimination, diversity, and
2106 equal opportunity.

2107 40U:5. Minimum Standards for Consistency with Commonwealth's
2108 Land Use Objectives

2109 The minimum standards for consistency with the commonwealth's land use
2110 objectives may be set forth in regulations duly promulgated by the Interagency Planning Board.

2111 Notwithstanding the foregoing, for plans submitted for certification within the
2112 first 5 years of the effective date of passage of this act, a determination of consistency with the
2113 commonwealth's land use objectives shall be mandatory if the following minimum standards
2114 have been satisfied:

2115 A. The plan establishes prompt and predictable permitting of commercial
2116 and/or industrial development within one or more economic development districts. This
2117 standard may be waived or modified upon a determination by the regional planning agency that
2118 adequate alternatives for economic development exist elsewhere in the region and are more
2119 appropriately located there.

2120 B. The plan establishes prompt and predictable permitting of residential
2121 development within one or more residential development districts that can collectively
2122 accommodate, in the determination of the regional planning agency, a number of new housing
2123 units (excluding new housing units, other than accessory apartments, which are restricted,
2124 through zoning or other legal means, as to the number of bedrooms or as to the age of their
2125 residents) equal to the housing target number. For the initial certification of a plan, a
2126 municipality's housing target number shall be reduced by the number of new housing units for
2127 which building permits were issued within 2 years prior to the municipality's effective date, to
2128 the extent such building permits were issued within residential development districts for which
2129 there was prompt and predictable permitting at the time of building permit issuance.

2130 C. The plan requires that, for any zoning district that requires a minimum lot
2131 area of 40,000 square feet or more for single-family residential development, development of 5
2132 or more new housing units utilize open space residential design, except upon a determination by
2133 the regional planning agency that open space residential design is not feasible. In districts
2134 requiring minimum lot areas of between 40,000 and 80,000 square feet in nitrogen sensitive
2135 areas as defined under Title 5 of the Environmental Code, the minimum preservation
2136 requirement of 50 percent set forth in section 2, Open Space Residential Design, shall be
2137 modified to equal the percentage resulting from the subtraction of 40,000 square feet from the lot
2138 size requirement, divided by the lot size requirement, and multiplied by 100.

2139 D. The plan requires, through zoning or general ordinances or by-laws, all
2140 development that disturbs more than one acre of land, including development by-right, utilize
2141 low impact development techniques.

2142 E. The plan establishes prompt and predictable permitting of renewable or
2143 alternative energy generating facilities, renewable or alternative energy research and
2144 development facilities, or renewable or alternative energy manufacturing facilities, within one or
2145 more zoning districts that are eligible locations.

2146 The Interagency Planning board shall promulgate regulations to effect the
2147 purposes of this act. To assist municipalities in this effort, the regulations to be promulgated by
2148 the Interagency Planning Board hereunder shall include at least one model provision for
2149 implementing regulations for open space residential design, low impact development, and clean
2150 energy generation/cogeneration facilities that would satisfy the standards hereof.

2151 40U:6. Preparation, Adoption, Review, and Certification of
2152 Implementing Regulations

2153 Prior to or following municipal adoption of a partnership plan, the city or town
2154 may prepare proposed implementing regulations for the partnership plan.

2155 B. Upon completion of the proposed implementing regulations, the planning
2156 board and chief executive officer may submit the proposed implementing regulations to the
2157 regional planning agency for certification.

2158 C. Within 90 days of receiving a submission, the regional planning agency
2159 shall determine whether the proposed implementing regulations are consistent with the certified
2160 partnership plan. The implementing regulations shall be deemed consistent with the certified
2161 partnership plan if they effectuate the minimum standards for consistency with the
2162 commonwealth's land use objectives established or required by the certified partnership plan. If
2163 the regional planning agency determines that the implementing regulations are consistent with
2164 the certified partnership plan, then the agency shall issue a written certification to that effect. If
2165 the regional planning agency determines that the regulations do not effectuate the minimum
2166 standards for consistency, then the agency shall provide the municipality with a written statement
2167 of the reasons for its determination. A municipality may re-submit for certification at any time
2168 modified implementing regulations that address the issues set forth in the agency's statement of
2169 reasons. If the regional planning agency does not issue a certification or provide a statement of
2170 reasons within 90 days after receiving implementing regulations (including re-submitted
2171 implementing regulations), then the implementing regulations shall be deemed certified. The
2172 municipality shall have the option of submitting its implementing regulations together with its
2173 submission of its partnership plan pursuant to section 4 herein, in which case the regional
2174 planning agency shall review both the partnership plan and the implementing regulations within
2175 the same 90 day period.

2176 D. Following certification by the regional planning agency, the implementing
2177 regulations may be adopted by the municipality according to the procedures and requirements for
2178 each type of local law or regulation.

2179 E. The town clerk shall within 20 days of the final approval of all
2180 implementing regulations file a true copy of the implementing regulations with the regional
2181 planning agency.

2182 F. Amendments to the Implementing Regulations by the legislative body or a
2183 board made subsequent to certification may lead to withdrawal of certification by the regional
2184 planning agency.

2185 40U:7. Partnership Community Effective Date

2186 Within 15 days of receipt by the regional planning agency of a true copy of
2187 certified implementing regulations duly adopted by the city or town pursuant to a certified
2188 partnership plan, the agency shall notify the municipality in writing that it is deemed a
2189 "partnership community". The date of that notification shall be deemed the "municipality's
2190 effective date".

2191 40U:8. Effect of Partnership Plan Status on Zoning and Land Use
2192 Regulation

2193 A. Following the municipality's effective date, local zoning ordinances or by-
2194 laws, subdivision rules and regulations, and other local land use regulations (other than certified
2195 implementing regulations) which are determined to be inconsistent with the certified partnership
2196 plan or the certified implementing regulations shall be deemed invalid. Such a determination
2197 may be sought and obtained through any means otherwise available by statute for the
2198 determination of the validity of such land use regulations. Any material amendment to a
2199 certified partnership plan or certified implementing regulations that has not been prepared,
2200 certified, and adopted in accordance with the provisions of section 81D of chapter 41 and this
2201 chapter shall be presumed to be inconsistent with the certified partnership plan.

2202 B. If a municipality has issued, at the time of the municipality's effective date,
2203 a special permit that in itself allows new housing units equal to one-half or more of the
2204 municipality's housing target number, and if such special permit remains in effect for at least 2
2205 years after the municipality's effective date, then residential development under such special
2206 permit which otherwise qualifies hereunder shall also be deemed by right.

2207 C. If at any time more than 2 years after the municipality's effective date the
2208 total number of housing units for which building permits have been applied for within the
2209 residential development districts since the municipality's effective date is greater than the
2210 housing target number (adjusted pro rata for the number of years since the municipality's
2211 effective date divided by the ten-year time frame of the plan), but the total number of housing
2212 units for which building permits have been issued within the residential development districts is
2213 less than the pro rata housing target number, then the provisions of this subsection shall be in
2214 effect. During such time period, any applications for building permits or other local land use
2215 permits for residential development within such residential development districts shall deemed
2216 constructively approved if not acted upon within 180 days after receipt of permit applications. In
2217 addition, an application received under this section shall be subject only to those conditions that
2218 are necessary to ensure substantial compliance of the proposed development project with
2219 applicable laws and regulations; and it may be denied only on the grounds that the proposed
2220 development project does not substantially comply with applicable laws and regulations or the
2221 applicant failed to submit information and fees required by applicable laws and regulations and
2222 necessary for an adequate and timely review of the development project. The foregoing
2223 provisions shall no longer be in effect once the total number of housing units for which building
2224 permits have been issued within such residential development districts equals or exceed the pro
2225 rata housing target number.

2226 D. Following the municipality's effective date, in addition to those powers
2227 conferred upon cities and towns clarified and enumerated in chapter 40A, partnership
2228 communities shall have the following additional powers:

2229 1. Rate of Development: The power to regulate rate of development, as defined
2230 herein. A zoning ordinance or by-law that limits the rate of development of new housing units (a
2231 "rate of development measure") shall not be declared exclusionary, a denial of substantive due
2232 process, or otherwise against public policy, provided that it complies with the following
2233 conditions. Within residential development districts identified under section 5.B, above, the rate
2234 of development measure may limit the number of building permits issued in any twelve-month
2235 period to an amount equal to or greater than one-half of the housing target number. In the event
2236 the municipality meets its housing target number prior to the expiration of the 10-year term of
2237 the plan, it may amend said ordinance or by-law to restrict the by-right development of new
2238 housing units within residential development districts for the remainder of the term. For areas not
2239 located within residential development districts identified under section 5.B, above, any rate of
2240 development measure shall be consistent with the following additional element of the partnership
2241 plan. The plan shall contain consistent policies and strategies for the implementation of rate of
2242 development measures that include a study of the need for such measures, a methodology by
2243 which to determine a reasonable rate of issuance of either permits for new construction or
2244 approvals of new building lots, a time horizon within which such measures shall remain in effect,
2245 and a periodic review schedule. A rate of development measure shall not restrict the construction
2246 of, or creation of building lots for, affordable housing units as that term is defined under chapter
2247 40A and it shall not apply to structures accessory to residential uses nor to construction work
2248 upon an existing dwelling unit.

2249 2. Natural Resource Protection Zoning: A zoning ordinance or by-law that
2250 requires a minimum area density of 10 acres or more per dwelling unit to protect farmland,
2251 forestry land, or other land of high natural resource value shall not for that reason alone be
2252 declared exclusionary, a denial of substantive due process, or otherwise against public policy.
2253 Such land types deemed appropriate for these measures shall be identified in the partnership
2254 plan. The zoning ordinance or by-law may require dwelling units and other development to be
2255 concentrated on a portion of the parcel in a manner consistent with the natural resource
2256 protection goals of the ordinance or by-law. Natural resource protection zoning measures that
2257 specifically require individual lot sizes greater than 2 acres shall be subject to the requirements
2258 of section 5.C of this chapter 40U.

2259 3. Vested Rights: Notwithstanding section 6B of chapter 40A, the minimum
2260 vesting period for a definitive subdivision plan in a partnership community shall not be 8 years,
2261 but shall instead be 4 years. This provision shall not apply to the 3 year minimum vesting period
2262 for minor subdivisions in said section 6B of chapter 40A.

2263 4. Development Agreements: The power to enter into development agreements
2264 as defined herein. A development agreement is a contract between the applicant and a city or
2265 town under which the applicant may agree to contribute public capital facilities to serve the
2266 proposed development and the municipality or both, to build affordable housing either on site or
2267 off site, to dedicate or reserve land for open space community facilities or recreational use or to

2268 contribute funds for any of these purposes. The development agreement shall function as a bona
2269 fide local land use regulation, establishing the permitted uses and densities within the
2270 development, and any other terms or conditions mutually agreed upon between the applicant and
2271 the municipality. A development agreement shall vest land use and development rights in the
2272 property, and such rights would not be subject to subsequent changes in development laws or
2273 regulations for the duration of the agreement. Any such development agreement shall be
2274 consistent with the partnership plan and may be entered into by the chief executive officer
2275 following a majority vote of the governing body.

2276 5. Development Impact Fees: Development impact fees imposed pursuant to
2277 section 9F of chapter 40A may, in addition to the off-site public capital facilities listed in
2278 subsection 1.b of said section, be used to defray the costs of the following off-site public capital
2279 facilities: public elementary and secondary schools, libraries, municipal offices, affordable
2280 housing, and public safety facilities.

2281 40U:9. Review of Certification by Regional Planning Agency

2282 A. Any certification or determination of non-certification by a regional
2283 planning agency with respect to a partnership plan or implementing regulations or a material
2284 amendment of either is subject to review by the Interagency Planning Board. The Interagency
2285 Planning Board may, upon the request of the subject municipality or upon its own motion,
2286 review any such decision in an informal, non-adjudicatory proceeding, may request information
2287 from any third party and may modify or reverse such decision if the same does not comply with
2288 the provisions hereof.

2289 B. If a municipality provides written notice to the Interagency Planning Board
2290 of the certification by a regional planning agency of a partnership plan or implementing
2291 regulations or a material amendment of either, including a deemed certification resulting from a
2292 regional planning agency's failure to act, then the board may only review such certification if it
2293 commences such review with 60 days of such certification.

2294 C. The Interagency Planning Board may through regulation establish a
2295 procedure for reviewing and approving guidelines prepared by regional planning agencies to be
2296 used in the certification of plans, implementing regulations and material amendments. If a
2297 certification or determination of non-certification under review by the Interagency Planning
2298 Board has been issued by the regional planning agency based upon an approved guideline, then
2299 the board may only modify or reverse such decision for inconsistency with the approved
2300 guideline.

2301 40U:10. Expiration; Renewal of Certified Partnership Community
2302 Status; Amendments

2303 A. A municipality's status as a partnership community shall expire 10 years
2304 after the municipality's effective date, unless a renewal partnership plan, together with any
2305 necessary implementing regulations, is prepared, certified, and adopted in accordance with the
2306 provisions of section 81D of chapter 41 and this chapter prior to such date. Each such renewal
2307 plan shall also expire in 10 years. Notwithstanding the foregoing, the expiration of a
2308 municipality's status as a partnership community shall not affect the vesting provisions currently
2309 applicable to the municipality under section 8 of this chapter 40U. Notwithstanding the
2310 foregoing, the previously certified implementing regulations shall continue to be deemed valid
2311 until such time as the community duly adopts new regulations.

2312 B. From and after a municipality's effective date, any material amendment to a
2313 partnership plan or to any certified implementing regulations shall be prepared, certified and
2314 adopted in accordance with the provisions of section 81D of chapter 41 and this chapter. The
2315 Interagency Planning Board may by regulation define categories of amendments that shall be
2316 deemed non-material.

2317 40U:11. Priority for Infrastructure Funding

2318 The Executive Office of Housing and Economic Development, the Executive
2319 Office of Energy and Environmental Affairs, the Executive Office of Transportation, and the
2320 Executive Office of Administration and Finance shall, when awarding discretionary funds for
2321 local infrastructure improvements, give priority consideration to infrastructure improvements
2322 identified in the partnership plans of partnership communities. Within 90 days of the effective
2323 date of this act, the governor shall issue regulations providing a priority in the allocation of state
2324 discretionary funding for partnership communities. Said regulations shall apply to the
2325 distribution of funds, whether appropriated or derived through bonding, for all programs listed in
2326 the Commonwealth Capital program, so-called, as it is administered by the Executive Office of
2327 Energy and Environmental Affairs; the programs of the Massachusetts School Building
2328 Authority; the programs for roadway, bridge, transit, bicycle, and pedestrian improvements
2329 overseen by the Executive Office of Transportation and Public Works; and such other programs
2330 as the governor may indicate by regulation, provided however that no priority consideration
2331 issued pursuant to this act will be allowed to deny funding to a municipality that might otherwise
2332 qualify for grants or loans which may be needed to protect the immediate public safety, as
2333 determined in a waiver from the provisions of this section issued by the secretary of the
2334 responsible executive office. Said regulations will ensure that all decision-making bodies of the
2335 commonwealth shall, in regard to the programs listed above, increase the score of the applicant
2336 municipality by 20 percent for any partnership community, above the score it would otherwise
2337 achieve. This 20 percent bonus shall be in addition to, rather than as a substitute for other
2338 elements of the scoring process which might reasonably be related to criteria associated with the
2339 Commonwealth's Sustainable Development Principles, so-called, as issued and approved from
2340 time to time by the governor. Nothing herein shall be construed to reduce the scoring preference
2341 already provided to municipalities participating in the Commonwealth Capital program.

2342 40U:12. Consideration Under State Programs

2343 State agencies responsible for regulatory and/or capital spending programs that
2344 have a material effect on land use and development within partnership communities shall take
2345 into account the land use goals, objectives and policies of such communities, as set forth in their
2346 partnership plans, in administering such programs.

2347 Capital Funding

2348 To provide for a capital outlay program to fund local and regional planning for
2349 the several purposes and subject to the conditions specified in this act, are hereby made available
2350 subject to the laws regulating the disbursement of public funds-

2351 7006-xxxx For a technical assistance program in the form of grants to
2352 municipalities or regional planning agencies for the preparation of plans under section 81D of
2353 chapter 41, sections 3-5 of chapter 40U, and regional plans in the manner described in section 5
2354 of chapter 40B created by any regional planning agency including those created under special
2355 law or act, provided that the grants are to be administered by the Interagency Planning Board;
2356 and provided further, priority for the municipal grants administered by the Interagency Planning
2357 Board shall be given to those municipalities identified by the applicable regional planning
2358 agencies as being most likely to prepare and adopt partnership plans and implementing
2359 regulations under chapter 40U, if provided with financial assistance; provided further, that no
2360 expenditure shall be made from this item without the prior approval of the secretary for
2361 administration and finance……$11,000,000.