

HOUSE No. 1186

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act making chapter 40B, so called, more responsive to the Commonwealth's cities and towns..

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

1 SECTION 1. Section 20 of chapter 40B of the General Laws, as appearing in the 2000
2 Official Edition, is hereby amended by inserting before the definition of “Low or moderate
3 income housing”, the following definition:—“Local Housing Authority”, any housing authority
4 within a city or town as provided under chapter 121B of the General Laws.

5 SECTION 2. Said section 20 of said chapter 40B, as so appearing, is hereby amended by
6 striking out, in line 6, the words “or state” and inserting in place thereof the following words:— ,
7 state or local.

8 SECTION 3. The definition of “Low or moderate income housing” in said section 20 of
9 said chapter 40B is hereby amended by adding the following sentence:— Such program shall not
10 include any funding by the Federal Home Loan Bank.

11 SECTION 4. The definition of “Low or moderate income housing” in said section 20 of
12 said chapter 40B, as so appearing, is hereby amended by adding the following 2 paragraphs:—In
13 calculating a city or town’s 80 per cent threshold of low or moderate income housing stock, the

department of housing and community development shall count all rental units and all units being offered for sale at market rate constructed in accordance with this chapter. The sale or rental of low or moderate income housing shall be calculated at 40 per cent of the income of those persons whose income is 80 per cent or less of the area median income, as defined by the United States Department of Housing and Urban Development.

SECTION 5. The definition of “Uneconomic” in said section 20 of said chapter 40B, as so appearing, is hereby amended by adding the following paragraph:—The profit realized by any developer of a comprehensive permit project shall not exceed 10 per cent. In calculating the profit, the baseline acquisition cost shall be limited to either the last purchase price of a developer-owned parcel with reasonable carrying costs or the fair market value of a property that is under a purchase and sale agreement.

SECTION 6. Said section 20 of said chapter 40B, as so appearing, is hereby further amended by striking out, in line 31, the words “board of zoning appeals” and inserting in place thereof the following words:— planning board.

SECTION 7. The definition of “Consistent with local needs” in said section 20 of said chapter 40B, as so appearing, is hereby further amended by inserting after the first sentence the following 5 sentences:—

The applicant for a comprehensive permit shall be required to list any and all waivers to local regulations, demonstrate the necessity for each waiver, the specific portion of the property to which each waiver applies and how each waiver is required to sustain the economic viability of the development proposal. Local wetland by-laws and board of health regulations may be waived by the planning board only if they apply to dimensional criteria such as setbacks, lot

36 areas and buffer zones and only if the applicant can demonstrate that such waivers will not
37 adversely affect the environment. The board may choose not to waive municipal sewer
38 regulations or bylaws. The board shall not waive any regulation that will prevent the
39 development of environmentally or physically unsuitable land. The applicant shall be required to
40 establish that the subject property could physically support a conventional development of at
41 least 35 per cent of the number of units that are proposed under the comprehensive permit
42 process.

43 SECTION 8. Said section 20 of said chapter 40B, as so appearing, is hereby further
44 amended by striking out, in line 33 the word “ten” and inserting in place thereof the following
45 figure:— 8.

46 SECTION 9. The definition of “Consistent with local needs” in said section 20 of said
47 chapter 40B, as so appearing, is hereby amended by adding the following paragraph:—

48 Notwithstanding the provisions of any law or regulation to the contrary, in any
49 municipality where at least 40 per cent of the housing units for sale or rent can be occupied
50 through conventional market based financing by households whose income does not exceed 80
51 per cent of the area median income, as defined by the United States Department of Housing and
52 Urban Development, this chapter shall have no force or effect and shall not be allowed to be used
53 to achieve any site approval pursuant to this chapter.

54 SECTION 10. Said chapter 40B is hereby further amended by inserting after section 20
55 the following section:—Section 20A. All low and moderate income housing units included in a
56 comprehensive permit shall have a use restriction in perpetuity and such restriction shall be

57 recorded in the registry of deeds for the district in which the land lies or the registry district of
58 the land court.

59 SECTION 11. Section 21 of said chapter 40B, as appearing in the 2000 Official Edition,
60 is hereby amended by striking out, in lines 3 and 4, the words “board of appeals, established
61 under section twelve of chapter forty A” and inserting in place thereof the following words:—

62 planning board established under section 70 of chapter 41.

63 SECTION 12. Said section 21 of said chapter 40B, as so appearing, is hereby further
64 amended, by striking out, in lines 5, 9, 17, 20 and 24 the words “ board of appeals” and inserting
65 in place thereof, in each instance, the following words:—

66 planning board.

67 SECTION 13. Section 21 of said chapter 40B, as so appearing, is hereby further amended
68 by inserting, after the second sentence the following sentence:—

69 The planning board shall be entitled to charge the applicant a reasonable fee for the cost
70 of reviewing a comprehensive permit application in accordance with chapter 44, section 53G.

71 SECTION 14. Said section 21 of said chapter 40B, as so appearing, is hereby further
72 amended by inserting after the third sentence, the following sentence:—

73 The planning board shall have the power to attach to said permit or approval the
74 condition that a certain percentage of handicapped accessible units shall be built within the
75 comprehensive permit development.

SECTION 15. Said section 21 of said chapter 40B, as so appearing, is hereby further amended by inserting after the fourth sentence, the following sentence:—

The planning board shall receive and consider evidence that the density or pace of a proposed development will unduly burden a city or town's ability to provide adequate services, including, but not limited to schools, water and sewer and other municipal services.

SECTION 16. Said section 21 of said chapter 40B, as so appearing, is hereby further amended by adding the following sentence:—

No application for a comprehensive permit shall be filed while a pending comprehensive permit application for development in the same community is under review by the planning board or the housing appeals committee.

SECTION 17. Said chapter 40B is hereby further amended by inserting after section 21, the following section:—

Section 21A. If the planning board of a city or town develops an affordable housing plan that insures that a minimum of 25 per cent of all new housing units constructed in the city or town are affordable, including, but not limited to inclusionary, cluster and mixed use zoning provisions, and the proposal is approved by the community's legislative body, the community shall be exempt from the provisions of this chapter. If the community does not create a plan or the plan fails to make 25 per cent of its new housing construction affordable, the community shall not be exempt from this chapter.

SECTION 18. Section 22 of said chapter 40B, as appearing in the 2000 Official Edition, is hereby amended by striking out, in lines 7 and 10, the words “board of appeals” and inserting in place thereof, in each instance, the following words:— planning board.

SECTION 19. Section 23 of said chapter 40B, as appearing in the 2000 Official Edition, is hereby amended by striking out, in lines 4, 9, 23 and 30 the words, “board of appeals” and inserting in place thereof, in each instance, the following words:— planning board.

SECTION 20. Said Section 23 of said chapter 40B, as so appearing, is hereby further amended by inserting after the first sentence the following sentence:— The housing appeals committee shall consider evidence from a city or town that the density or pace of a proposed development will unduly burden that city or town’s ability to provide adequate services, including, but not limited to schools, water and sewer and other municipal services.

SECTION 21. Said chapter 40B is hereby further amended by inserting after section 23 the following sections:—

Section 23A. The public agency or limited dividend or nonprofit organization proposing to build low or moderate income housing shall be required to meet with the local housing authority prior to approval by the planning board. The developer shall also pay any and all fees to the local housing authority necessary for the administration of the rental or sale of the affordable units. The local housing authority shall administer the process through which affordable housing units in developments are rented or sold. The authority shall use its existing waiting lists to determine which local residents are eligible for the affordable units. In making the determination of eligibility, the authority must require a criminal offender records information check of all applicants and an annual certification of income. Those who are eligible

117 for affordable housing shall submit to an annual recertification of income by the local housing
118 authority.

119 Section 23B. The department of housing and community development shall promulgate
120 regulations to implement these sections.