

**HOUSE . . . . . No. 1219**

---

**The Commonwealth of Massachusetts**

\_\_\_\_\_  
**In the Year Two Thousand Nine**  
\_\_\_\_\_

An Act to promote open space residential development..

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

1 SECTION 1. Section 3 of chapter 40A of the General Laws, as appearing in the 2006  
2 Official Edition, is hereby amended by inserting after the ninth paragraph the following  
3 paragaraph:—

4 No zoning ordinance or by-law shall prohibit or unreasonably regulate the use of land for  
5 open space residential development in any district zoned for residential use. For the purposes of  
6 the section, the term “open space residential development” shall be as defined in section 9.

7 SECTION 2. Section 9 of chapter 40A of the General Laws, as appearing in the 2006  
8 Official Edition, is hereby amended by striking out, in line 33, the word “cluster” and inserting in  
9 place thereof the following:— open space residential

10 SECTION 3. Section 9 of chapter 40A of the General Laws, as so appearing, is hereby  
11 amended by striking out, in line 37, the word “cluster” and inserting in place thereof the  
12 following:— open space residential

13 SECTION 4. Section 9 of chapter 40A of the General Laws, as so appearing, is hereby  
14 amended by striking out the seventh paragraph and inserting in place thereof the following  
15 paragraph:—

16 “Open space residential development” means a residential development in which the  
17 buildings and accessory uses are clustered together into one or more groups separated from  
18 adjacent property and other groups within the development by intervening open land. An open  
19 space residential development shall be permitted only on a plot of land of such minimum size as  
20 a zoning ordinance or by-law may specify which is divided into building lots with dimensional  
21 control, density and use restrictions of such building lots varying from those otherwise permitted  
22 by the ordinance or by-law and open land. Such open land when added to the building lots shall  
23 be at least equal in area to the land area required by the ordinance or by-law for the total number  
24 of units or buildings contemplated in the development. Such open land may be situated to  
25 promote and protect maximum solar access within the development. Such open land shall either  
26 be conveyed to the city or town and accepted by it for park or open space use, or be conveyed to  
27 a non-profit organization the principal purpose of which is the conservation of open space, or to  
28 be conveyed to a corporation or trust owned or to be owned by the owners of lots or residential  
29 units within the plot. If such a corporation or trust is utilized, ownership thereof shall pass with  
30 conveyances of the lots or residential units. In any case where such land is not conveyed to the  
31 city or town, a restriction enforceable by the city or town shall be recorded providing that such  
32 land shall be kept in an open or natural state and not be built for residential use or developed for  
33 accessory uses such as parking or roadway.