

SENATE No. 2482

The Commonwealth of Massachusetts

In the Year Two Thousand Ten

An Act relative to land use.

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

4 CHAPTER 40A

5 ZONING

6 1. Title, Authority, and Purposes

7 2. Definitions

8 3. Consistency with Master Plan

9 4. Powers of Cities and Towns

10 5. Exemptions from Zoning, Limitations on Local Authority

11 6. Nonconformities and Vested Rights

12 7. Adoption and Amendment of Zoning Ordinances and By-laws

13 8. Boards of Appeal, Zoning Administrators

14 9. Permits and Approvals, Procedures, and Zoning Tools

15 10. Enforcement

16 11. Judicial Review Procedures and Standards

17 12. Transition Provisions

18 40A:1. Title, Authority, and Purposes

19 A. Title of Chapter

20 This chapter shall be known and may be cited as “The Zoning Act”.

21 B. Authority

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

31 C. Purposes of the Zoning Act

32 The purposes of this Zoning Act are:

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

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

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

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

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

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

48 D. Purposes of Zoning Ordinances and By-laws

49 The authority of cities and towns to adopt zoning ordinances and by-laws for the
50 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 which 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.

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

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

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

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

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

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

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

90 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

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

“Affordable housing”, A dwelling unit restricted for purchase or rent by a household with an income at or below 80 percent of the median family income for the applicable metropolitan or non-metropolitan area, as determined by the U.S. Department of Housing and Urban

Development (HUD). Affordable housing shall be subject to an affordable housing restriction in accordance with sections 31 and 32 of chapter 184, or, if ineligible under said sections, restricted by other means as required in an ordinance or by-law.

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

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

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

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

“Development agreement”, a contract entered into between a municipality or municipalities and a holder of property development rights, the principal purpose of which is to

134 establish the development regulations that will apply to the subject property during the term of
135 the agreement and to establish the conditions to which the development will be subject including,
136 without limitation, a schedule of development impact fees.

137 “Form-based zoning”, text and graphics in a zoning ordinance or by-law that specify the
138 built form of the community, general intensity of use, and the relationship between buildings and
139 the outdoor public spaces they shape. Notwithstanding any provision of any general or special
140 law, form-based codes may regulate building type, exterior building materials, minimum and
141 maximum building heights, frontage type, build-to lines, street type, street and streetscape
142 design, public open spaces, and any other parameter of the built or natural environment which
143 gives form to the exterior of buildings and the spaces between them. Form-based codes may
144 combine in a single document standards for new subdivision streets, existing and new public
145 streets and sidewalks, and use and dimensional standards. Such combined standards may be in
146 the form of a “regulating plan” that integrates building, dimensional, use, street, sidewalk, and
147 parking requirements. Form-based codes may also specify lot-by-lot in a detailed regulating plan,
148 building forms and allowed use mixes, even if such specification is not uniform throughout a
149 zoning district, provided that it is based upon a plan for the area subject to the code. Form-based
150 codes may specify prescribed future lot division lines which will be allowed as a matter of right
151 in any future division of land.

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

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

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

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

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

“Site plan review,” the review and approval of a site plan by a designated municipal board pursuant to section 9B of this chapter. Site plan review may be required independently for specified uses permitted by-right, or as a required component of a special permit, variance, or other discretionary zoning approval.

“Solar access,” the access of a solar energy system to direct sunlight.

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

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

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

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

“Unified development ordinance or by-law”, An ordinance or bylaw that combines in a single document standards and procedures for land use approvals that derive from different chapters of the General Laws, including but not limited to chapters 40A, 40B, 40C, and 41,

combining procedures for subdivision, comprehensive permits, historic districts, streets and sidewalks, as well as the use and dimensional standards typically found in zoning.

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

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

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

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

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 extant 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

239 4. to provide for the transfer of development rights, including the inter-municipal transfer
240 of development rights between or among municipalities with complementary ordinances or by-
241 laws. Such authorization may be by special permit or by other methods, including, but not
242 limited to, the applicable provisions of sections 81K to 81GG, inclusive, of chapter 41, and in
243 accordance with a planning board's rules and regulations governing subdivision control. Any
244 inter-municipal transfer of development rights plan must be reviewed by the Department of
245 Housing and Community Development prior to adoption to ensure that it is consistent with
246 federal and state fair housing laws, provided that a plan shall be deemed consistent unless the
247 Department makes a written finding of inconsistency within 30 days of submission.

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

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

256 40A:5. Exemptions from Zoning, Limitations on Local Authority

257 A. Building Code: No zoning ordinance or by-law shall regulate or restrict the use of
258 materials, or methods of construction of structures regulated by the state building code. This
259 shall not prevent the regulation of exterior materials on existing or new buildings under form-

based codes or in zones specifically identified by statute, ordinance, or by-law as having historic or architectural significance.

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

C. Agriculture:

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

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

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

b. Annually at least 25 percent of such products have been produced by the owner or lessee of the land on which the facility is located, and at least an additional 50 per cent of such

products shall have been produced in Massachusetts on land, other than that on which the facility is located, used for the primary purpose of commercial agriculture, whether by the owner or lessee of the land on which the facility is located or by another.

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

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

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

“horticulture” shall include the growing and keeping of nursery stock and the sale thereof; and

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

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

E. Religious, Educational Purposes: No zoning ordinance or by-law shall prohibit, regulate or restrict the use of land or structures for religious purposes or for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions, or bodies

302 politic, or by a religious sect or denomination, or by a nonprofit educational corporation.

303 However, such land or structures may be subject to reasonable regulations concerning the bulk
304 and height of structures and determining yard sizes, lot area, setbacks, open space, parking, and
305 building coverage requirements.

306 F. Public Service Corporation: Lands or structures used, or to be used by a public service
307 corporation, may be exempted in particular respects from the operation of a zoning ordinance or
308 by-law if, upon petition of the corporation, the Department of Public Utilities shall, after notice
309 given pursuant to section 9D. and public hearing in the town or city, determine the exemptions
310 required and find that the present or proposed use of the land or structure is reasonably necessary
311 for the convenience or welfare of the public; provided, however, that if lands or structures used
312 or to be used by a public service corporation are located in more than one municipality such
313 lands or structures may be exempted in particular respects from the operation of any zoning
314 ordinance or by-law if, upon petition of the corporation, the Department of Public Utilities shall
315 after notice to all affected communities and public hearing in one of said municipalities,
316 determine the exemptions required and find that the present or proposed use of the land or
317 structure is reasonably necessary for the convenience or welfare of the public.

318 G. Child Care Facility:

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

321 2. No zoning ordinance or by-law in any city or town shall prohibit, or require a special
322 permit for, the use of land or structures, or the expansion of existing structures, for the primary,
323 accessory, or incidental purpose of operating a child care facility. Such land or structures may be

subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking, and building coverage requirements.

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

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

I. Disabled Persons, Congregate Living Arrangements: Notwithstanding any general or special law to the contrary, local land use and health and safety laws, regulations, practices, ordinances, by-laws, and decisions of a city or town shall not discriminate against a disabled person. Imposition of health and safety laws or land-use requirements on congregate living arrangements among unrelated persons with disabilities that are not imposed on families and

groups of similar size of other unrelated persons shall constitute discrimination. The provisions of this paragraph shall apply to every city or town, including, but not limited to the City of Boston and the City of Cambridge.

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

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

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

M. Amateur Radio Antennas: No zoning ordinance or by-law shall prohibit the construction or use of an antenna structure by a federally licensed amateur radio operator. Zoning ordinances and by-laws may reasonably regulate the location and height of such antenna structures for the purposes of health, safety, or aesthetics; provided, however, that such ordinances and by-laws reasonably allow for sufficient height of such antenna structures so as to effectively accommodate amateur radio communications by federally licensed amateur radio

operators and constitute the minimum practicable regulation necessary to accomplish the legitimate purposes of the city or town enacting such ordinance or by-law.

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

1. not less than 75 percent of the energy generated thereby shall be used or transmitted for use in agricultural operations on land and in structures in agricultural use or to serve the energy needs of educational facilities of the commonwealth or any of its agencies, subdivisions or bodies politic, or of a religious sect or denomination, or of a nonprofit educational corporation, or of municipally owned or controlled facilities, whether directly or under a net-metering arrangement approved by the Commissioner of the Department of Agricultural Resources;

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

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

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

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

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

401 P. Solid Waste Disposal Facilities: A facility, as defined in section 150A of chapter 111,
402 which has received a site assignment pursuant to said section 150A, shall be permitted to be
403 constructed or expanded on any locus zoned for industrial use unless specifically prohibited by
404 the ordinances and by-laws of the city or town in which such facility is proposed to be
405 constructed or expanded, in effect as of July 1, 1987; provided, however, that all permits and
406 licenses required by law have been issued to the proposed operator. A city or town shall not
407 adopt an ordinance or by-law prohibiting the siting of such a facility or the expansion of an
408 existing facility on any locus zoned for industrial use, or require a license or permit granted by
409 said city or town, except a special permit imposing reasonable conditions on the construction or
410 operation of the facility, unless such prohibition, license or permit was in effect on or before July

1, 1987. A city or town may adopt and enforce a zoning or non-zoning ordinance or by-law of general application that has the effect of prohibiting the siting or expansion of a facility in the following areas: recharge areas of surface drinking water supplies as shall be reasonably defined by rules and regulations of the Department of Environmental Protection, areas subject to section 40 of chapter 131, and the regulations promulgated thereunder; and areas within the zone of contribution of existing or potential public supply wells as defined by said department. No special permit authorized by this section may be denied for any such facility by any city or town; provided, however, that a special permit granting authority may impose reasonable conditions on the construction or operation of the facility, which shall be enforceable pursuant to the provisions of section 10.

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

40A:6. Nonconformities and Vested Rights

A. Nonconforming Lots, Structures and Uses

1. Nonconforming Residential Lots:

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

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

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

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

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

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

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

2. Nonconforming Structures and Uses:

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

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

i) an existing nonconforming structure or use; and

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

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

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

473 3. Alteration, Reconstruction, Extension, or Structural Change of Nonconforming

474 Structures and Uses:

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

479 b. A zoning ordinance or by-law may permit, by right or by special permit,
480 nonconforming structures to be altered, reconstructed, extended, or structurally changed, and
481 nonconforming uses to be extended or changed, provided, in either case, that such actions do not
482 increase the specific nonconformity of the structure or use.

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

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

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

B. Vested Rights: Effective Date of Zoning Amendments

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

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

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

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

2. General Provisions:

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

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

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

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

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

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

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

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

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

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

A. Initiation: Adoption or change of zoning ordinances or by-laws may be initiated by the chief administrative officer of the city or town, or by submission to the chief administrative officer of a proposed zoning ordinance or by-law by the chief executive officer, if different, by

535 the board of appeals, by an individual owning land to be affected by change or adoption, by
536 request of registered voters of a town pursuant to section 10 of chapter 39, by 10 registered
537 voters in a city, by a planning board, by a regional planning agency, or by other methods
538 provided by municipal charter, ordinance, or by-law. The chief administrative officer shall
539 within 14 days of receipt of such zoning ordinance or by-law submit it to the planning board for
540 review, unless the proposal had been initiated by the planning board itself.

541 B. Hearings Required: No zoning ordinance or by-law or amendment thereto shall be
542 adopted until after the planning board in a city or town, and the legislative body of a city or a
543 committee designated or appointed for the purpose by said legislative body, has each held a
544 public hearing thereon, together or separately, at which interested persons shall be given an
545 opportunity to be heard. Said public hearing shall be held within 65 days after the proposed
546 zoning ordinance or by-law is submitted to the planning board by the legislative body or if there
547 is no planning board, within 65 days after the proposed zoning ordinance or by-law is submitted
548 to the chief administrative officer.

549 C. Notice: Notice of the time and place of such public hearing, of the subject matter,
550 sufficient for identification, and of the place where texts and maps thereof may be inspected shall
551 be published in a newspaper of general circulation in the city or town once in each of 2
552 successive weeks, the first publication to be not less than 14 days before the day of said hearing,
553 and by posting such notice in a conspicuous place in the city or town hall for a period of not less
554 than 14 days before the day of said hearing. Notice of said hearing shall also be sent by mail,
555 postage prepaid to the regional planning agency, if any, and to the planning board of each
556 abutting city and town. The regional planning agency, the planning boards of all abutting cities
557 and towns, and nonresident property owners who may not have received notice by mail as

specified in this section, may grant a waiver of notice or submit an affidavit of actual notice to the city or town clerk prior to action by the legislative body on a proposed zoning ordinance, by-law or change thereto. Zoning ordinances or by-laws may provide that a separate, conspicuous statement shall be included with property tax bills sent to nonresident property owners, stating that notice of such hearings under this chapter shall be sent by mail, postage prepaid, to any such owner who files an annual request for such notice with the city or town clerk no later than January first, and pays a reasonable fee established by such ordinance or by-law. In cases involving boundary, density or use changes within a district, notice shall be sent to any such nonresident property owner who has filed such a request with the city or town clerk and whose property lies in the district where the change is sought. No defect in the form of any notice under this chapter shall invalidate any zoning ordinances or by-laws unless such defect is found to be misleading.

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

E. Planning Board Report: No vote to adopt any such proposed ordinance or by-law or amendment thereto shall be taken until a report with recommendations by a planning board has been submitted to the legislative body, or 21 days after said hearing has elapsed without

581 submission of such report. After such notice, hearing and report, or after 21 days shall have
582 elapsed after such hearing without submission of such report, the legislative body may adopt,
583 reject, or amend and adopt any such proposed ordinance or by-law.

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

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

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

599 M. Review by the Attorney General: When zoning by-laws or amendments thereto are
600 submitted to the attorney general for approval as required by section 32 of chapter 40, the
601 attorney general shall also be furnished with a statement which may be prepared by the planning

602 board explaining the by-laws or amendments proposed, which statement may be accompanied by
603 explanatory maps or plans.

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

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

616 P. Claim of Invalidity: No claim of invalidity of any zoning ordinance or by-law arising
617 out of any possible defect in the procedure of adoption or amendment shall be made in any legal
618 proceedings and no state, regional, county, or municipal officer shall refuse, deny, or revoke any
619 permit, approval, or certificate because of any such claim of invalidity, unless legal action is
620 commenced within the time period specified in sections 32 and 32A of chapter 40 and notice
621 specifying the court, parties, invalidity claimed, and date of filing, is filed together with a copy of
622 the petition with the town or city clerk within 7 days after commencement of the action.

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

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

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

40A:8. Boards of Appeal, Zoning Administrators

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

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

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

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

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

649 F. Associate Members: Zoning ordinances or by-laws may provide for the appointments
650 in like manner of associate members of the board of appeals; and if provision for associate
651 members has been made the chairman of the board may designate any such associate member to
652 sit on the board in case of absence, inability to act or conflict of interest on the part of any
653 member thereof, or in the event of a vacancy on the board until said vacancy is filled in the
654 manner provided in this section.

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

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

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

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

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

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

666 H. Procedures:

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

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

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

684 office of the city or town clerk. Failure by the board to take final action within said 114 days or
685 extended time, if applicable, shall be deemed to be the grant of the appeal, application, or
686 petition. The petitioner who seeks such approval by reason of the failure of the board to take
687 final action within the time prescribed shall notify the city or town clerk, in writing, within 14
688 days from the expiration of said 114 days or extended time, if applicable, of such approval and
689 that notice has been sent by the petitioner to parties in interest. The petitioner shall send such
690 notice to parties in interest, by mail and each notice shall specify that appeals, if any, shall be
691 made pursuant to section 11 and shall be filed within 20 days after the date the city or town clerk
692 received such written notice from the petitioner that the board failed to take final action within
693 the time prescribed. After the expiration of 20 days without notice of appeal pursuant to section
694 11, or, if appeal has been taken, after receipt of certified records of the court in which such
695 appeal is adjudicated, indicating that such approval has become final, the city or town clerk shall
696 issue a certificate stating the date of approval, the fact that the board failed to take final action
697 and that the approval resulting from such failure has become final, and such certificate shall be
698 forwarded to the petitioner. The board shall, within the 114 day time limit, cause to be made a
699 detailed record of its proceedings, indicating the vote of each member upon each question, or if
700 absent or failing to vote, indicating such fact, and setting forth clearly the reason for its decision
701 and of its official actions, copies of all of which shall be filed in the office of the city or town
702 clerk and shall be a public record. Notice of the decision shall be mailed forthwith to the
703 petitioner, applicant or appellant, to the parties in interest designated in section 9D, and to every
704 person present at the hearing who requested that notice be sent to him and stated the address to
705 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 the date of such order or decision or within 30 days from the date on which the appeal, application or petition in question shall have been deemed denied in accordance with said section 8J, as the case may be, by having the petitioner 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 city or

town clerk shall be filed forthwith in the office of the zoning administrator and in the case of an appeal under this subsection 8I with the officer whose decision was the subject of the initial appeal to said zoning administrator. The zoning administrator shall forthwith transmit to the board of appeals all documents and papers constituting the record of the case in which the appeal is taken.

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

K. Rules: The board of appeals shall adopt rules, not inconsistent with the provisions of the zoning ordinance or by-law for the conduct of its business and for purposes of this chapter and shall file a copy of said rules with the city or town clerk. If a board of appeals has appointed a zoning administrator in accordance with subsection 8J said rules shall set forth the fact of such

751 appointment, the identity of the persons from time to time appointed to such position, the powers
752 and duties delegated to such individual and any limitations thereon.

753 40A:9. Permits and Approvals, Procedures, and Zoning Tools

754 A. Special Permits

755 1. Requirements:

756 a. General: Any zoning ordinance or by-law that provides for the issuance of special
757 permits shall state the types of land uses and development for which special permits are required
758 and the districts where such special permits are required. Special permits shall be issued only for
759 uses which are in harmony with the general purpose and intent of the ordinance or by-law, and
760 shall be subject to general or specific provisions set forth therein; and such permits may also
761 impose conditions, safeguards, and limitations on time or use.

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

770 c. Increases in Density or Intensity: Any zoning ordinance or by-law that provides for
771 special permits authorizing increases in permissible density of population or intensity of a

particular use shall provide that the petitioner or applicant shall, as a condition for the grant of the special permit, provide improvements or amenities in the public interest. Such zoning ordinances or by-laws shall state the specific types of improvements or amenities required, and the maximum increases in density of population or intensity of use which may be authorized by such special permits.

2. Procedures:

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

b. Review of Special Permit by Other Boards and Agencies: Zoning ordinances or by-laws may provide that petitions for special permits shall be submitted to and reviewed by any other town agency or board and may further provide that such reviews may be held jointly. Any such board or agency to which petitions are referred for review shall make such recommendations as they deem appropriate and shall send copies thereof to the special permit granting authority and to the applicant; provided, however, that failure of any such board or agency to make recommendations within 35 days of receipt by such board or agency of the petition shall be deemed lack of opposition thereto.

c. Final Action, Failure to Take Final Action, Appeal: The special permit granting authority shall 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 within 14 days in the office of the city or town clerk and shall be deemed a public record, and 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 such 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. Failure by the special permit granting authority to take final action within said 90 days or extended time, if applicable, shall be deemed to be a grant of the special permit. The petitioner who seeks such approval by reason of the failure of the special permit granting authority to act within such time prescribed, shall notify the city or town clerk, in writing within 14 days from the expiration of said 90 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 such 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 special permit granting authority failed to act 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 special permit granting authority 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.

d. Recordation of Special Permit: A special permit, or any extension, modification or renewal thereof, shall not 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:

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

(ii) if it is a special permit which has been approved by reason of the failure of the special 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 special

839 permit granting authority failed to act within the time prescribed, and no appeal has been filed,
840 and that the grant of the petition resulting from such failure to act has become final or that if such
841 appeal has been filed, that it has been dismissed or denied.

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

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

847 e. Lapse, Extension: A special permit granted under this section shall state that it will
848 lapse within a period of time specified by the special permit granting authority, not less than 3
849 years, if a substantial use thereof has not sooner commenced except for good cause due to
850 circumstances beyond the control of the petitioner or, in the case of a special permit for
851 construction, if construction has not begun by such date except for good cause due to
852 circumstances beyond the control of the petitioner. The period of time before which a special
853 permit shall lapse shall not include the time required to pursue or await the determination of an
854 appeal from the grant thereof referred to in section 11. Upon written application by the grantee of
855 a special permit, the special permit granting authority in its discretion and without a public
856 hearing may, by the same vote majority originally required to approve the special permit, extend
857 the time for the exercise of such special permit for a period of time not to exceed the original
858 duration of the special permit. Such application must be filed no later than 65 days prior to the
859 lapse of the special permit. If the permit granting authority does not grant the extension within
860 65 days of the date of application therefor, upon the lapse of the special permit, the special

permit may be re-established only after notice and a new hearing pursuant to the provisions of this section.

3. Special Permits for Specific Uses:

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

b. Adult Uses, Live Nudity: Any zoning ordinance or by-law that provides for special permits authorizing the establishment of adult bookstores, adult motion picture theaters, adult paraphernalia stores, adult video stores or establishments which display live nudity for their patrons as hereinafter defined may state the specific improvements, amenities or locations of proposed uses for which such permit may be granted and may provide that the proposed use be a specific distance from any district designated by zoning ordinance or by-law for any residential use or from any other adult bookstore or adult motion picture theatre or from any establishment licensed under the provisions of section 12 of chapter 138. Such zoning ordinance or by-law shall prohibit the issuance of such special permits to any person convicted of violating the provisions of section 63 of chapter 119 or section 28 of chapter 272.

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

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

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

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

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

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

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

B. Site Plan Review

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

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

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

c. set forth what constitutes a complete application;

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

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

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

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

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

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

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

3. Conditions, Safeguards, and Limitations:

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

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

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

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

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

7. Discretionary Approvals: Where an ordinance or by-law provides that a variance, special permit, or other discretionary zoning approval shall also require site plan review, the review of the site plan shall be integrated into the processing of the variance, special permit, or other discretionary zoning approval and not made the subject of a separate proceeding, hearing, or decision. In such case, the content requirements and approval criteria for a site plan as

specified in the zoning ordinance or by-law shall be followed, but this section 9B shall not otherwise apply.

8. Transition Provision: In cities or towns that adopted a zoning ordinance or by-law requiring some form of site plan review or site plan approval prior to the effective date of this act, the provisions of this Section 9B. shall not be effective with respect to such zoning ordinance or by-law until the date 2 years after the effective date of this act.

C. Variances

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

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

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

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

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

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

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

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

4. Conditions, Safeguards, and Limitations: The permit granting authority may impose conditions, safeguards and limitations both of time and of use, including the continued 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

1010 clerk that 20 days have elapsed after the decision has been filed in the office of the city or town
1011 clerk is recorded in the registry of deeds for the county and district in which the land is located
1012 and indexed in the grantor index under the name of the owner of record or is recorded and noted
1013 on the owner's certificate of title.

1014 The certification shall include either:

1015 a. a statement that no appeal has been filed or that if such appeal has been filed, that it has
1016 been dismissed or denied, or;

1017 b. if it is a variance which has been approved by reason of the failure of the permit
1018 granting authority to act thereon within the time prescribed, a copy of the petition for the
1019 variance accompanied by the statement of the city or town clerk stating the fact that the permit
1020 granting authority failed to act within the time prescribed, and no appeal has been filed, and that
1021 the grant of the petition resulting from such failure to act has become final or that if such appeal
1022 has been filed, that it has been dismissed or denied.

1023 The fee for recording or registering shall be paid by the owner or applicant.

1024 7. Lapse, Extension: If the rights authorized by a variance are not exercised within two
1025 years of the date of the grant of the variance such variance shall lapse; provided, however, that
1026 upon written application by the grantee of such variance, the permit granting authority in its
1027 discretion may extend the time for exercise of such rights for a period not to exceed one year.
1028 Such application must be filed no later than 65 days prior to the lapse of the variance. If the
1029 permit granting authority does not grant the extension within 65 days of the date of application
1030 therefor, upon the lapse of the variance, the variance may be re-established only after notice and
1031 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 forth

1076 compliance with the statutory requirements for the issuance of such variance, special permit, or
1077 site plan review and certifying that copies of the decision and all plans referred to in the decision
1078 have been filed with the planning board and city or town clerk.

1079 b. Final Unfavorable Decisions, Reconsideration: No appeal, application or petition
1080 which has been unfavorably and finally acted upon by the special permit granting or permit
1081 granting authority shall be acted favorably upon within 2 years after the date of final unfavorable
1082 action unless said special permit granting authority or permit granting authority finds, by a
1083 unanimous vote of a board of 3 members or by a vote of 4 members of a board of 5 members or
1084 two-thirds vote of a board of more than 5 members, specific and material changes in the
1085 conditions upon which the previous unfavorable action was based, and describes such changes in
1086 the record of its proceedings, and unless all but one of the members of the planning board
1087 consents thereto and after notice is given to parties in interest of the time and place of the
1088 proceedings when the question of such consent will be considered. The aforesaid restriction
1089 upon reconsideration shall not apply to applications for site plan review for uses allowed by-
1090 right.

1091 c. Withdrawal of Petition or Application: Any petition for a variance or application for a
1092 special permit or a site plan review which has been transmitted to the permit granting authority
1093 or special permit granting authority may be withdrawn, without prejudice by the petitioner prior
1094 to the publication of the notice of a public hearing thereon, but thereafter may be withdrawn
1095 without prejudice only with the approval of the special permit granting authority or permit
1096 granting authority.

1097 E. Inclusionary Zoning

1098 1. Authority: In furtherance of the purposes of zoning ordinances and by-laws stated in
1099 section 1 of this chapter and in the exercise of their home rule powers, a city or town, by
1100 ordinance or by-law, may require or provide incentives for the applicant for a residential
1101 development to provide inclusionary housing units within such development.

1102 2. Off-Site Units, Land Dedications, Payment of Funds: In lieu of constructing the
1103 required inclusionary housing units on-site, the ordinance or by-law may provide for the
1104 construction of such units off-site, the dedication of land for such purpose, or the payment of
1105 funds to a separate account created by the city or town sufficient for and dedicated to the
1106 provision of inclusionary housing, provided the applicant demonstrates to the satisfaction of the
1107 local approving authority that the units cannot be otherwise provided on-site or that an
1108 alternative proposal better meets the needs of the city or town with respect to the provision of
1109 inclusionary housing. Off-site units, land dedication, or payment in-lieu of units shall, in the
1110 opinion of the board or official designated by ordinance or by-law to administer the provisions of
1111 this section 9E and in consideration of local needs, provide inclusionary housing benefits roughly
1112 equivalent to the provision of on-site units.

1113 3. Dedicated Accounts: Cities and towns are authorized to establish a separate dedicated
1114 account for the deposit of funds received under this section, including Municipal Housing Trust
1115 Fund accounts under section 55C of chapter 44 or other dedicated accounts of similar purpose.
1116 Said funds shall be deposited with the treasurer and disbursed for inclusionary housing purposes
1117 in accordance with the ordinances, by-laws, or regulations of the city or town. Where the
1118 application of this section results in less than a full dwelling unit, the board may accept a
1119 prorated payment of funds in lieu of unit creation.

1120 4. Price or Rent Restriction: The inclusionary housing units shall be subject to an
1121 affordable housing restriction in accordance with sections 31 and 32 of chapter 184 or, if
1122 ineligible under said sections, restricted by other means as required in an ordinance or by-law for
1123 a period of not less than 30 years.

1124 5. Eligibility for Subsidized Housing Inventory: The ordinance or by-law may further
1125 require some or all of the inclusionary housing units to be low- or moderate-income housing as
1126 defined in section 20-23 of chapter 40B, and be eligible for inclusion on the local subsidized
1127 housing inventory subject to and in accordance with applicable regulations and guidelines of the
1128 Department of Housing and Community Development or successor agency. Nothing in this
1129 section shall be construed to require the Department of Housing and Community Development to
1130 include affordable units created hereunder on the subsidized housing inventory.

1131 6. Nothing in this section shall limit the authority of a planning board under section 81Q
1132 of chapter 41, the Subdivision Control Law.

1133 F. Development Impact Fees

1134 1. Authority:

1135 a. Any city or town that adopts a local ordinance or by-law requiring the payment of a
1136 development impact fee as a requirement of any permit or approval otherwise required for any
1137 proposed development having development impacts as defined in the ordinance or by-law, shall
1138 do so only in accordance with this section or any authority conferred by a special act. The
1139 development impact fee may be imposed only on construction, enlargement, expansion,
1140 substantial rehabilitation, or change of use of a development. The development impact fee shall
1141 be used solely for the purposes of defraying the costs of off-site public capital facilities to be

1142 provided or paid for by the city or town and which are either caused by and necessary to support
1143 or compensate for the proposed development, or, in the case of a city or town authorized to
1144 impose such fees under the provisions of a special act, then such fees may be used for the
1145 purposes set forth in the special act.

1146 b. Such off-site public capital facilities may include the provision of infrastructure,
1147 facilities, land, or studies associated with the following:

1148 (i) water supply, treatment, and distribution, both potable and for suppression of fires;

1149 (ii) wastewater treatment and sanitary sewerage;

1150 (iii) stormwater management and treatment;

1151 (iv) solid waste;

1152 (v) roads, public transportation, pedestrian ways, and bicycle paths; and

1153 (vi) parks, open space, and recreational facilities.

1154 c. Nothing in this section shall prohibit a city or town from imposing other fees
1155 or requirements for mitigation of development impacts which it may otherwise impose under
1156 state or local law and that are consistent with the constitution and laws of the Commonwealth.

1157 2. Limitations:

1158 a. No development impact fee under this section shall be imposed upon any affordable
1159 housing dwelling unit, regardless of how created or permitted, which is subject to a restriction on
1160 sale price or rent under the provisions of sections 31 and 32 of chapter 184 as amended ensuring

1161 that the unit will remain affordable for a period of at least 30 years. The foregoing limitation
1162 shall not apply to cities and towns imposing development impact fees under a special act.

1163 b. The fee shall not be expended for personnel costs, normal operation and maintenance
1164 costs, or to remedy deficiencies in existing facilities, except where such deficiencies are
1165 exacerbated by the new development, in which case the fee may be assessed only in proportion
1166 to the deficiency so exacerbated.

1167 3. Requirements:

1168 a. Prior to the imposition of development impact fees under this section, a city or town
1169 shall complete a study that:

1170 (i) analyzes any existing capital improvement plans and the infrastructure and capital
1171 facilities subject matter of a plan adopted under section 81D of chapter 41 or the capital facilities
1172 planning element of a local comprehensive plan adopted pursuant to Chapter 716 of the Acts of
1173 1989, as amended;

1174 (ii) estimates future development based on the then current zoning ordinance or by-law;

1175 (iii) assesses the impacts related to such development;

1176 (iv) determines the need for capital facilities required to address the impacts of the
1177 estimated development including excess facility capacity, if any, currently planned to
1178 accommodate future development;

1179 (v) develops cost projections for the needed capital facilities and documents costs of
1180 existing facilities with planned excess capacity; and

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

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

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

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

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

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

4. Administration:

1201 a. The ordinance or by-law may provide for a waiver or reduction of the development
1202 impact fee for any development that furthers an overriding public purpose as set forth in a plan
1203 adopted by the city or town under section 81D of chapter 41 or other plan designed to set goals
1204 for the development of land within the city or town.

1205 b. If the proposed development is located in more than one municipality, the impact fee
1206 shall be apportioned among the municipalities in accordance with the land area or other equitable
1207 measure of the impacts of the proposed development in each city or town.

1208 c. Any development impact fee assessed under this section shall be payable no sooner
1209 than the issuance of a building permit, or in the case of a phased development, for a building
1210 permit for any phase thereof. The fee shall be deposited to a separate, interest bearing account in
1211 the city or town in which the proposed development is located. Unless subject to section 4.d
1212 below, no development impact fee shall be paid to the general treasury or used as general
1213 revenues of the city or town subject to the provisions of section 53 of chapter 44.

1214 d. Any funds not expended or encumbered by the end of the calendar quarter immediately
1215 following 10 years from the date the development impact fee was paid shall, upon request of the
1216 applicant or its assigns, be returned with interest provided that an application for a refund
1217 prescribed in the ordinance or by-law has been submitted within one 180 calendar days prior to
1218 the expiration of the 10 year period. If no application for refund is received by the city or town
1219 within said period, any funds not expended or encumbered by the end of the calendar quarter
1220 shall then revert to and become part of the general fund under section 53 of chapter 44. In the
1221 event of any disagreement relative to who shall receive the refund, the city or town may retain
1222 said development impact fee pending instructions given in writing by the parties involved or by a

1223 court of competent jurisdiction. Notwithstanding the foregoing, a city or town authorized to
1224 impose development impact fees pursuant to a special act shall comply with the requirements set
1225 forth in such special act.

1226 e. The applicant and the municipality may agree that the applicant shall construct the
1227 public capital facility or a portion thereof for which the development impact fee was assessed in
1228 lieu of paying the development impact fee to the municipality, provided that the applicant shall
1229 not be required to construct such improvement if it chooses to pay the assessed development
1230 impact fee.

1231 G. Land Use Dispute Avoidance

1232 1. Applicability: As an optional means of avoiding or minimizing land use disputes, the
1233 owner of land or structures who has applied or intends to apply for a building permit, any permit
1234 or approval required under this chapter, an approval under sections 81K-GG of chapter 41, or a
1235 comprehensive permit under sections 20-23 of chapter 40B, may request of the public official or
1236 local board charged with acting on the application to undertake a land use dispute avoidance
1237 process as hereinafter provided.

1238 2. Initial Conflict Evaluation: The dispute avoidance process may include an initial
1239 conflict evaluation to determine if a further resolution effort is advisable, and if so, whether there
1240 should be subsequent resolution efforts to avoid or minimize disputes relating to the application.

1241 3. Participation: Both the conflict evaluation and any later resolution effort shall be
1242 voluntary for those participating requiring the joint written agreement of both the applicant and
1243 public official or local board which shall be filed with the city or town clerk.

1244 4. Neutral Facilitator: The conflict evaluation and any later resolution effort may be
1245 conducted by a neutral facilitator as defined in section 23C of chapter 233, selected from a list
1246 prepared by the Massachusetts Office of Dispute Resolution or its successor agency or its
1247 designee, or as chosen jointly by the applicant and the public official or local board. The
1248 facilitator and any associate assisting the facilitator shall comply with the standards of conduct of
1249 the Association for Conflict Resolution or as promulgated by the Massachusetts Office of
1250 Dispute Resolution or its successor agency or its designee.

1251 5. Costs: Funding for any conflict evaluation or resolution effort under this section may
1252 be as the applicant and the public official or local board may agree, or the public official or local
1253 board may provide for the imposition of reasonable fees for the employment of outside
1254 consultants, including the facilitator, in the same manner as set forth in section 53G of chapter
1255 44.

1256 6. Rules: Public officials or local boards may adopt, and from time to time amend, after a
1257 public hearing, rules to implement the conflict evaluation or resolution efforts undertaken
1258 pursuant to this section. Notice of the hearing on the proposed rules, including the location, date,
1259 and time of the hearing shall be filed with the city or town clerk and published once in a
1260 newspaper of general circulation in the city or town at least 14 days before the public hearing.

1261 7. Process of Conflict Evaluation: As part of the conflict evaluation, the facilitator may
1262 solicit information and opinions relating to the application, and may identify and notify those
1263 members of the public likely to be interested in or affected by the application. The facilitator
1264 may clarify the issues and investigate the willingness of all interested parties to work together
1265 with the applicant to resolve those issues. The facilitator may identify measures or community-

enhancing features that would benefit the neighborhood, the larger community, and the project itself. Based upon the evaluation, the facilitator may determine whether further resolution effort would be productive in reaching a consensus of those participating, with the understanding that the outcome may be the withdrawal or substantial modification of the application.

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

9. Report on Conflict Evaluation: In preparing a report on conflict evaluation, or on a later resolution effort, the facilitator shall not attribute statements, positions, ideas, or interests to specific individuals, organizations, or persons interviewed, and shall distribute copies of the report to those participating without prior review or approval of any participant. The conflict evaluation report shall indicate whether and how a subsequent resolution effort might be appropriate for the application involved, including elaborating on how it might be undertaken and by whom.

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

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

40A:10. Enforcement

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

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

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

D. Enforcement Procedures: If the zoning enforcement officer is requested in writing to enforce such ordinances or by-laws against any person allegedly in violation of the same, said

1309 officer shall notify, in writing, the party requesting such enforcement of any action or refusal to
1310 act, and the reasons therefor, within 14 days of receipt of such request.

1311 E. Penalties for Violations: Notwithstanding any other provision of general or special
1312 law, zoning ordinances and by-laws may provide a penalty of up to 1,000 dollars per violation;
1313 provided, however, that nothing herein shall be construed to prohibit such laws from providing
1314 that each day such violation continues shall constitute a separate offense.

1315 F. Limits to Enforcement: No action, suit, or proceeding shall be maintained in any court,
1316 nor any administrative or other action taken to recover a fine or damages or to compel the
1317 removal, alteration, or relocation of any structure or part of a structure or alteration of a structure
1318 by reason of any violation of any zoning by-law or ordinance except in accordance with the
1319 provisions of this section, section 8, and section 11.

1320 G. Duration of Ability to Enforce, Building Permit: If real property has been improved
1321 and used in accordance with the terms of the original building permit issued by a person duly
1322 authorized to issue such permits, no action, criminal or civil, the effect or purpose of which is to
1323 compel the abandonment, limitation or modification of the use allowed by said permit or the
1324 removal, alteration or relocation of any structure erected in reliance upon said permit by reason
1325 of any alleged violation of the provisions of this chapter, or of any ordinance or by-law adopted
1326 thereunder, shall be maintained, unless such action, suit or proceeding is commenced and notice
1327 thereof recorded in the registry of deeds for each county or district in which the land lies within 6
1328 years next after the commencement of the alleged violation of law. Such structures shall not be
1329 deemed to be a protected nonconforming structure under section 6A of this chapter unless such
1330 status is specifically conferred in the zoning ordinance or by-law.

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

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

40A:11. Judicial Review Procedures and Standards

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

1353 situated or, if the land is situated in Hampden county, either to said land court or, superior court
1354 department or to the division of the housing court department for said county, or if the land is
1355 situated in a county, region or area served by a division of the housing court department either to
1356 said land court or superior court department or to the division of said housing court department
1357 for said county, region or area, or to the division of the district court department within whose
1358 jurisdiction the land is situated except in Hampden county, by bringing an action within 20 days
1359 after the decision has been filed in the office of the city or town clerk. If said appeal is made to
1360 said division of the district court department, any party shall have the right to file a claim for trial
1361 of said appeal in the superior court department within 25 days after service on the appeal is
1362 completed, subject to such rules as the supreme judicial court may prescribe. Notice of the action
1363 with a copy of the complaint shall be given to such city or town clerk so as to be received within
1364 such 20 days. The complaint shall allege that the decision exceeds the authority of the board or
1365 authority, and any facts pertinent to the issue, and shall contain a prayer that the decision be
1366 annulled. There shall be attached to the complaint a copy of the decision appealed from, bearing
1367 the date of filing thereof, certified by the city or town clerk with whom the decision was filed. If
1368 the complaint is filed by someone other than the original applicant, appellant or petitioner, such
1369 original applicant, appellant, or petitioner and all members of the board of appeals, permit
1370 granting authority, or special permit granting authority shall be named as parties defendant with
1371 their addresses.

1372 B. Notice of Filing of Complaint: To avoid delay in the proceedings, instead of the usual
1373 service of process, the plaintiff shall within 14 days after the filing of the complaint, send written
1374 notice thereof, with a copy of the complaint, by delivery or certified mail to all defendants,
1375 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 decision if found to exceed the authority of such board, permit granting authority, or special permit granting authority or make such other decree as justice and equity may require. The foregoing remedy shall be exclusive, notwithstanding any defect of procedure or of notice other than notice by publication, mailing or posting as required by this chapter, and the validity of any action shall not be questioned for matters relating to defects in procedure or of notice in any other proceedings except with respect to such publication, mailing or posting and then only by a proceeding commenced within 90 days after the decision has been filed in the office of the city or town clerk, but the parties shall have all rights of appeal and exception as in other equity cases.

F. Special Provisions for Appealing Site Plan Review Decisions: Notwithstanding the foregoing, and except where a site plan is required in connection with the issuance of a special permit or variance, decisions made under site plan review pursuant to section 9B of this chapter,

whether made pursuant to statutory or home rule authority, may be appealed by a civil action in the nature of certiorari pursuant to section 4 of chapter 249, and not otherwise. All issues in any proceeding under this subsection shall have precedence over all other civil actions and proceedings. A complaint by a plaintiff challenging a site plan approval shall allege the specific reasons why the project fails to satisfy the requirements of section 9B, the zoning ordinance or by-law, or other applicable law and allege specific facts establishing how the plaintiff is aggrieved by such decision. A complaint by an applicant for site plan review challenging the denial or conditioned approval of a site plan shall similarly allege the specific reasons why the project properly satisfies the requirements of section 9B, the zoning ordinance or by-law, or other applicable law. The permit granting authority's decision in either case shall be affirmed unless the court concludes the permit granting authority abused its discretion under Section 9B, the zoning ordinance or by-law, or other applicable law in approving the project, approving with conditions, or denying the project.

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

H. Costs: Costs shall not be allowed against the board, permit granting authority, or special permit granting authority unless it shall appear to the court that the board, permit granting authority, or special permit granting authority in making the decision appealed from acted with gross negligence, in bad faith or with malice. Costs shall not be allowed against the party appealing from the decision of the board, permit granting authority, or special permit granting

1420 authority unless it shall appear to the court that said appellant or appellants acted in bad faith or
1421 with malice in making the appeal to the court.

1422 I. Requirement to Post Bond: The court shall require nonmunicipal plaintiffs to post a
1423 surety or cash bond in a sum of not less than 2,000 nor more than 15,000 dollars to secure the
1424 payment of such costs in appeals of decisions approving subdivision plans.

1425 J. Precedence: All issues in any proceeding under this section shall have precedence over
1426 all other civil actions and proceedings.

1427 K. Mediation of Land Use Appeals:

1428 1. Initiation, Time Periods: After the filing of an appeal hereunder, the parties may agree
1429 to mediate the decision appealed. In all cases, the parties shall file with the court a statement
1430 advising the court that the dispute has been submitted for mediation. If the parties agree to
1431 mediation, the mediation shall begin within 60 days of the date such statement was filed, or such
1432 other period as the parties may agree or the court may allow upon application by any party. The
1433 mediation shall conclude not later than 180 days after filing, provided that such period may be
1434 extended for an additional 180 days by joint written agreement of the parties, or for such other
1435 additional period as the court may allow upon application by any party.

1436 2. Selection of Mediator, Compensation, and Withdrawal from Mediation: The parties
1437 may select the mediator from a list provided by the court or otherwise as the parties may
1438 determine. The mediator shall be compensated by the parties as they may agree, or in the
1439 absence of agreement, as the court may determine. A party may withdraw from mediation at any
1440 time after written notification to the other parties and to the court, but shall remain responsible
1441 for that party's share of the costs of mediation until the time of withdrawal.

1442 3. Special Provisions: During the mediation any appeal otherwise pending shall be
1443 stayed. The mediator shall have the protections provided under section 23C of chapter 233. To
1444 the extent that public agencies are participants in the mediation, their deliberations shall be
1445 subject to the provisions of section 21(b) (9) of chapter 30A.

1446 4. Conclusion of Mediation: At the conclusion of the mediation, the mediator shall file
1447 with the court a statement describing whether the parties have come to agreement. If unresolved,
1448 the appeal will then go forward; if the matter has been resolved, the appeal will be dismissed
1449 with prejudice. The cost of mediation shall be distributed among the parties as a cost of the
1450 appeal as the parties may agree, or in the absence of agreement, as the court may determine.
1451 Mediation hereunder shall not be the only method of resolving a zoning appeal.

1452 40A:12. Transition Provisions

1453 Any rights under section 6 of chapter 40A and any zoning ordinance or by-law relating
1454 thereto that were finally acquired prior to [Date] shall continue in full force and effect for the
1455 periods of time specified in said statute and local zoning law.

1456 SECTION 2. Section 81D of chapter 41 of the General Laws, as appearing in the 2008
1457 Official Edition, is hereby amended by striking out section 81D and inserting in place thereof the
1458 following section 81D:-

1459 41:81D. Master Plan

1460 1. Requirement to Plan: A planning board established in any city or town shall make a
1461 master plan for such city or town. The plan shall take effect upon adoption by the legislative
1462 body as provided in subsection 6, below. For a plan to remain in effect, from time to time not to

exceed 10 years from the date of adoption, the planning board shall conduct a comprehensive review of the plan and may extend, revise, or remake the plan, and the plan or amendment thereto shall thereafter be re-adopted as provided in this section. The plan, once adopted, shall be the official master plan of the city or town, replacing any previously adopted master plans.

2. General Description of Plan:

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

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

1484 3. Required Subjects: The plan shall address the following 5 required subjects, described
1485 below in a general manner:

1486 a. Goals and Policies: A goals and policies statement that identifies the goals and policies
1487 of the municipality for its future growth, development, redevelopment, conservation, and
1488 preservation. Each community shall conduct a citizen participation process to determine
1489 community values, to establish goals, and to identify patterns of development, redevelopment,
1490 conservation, and preservation consistent with these goals. The goals and policies statement
1491 shall address the required and selected optional plan elements

1492 b. Housing:

1493 (i) An inventory of local housing and population characteristics, an assessment and
1494 forecast of housing needs; a statement of local housing goals, objectives, policies; and
1495 implementing measures. Where applicable, existing local housing plans and studies may be
1496 included by reference.

1497 (ii) An analysis of housing units by type of structure (e.g. single family, two family,
1498 multi-family); affordable housing and subsidized housing; housing available for rental; special
1499 needs housing; and housing for the elderly, including assisted living residences.

1500 (iii) An analysis of existing local policies, programs, laws, or regulations that encourage
1501 the preservation, improvement, and development of such housing, including an assessment of
1502 their adequacy.

1503 (iv) An evaluation of zoning and other policies to provide a variety of housing that meets
1504 a broad range of housing needs, including but not limited to the affordable housing needs of low,

1505 moderate, and median income households and the accessible housing needs of people with
1506 disabilities and special needs. The evaluation shall include specific measures for implementing
1507 the master plan in order to address these needs, including strategies, programs, and assistance for
1508 the preservation or rehabilitation of existing housing; the construction of new housing; and the
1509 adoption or amendment of local ordinances or bylaws and regulations permitting, encouraging,
1510 or requiring diversity in housing locations, types, designs, and area densities that offer
1511 alternatives to single family detached housing. A current housing production plan consistent
1512 with M.G.L. 760 CMR 56.03(4) shall constitute the subject matter relative to housing under this
1513 subsection b.

1514 c. Natural Resources and Energy:

1515 (i) A general overview of the significant natural and energy resources of the municipality.

1516 (ii) Identification of protected and unprotected wetlands and water resources, lands
1517 critical to sustaining surface and groundwater quality and quantity, environmentally sensitive
1518 lands, critical wildlife habitat and biodiversity, agricultural lands and forests. Priorities for
1519 protection of wildlife habitat, water resources, vistas and key landscapes, outdoor recreation
1520 facilities, and farm and forestry land shall be identified.

1521 (iii) An outline of local laws, regulations, policies, and strategies to address needs for the
1522 protection, restoration, and sustainable management of these resources, including wetlands and
1523 water resources, environmentally sensitive lands, critical wildlife habitat and biodiversity,
1524 agricultural lands, and forests; and to promote development that respects and enhances the state's
1525 natural resources.

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

d. Land Use and Zoning:

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

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

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

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

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

1569 of jobs, the retention of existing businesses, and the provision of space for new businesses;
1570 encourage the reuse and rehabilitation of existing infrastructure, including brownfields, rather
1571 than the construction of new infrastructure in undeveloped areas; and facilitate larger-scale
1572 economic redevelopment or development in industry clusters consistent or compatible with the
1573 regional and local economy.

1574 (iii) An assessment of opportunities and barriers to agriculture, including all branches of
1575 farming and forestry, where applicable.

1576 (iv) An assessment of opportunities and barriers to self-employment and home
1577 occupations, including but not limited to consideration of land use policies, infrastructure and
1578 utilities, and technology.

1579 b. Cultural Resources:

1580 (i) An inventory of the significant cultural, scenic, and historic structures, sites, and
1581 landscapes of the municipality, including archaeological resources.

1582 (ii) An assessment of policies and strategies to protect and manage the community's
1583 cultural resources, including but not limited to a community-wide preservation plan, ordinances
1584 or bylaws and incentives for historic preservation, and land use policies to facilitate the reuse of
1585 historic structures, where appropriate.

1586 c. Open Space and Recreation: An inventory of recreational facilities and open space
1587 areas of the municipality, and policies and strategies for the management, protection, and
1588 enhancement of such facilities and areas. A current Open Space and Recreational Plan approved

1589 by the Division of Conservation Services shall constitute the subject matter relative to open
1590 space and recreation hereunder.

1591 d. Infrastructure and Capital Facilities: An identification and analysis of existing and
1592 forecasted needs for infrastructure and facilities used by the public. Scheduled expansion or
1593 replacement of public facilities, infrastructure components such as water and sewer systems or
1594 circulation system components and the anticipated costs and revenues associated with
1595 accomplishment of such activities shall be detailed. This subject shall be required in a master
1596 plan if development impact fees are to be assessed under section 9F of chapter 40A. The master
1597 plan may be updated at any time to include this subject matter provided the requirements in
1598 subsections 5 and 6 are met.

1599 e. Transportation:

1600 (i) An inventory of existing and proposed circulation and transportation systems.

1601 (ii) An assessment of opportunities and barriers to increasing access to available or
1602 feasible transportation options, including land and water based public transit, bicycling, walking,
1603 and transportation services for populations with disabilities.

1604 (iii) Identification of strategic investment options for transportation infrastructure to
1605 encourage smart growth, maximize mobility, conserve fuel, and improve air quality; and to
1606 facilitate the location of new development where a variety of transportation modes can be made
1607 available.

1608 f. Partnership Planning: This subject shall be known as the “partnership plan,” and shall
1609 be required in a master plan if a city or town wishes to accept the provisions of chapter 40U.

1610 The partnership plan shall be consistent with this section 81D and the requirements set forth in
1611 chapter 40U relative thereto. A master plan may be updated at any time to include this subject
1612 matter provided the requirements in subsections 5 and 6 are met.

1613 5. Regional Plan, Self Assessment: Any required or selected optional subjects above shall
1614 include a self assessment against similar subject matter in a regional plan adopted by the regional
1615 planning agency under section 5 of chapter 40B and in effect, if any.

1616 6. Adoption of Plan:

1617 a. Proposal of the Plan: The plan shall only be made, extended, revised, or remade from
1618 time to time by a simple majority vote of the planning board after a public hearing, notice of
1619 which shall be posted and published in the manner prescribed for zoning amendments under
1620 section 7 of chapter 40A,

1621 b. Adoption of the Plan: Adoption of the plan, or the extension, revision, or remake of the
1622 plan, shall be by a simple majority vote the legislative body of the city or town; however, no vote
1623 of the legislative body to alter the plan or amendment as proposed by the planning board shall be
1624 other than by a two-thirds vote.

1625 c. The planning board shall, upon completion of any plan or report, or any change or
1626 amendment to a plan or report produced under this section, furnish a copy of such plan or report
1627 or amendment thereto, to the Department of Housing and Community Development.

1628 7. Regional Planning Agency, Optional Review and Certification of Plans:

1629 a. Review of Master Plan: Prior to local legislative adoption of a master plan under this
1630 section, the plan may, at the election of the planning board and chief executive officer, be

referred to the applicable regional planning agency for review and certification. The regional planning agency may, at its election, review the plan for certification, but must provide written notice to the city or town within 15 days from receipt of the plan if it intends not to review the plan. If the regional planning agency has elected to review the plan it shall act within 90 days of receipt of the plan. Failure to act within 90 days shall be deemed a plan certification by the regional planning agency. The 90 day review period shall be extended by not longer than 90 days by the regional planning agency upon written request by the planning board of the city or town.

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

c. Review of Partnership Plan: Review and certification by the regional planning agency of a partnership plan pursuant to Chapter 40U shall be in accordance with subsection 7.a, above,

and shall consider whether a proposed partnership plan is: (i) complete ; and (ii) consistent with the commonwealth's land use objectives as set forth in Chapter 40U. A partnership plan shall be determined to be complete if, in addition to the requirements for required subjects set forth in subsection 3 above of this section 81D it also contains all the elements required in section 4 of chapter 40U. A partnership plan shall be determined to be consistent with the commonwealth's land use objectives if it satisfies the minimum standards for consistency in accordance with section 5 of chapter 40U. The review process may be interactive and iterative between the regional planning agency and the planning board; changes to the partnership plan mutually agreed upon may be made by simple majority vote of the planning board during the review period or extensions thereof. Once the review is completed by the regional planning agency and the partnership plan is certified as complete and consistent, it may be brought to the local legislative body for adoption if the planning board so votes by a simple majority. A partnership plan that has been certified by the regional planning agency and adopted by the city or town shall be presumed to be in compliance with this section 81D and chapter 40U. A partnership plan that has not been so certified, for any reason including non-referral to the regional planning agency, shall not be in compliance with this section 81D and chapter 40U.

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

provided the requirements of each plan are met.

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

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

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

“Minor Subdivision” shall mean a subdivision created in accordance with section 81P, provided however that until rules and regulations are adopted by a planning board under 81P therefor, “minor subdivision” shall solely mean the division of a lot, tract, or parcel of land into 2 or more lots, tracts, or parcels where, at the time when it is made, every lot within the lot, tract or parcel so divided has frontage on: a) a public way or a way which the clerk of the city or town certifies is maintained and used as a public way; b) a way shown on a plan theretofore approved and endorsed in accordance with the subdivision control law; or c) a way in existence when the subdivision control law became effective in the city or town in which the land lies, having, in the opinion of the planning board, sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby, and for the installation of municipal services to serve such land and

the buildings erected or to be erected thereon. Such frontage shall be of at least such distance as is then required by the zoning ordinance or by-law, if any, of said city or town for erection of a building on such lot, and if no distance is so required, such frontage shall be of at least 20 feet.

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

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

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

For the purposes of the time within which a planning board must act, a plan shall be deemed submitted under this section as of the date of the next regularly scheduled meeting of the planning board, provided that during posted business hours the plan is both received by the planning board and filed with the town clerk no later than 7 calendar days prior to said meeting date, or 35 calendar days after such receipt by the planning board and filing with the town clerk, whichever shall first occur. An incomplete submission or one not in accordance with submittal

requirements may be the basis upon which the planning board may deny approval of the plan.

Notwithstanding the foregoing, a planning board or its designee may give notice to the applicant of how the application is incomplete or not in accordance with said submittal requirements and may grant to the applicant additional time to effect corrective measures.

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

41:81P. Minor Subdivisions

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

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

3) Rules and Regulations, Required Provisions: The rules and regulations for minor subdivisions shall: a) specify that an application for a minor subdivision may create up to 6 additional residential lots within the meaning of the subdivision control law, either on ways described in the definition of minor subdivision or on new ways; b) set forth the reasonable

1741 requirements and standards of the board for those existing ways described in the definition of
1742 minor subdivision, provided that no requirements shall be made for the location of such ways or
1743 for a roadway width of greater than 22 feet; c) set forth the reasonable requirements and
1744 standards of the board for the proposed ways shown on a plan, provided that no requirement may
1745 be made for a roadway width of greater than 22 feet; and d) establish a time period for the
1746 planning board to take final action and to file with the city or town clerk a certificate of such
1747 action within 65 days or less in the case of an existing way, or 95 days or less in the case of a
1748 new way.

1749 4) Rules and Regulations, Optional Provisions The rules and regulations for minor
1750 subdivisions may: a) notwithstanding subsection 1), above require a public hearing under Section
1751 81T of this chapter for minor subdivisions served by a new way; b) require that applications for
1752 minor subdivisions from the same lot, tract, or parcel from which the first minor subdivision was
1753 created not create more than the maximum number of additional lots in a set period of years; c)
1754 lessen or eliminate any requirement of section 81U of this chapter otherwise applicable to
1755 subdivisions; and d) lessen or eliminate any local rule or regulation adopted under section 81Q of
1756 this chapter otherwise applicable to subdivisions.

1757 5) Rules and Regulations, Optional Provisions Requiring Ratification by Legislative
1758 Body: Subject to ratification by the local legislative body by a simple-majority vote, the rules
1759 and regulations for minor subdivisions may: a) increase the maximum number of additional lots
1760 created in an application for a minor subdivision to a number greater than 6; and c) define
1761 “minor subdivision” more broadly than in section 81L of this chapter.

6) Alternate Procedures for Minor Subdivisions Until Rules and Regulations Adopted:

Until such rules and regulations are adopted, any person wishing to cause to be recorded a plan of land situated in a city or town in which the subdivision control law is in effect, who believes that his plan does not require approval under the subdivision control law, may submit his plan to the planning board of such city or town in the manner prescribed in section 81T, and, if the board finds that the plan does not require such approval, it shall forthwith, without a public hearing, endorse thereon or cause to be endorsed thereon by a person authorized by it the words “approval under the subdivision control law not required” or words of similar import with appropriate name or names signed thereto, and such endorsement shall be conclusive on all persons. Such endorsement shall not be withheld unless such plan shows a subdivision. If the board shall determine that in its opinion the plan requires approval, it shall within 21 days of such submittal, give written notice of its determination to the clerk of the city or town and the person submitting the plan, and such person may submit his plan for approval as provided by law and the rules and regulations of the board, or he may appeal from the determination of the board in the manner provided in section 81BB. If the board fails to act upon a plan submitted under this section or fails to notify the clerk of the city or town and the person submitting the plan of its action within 21 days after its submission, it shall be deemed to have determined that approval under the subdivision control law is not required, and it shall forthwith make such endorsement on said plan, and on its failure to do so forthwith the city or town clerk shall issue a certificate to the same effect. The plan bearing such endorsement or the plan and such certificate, as the case may be, shall be delivered by the planning board, or in case of the certificate, by the city or town clerk, to the person submitting such plan. The planning board of a city or town which has authorized any person, other than a majority of the board, to endorse on a plan the approval of

the board or to make any other certificate under the subdivision control law, shall transmit a written statement to the register of deeds and the recorder of the land court, signed by a majority of the board, giving the name of the person so authorized.

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

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

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

After January 1, 2017, no subdivision rule or regulation may be inconsistent with a plan adopted in compliance with section 81D of chapter 41. No subdivision rule or regulation 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.

After the effective date of the plan, a subdivision rule or regulation 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

1807 upon which a court or administrative agency may declare any relevant zoning ordinance or by-
1808 law provision to be invalid as applied to the property which is the subject of the action, suit, or
1809 administrative proceeding. For any amendment to a plan adopted after January 1, 2017, no such
1810 declaration of invalidity may be made in any action, suit, or administrative proceeding for a
1811 period of 12 months after the effective date of such plan amendment.

1812 For the purposes of this section only, a city or town without a current local plan under
1813 section 81D of chapter 41 may adopt an extant regional plan under section 5 of chapter 40B.
1814 Such adoption shall be by the same process specified in section 81D of chapter 41.

1815 SECTION 12. Section 81T of said chapter 41, as so appearing, is hereby amended by
1816 striking out, in lines 2-3 inclusive, the following words “or for a determination that approval is
1817 not required”.

1818 SECTION 13. Said section 81U of said chapter 41, as so appearing, is hereby amended
1819 by striking out, in lines 173-174 inclusive, the words “for a period of not more than three years”.

1820 SECTION 14. Section 81X of said chapter 41, as so appearing, is hereby amended by
1821 striking out, in lines 12-13 inclusive, the following words “such plan bears the endorsement of
1822 the planning board that approval of such plan is not required, as provided in section eighty-one P,
1823 or (3)”.

1824 SECTION 15. Said section 81X of said chapter 41, as so appearing, is hereby amended
1825 by striking out, in lines 17-20 inclusive, the following words “or that it is a plan submitted
1826 pursuant to section eighty-one P and that it has been determined by failure of the planning board
1827 to act thereon within the prescribed time that approval is not required,”.

1828 SECTION 16. Said section 81X of said chapter 41, as so appearing, is hereby amended
1829 by striking out the fourth paragraph and inserting in place thereof the following paragraphs:-

1830 Perimeter Plans: Notwithstanding the foregoing provisions of this section, the register of
1831 deeds shall accept for recording, and the land court shall accept with a petition for registration or
1832 confirmation of title, any plan bearing a professional opinion by a registered professional land
1833 surveyor that the property lines shown are the lines dividing existing ownerships, and the lines of
1834 streets and ways shown are those of public or private streets or ways already established, and that
1835 no new lines for division of existing ownership or for new ways are shown.

1836 Lot Line Changes: The register of deeds and the land court shall accept for recording or
1837 registration any plan showing a change in the line of any lot, tract, or parcel bearing a
1838 professional opinion by a registered professional land surveyor and a certificate by the person or
1839 board charged with the enforcement of the zoning ordinance or by-law of the city or town that
1840 the property lines shown: do not create an additional building lot; do not create, add to, or alter
1841 the lines of a street or way; do not render an existing legal lot or structure illegal; do not render
1842 an existing nonconforming lot or structure more nonconforming; and are not subject to
1843 alternative local rules and regulations for minor subdivisions under section 81P of this chapter.
1844 The recording of such plan shall not relieve any owner from compliance with the provisions of
1845 the Subdivision Control Law or of any other applicable provision of law.

1846 SECTION 17. Said section 81BB of said chapter 41, as so appearing, is hereby amended
1847 by striking out the first paragraph and inserting in place thereof the following paragraph:-

1848 Section 81BB. Any person, whether or not previously a party to the proceedings, or any
1849 municipal officer or board, aggrieved by a decision of a board of appeals under section 81Y, or

by any decision of a planning board concerning a plan of a subdivision or minor subdivision of land, or by the failure of such a board to take final action concerning such a plan within the required time, may appeal to the superior court for the county in which said land is situated or to the land court; provided, that such appeal is entered within 20 days after such decision has been recorded in the office of the city or town clerk or within 20 days after the expiration of the required time as aforesaid, as the case may be, and notice of such appeal is given to such city or town clerk so as to be received within such 20 days. A complaint by a plaintiff challenging a subdivision or minor subdivision approval under this section shall allege the specific reasons why the subdivision or minor subdivision fails to satisfy the requirements of the board's rules and regulations or other applicable law and allege specific facts establishing how the plaintiff is aggrieved by such decision. A complaint by an applicant challenging a subdivision or minor subdivision denial or conditioned approval under this section shall allege the specific reasons why the subdivision or minor subdivision properly satisfies the requirements of the board's rules and regulations or other applicable law. The board's decision in either case shall be affirmed unless the court concludes the board abused its discretion in approving, approving with conditions, or denying the subdivision or minor subdivision, as the case may be.

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

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

CHAPTER 40U

1872	LAND USE PARTNERSHIP ACT
1873	1. Preamble; Statement of the Commonwealth’s Land Use Objectives
1874	2. Definitions
1875	3. Preparation, Adoption, and Certification of a Partnership Plan
1876	4. Elements of a Partnership Plan
1877	5. Minimum Standards for Consistency with Commonwealth’s Land Use Objectives
1878	6. Preparation, Adoption, Review, and Certification of Implementing Regulations
1879	7. Partnership Community Effective Date
1880	8. Effect of Partnership Plan Status on Zoning and Land Use Regulation
1881	9. Review of Certification by Regional Planning Agency
1882	10. Expiration; Renewal of Certified Partnership Community Status; Amendments
1883	11. Priority for Infrastructure Funding
1884	12. Consideration Under State Programs
1885	40U:1. Preamble; Statement of the Commonwealth’s Land Use Objectives
1886	The sections herein this chapter shall be known and may be cited as the “Land Use
1887	Partnership Act.” The purposes of the act shall be to advance the commonwealth’s land use
1888	objectives, which are as follows:

1889 A) Support the revitalization of city and town centers and neighborhoods by promoting
1890 development that is compact, conserves land and integrates uses;

1891 B) Support the construction and rehabilitation of homes near jobs, infrastructure and
1892 transportation options to meet the needs of people of all abilities, income levels, and household
1893 types;

1894 C) Attract businesses and jobs to locations near housing, infrastructure, and
1895 transportation options;

1896 D) Protect environmentally sensitive lands, natural resources, agricultural lands, critical
1897 habitats, wetlands and water resources, and cultural and historic structures and landscapes;

1898 E) Construct and promote developments, buildings, and infrastructure that conserve
1899 natural resources by reducing waste and pollution through efficient use of land, energy and
1900 water;

1901 F) Support transportation options that maximize mobility, reduce congestion, conserve
1902 fuel and improve air quality;

1903 G) Maximize energy efficiency and renewable energy opportunities to reduce greenhouse
1904 gas emissions and consumption of fossil fuels;

1905 H) Promote equitable sharing of the benefits and burdens of development;

1906 I) Make regulatory and permitting processes for development clear, predictable,
1907 coordinated, and timely in accordance with smart growth and environmental stewardship; and

1908 J) Support the development and implementation of local and regional plans that have
1909 broad public support and are consistent with these purposes.

1910 40U:2. Definitions

1911 As used in this chapter, the following words shall, unless the context clearly requires
1912 otherwise, have the following meanings:

1913 “Affordable housing” shall have the definition found in Chapter 40A.

1914 “By-right” shall have the definition found in Chapter 40A.

1915 “Chief executive officer” shall have the definition found in Chapter 40A.

1916 “Constructively approved” means deemed approved by the failure of the granting
1917 authority to issue a decision or determination within the time prescribed, as it may be extended
1918 by written agreement between the applicant and the granting authority; provided that an
1919 applicant who seeks approval by reason of the failure of the granting authority to act within such
1920 time prescribed, shall so notify the city or town clerk, and parties in interest, in writing within 14
1921 days from the expiration of the time prescribed or extended time, if applicable, of such approval.

1922 “Development agreement”, a contract entered into between a municipality or
1923 municipalities and a holder of property development rights, the principal purpose of which is to
1924 establish the development regulations that will apply to the subject property during the term of
1925 the agreement and to establish the conditions to which the development will be subject including,
1926 without limitation, a schedule of development impact fees.

1927 “Economic development district” shall mean a zoning district that: permits or allows
1928 commercial and/or industrial use; or permits or allows mixed use including commercial and/or
1929 industrial use; and is an eligible location.

1930 “Eligible location” shall mean an area that by virtue of its physical and regulatory
1931 suitability for development, the adequacy of transportation and other infrastructure and the
1932 compatibility of proximate land uses is, in the determination of the regional planning agency, a
1933 suitable location for development of the type contemplated by a partnership plan. Any area that
1934 would qualify as an “eligible location” under chapter 40R shall automatically qualify as an
1935 “eligible location” for a residential development district.

1936 “Housing target number” shall mean a number equal to 5 percent of the total number of
1937 year-round housing units enumerated for the municipality in the latest available United States
1938 census as of the date on which the plan was submitted to the regional planning agency.

1939 “Implementing regulations” shall mean the local zoning ordinances or by-laws,
1940 subdivision rules and regulations, and other local land use regulations, or amendments thereof,
1941 necessary to effectuate the minimum standards for consistency with the commonwealth’s land
1942 use objectives established or required by a partnership plan.

1943 “Interagency planning board” shall mean a board comprised of the secretary of Housing
1944 and Economic Development, the secretary of Energy and Environmental Affairs, and the state
1945 permit ombudsman, or their designees, together with a representative designated by the
1946 Massachusetts Association of Regional Planning Agencies (the “regional representative”), a
1947 representative designated by the Massachusetts Municipal Association (the “municipal
1948 representative”), and a representative designated by the Massachusetts Association of Planning

1949 Directors (the “planning representative”). The state permit ombudsman shall serve as the chair
1950 of the board and shall vote only in the case of a tie.

1951 “Low impact development techniques” shall mean stormwater management techniques
1952 appropriate to the size, scale, and location of the development proposal that limit off-site
1953 stormwater runoff (both peak and non-peak flows) to levels substantially similar to natural
1954 hydrology (or, in the case of a redevelopment site, that reduce such flows from pre-existing
1955 conditions), by emphasizing decentralized management practices and the protection of on-site
1956 natural features.

1957 “Minimum area density” shall mean the land area required for a given unit of
1958 development, which shall not necessarily be expressed as a lot size requirement.

1959 “Natural resource protection zoning” shall mean the power to protect natural resources by
1960 limiting development in areas designated by the state, a regional planning agency, or by a city or
1961 town as having significant natural or cultural resource values by requiring minimum area
1962 densities of one dwelling unit per ten or more acres.

1963 “Open space residential design” shall mean a process for the cluster development of land
1964 that: requires identification of the significant natural features of the land and concentrates
1965 development by use of reduced dimensional requirements in order to preserve those natural
1966 features; preserves at least 50 percent of the land’s developable area in a natural, scenic or open
1967 condition or in agricultural, farming or forestry use; and permits the development of a number of
1968 new housing units at least equal to the quotient of the land’s developable area divided by the
1969 minimum lot area per housing unit required by the zoning ordinance or by-law. For the purposes
1970 of this definition, the land’s developable area shall be determined pursuant to applicable state

1971 and local land use and environmental laws and regulations, and the zoning ordinance or by-law,
1972 without regard in either case to the suitability of soils or groundwater for on-site wastewater
1973 disposal.

1974 “Other local land use regulations” shall mean all local legislative, regulatory, or other
1975 actions which are more restrictive than state requirements, if any, including subdivision and
1976 board of health rules and regulations, local wetlands ordinances or by-laws, and other local
1977 ordinances, by-laws, codes, and regulations.

1978 “Partnership community” shall mean a community for which a partnership plan and
1979 implementing regulations have been certified by the applicable regional planning agency,
1980 adopted by the municipality, and remain in effect.

1981 “Partnership plan” shall mean the subject matter contained in section 81D.4.f of chapter
1982 41 prepared by the planning board in accordance with sections 4 and 5 of this chapter 40U and
1983 which has been certified by the applicable regional planning agency.

1984 “Prompt and predictable permitting” shall mean that zoning and other local land use
1985 regulations allow development to proceed by right by means of permitting processes that are
1986 designed to result in final written decisions on all local permits and approvals in less than 180
1987 days from the date of the filing of a complete application. For commercial and industrial
1988 development, local permitting pursuant to chapter 43D shall also be deemed prompt and
1989 predictable permitting.

1990 “Rate of development”, local legislative or regulatory measures adopted by cities and
1991 towns under this chapter to regulate the number of permits for new construction or approvals of

1992 new building lots issued in a defined period of time or otherwise in accordance with defined
1993 standards and criteria.

1994 “Regional planning agency” shall mean the regional or district planning commission
1995 established pursuant to chapter 40B for the region within which a municipality is located. The
1996 term shall also mean the Martha’s Vineyard Commission, as described in Chapter 831 of the
1997 Acts of 1977, and the Cape Cod Commission, as described in Chapter 716 of the Acts of 1989,
1998 the Franklin Council of Governments, as described in Chapter 151 of the Acts of 1996, and the
1999 Northern Middlesex Council of Governments, as described in Chapter 420 of the Acts of 1989.

2000 “Residential development district” shall mean a zoning district that: permits or allows
2001 residential use at a density of not less than 4 units per acre of developable land for single-family
2002 residential use, not less than 8 units per acre of developable land for two- and three-family and
2003 attached townhouse residential use, and not less than 12 units per acre of developable land for
2004 multi-family residential use, or permits or allows mixed use including residential use at such
2005 density; is in an eligible location; and does not impose other requirements that add unreasonable
2006 costs or otherwise unreasonably impair the economic feasibility of residential development at
2007 such density. A zoning district that permits or allows mixed use may qualify as both an economic
2008 development district and a residential development district, if the standards for both districts are
2009 met. The implementing regulations for any residential development district that permits or
2010 allows mixed use shall contain adequate provisions to ensure that any contemplated contribution
2011 towards the housing target number to be provided by such district will be achieved. To achieve
2012 the minimum densities and housing target number, the implementing regulations may employ
2013 zoning techniques such as infill development, cottage zoning, transfer of development rights, and
2014 accessory dwelling units. The foregoing minimum density for single-family residential use may

2015 be reduced to not less than 2 units per acre of developable land upon a determination by the
2016 regional planning agency that the lack of adequate water supply and/or wastewater infrastructure
2017 within the municipality prevents full compliance with the minimum density standard. If there is
2018 no public water supply or public wastewater infrastructure existing anywhere within the
2019 municipality, then the minimum density for single-family residential use may be reduced to not
2020 less than 2 units per acre of developable land without the need for a determination by the
2021 regional planning agency.

2022 40U:3. Preparation, Adoption, and Certification of a Partnership Plan

2023 A. A planning board may prepare, and from time to time amend or renew, a proposed
2024 partnership plan for a municipality.

2025 B. The partnership plan shall be reviewed, certified, and adopted pursuant to the
2026 requirements of subsections 4-7 of section 81D of chapter 41.

2027 40U:4. Elements of a Partnership Plan

2028 A partnership plan shall be consistent with section 81D of chapter 41 and in addition shall
2029 address at least the following five areas: economic development, housing, open space protection,
2030 water management, and energy management.

2031 The partnership plan shall contain:

2032 A. an overall statement of the land use goals and objectives of the municipality for its
2033 future growth and development, including specific reference to each of the five areas;

2034 B. a description of the zoning and other land use regulation policies that will be used to
2035 implement those goals and objectives, including with respect to each of the five areas;

2036 C. an assessment of the infrastructure improvements needed to support the
2037 implementation policies and strategies identified in B, above;

2038 D. an overall assessment of the plan's consistency with the commonwealth's land use
2039 objectives set forth in section 1 herein; and

2040 E. an assessment of the plan's specific compliance with the minimum standards for
2041 consistency set forth in section 5, below.

2042 The partnership plan may include materials prepared within the last 5 years as part of a
2043 local planning document, including a master plan prepared pursuant to section 81D of chapter
2044 41.

2045 The partnership plan shall be established and implemented in ways that protect and
2046 affirmatively promote equal opportunity and diversity, consistent with stated goals of the
2047 commonwealth. Each municipality, in preparing and implementing its partnership plan, shall
2048 consider the likely effects that the plan will have on achieving non-discrimination, diversity, and
2049 equal opportunity.

2050 40U:5. Minimum Standards for Consistency with Commonwealth's Land Use
2051 Objectives

2052 The minimum standards for consistency with the commonwealth's land use objectives
2053 may be set forth in regulations duly promulgated by the Interagency Planning Board.

2054 Notwithstanding the foregoing, for plans submitted for certification within the first 5
2055 years of the effective date of passage of this act, a determination of consistency with the

2056 commonwealth's land use objectives shall be mandatory if the following minimum standards
2057 have been satisfied:

2058 A. The plan establishes prompt and predictable permitting of commercial and/or
2059 industrial development within one or more economic development districts. This standard may
2060 be waived or modified upon a determination by the regional planning agency that adequate
2061 alternatives for economic development exist elsewhere in the region and are more appropriately
2062 located there.

2063 B. The plan establishes prompt and predictable permitting of residential development
2064 within one or more residential development districts that can collectively accommodate, in the
2065 determination of the regional planning agency, a number of new housing units (excluding new
2066 housing units, other than accessory apartments, which are restricted, through zoning or other
2067 legal means, as to the number of bedrooms or as to the age of their residents) equal to the
2068 housing target number. For the initial certification of a plan, a municipality's housing target
2069 number shall be reduced by the number of new housing units for which building permits were
2070 issued within 2 years prior to the municipality's effective date, to the extent such building
2071 permits were issued within residential development districts for which there was prompt and
2072 predictable permitting at the time of building permit issuance.

2073 C. The plan requires that, for any zoning district that requires a minimum lot area of
2074 40,000 square feet or more for single-family residential development, development of 5 or more
2075 new housing units utilize open space residential design, except upon a determination by the
2076 regional planning agency that open space residential design is not feasible. In districts requiring
2077 minimum lot areas of between 40,000 and 80,000 square feet in nitrogen sensitive areas as

2078 defined under Title 5 of the Environmental Code, the minimum preservation requirement of 50
2079 percent set forth in section 2, Open Space Residential Design, shall be modified to equal the
2080 percentage resulting from the subtraction of 40,000 square feet from the lot size requirement,
2081 divided by the lot size requirement, and multiplied by 100.

2082 D. The plan requires, through zoning or general ordinances or by-laws, all development
2083 that disturbs more than one acre of land, including development by-right, utilize low impact
2084 development techniques.

2085 E. The plan establishes prompt and predictable permitting of renewable or alternative
2086 energy generating facilities, renewable or alternative energy research and development facilities,
2087 or renewable or alternative energy manufacturing facilities, within one or more zoning districts
2088 that are eligible locations.

2089 The Interagency Planning board shall promulgate regulations to effect the purposes of
2090 this act. To assist municipalities in this effort, the regulations to be promulgated by the
2091 Interagency Planning Board hereunder shall include at least one model provision for
2092 implementing regulations for open space residential design, low impact development, and clean
2093 energy generation/cogeneration facilities that would satisfy the standards hereof.

2094 40U:6. Preparation, Adoption, Review, and Certification of Implementing Regulations

2095 Prior to or following municipal adoption of a partnership plan, the city or town may
2096 prepare proposed implementing regulations for the partnership plan.

2097 B. Upon completion of the proposed implementing regulations, the planning board and
2098 chief executive officer may submit the proposed implementing regulations to the regional
2099 planning agency for certification.

2100 C. Within 90 days of receiving a submission, the regional planning agency shall
2101 determine whether the proposed implementing regulations are consistent with the certified
2102 partnership plan. The implementing regulations shall be deemed consistent with the certified
2103 partnership plan if they effectuate the minimum standards for consistency with the
2104 commonwealth's land use objectives established or required by the certified partnership plan. If
2105 the regional planning agency determines that the implementing regulations are consistent with
2106 the certified partnership plan, then the agency shall issue a written certification to that effect. If
2107 the regional planning agency determines that the regulations do not effectuate the minimum
2108 standards for consistency, then the agency shall provide the municipality with a written statement
2109 of the reasons for its determination. A municipality may re-submit for certification at any time
2110 modified implementing regulations that address the issues set forth in the agency's statement of
2111 reasons. If the regional planning agency does not issue a certification or provide a statement of
2112 reasons within 90 days after receiving implementing regulations (including re-submitted
2113 implementing regulations), then the implementing regulations shall be deemed certified. The
2114 municipality shall have the option of submitting its implementing regulations together with its
2115 submission of its partnership plan pursuant to section 4 herein, in which case the regional
2116 planning agency shall review both the partnership plan and the implementing regulations within
2117 the same 90 day period.

2118 D. Following certification by the regional planning agency, the implementing regulations
2119 may be adopted by the municipality according to the procedures and requirements for each type
2120 of local law or regulation.

2121 E. The town clerk shall within 20 days of the final approval of all implementing
2122 regulations file a true copy of the implementing regulations with the regional planning agency.

2123 F. Amendments to the Implementing Regulations by the legislative body or a board made
2124 subsequent to certification may lead to withdrawal of certification by the regional planning
2125 agency.

2126 40U:7. Partnership Community Effective Date

2127 Within 15 days of receipt by the regional planning agency of a true copy of certified
2128 implementing regulations duly adopted by the city or town pursuant to a certified partnership
2129 plan, the agency shall notify the municipality in writing that it is deemed a “partnership
2130 community”. The date of that notification shall be deemed the “municipality’s effective date”.

2131 40U:8. Effect of Partnership Plan Status on Zoning and Land Use Regulation

2132 A. Following the municipality’s effective date, local zoning ordinances or by-laws,
2133 subdivision rules and regulations, and other local land use regulations (other than certified
2134 implementing regulations) which are determined to be inconsistent with the certified partnership
2135 plan or the certified implementing regulations shall be deemed invalid. Such a determination
2136 may be sought and obtained through any means otherwise available by statute for the
2137 determination of the validity of such land use regulations. Any material amendment to a
2138 certified partnership plan or certified implementing regulations that has not been prepared,

2139 certified, and adopted in accordance with the provisions of section 81D of chapter 41 and this
2140 chapter shall be presumed to be inconsistent with the certified partnership plan.

2141 B. If a municipality has issued, at the time of the municipality's effective date, a special
2142 permit that in itself allows new housing units equal to one-half or more of the municipality's
2143 housing target number, and if such special permit remains in effect for at least 2 years after the
2144 municipality's effective date, then residential development under such special permit which
2145 otherwise qualifies hereunder shall also be deemed by right.

2146 C. If at any time more than 2 years after the municipality's effective date the total number
2147 of housing units for which building permits have been applied for within the residential
2148 development districts since the municipality's effective date is greater than the housing target
2149 number (adjusted pro rata for the number of years since the municipality's effective date divided
2150 by the ten-year time frame of the plan), but the total number of housing units for which building
2151 permits have been issued within the residential development districts is less than the pro rata
2152 housing target number, then the provisions of this subsection shall be in effect. During such time
2153 period, any applications for building permits or other local land use permits for residential
2154 development within such residential development districts shall deemed constructively approved
2155 if not acted upon within 180 days after receipt of permit applications. In addition, an application
2156 received under this section shall be subject only to those conditions that are necessary to ensure
2157 substantial compliance of the proposed development project with applicable laws and
2158 regulations; and it may be denied only on the grounds that the proposed development project
2159 does not substantially comply with applicable laws and regulations or the applicant failed to
2160 submit information and fees required by applicable laws and regulations and necessary for an
2161 adequate and timely review of the development project. The foregoing provisions shall no

longer be in effect once the total number of housing units for which building permits have been issued within such residential development districts equals or exceed the pro rata housing target number.

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

1. Rate of Development: The power to regulate rate of development, as defined herein. A zoning ordinance or by-law that limits the rate of development of new housing units (a "rate of development measure") shall not be declared exclusionary, a denial of substantive due process, or otherwise against public policy, provided that it complies with the following conditions. Within residential development districts identified under section 5.B, above, the rate of development measure may limit the number of building permits issued in any twelve-month period to an amount equal to or greater than one-half of the housing target number. In the event the municipality meets its housing target number prior to the expiration of the 10-year term of the plan, it may amend said ordinance or by-law to restrict the by-right development of new housing units within residential development districts for the remainder of the term. For areas not located within residential development districts identified under section 5.B, above, any rate of development measure shall be consistent with the following additional element of the partnership plan. The plan shall contain consistent policies and strategies for the implementation of rate of development measures that include a study of the need for such measures, a methodology by which to determine a reasonable rate of issuance of either permits for new construction or approvals of new building lots, a time horizon within which such measures shall remain in effect, and a periodic review schedule. A rate of development measure shall not restrict the construction

of, or creation of building lots for, affordable housing units as that term is defined under chapter 40A and it shall not apply to structures accessory to residential uses nor to construction work upon an existing dwelling unit.

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

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

4. Development Agreements: The power to enter into development agreements as defined herein. A development agreement is a contract between the applicant and a city or town under which the applicant may agree to contribute public capital facilities to serve the proposed development and the municipality or both, to build affordable housing either on site or off site, to dedicate or reserve land for open space community facilities or recreational use or to contribute funds for any of these purposes. The development agreement shall function as a bona fide local

2207 land use regulation, establishing the permitted uses and densities within the development, and
2208 any other terms or conditions mutually agreed upon between the applicant and the municipality.
2209 A development agreement shall vest land use and development rights in the property, and such
2210 rights would not be subject to subsequent changes in development laws or regulations for the
2211 duration of the agreement. Any such development agreement shall be consistent with the
2212 partnership plan and may be entered into by the chief executive officer following a majority vote
2213 of the governing body.

2214 5. Development Impact Fees: Development impact fees imposed pursuant to section 9F
2215 of chapter 40A may, in addition to the off-site public capital facilities listed in subsection 1.b of
2216 said section, be used to defray the costs of the following off-site public capital facilities: public
2217 elementary and secondary schools, libraries, municipal offices, affordable housing, and public
2218 safety facilities.

2219 40U:9. Review of Certification by Regional Planning Agency

2220 A. Any certification or determination of non-certification by a regional planning agency
2221 with respect to a partnership plan or implementing regulations or a material amendment of either
2222 is subject to review by the Interagency Planning Board. The Interagency Planning Board may,
2223 upon the request of the subject municipality or upon its own motion, review any such decision in
2224 an informal, non-adjudicatory proceeding, may request information from any third party and may
2225 modify or reverse such decision if the same does not comply with the provisions hereof.

2226 B. If a municipality provides written notice to the Interagency Planning Board of the
2227 certification by a regional planning agency of a partnership plan or implementing regulations or a
2228 material amendment of either, including a deemed certification resulting from a regional

2229 planning agency's failure to act, then the board may only review such certification if it
2230 commences such review with 60 days of such certification.

2231 C. The Interagency Planning Board may through regulation establish a procedure for
2232 reviewing and approving guidelines prepared by regional planning agencies to be used in the
2233 certification of plans, implementing regulations and material amendments. If a certification or
2234 determination of non-certification under review by the Interagency Planning Board has been
2235 issued by the regional planning agency based upon an approved guideline, then the board may
2236 only modify or reverse such decision for inconsistency with the approved guideline.

2237 40U:10. Expiration; Renewal of Certified Partnership Community Status; Amendments

2238 A. A municipality's status as a partnership community shall expire 10 years after the
2239 municipality's effective date, unless a renewal partnership plan, together with any necessary
2240 implementing regulations, is prepared, certified, and adopted in accordance with the provisions
2241 of section 81D of chapter 41 and this chapter prior to such date. Each such renewal plan shall
2242 also expire in 10 years. Notwithstanding the foregoing, the expiration of a municipality's status
2243 as a partnership community shall not affect the vesting provisions currently applicable to the
2244 municipality under section 8 of this chapter 40U. Notwithstanding the foregoing, the previously
2245 certified implementing regulations shall continue to be deemed valid until such time as the
2246 community duly adopts new regulations.

2247 B. From and after a municipality's effective date, any material amendment to a
2248 partnership plan or to any certified implementing regulations shall be prepared, certified and
2249 adopted in accordance with the provisions of section 81D of chapter 41 and this chapter. The

2250 Interagency Planning Board may by regulation define categories of amendments that shall be
2251 deemed non-material.

2252 40U:11. Priority for Infrastructure Funding

2253 The Executive Office of Housing and Economic Development, the Executive Office of
2254 Energy and Environmental Affairs, the Executive Office of Transportation, and the Executive
2255 Office of Administration and Finance shall, when awarding discretionary funds for local
2256 infrastructure improvements, give priority consideration to infrastructure improvements
2257 identified in the partnership plans of partnership communities. Within 90 days of the effective
2258 date of this act, the governor shall issue regulations providing a priority in the allocation of state
2259 discretionary funding for partnership communities. Said regulations shall apply to the
2260 distribution of funds, whether appropriated or derived through bonding, for all programs listed in
2261 the Commonwealth Capital program, so-called, as it is administered by the Executive Office of
2262 Energy and Environmental Affairs; the programs of the Massachusetts School Building
2263 Authority; the programs for roadway, bridge, transit, bicycle, and pedestrian improvements
2264 overseen by the Executive Office of Transportation and Public Works; and such other programs
2265 as the governor may indicate by regulation, provided however that no priority consideration
2266 issued pursuant to this act will be allowed to deny funding to a municipality that might otherwise
2267 qualify for grants or loans which may be needed to protect the immediate public safety, as
2268 determined in a waiver from the provisions of this section issued by the secretary of the
2269 responsible executive office. Said regulations will ensure that all decision-making bodies of the
2270 commonwealth shall, in regard to the programs listed above, increase the score of the applicant
2271 municipality by 20 percent for any partnership community, above the score it would otherwise
2272 achieve. This 20 percent bonus shall be in addition to, rather than as a substitute for other

2273 elements of the scoring process which might reasonably be related to criteria associated with the
2274 Commonwealth's Sustainable Development Principles, so-called, as issued and approved from
2275 time to time by the governor. Nothing herein shall be construed to reduce the scoring preference
2276 already provided to municipalities participating in the Commonwealth Capital program.

2277 40U:12. Consideration Under State Programs

2278 State agencies responsible for regulatory and/or capital spending programs that have a
2279 material effect on land use and development within partnership communities shall take into
2280 account the land use goals, objectives and policies of such communities, as set forth in their
2281 partnership plans, in administering such programs.

2282 BUDGET

2283 SECTION Item 7002-0013 is hereby amended by adding the following:- “provided, that
2284 not more than \$1,000,000 shall be expended for technical assistance grants to municipalities for
2285 the preparation of plans and implementing regulations, and grants are to be administered by the
2286 Interagency Planning Board; provided further, that not more than \$500,000 shall be expended for
2287 technical assistance grants to regional planning agencies for the certification of plans and
2288 implementing regulations and the preparation of guidelines, and such grants are to be
2289 administered by the Interagency Planning Board; and provided further, priority for the municipal
2290 grants administered by the Interagency Planning Board shall be given to those municipalities
2291 identified by the applicable regional planning agencies as being most likely to prepare and adopt
2292 partnership plans and implementing regulations, if provided with financial assistance.”