

**SENATE . . . . . No. 783**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Nine**  
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An Act Relative to Community Planning..

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

1           WHEREAS, Article 89 of the amendments to the constitution of the commonwealth,  
2           which was ratified by the voters in 1966, empowers municipalities to “exercise any power or  
3           function which the general court has power to confer upon it, which is not inconsistent with the  
4           constitution or laws enacted by the general court”;

5           WHEREAS, statutes governing municipal zoning, subdivision control, and planning in  
6           Massachusetts have not been updated in over thirty years;

7           WHEREAS, credible studies and reports have documented that Massachusetts’  
8           antiquated and confusing framework of municipal, zoning, subdivision control, and planning  
9           laws promotes inefficient land use practices that are contrary to smart growth;

10          WHEREAS, poorly planned residential, commercial, and industrial development  
11          exacerbates the affordable housing shortage and threatens the natural and cultural heritage of  
12          Massachusetts;

13 WHEREAS, the Massachusetts legislature provided in 2000 through the passage of the  
14 community preservation act a new financial tool for municipal open space protection, affordable  
15 housing, and historic preservation;

16 NOW, THEREFORE, the time has arrived for the Massachusetts legislature to enhance  
17 and modernize the regulatory tools for municipal zoning, subdivision control, and planning to  
18 guide local growth through the following bill, which shall be known as the community planning  
19 act.

20 SECTION 1. Section 1A of chapter 40A of the General Laws, as appearing in the 2006  
21 official edition, is hereby amended by inserting the following definition:-

22 “Development impact fee”, a fee imposed by city zoning ordinance or town zoning by-  
23 law for the purpose of offsetting the impacts of a development, and in accordance with the  
24 provisions of section 9D of this chapter.

25 SECTION 2. Said section 1A of said chapter 40A, as so appearing, is hereby amended  
26 by inserting the following definition:-

27 “Rate of development”, local legislative or regulatory measures adopted by cities and  
28 towns under section 9F of this chapter to regulate the number of permits for new construction or  
29 approvals of new building lots issued in a defined period of time or otherwise in accordance with  
30 defined standards and criteria.

31 SECTION 3. Said chapter 40A, as so appearing, is hereby amended by inserting after  
32 section 1A the following section:-

33 Section 40A:2.Construction and Purposes

34 (A) Rule of Construction

35 This chapter shall be so construed as to give full effect to the home rule authority of cities  
36 and towns to act with respect to land use planning and regulation under Article 89 of the  
37 amendments to the constitution of the commonwealth. It is hereby acknowledged that the source  
38 of authority of cities and towns with respect to zoning is article 60 of said amendments, derived  
39 through article 89. Nothing in this chapter shall be construed as limiting the constitutional  
40 authority of cities and towns unless the language in this chapter expressly so states. Wherever  
41 the language of this chapter purports to authorize or enable, it shall be so construed only where  
42 such authority is not otherwise available to cities and towns under the constitution or laws of the  
43 commonwealth, and in all other cases such language shall be deemed illustrative only.

44 (B) Public Purposes

45 Cities and towns have the authority to adopt zoning ordinances and by-laws for the  
46 protection of the public health, safety, and general welfare. Cities and towns have the authority  
47 to advance some or all of the zoning objectives listed below and may advance other zoning  
48 objectives not so listed as they deem appropriate.

49 (1) The implementation of a plan adopted by the city or town under section 81D of  
50 chapter 41.

51 (2) The orderly and sustainable growth, development, redevelopment, conservation,  
52 and preservation of a city or town which promotes the types, patterns, and intensities of land use  
53 contained in a plan adopted by the city or town under section 81D of chapter 41.

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

56           (4)     The efficient resolution of planning and regulatory conflicts involving public and  
57 private interests.

58           (5)     The use of innovative development laws, regulations, and planning practices such  
59 as development agreements, development impact fees, mitigation measures, design review, inter-  
60 municipal transfers of development rights, form-based zoning, agricultural zoning, natural  
61 resource protection zoning, special district overlays, village districts, inclusionary zoning  
62 provisions which require or provide incentives for the creation of below-market-rate housing,  
63 mediation and dispute resolution, and urban growth boundaries.

64           (6)     The delineation and balancing of urban and rural development.

65           (7)     The achievement of a balance of housing choices, types, and opportunities for all  
66 income levels and groups, including the creation of below-market-rate housing, the preservation  
67 of existing housing stock and the preservation of affordability in housing.

68           (8)     The integration of residential and commercial, civic, cultural, governmental,  
69 recreational, and other compatible land uses at locations that maximize efficiencies in  
70 transportation energy use.

71           (9)     The adequate provision and distribution of educational, health, cultural, and  
72 recreational facilities.

73           (10)    The preservation or enhancement of community amenities or features of  
74 significant architectural, historical, cultural, visual, aesthetic, scenic, or archaeological interest.

75           (11)   The protection of the environment and the conservation of natural resources,  
76 including those qualities of the environment and natural resources set forth in article 97 of the  
77 constitution of the commonwealth.

78           (12)   The retention of open land for agricultural production, forest products,  
79 horticulture, aquaculture, tourism, outdoor recreation, and freshwater and marine fisheries

80           (13)   The protection of public investment in infrastructure systems.

81           (14)   An energy efficient, convenient, and safe transportation infrastructure with as  
82 wide a choice of modes as practical, including, wherever possible, maximal access to public  
83 transit systems and non-motorized modes.

84           (15)   The efficient use of energy and the reduction of pollution from energy generation,  
85 including the promotion of renewable energy sources and associated technologies.

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

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

92           (18)   The accommodation of regional growth in a fair, equitable, and sustainable  
93 manner among municipalities, including coordination of land uses with contiguous  
94 municipalities, other municipalities, the state, and other agencies, as appropriate, especially with

95 regard to resources and facilities that extend beyond municipal boundaries or have a direct  
96 impact on other municipalities.

97 (19) The implementation of rate of development measures of defined duration during  
98 which planning or zoning studies are undertaken, and the longer-term use of such measures in a  
99 manner consistent with a plan adopted by the city or town under section 81D of chapter 41.

100 (20) The implementation of a plan adopted by a regional planning agency under  
101 section 5 of chapter 40B.

102 SECTION 4. Section 3 of said chapter 40A, as so appearing, is hereby amended by  
103 inserting, after the words “or restrict the”, in line 25, the following word:- minimum.

104 SECTION 5. Said section 3 of said chapter 40A, as so appearing, is hereby amended by  
105 striking out, in line 66, the word “or”, and inserting in place thereof the word:- of.

106 SECTION 6. Section 4 of said chapter 40A, as so appearing, is hereby amended by  
107 inserting, after the word “permitted.”, in line 3, the following words:- However, this requirement  
108 shall not apply to any provision thereof not uniformly applicable where the ordinance or by-law  
109 states a valid planning or zoning basis rationally related to the distinguishing characteristics of  
110 such structures or uses.

111 SECTION 7. Section 5 of said chapter 40A, as so appearing, is hereby amended by  
112 inserting, at the beginning of the fifth paragraph, the following words:- Except where a lesser  
113 majority vote has been prescribed in a zoning ordinance or by-law adopted by a two-thirds vote  
114 of the local legislative body,

115 SECTION 8. Said section 5 of said chapter 40A, as so appearing, is hereby amended by  
116 striking out, in lines 109-111, the words “provided, however, that such ordinance or amendment  
117 shall subsequently be forwarded by the city clerk to the office of the attorney general.”.

118 SECTION 9. Said section 5 of said chapter 40A, as so appearing, is hereby amended  
119 by inserting, after the tenth paragraph, the following paragraphs:-

120 After January 1, 2014, no zoning ordinance or by-law may be inconsistent with a plan  
121 adopted by the city or town under section 81 D of chapter 41. No zoning ordinance or by-law  
122 shall be deemed inconsistent with the plan if it furthers, or at least does not impede, the  
123 achievement of the plan's goals and policies, and if it is not incompatible with the plan's  
124 proposed land uses and development patterns.

125 After the effective date of the plan, a zoning ordinance or by-law shall enjoy a rebuttable  
126 presumption in any action, suit, or administrative proceeding that its provisions are not  
127 inconsistent with the plan. If the presumption is rebutted, inconsistency may serve as the basis  
128 upon which a court or administrative agency may declare any relevant zoning ordinance or by-  
129 law provision to be invalid as applied to the property which is the subject of the action, suit, or  
130 administrative proceeding. For any amendment to a plan adopted after January 1, 2014, no such  
131 declaration of invalidity may be made in any action, suit, or administrative proceeding for a  
132 period of 12 months after the effective date of such plan amendment.

133 SECTION 10. Said chapter 40A, as so appearing, is hereby amended by striking out  
134 section 6 and inserting in place thereof the following sections:-

135 Section 6A. Nonconforming Lots, Structures and Uses

136 (A) Nonconforming residential lots

137 (1) Increases in lot area, frontage, width, or depth of a zoning ordinance or by-law  
138 shall not apply to a lot for single- or two-family residential use which on the date of the first  
139 publication of notice of the public hearing on such ordinance or by-law required by section 5 that  
140 renders the lot nonconforming:

141 (i) was shown or described as a separate lot on a recorded plan or deed; and

142 (ii) conformed to the lot area, frontage, lot width, and depth requirements in effect on  
143 the date of said notice; and

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

147 (iv) was not held in common ownership with any adjoining land.

148 (2) A lot described in 6A(A)(1) shall have vital access to and frontage on a way of  
149 sufficient width, grade, and construction as set forth in regulations established by the planning  
150 board.

151 (3) Whenever the lines of a lot described in 6A(A)(1) are changed in any way that  
152 renders the lot more conforming, the resulting boundaries of the lot shall govern the application  
153 of this section.

154 (4) Whenever any lot described in 6A(A)(1) comes into common ownership with  
155 adjacent land, such lot and adjacent land shall be merged and combined for the purposes of this



156 section. Common ownership shall include lots held by separate legal entities, persons, or trusts  
157 under common control or having common beneficial interests.

158 (B) Lawfully nonconforming structures and uses

159 (1) A lawfully nonconforming structure or use shall mean a structure or use lawfully  
160 in existence on the date of the first publication of notice of the public hearing on such ordinance  
161 or by-law required by section 5 rendering such structure or use nonconforming. For the purposes  
162 of this section, a structure or use lawfully in existence shall not include a structure or use in  
163 violation of the zoning ordinance or by-law, nor a structure built without a legally required  
164 building permit.

165 (2) Adoption or amendment of a zoning ordinance or by-law shall not apply to any  
166 lawfully existing nonconformity of: i) a lawfully existing nonconforming structure or use; and ii)  
167 structures and uses lawfully begun prior to the first publication of notice of the public hearing on  
168 the adoption or amendment of the relevant zoning ordinance or by-law required by section five.

169 (3) A zoning ordinance or by-law may regulate a nonconforming structure or use if  
170 abandoned or if discontinued for a period of 2 years or more. Abandonment shall consist of any  
171 overt act, or failure to act, that would indicate that the owner neither claims or retains any intent  
172 to continue the nonconforming structure or use, unless the owner can demonstrate an intent not  
173 to abandon it. An involuntary interruption of a nonconforming structure or use, such as by fire  
174 and natural catastrophe, does not establish the intent to abandon.

175 (4) This subsection 6A(b) shall not apply to establishments which display live nudity  
176 for their patrons, as defined in section 9A, adult bookstores, adult motion picture theaters, adult  
177 paraphernalia shops, or adult video stores subject to the provisions of section 9A.

178           (C)    Alteration, reconstruction, extension, or structural change of lawfully  
179 nonconforming structures and uses

180           (1)    A zoning ordinance or by-law shall not prohibit the alteration, reconstruction,  
181 extension, or structural change to a lawfully nonconforming single- or two-family residential  
182 structure, provided all such construction satisfies the applicable dimensional requirements of the  
183 current zoning ordinance or by-law.

184           (2)    A zoning ordinance or by-law may permit, as of right or by special permit,  
185 lawfully nonconforming structures or uses to be altered, reconstructed, extended, or structurally  
186 changed, provided that such actions do not increase the specific nonconformity of the structure  
187 or use.

188           (3)    A zoning ordinance or by-law may permit, by special permit, nonconforming  
189 structures or uses to be altered, changed, reconstructed, or extended in a manner that increases  
190 the specific nonconformity of the structure or use, provided that the special permit granting  
191 authority finds that such actions are not substantially more detrimental to the neighborhood than  
192 the existing lawfully nonconforming structure or use.

193           (4)    A zoning ordinance or by-law may regulate nonconforming structures differently  
194 than nonconforming uses.

195           (5)    A zoning ordinance or by-law may vary by zoning district(s) the requirements for  
196 the alteration, reconstruction, extension or structural change for all lawfully nonconforming  
197 structures and uses.

198           Section 6B. Vested Rights: Effective Date of Zoning Amendments

199 (A) Building permits and special permits

200 (1) Adoption or amendment of a zoning ordinance or by-law shall not apply to a  
201 building permit or special permit issued prior to the date of the first publication of notice of the  
202 public hearing on the adoption or amendment required by section 5 provided that:

203 (i) construction under the building permit is commenced within 6 months after  
204 issuance and is carried through to completion as continuously and expeditiously as is reasonable;  
205 or

206 (ii) the use or construction authorized under the special permit is commenced within  
207 two years after issuance and is carried through to completion as continuously and expeditiously  
208 as is reasonable.

209 (B) Subdivision plans

210 (1) Adoption or amendment of a zoning ordinance or by-law shall not apply to a  
211 definitive subdivision plan or to modifications or amendments to such plan under section 81W of  
212 chapter 41 for a period of three years after the original definitive subdivision plan approval,  
213 provided such approval occurs prior to the date of the first publication of notice of the public  
214 hearing on the adoption or amendment of the relevant zoning ordinance or by-law required by  
215 section 5.

216 (C) General provisions

217 (1) The vesting provisions of this section 6B shall be extended for a period of time  
218 equal to the duration of:

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

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

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

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

229 SECTION 11. Section 7 of said chapter 40A, as so appearing, is hereby amended by  
230 inserting after the word "violation", in line 44, the following words:- , except that such structures  
231 shall not be deemed to be a protected nonconforming structure under section 6A of this chapter  
232 unless such status is specifically provided for in the zoning ordinance or by-law.

233 SECTION 12. Said chapter 40A, as so appearing, is hereby amended by inserting after  
234 section 7 the following new section:-

235 Section 7A. Site plan review

236 (A) As used in this section, "site plan" shall mean the submission made to a  
237 municipality that includes documents and drawings required by an ordinance or by-law to  
238 determine whether a proposed use of land or structures is in compliance with applicable local  
239 ordinances or by-laws, to evaluate the impacts of the proposed use of land or structures on the

240 neighborhood and/or community, and to evaluate and propose site design modifications that will  
241 lessen those impacts.

242 (B) In addition to the home rule authority of cities and towns to require site plan  
243 review, a city or town may adopt a local ordinance or by-law under this section requiring the  
244 submission, review, and approval of a site plan before authorization is granted for the use of land  
245 or structures governed by a zoning ordinance or by-law.

246 (C) Such ordinance or by-law requiring site plan review shall:

247 (1) establish which uses of land or structures are subject to site plan review;

248 (2) specify the local boards or officials charged with reviewing and approving site  
249 plans, which may differ for different types, scales, or categories of uses of land or structures;

250 (3) establish the submission and review process for a site plan submitted in  
251 connection with an application for a variance, special permit, or other discretionary zoning  
252 approval. This submission and review may be conducted as part of the review of the application  
253 for discretionary approval or may be a separate review process under subsection (c)(4) below;

254 (4) establish the submission, review, and approval process for applications not  
255 governed by the procedures for review of discretionary zoning approval under subsection (c)(3)  
256 above, which may include the requirement of a public hearing held pursuant to the provisions in  
257 section eleven of this chapter. Approval of a site plan under this subsection (4) shall require a  
258 simple majority vote of the full board and shall be made within the time limits prescribed by  
259 ordinance or by-law, not to exceed the time limits for special permits contained in section nine of

260 this chapter. If no decision is issued within the time limit prescribed, the site plan shall be  
261 deemed constructively approved as provided in section 9, paragraph 11 of this chapter;

262 (5) establish standards and criteria by which the use of land or structures and its  
263 impact on the neighborhood shall be evaluated; and

264 (6) contain provisions that make the terms, conditions, and content of the approved  
265 site plan enforceable by the municipality, which may include the requirement of performance  
266 guarantees.

267 (D) The local board or official charged with review of site plans may adopt, and from  
268 time to time amend, rules to implement the local site plan ordinance or by-law adopted under this  
269 section.

270 (E) A site plan submitted for the use of specific land or structures provided in  
271 subsection (c)(4) shall be approved if the site plan:

272 (1) satisfies the procedural and submission requirements of the site plan review  
273 process applicable to the specific land or structures;

274 (2) complies with the regulations applicable to such land or structures in the local  
275 zoning ordinance or by-law; and

276 (3) meets such standards and criteria as the local zoning ordinance or by-law provides  
277 by which the use of land or structures and its impact on the neighborhood shall be evaluated.

278 (F) A site plan approved hereunder may include reasonable conditions, safeguards,  
279 and limitations to mitigate the impacts of a specific use of land or structures on the  
280 neighborhood.

281 (G) Decisions made under site plan review may be appealed as specified in the  
282 ordinance or by law, which may include direct judicial review pursuant to section seventeen of  
283 this chapter.

284 (H) Zoning ordinances or by-laws shall provide that a site plan approval granted  
285 under this section shall lapse within a specified period of time, not more than two years from the  
286 date of the filing of such approval with the city or town clerk, if substantial use or construction  
287 has not yet begun, except as extended for good cause by the approving authority designated  
288 under (c)(2) above. Such extension shall not include time required to pursue or await the  
289 determination of an appeal under subsection (g) above. The aforesaid maximum period of two  
290 years may, by ordinance or by-law, be increased to a longer maximum period.

291 (I) The board designated by ordinance or by-law to review site plans under this  
292 section may, by rules and regulations adopted by such board, provide for the imposition of  
293 reasonable fees for the employment of outside consultants in the same manner as set forth in  
294 section 53G of chapter 44.

295 SECTION 13. Section 9 of said chapter 40A, as so appearing, is hereby amended by  
296 striking out the fourth paragraph and inserting in place thereof the following paragraph:-

297 Zoning ordinances or by-laws may authorize the transfer of development rights of land  
298 within a city or town, or within two or more cities and towns that have adopted complementary  
299 ordinances or by-laws. Such authorization may be by special permit or by other methods,  
300 including, but not limited to, the applicable provisions of sections 81K to 81GG, inclusive, of  
301 chapter 41, and in accordance with a planning board's rules and regulations governing  
302 subdivision control.

303 SECTION 14. Said section 9 of said chapter 40A, as so appearing, is hereby amended by  
304 striking out the first sentence in the seventh paragraph, and inserting in place thereof the  
305 following sentence:- “Cluster development” means a residential development in which reduced  
306 dimensional requirements allow the developed areas to be concentrated in order to create  
307 permanently preserved open land elsewhere on the plot.

308 SECTION 15. Said section 9 of said chapter 40A, as so appearing, is hereby amended by  
309 inserting after the word “plot”, in line 59, the following words:- or to be conveyed or owned in a  
310 manner specifically prescribed in the ordinance or by-law.

311 SECTION 16. Said section 9 of said chapter 40A, as so appearing, is hereby amended by  
312 striking out the twelfth paragraph and inserting in place thereof the following paragraph:-

313 Each application for a special permit shall be filed by the petitioner with the city or town  
314 clerk and a copy of said application, including the date and time of filing certified by the city or  
315 town clerk, shall be filed forthwith by the petitioner with the special permit granting authority.  
316 The special permit granting authority shall hold a public hearing, for which notice has been given  
317 as provided in section eleven, on any application for a special permit within sixty-five days from  
318 the date of filing of such application; provided, however, that a city council having more than  
319 five members designated to act upon such application may appoint a committee of such council  
320 to hold the public hearing. The decision of the special permit granting authority shall be made  
321 within ninety days following the date of the close of such public hearing. The required time  
322 limits for a public hearing and said action may be extended by written agreement between the  
323 petitioner and the special permit granting authority. A copy of such agreement shall be filed in  
324 the office of the city or town clerk. Unless a lesser majority is specified in the zoning ordinance



325 or by-law, issuance of a special permit under this section shall require a vote of two-thirds of the  
326 entire special permit granting authority in the case of an authority with more than five members,  
327 the vote of at least four members of a five-member authority, or the vote of all members of an  
328 authority comprised of fewer than five members.

329 SECTION 17. Said section 9 of said chapter 40A, as so appearing, is hereby amended by  
330 striking out the fourteenth paragraph and inserting in place thereof the following paragraphs:-

331 A special permit granted under this section shall state that it will lapse within a period of  
332 time specified by the special permit granting authority, not more than two years, if a substantial  
333 use thereof has not sooner commenced except for good cause or, in the case of a permit for  
334 construction, if construction has not begun by such date except for good cause. The aforesaid  
335 maximum period of two years may, by ordinance or by-law, be increased to a longer maximum  
336 period. The period of time before which a special permit shall lapse shall not include the time  
337 required to pursue or await the determination of an appeal from the grant thereof referred to in  
338 section seventeen.

339 Upon written application by the grantee of a special permit, the special permit granting  
340 authority in its discretion and without a public hearing may, by the same vote majority originally  
341 required to approve the special permit, extend the time for the exercise of such special permit for  
342 a period of time not to exceed the original duration of the special permit. Such application must  
343 be filed no later than sixty-five days prior to the lapse of the special permit. If the permit  
344 granting authority does not grant the extension within sixty-five days of the date of application  
345 therefor, upon the lapse of the special permit, the special permit may be re-established only after  
346 notice and a new hearing pursuant to the provisions of this section.

347 SECTION 18. Said chapter 40A, as so appearing, is hereby amended by inserting after  
348 section 9C the following new section:-

349 Section 9D. Development impact fee

350 (A) Authority

351 (1) In addition to its home rule authority to impose a development impact fee, a city  
352 or town may adopt a local ordinance or by-law under this section that requires the payment of a  
353 development impact fee as a condition of any permit or approval otherwise required for any  
354 proposed development within the scope of this section, and having development impacts as  
355 defined in the ordinance or by-law. The development impact fee may be imposed only on  
356 construction, enlargement, expansion, substantial rehabilitation, or change of use of a  
357 development. The development impact fee shall be used solely for the purposes of defraying the  
358 costs of capital facilities to be provided or paid for by the city or town and which are caused by  
359 and necessary to support or compensate for the proposed development. Such capital facilities  
360 may include the costs related to the provision of equipment, infrastructure, facilities, or studies  
361 associated with the following: schools; libraries; municipal offices; water supply; sewers; storm  
362 water management and treatment; pollution abatement; solid waste processing and disposal;  
363 traffic mitigation; public transportation; child care; parks, playgrounds, and other recreational  
364 facilities; police, fire, ambulance, rescue and other public safety facilities; affordable housing; or  
365 other capital improvements.

366 (2) Nothing in this section shall prohibit a city or town from imposing other fees  
367 or requirements for mitigation of development impacts which it may otherwise impose under  
368 state or local law and that are consistent with the constitution and laws of the Commonwealth.

369 (B) Limitations

370 (1) No development impact fee under this section shall be imposed upon any dwelling  
371 unit, regardless of how created or permitted, which is subject to a restriction on sale price or rent  
372 under the provisions of chapter 184 of the general laws, as amended, ensuring that the unit will  
373 remain affordable for a period of at least 30 years to households at or below the area median  
374 income as most recently defined by the United States department of housing and urban  
375 development or successor agency.

376 (2) The fee shall not be expended for personnel costs, normal operation and  
377 maintenance costs, or to remedy deficiencies in existing facilities, except where such deficiencies  
378 are exacerbated by the new development, in which case the fee may be assessed only in  
379 proportion to the deficiency so exacerbated.

380 (C) Requirements

381 (1) Prior to the imposition of development impact fees under this section, a city or  
382 town shall complete a study that: (i) analyzes existing capital improvement plans or the facilities  
383 element of a plan adopted under section 81D of chapter 41; (ii) estimates future development  
384 based on the then current zoning ordinance or by-law; (iii) assesses the impacts related to such  
385 development; (iv) determines the need for capital facilities required to address the impacts of the  
386 estimated development including excess facility capacity, if any, currently planned to  
387 accommodate future development; (v) develops cost projections for the needed capital facilities  
388 and documents costs of existing facilities with planned excess capacity; and (vi) establishes the  
389 amount of any development impact fee authorized under this section in accordance with a  
390 methodology determined pursuant to the study. The study shall be updated periodically to reflect

391 actual development activity, actual costs of infrastructure improvements completed or underway,  
392 plan changes, or amendments to the zoning ordinance or by-law.

393 (2) A development impact fee shall have a rational nexus to, and shall be roughly  
394 proportionate to, the impacts created by the development as determined by the study described in  
395 (c)(1) above evaluating said impacts.

396 (3) The purposes for which the fee is expended shall reasonably benefit the proposed  
397 development

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

401 (D) Administration

402 (1) The ordinance or by-law may provide for a waiver or reduction of the  
403 development impact fee for any development that furthers an overriding public purpose as set  
404 forth in a plan adopted by the city or town under section 81D of chapter 41.

405 (2) If the proposed development is located in more than one municipality, the impact  
406 fee shall be apportioned among the municipalities in accordance with the land area or other  
407 equitable measure of the impacts of the proposed development in each city or town.

408 (3) Any development impact fee assessed under this section shall be deposited to a  
409 separate, interest bearing account in the city or town in which the proposed development is  
410 located. Unless subject to section (d)(4) below, no development impact fee shall be paid to the

411 general treasury or used as general revenues of the city or town subject to the provisions of  
412 section 53 of chapter 44 of the General Laws.

413 (4) Any funds not expended or encumbered by the end of the calendar quarter  
414 immediately following 10 years from the date the development impact fee was paid shall, upon  
415 request of the applicant or its assigns, be returned with interest provided that an application for a  
416 refund prescribed in the ordinance or by-law has been submitted within one 180 calendar days  
417 prior to the expiration of the 10 year period. If no application for refund is received by the city  
418 or town within said period, any funds not expended or encumbered by the end of the calendar  
419 quarter shall then revert to and become part of the general fund under section 53 of chapter 44.  
420 In the event of any disagreement relative to who shall receive the refund, the city or town may  
421 retain said development impact fee pending instructions given in writing by the parties involved  
422 or by a court of competent jurisdiction.

423 SECTION 19. Said chapter 40A, as so appearing, is hereby amended by inserting after  
424 section 9D the following new section:-

425 Section 9E. Land use dispute avoidance

426 (A) As an optional means of avoiding or minimizing land use disputes, the owner of  
427 land or structures who has applied or intends to apply for a building permit, any permit or  
428 approval required under this chapter, an approval under sections 81K-GG of chapter 41, or a  
429 comprehensive permit under sections 20-23 of chapter 40B, may request of the public official or  
430 local board charged with acting on the application to undertake a land use dispute avoidance  
431 process as hereinafter provided. Such request shall be made in writing and duly noted in the  
432 notice of the public meeting of the local board that would respond to such request, and if made to

433 a public official other than a local board, such official shall file a notice of such request with the  
434 city or town clerk at least 48 hours prior to responding to such request.

435 (B) The dispute avoidance process may include an initial conflict assessment to  
436 determine if a further resolution effort is advisable in accordance with the procedures set out in  
437 this section, or as they may otherwise in writing jointly agree.

438 (C) Both the conflict assessment and any later resolution effort shall be voluntary for  
439 those participating requiring the joint written agreement of both the applicant and public official  
440 or local board and which shall be filed with the city or town clerk.

441 (D) The conflict assessment and any later resolution effort may be conducted by a  
442 neutral facilitator as defined in section 23C of chapter 233, selected from a list prepared by the  
443 Massachusetts office of dispute resolution, or its successor agency or its designee, or as chosen  
444 jointly by the applicant and the public official or local board.

445 (E) The facilitator and any associate shall comply with the standards of conduct of the  
446 association for conflict resolution or as promulgated by the Massachusetts office of dispute  
447 resolution, or its successor agency or its designee.

448 (F) Funding for any conflict assessment or resolution effort under this section may be  
449 as the applicant and the public official or local board shall agree. In the absence of such  
450 agreement, the public official or local board may impose reasonable fees for the employment of  
451 outside consultants, including the facilitator, in the same manner as set forth in section 53G of  
452 chapter 44.

453 (G) Public officials or local boards may, after a public hearing, adopt, and from time  
454 to time amend, rules to implement the conflict assessment or resolution efforts undertaken  
455 pursuant to this section. Notice of the hearing on the proposed rules, including the location, date,  
456 and time of the hearing shall be filed with the city or town clerk and published once in a  
457 newspaper of general circulation in the city or town at least fourteen days before the public  
458 hearing.

459 (H) As part of the conflict assessment, the facilitator may solicit information and  
460 opinions relating to the application, and may identify and notify those members of the public  
461 likely to be interested in or affected by the application. The facilitator may clarify the issues and  
462 investigate the willingness of all interested parties to work together with the applicant to resolve  
463 those issues. The facilitator may identify measures or community-enhancing features that would  
464 benefit the neighborhood, the larger community, and the project itself. Based upon the  
465 assessment, the facilitator may determine whether further resolution effort would be productive  
466 in reaching a consensus of those participating, with the understanding that the outcome may be  
467 the withdrawal or substantial modification of the application.

468 (I) The facilitator may convene meetings or conduct interviews that shall be  
469 confidential and privileged from discovery under section 23C of chapter 233 and that shall not be  
470 subject to the open meeting law under section 23B of chapter 39. The records of such meetings  
471 or interviews shall be exempt from disclosure under the public records law under section 10 of  
472 chapter 66 and clause 26 of section 7 of chapter 4.

473 (J) In preparing a report on conflict assessment or later resolution effort, the  
474 facilitator shall not attribute statements, positions, ideas, or interests to specific individuals,

475 organizations, or persons interviewed, and shall distribute copies of the report to those  
476 participating without prior review or approval of any participant. The conflict assessment report  
477 shall indicate whether and how a subsequent resolution effort might be appropriate for the  
478 application involved, including elaborating on how it might be undertaken and by whom.

479 (K) Whether or not a resolution results, the applicant may nevertheless proceed with  
480 the application without prejudice for having participated in a conflict assessment or resolution  
481 effort, and the application process shall proceed in due course as otherwise provided by statute,  
482 ordinance, or by-law. The applicant and the public official or local board may, by agreement in  
483 writing filed with the city or town clerk, stipulate and agree to extend any otherwise applicable  
484 time requirements of state or local law.

485 (L) At the conclusion of any conflict assessment or resolution efforts, the application  
486 which initiated the conflict assessment and resolution efforts may go forward in accordance with  
487 the applicable statute, ordinance, or by-law, reflecting if possible the result of any resolution  
488 effort. If the parties so agree, any resolution may be incorporated into the action taken by the  
489 local board or official.

490 SECTION 20. Said chapter 40A, as so appearing, is hereby amended by inserting after  
491 section 9E the following new section:-

492 Section 9F. Rate of development

493 Except for a defined period of time during which planning or zoning studies are  
494 underway, rate of development measures shall be in accordance with this section.



495 A zoning ordinance, by-law, or regulation that regulates the rate of development shall not  
496 be inconsistent with a plan adopted under c. 41, section 81D. The subject matter of such plan  
497 shall contain consistent policies and strategies for the implementation of rate of development  
498 measures that shall include a study of the need for such measures, a methodology by which to  
499 determine a reasonable rate of issuance of either permits for new construction or approvals of  
500 new building lots, a time horizon within which such measures shall remain in effect, and a  
501 periodic review schedule.

502 Rate of development measures shall not restrict the construction of, or creation of  
503 building lots for, affordable housing units restricted to remain affordable for a period of at least  
504 30 years to households with income at or below 120 percent of the area median income as such  
505 income is most recently determined by the federal department of housing and urban development  
506 or successor agency.

507 Rate of development measures shall not apply to structures accessory to residential uses  
508 nor to construction work upon an existing dwelling unit.

509 SECTION 21. Said chapter 40A, as so appearing, is hereby amended by inserting after  
510 section 9F the following section:-

511 Section 9G. Affordable housing

512 (A) In furtherance of the public purposes zoning objectives stated in section 2A,  
513 subsections (B)(5 and 7) of this chapter and in the exercise of their home rule powers, a city or  
514 town, by ordinance or by-law, may require or provide incentives for the applicant for a  
515 residential development to provide affordable dwelling units within such development.

516 (B) In lieu of constructing the units required on-site, the ordinance or by-law may  
517 provide for the construction of such units off-site, the dedication of land for such purpose, or the  
518 payment of funds to a separate account created by the city or town sufficient for and dedicated to  
519 the provision of affordable housing, provided the applicant demonstrates to the satisfaction of the  
520 local approving authority that the units cannot be otherwise provided on-site or that an  
521 alternative proposal better meets the needs of the city or town with respect to the provision of  
522 affordable housing. Off-site units, land dedication, or payment in-lieu of units shall, in the  
523 opinion of the local approving authority and in consideration of local needs, provide affordable  
524 housing benefits roughly equivalent to the provision of on-site units.

525 (C) Cities and towns are authorized to establish a separate dedicated account for the  
526 deposit of funds received under this section, including municipal housing trust fund accounts  
527 under section 55C of chapter 44 or other dedicated accounts of similar purpose. Said funds shall  
528 be deposited with the treasurer and dispersed for affordable housing purposes in accordance with  
529 the ordinances, by-laws, or regulations of the city or town. Where the application of this section  
530 results in less than a full dwelling unit, the board may accept a prorated payment of funds in lieu  
531 of unit creation.

532 (D) The affordable units shall be subject to a restriction on sale price or rent under the  
533 provisions of chapter 184 of the general laws, as amended, and shall remain affordable, in  
534 perpetuity or for a period not less than 30 years.

535 (E) The regulation may further require some or all of the affordable units to be low-  
536 or moderate-income housing as defined in sections 20 through 23, inclusive of chapter 40B, of  
537 the general laws, and be eligible for inclusion on the subsidized housing inventory subject to and

538 in accordance with applicable regulations and guidelines of the department of housing and  
539 community development or successor agency. Nothing in this section shall be construed to  
540 require the department of housing and community development to include affordable units  
541 created hereunder on the subsidized housing inventory.

542 (F) Nothing in this section shall limit the authority of a planning board under chapter  
543 41, section 81Q of the general laws, the subdivision control law.

544 SECTION 22. Said chapter 40A, as so appearing, is hereby amended by striking out  
545 section 10 and inserting in place thereof the following section:-

546 Section 10. Variances

547 Where a literal enforcement of the provisions of the zoning ordinance or by-law would  
548 involve substantial hardship to the applicant, upon appeal or upon petition with respect to  
549 particular land or structures, the permit granting authority shall have the discretionary authority  
550 to grant a variance from the terms of the applicable zoning ordinance or by-law following a  
551 public hearing for which notice has been given by publication and posting as provided in section  
552 eleven and by mailing to the planning board and all parties in interest.

553 In making its determination, the permit granting authority shall take into consideration  
554 the benefit to the applicant if the variance is granted, as weighed against the detriment to the  
555 health, safety and welfare of the neighborhood or community by such grant. The permit granting  
556 authority may also take into consideration the extent to which the claimed hardship is self-  
557 created. In order to grant a variance the permit granting authority shall make all of the following  
558 findings: (1) the benefit sought by the applicant can not be achieved by some method, feasible  
559 for the applicant to pursue, other than a variance; (2) the variance will not have a substantial

560 undesirable effect on nearby properties, or the character of the neighborhood, or on the  
561 environment; (3) the variance will not nullify or substantially derogate from the intent or purpose  
562 of such ordinance or by-law or the master plan upon which the ordinance or by-law is based; and  
563 (4) the claimed hardship relating to the property in question is unique, and does not apply to a  
564 substantial portion of the district or neighborhood. In the granting of variances, the permit  
565 granting authority shall grant the minimum variance that it shall deem necessary to relieve the  
566 hardship.

567           Use variances are not included within the scope of this section unless expressly so  
568 authorized by ordinances or by-laws. If so authorized, use variances shall be subject to all the  
569 provisions of this section and to any additional more stringent criteria contained in the ordinance  
570 or by-law.

571           The permit granting authority may impose conditions, safeguards and limitations both of  
572 time and of use, including the continued existence of any particular structures. Variances shall  
573 run with the land, except that a use variance may run with land only if so determined by the  
574 permit granting authority acting pursuant to an ordinance or by-law enabling such a  
575 determination.

576           If the rights authorized by a variance are not exercised within two years of the date of the  
577 grant of the variance such variance shall lapse; provided, however, that upon written application  
578 by the grantee of such variance, the permit granting authority in its discretion may extend the  
579 time for exercise of such rights for a period not to exceed one year. Such application must be  
580 filed no later than sixty-five days prior to the lapse of the variance. If the permit granting  
581 authority does not grant the extension within sixty-five days of the date of application therefor,

582 upon the lapse of the variance, the variance may be re-established only after notice and a new  
583 hearing pursuant to the provisions of this section.

584 SECTION 23. Section 17 of said chapter 40A, as so appearing, is hereby amended by  
585 inserting after the seventh paragraph the following paragraph:-

586 Mediation of land use appeals: After the filing of an appeal hereunder, the parties may  
587 agree to mediate the decision appealed. In all cases, the parties shall file with the court a  
588 statement advising the court that the dispute has been submitted for mediation. If the parties  
589 agree to mediation, the mediation shall begin within 60 days of the date such statement was filed,  
590 or such other period as the parties may agree or the court may allow upon application by any  
591 party. The mediation shall conclude not later than 180 days of filing, provided that such period  
592 may be extended for an additional 180 days by joint written agreement of the parties, or for such  
593 other additional period as the court may allow upon application by any party. The parties may  
594 select the mediator from a list provided by the court or otherwise as the parties may determine.  
595 The mediator shall be compensated by the parties as they may agree, or in the absence of  
596 agreement, as the court may determine. During the mediation any appeal otherwise pending  
597 shall be stayed. A party may withdraw from mediation at any time after written notification to  
598 the other parties and to the court, but shall remain responsible for that party's share of the costs  
599 of mediation until the time of withdrawal. The mediator shall have the protections provided  
600 under section 23C of chapter 233, and to the extent that public agencies are participants in the  
601 mediation, their deliberations shall not be subject to the provisions of section 23B of chapter 39.  
602 At the conclusion of the mediation, the mediator shall file with the court a statement describing  
603 whether the parties have come to agreement. If unresolved, the appeal will then go forward; if  
604 the matter has been resolved, the appeal will be dismissed with prejudice. The cost of mediation

605 shall be distributed among the parties as a cost of the appeal as the parties may agree, or in the  
606 absence of agreement, as the court may determine. Mediation hereunder shall not be the only  
607 method of resolving a zoning appeal.

608 SECTION 24. Chapter 41 of the General Laws, as appearing in the 2006 official edition,  
609 is hereby amended by striking out section 81D and inserting in place thereof the following  
610 section:-

611 Section 81D. Land use and zoning plan

612 A planning board established in any city or town under section 81A shall make a land use  
613 and zoning plan of such city or town and from time to time, not to exceed ten years, shall update  
614 or remake such plan. After adoption as provided in this section such plan shall become the  
615 official land use and zoning plan of the city or town, replacing any previously-adopted master  
616 plans.

617 Such plan shall be a statement, through text, maps, illustrations or other forms of  
618 communication that is designed to provide a basis for decision making regarding the long-term  
619 physical development of the municipality. Other completed and current plans, reports, and  
620 studies may be incorporated by reference to fulfill or partially fulfill the requirements of each  
621 element listed below. The land use and zoning plan shall be internally consistent in its policies,  
622 forecasts and standards, shall underlie a city or town's zoning bylaws and subdivision  
623 regulations, and shall include the following required elements:

624 (1) A goals and policies statement that identifies the goals and policies of the  
625 municipality for its future sustainable growth, development, redevelopment, conservation, and  
626 preservation. Each community shall conduct an interactive public process to determine

627 community values, and goals and to identify patterns of development, redevelopment,  
628 conservation, and preservation that will be consistent with these goals.

629 (2) A housing element that shall consist of identification and analysis of existing and  
630 forecast housing needs; an inventory of local housing; local housing goals, objectives and  
631 policies; and implementing measures. Where applicable, existing local housing plans may be  
632 included by reference.

633 As a percentage of the total housing stock, the local housing inventory shall include an  
634 estimate of: i) housing units by physical type (e.g. single-family, two-family, multi-family, etc.);  
635 ii) affordable housing and subsidized housing, including subsidized housing that qualifies as  
636 such under chapter 40B; iii) housing available for rental; iv) residential community programs;  
637 and v) senior, assisted living, and special needs housing. The inventory shall analyze existing  
638 local policies, programs, laws or regulations that encourage the preservation, improvement, and  
639 development of such housing and shall assess whether they are adequate to achieve their stated  
640 objectives.

641 The element shall enumerate local goals, objectives, and policies so as to provide a  
642 diversity of housing stock meeting the housing needs of residents from a broad range of income  
643 levels and age groups, including those with disabilities and special needs. The element shall  
644 identify and evaluate specific measures for inclusion in the implementation element of the master  
645 plan necessary to accomplish this purpose, including strategies, programs, and assistance for: the  
646 preservation of existing housing stock; the financing of additional housing; the construction or  
647 rehabilitation of housing; and for the adoption or amendment of local laws and regulations  
648 permitting, encouraging, or requiring diversity in housing locations, types, designs, and area

649 densities that offer complements or alternatives to larger single-family detached housing that are  
650 compatible with a community's character and vision.

651 (3) A natural resources and energy element that provides an inventory of the significant  
652 natural and energy resources of the municipality. Such element shall outline zoning or other  
653 policies and strategies: for the protection, restoration, and sustainable management of such  
654 resources, including wetlands and water resources, environmentally sensitive lands, critical  
655 wildlife habitat and biodiversity, agricultural lands and forests; and to promote development that  
656 respects and enhances the state's natural resources.

657 The energy component of this element shall explore locally-feasible land use strategies  
658 to: maximize energy efficiency and renewable energy opportunities; support land, energy, water,  
659 and materials conservation strategies, local clean power generation, distributed generation  
660 technologies, and innovative industries; and reduces greenhouse gas emissions and consumption  
661 of fossil fuels.

662 (4) A land use element that identifies present land use and designates the proposed  
663 distribution, location and inter-relationship of public and private land uses in a general manner  
664 sufficient to guide the development of zoning ordinances, bylaws, and maps. This element shall  
665 examine the current land use permitting process in a community and, if necessary, make  
666 recommendations for the development of clear, predictable, coordinated, and timely procedures  
667 thereunder. A land use plan map illustrating the general land use policies of the municipality  
668 shall be included.

669 To the extent practicable in a community or areas of a community, this element shall  
670 support the revitalization of city and town centers and neighborhoods by promoting development



671 that is compact, conserves land, protects historic resources, integrates uses, and coordinates the  
672 provision of housing with the location of jobs, transit and services. In these areas the plan shall  
673 encourage the creation or extension of pedestrian-friendly districts and neighborhoods that mix  
674 commercial, civic, cultural, educational, and recreational activities with open space and homes.

675 This element shall relate the proposed standards of population density and building  
676 intensity to the capacity of land available or planned facilities and services and may identify  
677 consistent policies and strategies for the use of rate of development measures which shall include  
678 a study of the need for such measures, including providing an appropriate share of the housing  
679 growth in the region, a methodology by which to determine a reasonable rate of issuance of  
680 permits for new construction or approvals of new building lots, a time horizon within which such  
681 measures shall remain in effect, and a periodic review schedule.

682 (5) An implementation program element that defines and schedules the specific  
683 municipal actions necessary to achieve the objectives of each element of the land use and zoning  
684 plan. This element shall specify the course of action by which the municipality's regulatory  
685 structures, including zoning and subdivision control regulations, shall, if necessary, be amended  
686 so as not to be inconsistent with the land use and zoning plan.

687 The following elements are optional:

688 (6) An economic development element that, as appropriate: identifies land use policies  
689 and available locations that supports the growth of new and existing local businesses, including  
690 home-based businesses; attract businesses to locations near housing, infrastructure, water, and  
691 transportation options; strengthens sustainable natural resource-based businesses, including  
692 agriculture, forestry, outdoor recreation, clean energy technology, and fisheries; encourages the

693 reuse and rehabilitation of existing infrastructure, including brownfields, rather than the  
694 construction of new infrastructure in undeveloped areas; facilitates larger-scale economic  
695 redevelopment or development in industry clusters consistent with regional and local character;  
696 and maintains reliable and affordable energy sources that reduce dependence on imported fossil  
697 fuels.

698 (7) A cultural resources element that provides an inventory of the significant cultural,  
699 scenic, and historic buildings, sites, and landscapes of the municipality, and policies and  
700 strategies for their protection and management.

701 (8) An open space and recreation element that provides an inventory of recreational and  
702 resources and open space areas of the municipality, and policies and strategies for the  
703 management, protection, and enhancement of such resources and areas. An open space and  
704 recreational plan approved by the division of conservation services shall constitute an open space  
705 and recreational element hereunder.

706 (9) A services and capital facilities element that identifies and analyzes existing and  
707 forecasted needs for facilities and services used by the public. Scheduled expansion or  
708 replacement of public facilities or circulation system components and the anticipated costs and  
709 revenues associated with accomplishment of such activities shall be detailed in this element.  
710 This element is required if development impact fees are to be assessed under section 9 of chapter  
711 40A.

712 (10) A transportation element that: provides an inventory of existing and proposed  
713 circulation and transportation systems; increases access to available or feasible transportation  
714 options including land- and water-based public transit, bicycling, and walking; explores strategic

715 investment options for transportation infrastructure to encourage smart growth, maximize  
716 mobility, conserve fuel, and improve air quality; and facilitates the location of new development  
717 where a variety of transportation modes can be made available.

718 Any required or selected optional element above shall include a self-assessment against a  
719 regional plan adopted by the regional planning agency under section 5 of chapter 40B and in  
720 effect, if any.

721 Such plan shall be made, and may be added to or changed from time to time, by a simple  
722 majority vote of the planning board after a public hearing, notice of which shall be posted and  
723 published in the manner prescribed for zoning by-law amendments under section 5 of chapter  
724 40A, followed by adoption by the legislative body of the city or town by a simple majority vote  
725 except where a greater majority vote has been prescribed in an ordinance or by-law adopted by a  
726 two-thirds vote of the local legislative body. However, no vote of the legislative body to alter  
727 the plan or amendment as adopted by the planning board shall be other than by a two-thirds vote  
728 of the legislative body. The planning board shall, upon completion of any plan or report, or any  
729 change or amendment to a plan or report produced under this section, furnish a copy of such plan  
730 or report or amendment thereto, to the department of housing and community development.

731 Prior to local legislative adoption of a land use and zoning plan under this section, the  
732 plan may, at the election of the planning board, be referred to the applicable regional planning  
733 agency for review and certification. The regional planning agency may, at its election, review the  
734 plan for certification, but must provide written notice to the city or town within 15 days from  
735 receipt of the plan if it intends not to review the plan. If the regional planning agency has elected  
736 to review the plan it shall act within 90 days of submission of the plan. Failure to act within 90

737 days shall be deemed a plan certification by the regional planning agency. The 90 day review  
738 period shall be extended by no longer than 90 days by the regional planning agency upon written  
739 request by the planning board of the city or town.

740           Such review and certification shall be limited to an assessment of plan compliance with  
741 the requirements of this section as such requirements are applicable to the city or town within its  
742 region. The review process may be interactive and iterative between the regional planning  
743 agency and the planning board, and mutually agreed upon changes to the plan may be made by  
744 simple majority vote of the planning board during the review period or extensions thereof. Once  
745 the review is completed by the regional planning agency, with or without certification,  
746 comments, or outstanding issues, it may be brought to the local legislative body for adoption if  
747 the planning board so votes by a simple majority. A plan that has been certified by the regional  
748 planning agency and adopted by the city or town shall be presumed to be in compliance with this  
749 section. A plan that has not been so certified, for whatever reason including non-referral to the  
750 regional planning agency, shall not, for that reason, be presumed to be out of compliance with  
751 this section.

752           SECTION 25. Section 81L of said chapter 41, as so appearing, is hereby amended by  
753 striking out, in lines 52-78 inclusive, the definition of “Subdivision” and inserting in place  
754 thereof the following definition:-

755           “Subdivision” shall mean the division of a lot, tract, or parcel of land into two or more  
756 lots, tracts, or parcels of land and shall include re-subdivision. When appropriate to the context,  
757 subdivision shall include the process of subdivision or the land or territory subdivided. A change  
758 in the line of any lot, tract, or parcel created by recorded deed or shown on a recorded plan may

759 be defined as a minor subdivision and, in such case, be governed by the provisions of section  
760 81P.

761 SECTION 26. Section 81M of said chapter 41, as so appearing, is hereby amended by  
762 inserting, after the word “systems”, in line 23, the words:- , and for those aspects of a plan  
763 adopted by the city or town under section 81D of this chapter which are particular to the  
764 subdivision of land.

765 SECTION 27. Section 81O of said chapter 41, as so appearing, is hereby amended by  
766 striking out the second sentence in the first paragraph and inserting in place thereof the following  
767 sentences:- After the approval of a plan, the location and width of ways, and the number, shape,  
768 and size of the lots shown thereon, may not be changed unless the plan is amended as provided  
769 in section 81W. In the alternative, a planning board may adopt rules and regulations under  
770 sections 81P and 81Q of this chapter defining and regulating such changes as minor  
771 subdivisions.

772 SECTION 28. Said section 81O of said chapter 41, as so appearing, is hereby amended  
773 by striking out the second paragraph and inserting in place thereof the following paragraph:-

774 A plan shall be deemed submitted under this section as of the date of the next regularly  
775 scheduled meeting of the planning board, provided that during posted business hours the plan is  
776 both delivered to the planning board and filed with the town clerk no later than 7 calendar days  
777 prior to said meeting date, or 35 calendar days after such delivery to the planning board and  
778 filing with the town clerk, whichever shall first occur. An incomplete submission or one not in  
779 accordance with submittal requirements may be the basis upon which the planning board may  
780 deny approval of the plan. Notwithstanding the foregoing, a planning board or its designee may

781 give notice to the applicant of how the application is incomplete or not in accordance with said  
782 submittal requirements and may grant to the applicant additional time to effect corrective  
783 measures.

784 SECTION 29. Said chapter 41, as so appearing, is hereby amended by striking out  
785 section 81P and inserting in place thereof the following section:-

786 Section 81P. Alternative approvals for minor subdivisions

787 A planning board may adopt alternative rules and regulations under section 81Q defining  
788 and regulating minor subdivisions in a more expeditious manner than would apply to other  
789 subdivisions. Such rules and regulations may reduce or eliminate any local rule or regulation  
790 made under section 81Q that would otherwise apply to a subdivision and any requirement of  
791 sections 81L relative to the definition of preliminary plan, 81S, 81T, or 81U of this chapter.  
792 Minor subdivisions under this section shall not create more than 3 additional lots.

793 SECTION 30. Section 81Q of said chapter 41, as so appearing, is hereby amended by  
794 striking out, in line 59, the words “or use”.

795 SECTION 31. Said section 81Q of said chapter 41, as so appearing, is hereby amended  
796 by striking out, in lines 62-69 inclusive, the words “No rule or regulation shall require, and no  
797 planning board shall impose, as a condition of approval of a subdivision, that any of the land  
798 within said subdivision be dedicated to the public use, or conveyed or released to the  
799 commonwealth or to the county, city or town in which the subdivision is located, for use as a  
800 public way, public park or playground, or for any other public purpose, without just  
801 compensation to the owner thereof.” and inserting in place thereof the following words:- The  
802 rules and regulations may require the plan to show a park or parks suitably located for

803 playground or recreation purposes or for providing light and air, except that such requirement  
804 shall not exceed 10 percent of the land being subdivided.

805 SECTION 32. Said section 81Q of said chapter 41, as so appearing, is hereby amended  
806 by inserting after the first paragraph the following paragraphs:-

807 Notwithstanding any general or special law to the contrary, a planning board may, by  
808 regulation, require an applicant for a residential subdivision to provide affordable dwelling units  
809 and to show on the subdivision plan a lot or lots reserved for such units. The required affordable  
810 units shall be in addition to, but shall not exceed 25 percent of the number of, market-rate units  
811 approved by the board in accordance with any otherwise applicable ordinance, by-law, or  
812 regulation. In order to include the additional affordable units, the regulation shall provide for an  
813 increase in the permitted density or intensity of residential uses within a subdivision as  
814 authorized by a complementary zoning ordinance or by-law relating to the subdivision of land.  
815 In lieu of constructing the units required on-site, the regulation may provide for the construction  
816 of such units off-site, the dedication of land for such purpose, or the payment of funds to a  
817 separate account created by the city or town sufficient for and dedicated to the provision of  
818 affordable housing, provided the applicant demonstrates to the satisfaction of the board that the  
819 units cannot be otherwise provided on-site or that an alternative proposal better meets the needs  
820 of the city or town with respect to the provision of affordable housing. Off-site units, land  
821 dedication, or payment in-lieu of units shall, in the opinion of the board and in consideration of  
822 local needs, provide affordable housing benefits roughly equivalent to the provision of on-site  
823 units. Cities and towns are authorized to establish a separate dedicated account for the deposit of  
824 funds received under this section, including municipal housing trust fund accounts under section  
825 55C of chapter 44 or other dedicated accounts of similar purpose. Said funds shall be deposited

826 with the treasurer and dispersed in accordance with the ordinances, by-laws, or regulations of the  
827 city or town. Where the application of this section results in less than a full dwelling unit, the  
828 board may accept a prorated payment of funds in lieu of unit creation.

829         The affordable units shall be subject to a restriction on sale price or rent under the  
830 provisions of chapter 184 of the general laws, as amended, and shall remain affordable, in  
831 perpetuity or for a period not less than 30 years, to households with income at or below the area  
832 median income as such income is most recently determined by the United States department of  
833 housing and urban development or successor agency. However, the regulation may allow some  
834 of the units to be restricted for sale or rent to households with income up to 120 percent of the  
835 area median income, provided the average allowable sale price or rent of all affordable housing  
836 units within the subdivision shall be affordable to households with income at or below the area  
837 median income, as set forth in the restriction. The regulation may further require some or all of  
838 the affordable units to be low- or moderate-income housing as defined in sections 20 through 23,  
839 inclusive, of chapter 40B of the general laws, and be eligible for inclusion on the subsidized  
840 housing inventory in accordance with applicable regulations and guidelines of the department of  
841 housing and community development or successor agency.

842         Nothing in this section shall prohibit a city or town from adopting an inclusionary zoning  
843 by-law, ordinance or regulation with affordable housing requirements that differ from the  
844 provisions stated herein.

845         After January 1, 2014, no rules and regulations adopted under this chapter may be  
846 inconsistent with a plan adopted by the city or town under section 81D of chapter 41. No rule or  
847 regulation shall be deemed inconsistent with the plan if it furthers, or at least does not impede,



848 the achievement of the plan's goals and policies, and if it is not incompatible with the plan's  
849 proposed land uses, design guidelines, and development patterns.

850 After the effective date of the plan, rules and regulations shall enjoy a rebuttable  
851 presumption in any action, suit, or administrative proceeding that its provisions are not  
852 inconsistent with the plan. If the presumption is rebutted, inconsistency may serve as the basis  
853 upon which a court or administrative agency may declare any relevant rule or regulation  
854 provision to be invalid as applied to the property which is the subject of the action, suit, or  
855 administrative proceeding. For an amendment to the plan adopted after January 1, 2014, no  
856 declaration of invalidity may be made in any action, suit, or administrative proceeding for a  
857 period of 12 months after the effective date of the plan amendment.

858 SECTION 33. Section 81T of said chapter 41, as so appearing, is hereby amended by  
859 striking out, in lines 2-3 inclusive, the following words “or for a determination that approval is  
860 not required”.

861 SECTION 34. Section 81U of said chapter 41, as so appearing, is hereby amended by  
862 striking out lines 74 through 79, inclusive, and inserting in place thereof the words “Before  
863 endorsement of its approval of a plan, a planning board shall require a performance guarantee  
864 such that the construction of ways and the installation of municipal services will be secured by  
865 one, or in part by one and in part by another, of the methods described in the following clauses  
866 (1), (2), (3), and (4). The method or combination of methods shall be selected by the planning  
867 board, provided, however, that the applicant shall have the right and option to substitute a  
868 covenant referred to in clause (3).”

869 SECTION 35. Said section 81U of said chapter 41, as so appearing, is hereby amended  
870 by striking out, in lines 173-174 inclusive, the words “for a period of not more than three years”.

871 SECTION 36. Section 81X of said chapter 41, as so appearing, is hereby amended by  
872 striking out, in lines 12-13 inclusive, the following words “such plan bears the endorsement of  
873 the planning board that approval of such plan is not required, as provided in section eighty-one P,  
874 or (3)”.

875 SECTION 37. Said section 81X of said chapter 41, as so appearing, is hereby amended  
876 by striking out, in lines 17-20 inclusive, the following words “or that it is a plan submitted  
877 pursuant to section eighty-one P and that it has been determined by failure of the planning board  
878 to act thereon within the prescribed time that approval is not required,”.

879 SECTION 38. Said section 81X of said chapter 41, as so appearing, is hereby amended  
880 by striking out the fourth paragraph and inserting in place thereof the following paragraph:-

881 Notwithstanding the foregoing provisions of this section, the register of deeds shall  
882 accept for recording, and the land court shall accept with a petition for registration or  
883 confirmation of title, any plan bearing a professional opinion by a registered professional land  
884 surveyor that the property lines shown are the lines dividing existing ownerships, and the lines of  
885 streets and ways shown are those of public or private streets or ways already established, and that  
886 no new lines for division of existing ownership or for new ways are shown. Similarly, the  
887 register of deeds and the land court shall accept for recording or registration any plan showing a  
888 change in the line of any lot, tract, or parcel bearing a professional opinion by a registered  
889 professional land surveyor and a certificate by the person or board charged with the enforcement  
890 of the zoning ordinance or by-law of the city or town that the property lines shown: do not create

891 an additional building lot; do not create, add to, or alter the lines of a street or way; do not render  
892 an existing legal lot or structure illegal; do not render an existing nonconforming lot or structure  
893 more nonconforming; and are not subject to alternative local rules and regulations for minor  
894 subdivisions under section 81P of this chapter. The recording of such plan shall not relieve any  
895 owner from compliance with the provisions of the subdivision control law or of any other  
896 applicable provision of law.

897 SECTION 39. Section 53G of chapter 44 of the General Laws, as appearing in the 2006  
898 official edition, is hereby amended by inserting after the word “section”, in line 2, the following  
899 figure:- 7A,

900 SECTION 40. Said section 53G of said chapter 44, as so appearing, is hereby amended  
901 by inserting after the word “nine”, in line 2, the following figure:- , 9E,

902 SECTION 41. The provisions of bill sections 1-42 herein, except as otherwise expressly  
903 provided, shall not be construed to affect any general or special law other than chapters 40A, 41,  
904 and 44, as revised.