SENATE DOCKET, NO. 1138 FILED ON: 1/18/2013

SENATE . . . . . No. 71

The Commonwealth of Massachusetts

PRESENTED BY:

James B. Eldridge

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act promoting healthy communities.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
James B. Eldridge	*Middlesex and Worcester*
Daniel A. Wolf	*Cape and Islands*
Paul McMurtry	*11th Norfolk*
Denise Andrews	*2nd Franklin*
Jonathan Hecht	*29th Middlesex*

SENATE DOCKET, NO. 1138 FILED ON: 1/18/2013

SENATE . . . . . No. 71

By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 71) of James B. Eldridge, Daniel A. Wolf, Paul McMurtry, Denise Andrews and other members of the General Court for legislation relative to comprehensive land use reform and partnership. Community Development and Small Businesses.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *1019* OF 2011-2012.]

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act promoting healthy communities.

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

SECTION 1. Chapter 40A of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out the chapter in its entirety and inserting in place thereof the following Chapter 40A:-

CHAPTER 40A

ZONING

1. Title, Authority, and Purposes

2. Definitions

3. Consistency with Master Plan

4. Powers of Cities and Towns

5. Exemptions from Zoning, Limitations on Local Authority

6. Nonconformities and Vested Rights

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

8. Boards of Appeal, Zoning Administrators

9. Permits and Approvals, Procedures, and Zoning Tools

10. Enforcement

11. Judicial Review Procedures and Standards

12. Transition Provisions

40A:1. Title, Authority, and Purposes

A. Title of Chapter

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

B. Authority

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

Nothing in this chapter shall be construed as limiting the authority of the regional planning agencies under St. 1989, c. 716, as amended, entitled "An Act Establishing the Cape Cod Commission," and St. 1977, c. 831, as amended, entitled "An Act Further Regulating the Protection of the Land and Waters of the Island of Martha's Vineyard," or any municipality within Barnstable or Dukes county acting pursuant to these special acts, including but not limited to the designation of districts of critical planning concern, the adoption of regulations for such districts, the review of developments of regional impact, and the imposition development impact fees. Where the provisions of this chapter conflict with these special acts and any regulations, ordinances, regional policy plans, or decisions issued or adopted thereunder, the latter shall control.

C. Purposes of the Zoning Act

The purposes of this Zoning Act are:

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

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

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

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

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

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

7. To ensure local land use laws and regulations can utilize the best available means of protecting the health, safety, and welfare of the Commonwealth's residents.

D. Purposes of Zoning Ordinances and By-laws

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

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

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

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

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

5. The use of planning and zoning laws, regulations, and practices such as but not limited to development agreements, development impact fees, design review, intra- and inter-municipal transfers of development rights, form-based zoning, agricultural zoning, natural resource protection zoning, cluster zoning, planned-unit-development zoning, special district overlays, village districts, urban growth boundaries, dispute resolution, mediation, and inclusionary zoning provisions which require, or provide incentives for, the creation of inclusionary housing units.

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

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

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

9. The cost-effective provision of Complete Streets in all development such that all users including pedestrians, bicyclists, transit riders, and motor vehicle drivers of all ages and abilities are safely and efficiently accommodated on the roadways and adjoining facilities such as sidewalks, bicycle lanes, and side paths.

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

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

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

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

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

15. The protection of public investment in infrastructure systems.

16. 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.

17. 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.

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

19. 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.

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

21. The promotion of local land use decisions that promote the planning and development of healthy communities. This shall include public health, or acknowledging state and federal health agency recommendations that all Americans benefit from daily physical activity, that only a fraction of the population meets these recommendations, and that the built environment and community design directly affects the routine physical activity levels of residents; economic health, or well-planned, compact, mixed-use development and enlightened designs that help support vibrant and thriving villages, town centers, and cities, with robust local economies; and environmental health, or reducing adverse air and water quality impacts, congestion, and costs associated with development that encourages only automobile travel and undermines active transportation modes.

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” or “as of 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, conservation design/development, or flexible development.

"Complete Streets" means a principal of roadway design, construction, and maintenance that assures consideration and appropriate accommodation of all types of users- pedestrians, bicyclists, transit riders, motor vehicles, and freight carriers- of all ages and abilities, during any and all facility construction, upgrade, repair, and maintenance, based on current conditions, adjoining land uses, and both current and potential future volumes of each type of user.

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

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

"Health Impact Assessment," an analysis of all of the potential health costs and benefits of a project or policy under consideration, including but not limited to environmental health (e.g. air and water quality, soil contamination, noise pollution), safety and accidental injury (e.g. motor vehicle collisions), and physical activity and nutrition (e.g. through impacts on routine walking, bicycling, transit use, and active recreation, and the availability of healthy food sources).

"Inclusionary housing units", 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.

"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.

"Multi-Modal Transportation Impact Analysis," an analysis of a proposed project or development that estimates effects on pedestrian, bicycle, and transit, as well as motor vehicle traffic patterns, volumes, safety, and efficiency to inform a full suite of impact mitigation options, such as provision of enhanced pedestrian and bicycle facilities, bicycle parking, and transit access, as well as or in lieu of only motor vehicle accommodation.

"Natural resource protection zoning (NRPZ)", zoning ordinances or by-laws principally to protect natural resources by establishing very low underlying densities, compact patterns of development so that a significant majority of the land remains permanently undeveloped and available for agriculture, forestry, recreation, watershed management, carbon sequestration, wildlife habitat, or other natural resource values.

"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, zoning administrator, or planning board as designated by zoning ordinance or by-law for the issuance of special permits, or other body 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 under this chapter 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, 2018, 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, 2018, 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. Exception: In Barnstable or Dukes Counties inconsistency with a local comprehensive plan adopted pursuant to St. 1989, c. 716, as amended, or St. 1977, c. 831, as amended, and the regional policy plans and regulations adopted thereunder to serve as a municipality's master plan for purposes of Chapter 41, Section 81D shall not serve as a basis for declaring a zoning ordinance or bylaw provision to be invalid under this section.

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 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;

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

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

6. to require Multi-Modal Transportation Analysis, as defined herein, rather than merely Traffic Impact Analysis, in assessing the pedestrian, bicycle, and transit as well as motor vehicle traffic impacts and mitigation required of a proposal or development.

7. to require advisory Health Impact Assessments, as defined herein, of proposed projects so that permit granting authorities may be fully informed of the environmental, safety, and transportation-related health effects of a proposal and can pursue appropriate mitigation as needed.

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

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

A. Building Code: No zoning ordinance or by-law shall regulate or restrict the use of materials, or methods of construction of structures regulated by the state building code. This 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 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. In areas not zoned for commercial agriculture, however, all such activities may be limited to parcels of 5 acres or more or to parcels 2 acres or more if the sale of products produced from commercial agricultural on the parcel generates at least $1,000 per acre based on gross sales dollars. 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 at least 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 or 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.

4. Renewable Energy on Agricultural Land for Municipal Uses: The planning board, with the approval of the chief executive officer of the city or town, may grant a special permit for renewable energy generating facilities, as defined in 220 CMR 18.02, whether directly or under a net-metering arrangement approved by the Commissioner of the Department of Agricultural Resources, on agricultural land to serve the energy needs of municipally owned or controlled

facilities, provided that: (1) the parcel on which the renewable energy generating facility is located is not less than five acres and remains primarily in commercial agricultural use as defined in Section 5C(3); (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 use of or adverse impact on agricultural resources, prime agricultural soils, or farm viability; and (3) the renewable energy capacity of any farm is limited to one megawatt (1,000 kilowatts), unless waived up to a limit of two megawatts (2,000 kilowatts) by the Commissioner of Agricultural Resources, provided that such waiver is approved by the planning board and the chief executive officer of the municipality.

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

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

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

G. Child Care Facility:

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

2. No zoning ordinance or by-law in any city or town shall prohibit, or require a special permit for, the use of land or structures or the expansion of existing structures for the primary, 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 natural disaster 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.

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

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

P. Solid Waste Disposal Facilities: A facility, as defined in section 150A of chapter 111, which has received a site assignment pursuant to said section 150A, shall be permitted to be constructed or expanded on any locus zoned for industrial use unless specifically prohibited by the ordinances and by-laws of the city or town in which such facility is proposed to be constructed or expanded, in effect as of July 1, 1987; provided, however, that all permits and licenses required by law have been issued to the proposed operator. A city or town shall not adopt an ordinance or by-law prohibiting the siting of such a facility or the expansion of an existing facility on any locus zoned for industrial use, or require a license or permit granted by said city or town, except a special permit imposing reasonable conditions on the construction or 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 the minimum allowable 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 1a above shall have actual and practical 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. In order to reduce nonconformities, 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, the term lawfully in existence shall not mean a structure or use that on such date was either in violation of the zoning ordinance or by-law or was a structure that had been built or altered without a legally required building permit.

b. Adoption or amendment of a zoning ordinance or by-law shall not apply to any lawful pre-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 previously existing 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 through credible evidence the intent not to abandon it. An involuntary interruption of a nonconforming structure or use, such as by fire or natural disaster, does not alone 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.

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

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

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

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

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

e. A zoning ordinance or by-law may vary by zoning district(s) the requirements for the alteration, reconstruction, extension or structural change of nonconforming structures, and for the 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 work or use proposed in a building permit, special permit, or definitive subdivision plan applied for in a complete application submitted 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 continue in effect notwithstanding later 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 applicant; 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, by the chief executive officer, if different, by the board of appeals, by an individual owning land to be affected by change or adoption, by request of registered voters of a town pursuant to section 10 of chapter 39, by 10 registered voters in a city, by a planning board, by a regional planning agency, or by other methods provided by municipal charter, ordinance, or by-law. The chief administrative officer shall within 14 days of receipt of such zoning ordinance or by-law submit it to the planning board for review, unless the proposal had been initiated by the planning board itself.

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

C. Notice: Notice of the time and place of such public hearing, of the subject matter, sufficient for identification, and of the place where texts and maps thereof may be inspected shall be published 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 said 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 said hearing. Notice of said hearing shall also be sent by mail, postage prepaid to the regional planning agency, if any, and to the planning board of each abutting city and town. The regional planning agency, the planning boards of all abutting cities 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. Notice shall be provided to all municipal departments, which shall be accorded the opportunity to provide advisory comments to the board in writing.

D. Notice to Farmland Advisory Board: Prior to the adoption of any zoning 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 submission of such report. After such notice, hearing and report, or after 21 days shall have elapsed after such hearing without submission of such report, the legislative body may adopt, reject, or amend and adopt any such proposed ordinance or by-law.

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

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

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

I. Review by the Attorney General: When zoning by-laws or amendments thereto are submitted to the attorney general for approval as required by section 32 of chapter 40, the

attorney general shall also be furnished with a statement which may be prepared by the planning board explaining the by-laws or amendments proposed, which statement may be accompanied by explanatory maps or plans.

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

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

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

M. 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.

N. 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.

O. 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, ordinance, or bylaw, and who shall serve for terms of such length and so arranged that the term of one member shall expire each year.

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

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

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

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

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

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

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

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

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

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

H. 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 appellant 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 appellant 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.

I. Procedures:

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

2. Votes: The concurring vote of all members of the board of appeals consisting of 3 members, and a concurring vote of 4 members of a board consisting of 5 members, shall be necessary to reverse an order or decision of an administrative official under this chapter or to effect a variance in the application of an ordinance or by-law. A zoning board of appeals acting as a special permit granting authority is governed by the voting requirements of section 9A(2)(a) of this Zoning Act.

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

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

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

A. Special Permits

1. Requirements:

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

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

c. Increases in Density or Intensity: Any zoning ordinance or by-law that provides for 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 special permit accompanied by the statement of the city or town clerk stating the fact that the special permit granting authority failed to act within the time prescribed, and no appeal has been filed, and that the grant of the petition resulting from such failure to act has become final or that if such appeal has been filed, that it has been dismissed or denied.

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

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

e. Lapse, Extension: A special permit granted under this section shall state that it will lapse within a period of time specified by the special permit granting authority, not less than 3 years, if a substantial use thereof has not sooner commenced except for good cause due to circumstances beyond the control of the petitioner or, in the case of a special permit for construction, if construction has not begun by such date except for good cause due to circumstances beyond the control of the petitioner. The period of time before which a special

permit shall lapse shall not include the time required to pursue or await the determination of an appeal from the grant thereof referred to in section 11. Upon written application by the grantee of a special permit, the special permit granting authority in its discretion and with or without a public hearing as provided in the ordinance or bylaw may, by the same vote majority originally required to approve the special permit, extend the time for the exercise of such special permit for a period of time not to exceed the original duration of the special permit. Such application must be filed no later than 65 days prior to the lapse of the special permit. If the permit granting authority does not grant the extension within 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 6any 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 have adopted a zoning ordinance or by-law requiring a 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 allowed 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 clerk that 20 days have elapsed after the decision has been filed in the office of the city or town clerk is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title.

The certification shall include either:

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

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

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

7. Lapse, Extension: If the rights authorized by a variance are not exercised within two years of the date of the grant of the variance such variance shall lapse; provided, however, that

upon written application by the grantee of such variance, the permit granting authority in its discretion may extend, either with or without a public hearing as provided in the zoning ordinance or bylaw, the time for exercise of such rights for a period not to exceed one year. Such application must be filed no later than 65 days prior to the lapse of the variance. If the permit granting authority does not grant the extension within 65 days of the date of application therefor, upon the lapse of the variance, the variance may be re-established only after notice and a new hearing pursuant to the provisions of this section.

D. Procedures for Applications, Hearings, and Decisions

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

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

2. Public Hearings:

a. 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. Notice shall be provided to all municipal departments, which shall be accorded the opportunity to provide advisory comments to the board in writing.

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

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

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

E. Inclusionary Zoning

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

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

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

4. Price or Rent Restriction: The inclusionary housing units 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 for a period of not less than 30 years.

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

F. Development Impact Fees

1. Authority:

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

b. Such off-site public capital facilities may include the provision of infrastructure, facilities, land, or studies including master plans under section 81D of chapter 41, partnership plans under chapter 40V, and impact fee studies required under subsection 3(a-c) herein associated with the following:

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

(ii) wastewater treatment and sanitary sewerage;

(iii) stormwater management and treatment;

(iv) solid waste;

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

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

c. Nothing in this section shall prohibit a city or town from imposing other fees or requirements for mitigation of development impacts which it may otherwise impose under state or local law.

2. Limitations:

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

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

3. Requirements:

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

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

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

(iii) assesses the impacts related to such development;

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

(v) develops cost projections for the needed capital facilities and documents costs of 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:

a. The ordinance or by-law may waive or reduce the development impact fee for any category of development that furthers an overriding public purpose as determined 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.

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

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

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

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

G. Land Use Dispute Avoidance

1. Applicability: As an optional means of avoiding or minimizing land use disputes, the owner of land or structures who has applied or intends to apply for a building permit, any permit or approval required under this chapter, an approval under sections 81K-GG of chapter 41, or a comprehensive permit under sections 20-23 of chapter 40B, may request of the public official or

local board charged with acting on the application to undertake a land use dispute avoidance process as hereinafter provided.

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

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

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

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

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

7. Process of Conflict Evaluation: As part of the conflict evaluation, the facilitator may solicit information and opinions relating to the application, and may identify and notify those members of the public likely to be interested in or affected by the application. The facilitator may clarify the issues and investigate the willingness of all interested parties to work together 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 officer shall notify, in writing, the party requesting such enforcement of any action or refusal to act, and the reasons therefor, within 14 days of receipt of such request.

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

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

G. Duration of Ability to Enforce, Building Permit: If real property has been improved and used in accordance with the terms of the original building permit issued by a person duly authorized to issue such permits, no action, criminal or civil, the effect or purpose of which is to compel the abandonment, limitation or modification of the use allowed by said permit or the removal, alteration or relocation of any structure erected in reliance upon said permit by reason of any alleged violation of the provisions of this chapter, or of any ordinance or by-law adopted thereunder, 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 6 years next after the commencement of the alleged violation of law. Such a structure shall not be deemed to be a protected nonconforming structure under section 6A of this chapter unless such 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 a structure or use 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 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: A person aggrieved and any municipal officer or board, whether or not previously a party to the proceeding, may appeal any decision or failure to act with respect to any matter governed by this chapter, as provided in this section. This section shall apply to:

1. the decision of the board of appeals or any permit granting authority or special permit granting authority;

2. the failure of the board of appeals to take final action concerning any appeal, application, or petition within the required time; and

3. 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.

The appeals shall be commenced by bringing an action within 20 days after the decision has been filed in the office of the city or town clerk, or within 20 days of the date by which the zoning authority was required to take final action. Notice of the action with a copy of the complaint shall be given to such city or town clerk so as to be received within such 20 days.

The appeal shall be made to the land court department, the superior court department in which the land concerned is situated or, if the land is situated in Hampden county, either to said land court or, superior court department or to the division of the housing court department for said county, or if the land is situated in a county, region or area served by a division of the housing court department either to said land court or superior court department or to the division of said housing court department for said county, region or area, or to the division of the district court department within whose jurisdiction the land is situated except in Hampden county. If said appeal is made to said division of the district court department, any party shall have the right to file a claim for trial of said appeal in the superior court department within 25 days after service on the appeal is completed, subject to such rules as the supreme judicial court may prescribe.

There shall be attached to the complaint a copy of the decision appealed from, bearing the date of filing thereof, certified by the city or town clerk with whom the decision was filed. The complaint shall allege that the decision exceeds the authority of the board or authority, and any facts pertinent to the issue, and shall contain a prayer that the decision be annulled.

If the complaint is filed by someone other than the original applicant, appellant or petitioner, such original applicant, appellant, or petitioner and all members of the board of

appeals, permit granting authority, or special permit granting authority shall be named as parties defendant with their addresses.

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

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

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

E. Hearing: The clerk of the court shall give notice of the hearing as in other cases without jury, to all parties whether or not they have appeared. The court shall hear all evidence pertinent to the authority of the board, permit granting authority, or special permit granting authority and determine the facts, and, upon the facts as so determined, annul such 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 using the procedures and standards applicable to 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 complainant challenging a site plan approval or conditional 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 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 authority unless it shall appear to the court that said appellant or appellants acted in bad faith or with malice in making the appeal to the court.

I. Requirement to Post Bond: The court may require non-municipal appellants to post a surety or cash bond in a sum of not less than 2,000 nor more than 15,000 dollars to secure the payment of any costs incurred by the appellee as a result of the appeal of a zoning or subdivision plan approval decision if it appears to the court that said appellant or appellants acted in bad faith or with malice in making the appeal to the court.

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

K. Mediation of Land Use Appeals:

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

2. Selection of Mediator, Compensation, and Withdrawal from Mediation: The parties may select the mediator from a list provided by the court or otherwise as the parties may determine. The mediator shall be compensated by the parties as they may agree, or in the absence of agreement, as the court may determine. A party may withdraw from mediation at any

time after written notification to the other parties and to the court, but shall remain responsible for that party's share of the costs of mediation until the time of withdrawal.

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

4. Conclusion of Mediation: At the conclusion of the mediation, the mediator shall file with the court a statement describing whether the parties have come to agreement. If unresolved, the appeal will then go forward; if the matter has been resolved, the appeal will be dismissed with prejudice. Mediation hereunder shall not be the only method of resolving a zoning appeal.

40A:12. Transition Provisions

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

SECTION 2. Section 81D of chapter 41 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out section 81D and inserting in place thereof the following section 81D:-

41:81D. Master Plan

1. Requirement to Plan: A planning board established in any city or town shall make a master plan for such city or town. The plan shall take effect upon adoption by the legislative 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.

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

a. Goals and Policies: A goals and policies statement that identifies the goals and policies of the municipality for its future growth, development, redevelopment, conservation, and preservation. Each community shall conduct a public participation process to determine community values, establish goals, and identify patterns of development, redevelopment, conservation, preservation, and protection of public health consistent with these goals. The goals and policies statement shall address the required and any additional selected optional plan subjects.

b. Housing:

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

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

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

(iv) An evaluation of zoning and other policies to provide a variety of housing that meets a broad range of housing needs, including but not limited to the affordable housing needs of low, moderate, and median income households and the accessible housing needs of people with disabilities and special needs. The evaluation shall include specific measures for implementing the master plan in order to address these needs, including strategies, programs, and assistance for the preservation or rehabilitation of existing housing; the construction of new housing; and the adoption or amendment of local ordinances or bylaws and regulations permitting, encouraging, or requiring diversity in housing locations, types, designs, and area densities that offer

alternatives to single family detached housing. A current housing production plan consistent with M.G.L. 760 CMR 56.03(4) shall constitute the subject matter relative to housing under this subsection b

(v) A description of the impact of existing and forecasted housing characteristics and needs on the health of the community.

c. Natural Resources and Energy Management:

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

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

(iii) An outline of local laws, regulations, policies, and strategies to address needs for the protection, restoration, and sustainable management of these resources and to promote development that respects and enhances the state's 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.

(v) A description of the impact of existing and forecasted natural resource and energy characteristics and needs on the health of the community.

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. Growth and development areas shall support the revitalization of city and town centers and neighborhoods by promoting 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 land use map illustrating the general land use policies and desired future development patterns of the municipality and a proposed zoning map.

(v) A description of the impact of existing and forecasted land use, zoning, and transportation characteristics and needs on the health of the community.

e. Implementation: An implementation program that defines and schedules the specific municipal actions necessary to achieve the goals and objectives of the master plan in accordance with the policies outlined therein. 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 7 subjects are optional, and described below in a general manner:

a. Economic Development:

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

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

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

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

(v) A description of the impact of existing and forecasted economic base and economic development on the public health.

b. Cultural Resources:

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

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

(iii) Where applicable, a description of the impact of cultural resources on the public health shall be included.

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

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

e. Transportation:

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

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

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

(iv) A description of the impact of existing and forecasted transportation characteristics and needs of the public health.

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

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

6. Adoption of Plan:

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

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

c. Distribution of the Plan: The planning board shall, upon adoption by the legislative body of any plan or report, or any change or amendment to a plan or report produced under this section, furnish a copy of such plan or report or amendment thereto, to the Department of Housing and Community Development.

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

a. Review of Master Plan: Prior to local legislative adoption of a master plan under this 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 40V 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 40V. A partnership plan shall be determined to be complete if, in addition to the requirements for required subjects set forth in subsection 3 of this section 81D it also contains all the elements required in section 4 of chapter 40V. 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 40V. 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 40V. 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 40V.

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 40V, 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.

e. Barnstable and Dukes Counties: Instead of adopting a master plan pursuant to the requirements of this section 81D, a municipality in Barnstable or Dukes county may adopt a local comprehensive plan pursuant to the special acts that protect those two regions, St. 1989, c. 716, as amended, and St. 1977, c. 831, as amended, respectively, and the regulations and regional policy plans adopted thereunder. The regional planning agency shall review the local comprehensive plan solely for consistency with the governing special act (St. 1989, c. 716 or St. 1977, c. 831, as these acts may be amended) and any regulations and regional policy plans adopted thereunder, rather than the requirements for master plans set forth in this section 81D. The time limits and requirements set forth in subsection 7.a. through 7.d. of this section 81D shall not apply to the review of such local comprehensive plans. A local comprehensive plan certified by the regional planning agency as consistent with this subsection 7.e. shall be deemed a master plan in compliance with this section 81D and shall entitle the municipality to the partnership plan benefits enumerated in Chapter 40U, Sections 8.D.1, 8.D.3, 11, and 12. To be entitled to any other benefits in Chapter 40U, the municipality must comply with all partnership plan requirements of this section 81D and Chapter 40U.

SECTION 3. Section 81L of chapter 41 of the General Laws, as appearing in the 2010 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. Chapter 41, as so appearing, is hereby amended by striking out section 81M and inserting in place thereof the following section 81M:–

Section 81M. The subdivision control law has been enacted for the purpose of protecting the safety, convenience and welfare of the inhabitants of the cities and towns in which it is, or may hereafter be, put in effect by regulating the laying out and construction of ways in subdivisions providing access to the several lots therein, but which have not become public ways, ensuring sanitary conditions in subdivisions, promoting and protecting the public health, and in proper cases parks and open areas. The powers of a planning board and of a board of appeal under the subdivision control law shall be exercised with due regard for the provision of adequate access to all of the lots in a subdivision by ways that will be safe and convenient for travel; for lessening congestion in such ways and in the adjacent public ways; for reducing danger to life and limb in the operation of motor vehicles; for securing safety in the case of fire, flood, panic and other emergencies; for promoting and protecting the public health; for ensuring compliance with the applicable zoning ordinances or by-laws; for securing adequate provision for water, sewerage, drainage, underground utility services, fire, police, and other similar municipal equipment, and street lighting and other requirements where necessary in a subdivision; and for coordinating the ways in a subdivision with each other and with the public ways in the city or town in which it is located and with the ways in neighboring subdivisions. Such powers may also be exercised with due regard for the policy of the commonwealth to encourage the use of solar energy and protect the access to direct sunlight of solar energy systems, and for those aspects of a plan adopted by the city of town under section 81D of this chapter which are particular to the subdivision of land. It is the intent of the subdivision control law that any subdivision plan filed with the planning board shall receive the approval of such board if said plan conforms to the recommendation of the board of health and to the reasonable rules and regulations of the planning board pertaining to subdivisions of land; provided, however, that such board may, when appropriate, waive, as provided for in section eighty-one R, such portions of the rules and regulations as is deemed advisable.

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 a submission 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 81Tof this chapter shall not apply to minor subdivisions. Except as provided below, all other sections of the subdivision control law that applies 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 requirements and standards of the board for those existing ways described in the definition of minor subdivision, provided that no requirements shall be made for the location of such ways or for a roadway width of greater than 22 feet; c) set forth the reasonable requirements and

standards of the board for the proposed ways shown on a plan, provided that no requirement may be made for a roadway width of greater than 22 feet; and d) establish a time period for the planning board to take final action and to file with the city or town clerk a certificate of such action within 65 days or less in the case of an existing way, or 95 days or less in the case of a new way.

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

5) Rules and Regulations, Optional Provisions Requiring Ratification by Legislative Body: Subject to ratification by the local legislative body by a simple-majority vote, the rules and regulations for minor subdivisions may: a) increase the maximum number of additional lots created in an application for a minor subdivision to a number greater than 6; and b) define "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 chapter 41, as so appearing, is hereby amended by inserting, after the first sentence, the sentence:- Notice shall be provided to all municipal departments, which shall be accorded the opportunity to provide advisory comments to the board in writing.

SECTION 10. 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 11. 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 12. 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, 2018, 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 master plan, a subdivision rule or regulation shall enjoy a rebuttable presumption in any actionsuit, or administrative proceeding that its provisions are not inconsistent with the master plan. If the presumption is rebutted, inconsistency may serve as the basis upon which a court or administrative agency may declare any relevant subdivision rule or regulation to be invalid as applied to the property which is the subject of the actionsuit, or administrative proceeding. For any amendment to a plan adopted after January 1, 2018, no such declaration of invalidity may be made in any actionsuit, or administrative proceeding for a period of 12 months after the effective date of such master plan amendment.

In Barnstable or Dukes Counties inconsistency with a local comprehensive plan adopted pursuant to St. 1989, c. 716, as amended, or St. 1977, c. 831, as amended, and the regional policy plans and regulations adopted thereunder to serve as a municipality’s master plan for purposes of

Chapter 41, Section 81D shall not serve as a basis for declaring a subdivision regulation provision to be invalid under this section.

SECTION 13. Section 81S of chapter 41, as so appearing is hereby amended by striking the first and second paragraphs and inserting in place thereof the following paragraph: -

Any person before submitting his definitive subdivision plan for approval shall submit to the planning board and the board of health, a preliminary plan, and shall give notice to the clerk of such city or town by delivery or by registered mail, postage prepaid, that he has submitted such plan.

SECTION 14. Section 81T of said chapter 41, as so appearing, is hereby amended by striking out, in lines 2-3 inclusive, the following words “or for a determination that approval is not required”.

SECTION 15. Section 81T of chapter 41, as so appearing, is hereby amended by adding the following sentence:- Notice shall be provided to all municipal department, which shall be accorded the opportunity to provide advisory comments to the board in writing.

SECTION 16. Said section 81U of said chapter 41, as so appearing, is hereby amended by striking out, in lines 173-174 inclusive, the words “for a period of not more than three years”.

SECTION 17. Section 81X of said chapter 41, as so appearing, is hereby amended by striking out, in lines 12-13 inclusive, the following words “such plan bears the endorsement of the planning board that approval of such plan is not required, as provided in section eighty-one P, or (3)”.

SECTION 18. Said section 81X of said chapter 41, as so appearing, is hereby amended by striking out, in lines 17-20 inclusive, the following words “or that it is a plan submitted pursuant to section eighty-one P and that it has been determined by failure of the planning board to act thereon within the prescribed time that approval is not required,”.

SECTION 19. Said section 81X of said chapter 41, as so appearing, is hereby amended by striking out the fourth paragraph and inserting in place thereof the following paragraphs:-

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

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

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

SECTION 20. Said section 81BB of said chapter 41, as so appearing, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:-

Section 81BB. Any person, whether or not previously a party to the proceedings, or any 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 21. Section 53G of chapter 44 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting after the number "9", in line 2, the following numbers and letters:- A, 9B, 9G,

SECTION 22. The General Laws are hereby amended by inserting after Chapter 40V the following chapter:- CHAPTER 40V LAND USE PARTNERSHIP ACT

CHAPTER 40V

LAND USE PARTNERSHIP ACT

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

2. Definitions

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

4. Elements of a Partnership Plan

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

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

7. Partnership Community Effective Date

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

9. Review of Certification by Regional Planning Agency

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

11. Priority for Infrastructure Funding

12. Consideration Under State Programs

40V:1. Preamble; Statement of the Commonwealth's Land Use Objectives

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

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

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

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

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

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

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

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

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

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

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

K) Promotion of a physical and built environment that promotes and protects public health.

40V:2. Definitions

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

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

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

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

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

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

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

"Eligible location" shall mean an area that by virtue of its physical and regulatory suitability for development, the adequacy of transportation and other infrastructure and the compatibility of proximate land uses is, in the determination of the regional planning agency, a

suitable location for development of the type contemplated by a partnership plan. Any area that would qualify as an "eligible location" under chapter 40R shall automatically qualify as an "eligible location" for a residential development district.

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

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

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

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

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

"Natural resource protection zoning" shall have the meaning ascribed to it in chapter 40A.

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

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

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

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

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

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

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

"Regional planning agency" shall mean the regional or district planning commission established pursuant to chapter 40B for the region within which a municipality is located. The term shall also mean the Martha's Vineyard Commission, as described in Chapter 831 of the Acts of 1977, the Nantucket Planning and Economic Development Commission, as described in Chapter 561 of the Acts of 1973, the Cape Cod Commission, as described in Chapter 716 of the Acts of 1989, the Franklin Regional Council of Governments, as described in Chapter 151 of the Acts of 1996, and the Northern Middlesex Council of Governments, as described in Chapter 420 of the Acts of 1989.

"Residential development district" shall mean a zoning district that: permits or allows residential use at a density of not less than 4 units per acre of developable land for single-family residential use, not less than 8 units per acre of developable land for two- and three-family and attached townhouse residential use, and/or not less than 12 units per acre of developable land for multi-family residential use, or permits or allows mixed use including residential use at such

density; is in an eligible location; and does not impose other requirements that add unreasonable costs or otherwise unreasonably impair the economic feasibility of residential development at such density. A zoning district that permits or allows mixed use may qualify as both an economic development district and a residential development district, if the standards for both districts are met. The implementing regulations for any residential development district that permits or allows mixed use shall contain adequate provisions to ensure that any contemplated contribution towards the housing target number to be provided by such district will be achieved. To achieve the minimum densities and housing target number, the implementing regulations may employ zoning techniques such as infill development, cottage zoning, transfer of development rights, and accessory dwelling units. The foregoing minimum density for single-family residential use may be reduced to not less than 2 units per acre of developable land upon a determination by the regional planning agency that the lack of adequate water supply and/or wastewater infrastructure within the municipality prevents full compliance with the minimum density standard. If there is no public water supply or public wastewater infrastructure existing anywhere within the municipality, then the minimum density for single-family residential use may be reduced to not less than 2 units per acre of developable land without the need for a determination by the regional planning agency.

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

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

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

40V:4. Subjects of a Partnership Plan

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

The partnership plan shall contain:

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

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

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

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

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

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

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

40V:5. Minimum Standards for Consistency with Commonwealth's Land Use Objectives

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

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

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

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

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

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

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

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

40V:6. Adoption, Review, and Certification of a Partnership Plan

Adoption, review, and certification of a partnership plan shall be in accordance with, sections 81D(6) and (7) of chapter 41.

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

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

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

C. Within 90 days of receiving a submission, the regional planning agency shall determine whether the proposed implementing regulations are consistent with the certified partnership plan. The implementing regulations shall be deemed consistent with the certified partnership plan if they effectuate the minimum standards for consistency with the commonwealth's land use objectives established or required by the certified partnership plan. If

the regional planning agency determines that the implementing regulations are consistent with the certified partnership plan, then the agency shall issue a written certification to that effect. If the regional planning agency determines that the regulations do not effectuate the minimum standards for consistency, then the agency shall provide the municipality with a written statement of the reasons for its determination. A municipality may re-submit for certification at any time modified implementing regulations that address the issues set forth in the agency's statement of reasons. If the regional planning agency does not issue a certification or provide a statement of reasons within 90 days after receiving implementing regulations (including re-submitted implementing regulations), then the implementing regulations shall be deemed certified. The municipality shall have the option of submitting its implementing regulations together with its submission of its partnership plan pursuant to section 4 herein, in which case the regional planning agency shall review both the partnership plan and the implementing regulations within the same 90 day period.

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

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

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

40V:7. Partnership Community Effective Date

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

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

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

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

C. If at any time more than 2 years after the municipality's effective date the total number of housing units for which building permits have been applied for within the residential development districts since the municipality's effective date is greater than the housing target number (adjusted pro rata for the number of years since the municipality's effective date divided by the ten-year time frame of the plan), but the total number of housing units for which building permits have been issued within the residential development districts is less than the pro rata housing target number, then the provisions of this subsection shall be in effect. During such time period, any applications for building permits or other local land use permits for residential development within such residential development districts shall deemed constructively approved if not acted upon within 180 days after receipt of permit applications. In addition, an application received under this section shall be subject only to those conditions that are necessary to ensure substantial compliance of the proposed development project with applicable laws and regulations; and it may be denied only on the grounds that the proposed development project does not substantially comply with applicable laws and regulations or the applicant failed to submit information and fees required by applicable laws and regulations and necessary for an 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 areas designated by the state, a regional planning agency, or by a city or town as having significant natural resource values 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 40V.

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

5. Development Impact Fees: Development impact fees imposed pursuant to section 9F of chapter 40A may, in addition to the off-site public capital facilities listed in subsection 1.b of said section, be used to defray the costs of the following off-site public capital facilities: public

elementary and secondary schools, libraries, municipal offices, affordable housing, and public safety facilities.

40V:9. Review of Certification by Regional Planning Agency

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

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

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

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

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

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

40V:11. Priority for Infrastructure Funding

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

40V:12. Consideration under State Programs

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

Capital Funding

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

7006-xxxx For a technical assistance program in the form of grants to municipalities or regional planning agencies for the preparation of plans under section 81D of chapter 41, within Barnstable and Dukes Counties local comprehensive plans adopted pursuant to St. 1989, c. 716,

as amended, or St. 1977, c. 831, as amended, sections 3-5 of chapter 40V, and regional plans in the manner described in section 5 of chapter 40B created by any regional planning agency including those created under special law or act, provided that the grants are to be administered by the Interagency Planning Board; and provided further, priority for the municipal grants administered by the Interagency Planning Board shall be given to those municipalities identified by the applicable regional planning agencies as being most likely to prepare and adopt partnership plans and implementing regulations under chapter 40U, if provided with financial assistance; provided further, that no expenditure shall be made from this item without the prior approval of the secretary for administration and finance……$11,000,000.