

# **HOUSE . . . . . No. 4140**

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## The Commonwealth of Massachusetts

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HOUSE OF REPRESENTATIVES, April 4, 2016.

The committee on Housing to whom were referred the petition (accompanied by bill, Senate, No. 119) of Michael J. Rodrigues and Angelo J. Puppolo, Jr. for legislation to improve housing opportunities and the Massachusetts economy, the petition (accompanied by bill, House, No. 1080) of Christine P. Barber, David M. Rogers and James B. Eldridge for legislation to address equal access to housing through local zoning, and the joint petition (accompanied by bill, House, No. 1107) of Kevin G. Honan relative to multifamily housing construction, reports recommending that the accompanying bill (House, No. 4140) ought to pass [Representatives Diehl of Whitman and DeCoste of Norwell dissenting].

For the committee,

KEVIN G. HONAN.

**HOUSE . . . . . No. 4140**

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The Commonwealth of Massachusetts

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**In the One Hundred and Eighty-Ninth General Court  
(2015-2016)**  
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An Act to expedite multifamily housing construction and cluster development.

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

1           SECTION 1. Chapter 40A of the General Laws is hereby amended by adding the  
2 following sections:-

3           Section 3A.

4           (a) For purposes of this section, unless the context clearly requires otherwise, the  
5 following words shall have the following meanings:

6           “As of right”, development may proceed under a zoning ordinance or by-law without the  
7 need for a special permit, variance, zoning amendment, waiver, or other discretionary zoning  
8 approval.

9           "Eligible locations", (1) areas near transit stations, including rapid transit, commuter rail  
10 and bus and ferry terminals; (2) areas of concentrated development, including town and city  
11 centers, other existing commercial districts in cities and towns, and existing rural village centers;

12 or (3) areas that by virtue of their infrastructure, transportation access, existing underutilized  
13 facilities, and/or location make highly suitable locations for residential multi-family housing.

14 “Gross density”, is a units-per-acre density measurement that includes in the calculation,  
15 land occupied by public rights-of-way, recreational, civic, commercial and other non-residential  
16 uses.

17 "Lot", shall mean an area of land with definite boundaries, used, or available for use, as  
18 the site of one or more buildings.

19 "Multi-family housing”,(i) A residential building with three or more dwelling units; or (ii)  
20 Two or more residential buildings on the same lot with more than one dwelling unit in each  
21 building.

22 “Rural town”, a municipality with a population density of less than 500 persons per  
23 square mile as determined by the most recent decennial federal census.

24 “The department”, Department of Housing and Community Development.

25 (b) Within three years of the effective date of this section, zoning ordinances and bylaws  
26 shall provide one or more districts in which multi-family housing is a permitted use as of right.

27 For the purposes of this section, districts shall satisfy the following minimum requirements:

28 1. Include multi-family housing without age restrictions, which is suitable for  
29 families with children;

30 2. accommodate a reasonable share of the regional need for multi-family housing;

31           3.       a minimum gross density of eight units per acre in rural towns subject to any  
32 further limitations imposed by the state Wetlands Protection Act pursuant to section 40 of  
33 chapter 131 of the General Laws and Title 5 of the State Environmental Code pursuant to section  
34 13 of chapter 21A of the General Laws. All other municipalities shall have a minimum gross  
35 density of fifteen units per acre.

36           4.       be in eligible locations.

37           A city or town may elect to satisfy the requirement of subsection (b) of this section by  
38 obtaining a determination from the department, acting directly or through a regional planning  
39 agency as its designee, that the multi-family provisions of its zoning ordinance or bylaw are  
40 consistent with the department's guidelines. If a city or town obtains a determination from the  
41 department under this section, the city or town may use the determination as verification of  
42 compliance when applying for discretionary funding by state agency programs that have  
43 included a preference or priority for multi-family zoning pursuant to this section.

44           (c) The department shall publish guidelines which may be used to determine if a city or  
45 town has satisfied the requirements established in subsection (b) of this section.

46           Section 3B.

47           Zoning ordinances or by-laws shall provide for open space residential developments, as  
48 defined in this chapter. Such ordinances or by-laws shall be adopted by cities and towns within  
49 two years of the effective date of this section and shall provide that open space residential  
50 developments shall be allowed either in a specific district or districts within said district, or in  
51 multiple districts through overlay zoning. Such ordinances or by-laws shall provide that open  
52 space residential developments shall be permitted upon review and approval by a planning board

53 pursuant to the applicable provisions of Section 81K to 81GG, inclusive, of Chapter 41 and in  
54 accordance with its rules and regulations governing subdivision control. Allowance of open  
55 space residential development by right in accordance with this section shall not preclude  
56 establishment of zoning districts which provide for increases in the permissible density of  
57 population or intensity of a particular use within an open space residential development by  
58 special permit as provided in section nine of this chapter.

59 Section 3C.

60 The Department of Housing and Community Development shall publish guidelines which  
61 shall be used to determine if a city or town has met the requirement established in Sections 3B.  
62 Said guidelines shall include the review and approval of a city or town zoning ordinance or by-  
63 law and subdivision regulations, if any, including guidelines for determining density, lot layout  
64 and standards for the completion of subdivision improvements.

65 SECTION 2. Section 5 of Chapter 40A, as so appearing, is hereby amended by inserting  
66 after the words “town meeting;” in line 82 the following;-

67 “provided, however, if a city or town has failed to meet the minimum requirements of  
68 subsection (b) of section 3A of Chapter 40A, any zoning ordinance or by-law that is consistent  
69 with the requirements of section 3A of chapter 40A shall be adopted by a vote of a simple  
70 majority of all members of the town council, or of the city council where there is a commission  
71 form of government or a single branch, or of each branch where there are two branches, or by a  
72 vote of a simple majority of a town meeting;”

73 SECTION 3. Section 9 of Chapter 40A is hereby amended by striking out, in line 33, the  
74 word “cluster” and inserting in place thereof the following:- open space residential

75 SECTION 4. Section 9 of Chapter 40A is hereby amended by striking out, in line 37, the  
76 word “cluster” and inserting in place thereof the word:– open space residential

77 SECTION 5. Section 9 of Chapter 40A is hereby amended by striking out the sixth  
78 paragraph.

79 SECTION 6. Section 9 of Chapter 40A is hereby amended by striking out the seventh  
80 paragraph and inserting in place thereof the following paragraph:–

81 “Open space residential development” means a residential development in which the  
82 buildings and accessory uses are clustered together into one or more groups separated from  
83 adjacent property and other groups within the development by intervening open land. An open  
84 space residential development shall be permitted only on a plot of land of such minimum size as  
85 a zoning ordinance or by-law may specify which is divided into building lots with dimensional  
86 control, density and use restrictions for such building lots varying from those otherwise  
87 permitted by the ordinance or by-law and open land. Such open land when added to the building  
88 lots shall be at least equal in area to the land area required by the ordinance or by-law for the  
89 total number of units or buildings contemplated in the development. Such open land may be  
90 situated to promote and protect maximum solar access within the development. Such open land  
91 shall either be conveyed to the city or town and accepted by it for park or open space use, or be  
92 conveyed to a non-profit organization the principal purpose of which is the conservation of open  
93 space, or to be conveyed to a corporation or trust owned or to be owned by the owners of lots or  
94 residential units within the development. If such corporation or trust is utilized, ownership  
95 thereof shall pass with conveyances of the lots or residential units. In any case where such land is  
96 not conveyed to the city or town, a restriction enforceable by the city or town shall be recorded

97 providing that such land shall be kept in an open or natural state and not be built for residential  
98 use or developed for accessory uses such as parking or roadway.

99 SECTION 7. (a) Section 1 of Chapter 40S of the General Laws, as appearing in the 2014  
100 official edition, is hereby amended by inserting after line 20 the following:-

101 “Dense cluster development”, a cluster development that (a) occurs in a residential  
102 district where cluster development is allowed as of right; (b) has a gross density of at least four  
103 units per acre of developable land; (c) where no less than 20% of the total residential units are  
104 affordable to and occupied by individuals and families whose annual income is no more than  
105 80% of the area median income as determined by the United States Department of Housing and  
106 Urban Development; and (d) no less than 50% of the total residential units are affordable to and  
107 occupied by individuals and families whose annual income is no more than 110% of area median  
108 income as determined by the United States Department of Housing and Urban Development

109 SECTION 8. Said Section 1 of Chapter 40S, as so appearing, is further amended by  
110 inserting after line 37 the following:-

111 “Gross density”, is a units-per-acre density measurement that includes in the calculation,  
112 land occupied by public rights-of-way, recreational, civic, commercial and other non-residential  
113 uses.

114 SECTION 9. Said Section 1 of Chapter 40S, as so appearing, is further amended by  
115 inserting after line 48 the following:-

116 “Multi-family zoning district”, a zoning district adopted by a community pursuant to  
117 section 3A of Chapter 40A of the General Laws.

118 SECTION 10. Said Section 1 of Chapter 40S, as so appearing, is further amended by  
119 adding after the words “smart growth zoning district” the following words:-

120 “; any new residential development subject to the payment of local property taxes that:  
121 (a) occurs in a multi-family housing district after the adoption of such zoning by the community;  
122 (b) where no less than 20% of the total residential units are affordable to and occupied by  
123 individuals and families whose annual income is no more than 80% of the area median income as  
124 determined by the United States Department of Housing and Urban Development; and (c) no less  
125 than 50% of the total residential units are affordable to and occupied by individuals and families  
126 whose annual income is no more than 110% of area median income as determined by the United  
127 States Department of Housing and Urban Development; or any new dense cluster development”

128 SECTION 11. Section 2 of Chapter 40S, as so appearing, is hereby amended by inserting  
129 after the first sentence, the following sentence:-

130 “For each fiscal year commencing with fiscal year 2020, any city or town that has  
131 established 1 or more smart growth zoning districts, 1 or more multi-family zoning districts, or 1  
132 or more dense cluster developments shall receive smart growth school cost reimbursement from  
133 the commonwealth.”

134 SECTION 12. Section 3 of said chapter 40S, as so appearing, is hereby amended by  
135 inserting after the word “district”, in line 2, the following words:- or a multifamily zoning  
136 district.

137 SECTION 13. Section 3 of said chapter 40S, as so appearing, is hereby amended by  
138 inserting after the word “district”, in line 10, the following words:-a multi-family zoning district,  
139 or a dense cluster development.

140 SECTION 14. Section 3 of chapter 40S, as so appearing, is hereby amended by striking  
141 out, in line 26, the words “within a smart growth zoning district”.

142 SECTION 15. Section 3 of chapter 40S, as so appearing, is hereby amended by striking  
143 out, in line 35, the words “in the smart growth zoning district”.

144 SECTION 16. Section 4 of Chapter 40S, as so appearing, is hereby amended by inserting  
145 after the word “commonwealth”, in line 7, the following words:- the number of multi-family  
146 zoning districts in the commonwealth, the number of dense cluster developments.