

SENATE No. 1075

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:
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>

SENATE No. 1075

By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 1075) of James B. Eldridge, John J. Lawn, Jr. and Marjorie C. Decker for legislation relative to comprehensive land use reform and partnership. Municipalities and Regional Government.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 71 OF 2013-2014.]

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

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:

1 SECTION 1. Chapter 40A of the General Laws, as appearing in the 2012 Official
2 Edition, is hereby amended by striking out the chapter in its entirety and inserting in place
3 thereof the following Chapter 40A:-

4 CHAPTER 40A

5 ZONING

6 1. Title, Authority, and Purposes

7 2. Definitions

8 3. Consistency with Master Plan

- 9 4. Powers of Cities and Towns
- 10 5. Exemptions from Zoning, Limitations on Local Authority
- 11 6. Nonconformities and Vested Rights
- 12 7. Adoption and Amendment of Zoning Ordinances and By-laws
- 13 8. Boards of Appeal, Zoning Administrators
- 14 9. Permits and Approvals, Procedures, and Zoning Tools
- 15 10. Enforcement
- 16 11. Judicial Review Procedures and Standards
- 17 12. Transition Provisions

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

19 A. Title of Chapter

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

21 B. Authority

22 The authority of cities and towns to act with respect to land use planning, zoning, and
23 regulation is contained in Article 89 of the Articles of Amendment to the Constitution of the
24 Commonwealth, also known as the “Home Rule Amendment.” This chapter shall be construed to
25 give full effect to the home rule authority of cities and towns. Nothing in this chapter shall be
26 construed as limiting the constitutional authority of cities and towns unless the language in this
27 chapter expressly so states. Wherever the language of this chapter purports to authorize or

28 enable, it shall be so construed only where such authority is not otherwise available to cities and
29 towns under the constitution or laws of the commonwealth, and in all other cases such language
30 shall be deemed illustrative only.

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

41 C. Purposes of the Zoning Act

42 The purposes of this Zoning Act are:

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

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

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

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

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

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

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

60 D. Purposes of Zoning Ordinances and By-laws

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

66 1. The Implementation of a plan adopted by the city or town under section 81D of chapter
67 41 or other plan designed to set goals for the development of land within the city or town.

68 2. The orderly and sustainable growth, development, redevelopment, conservation, and
69 preservation of a city or town that promotes the types, patterns, and intensities of land use

70 contained in a plan adopted by the city or town under section 81D of chapter 41 or other plan
71 designed to set goals for the development of land within the city or town.

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

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

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

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

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

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

89 9. The cost-effective provision of Complete Streets in all development such that all users
90 including pedestrians, bicyclists, transit riders, and motor vehicle drivers of all ages and abilities

91 are safely and efficiently accommodated on the roadways and adjoining facilities such as
92 sidewalks, bicycle lanes, and side paths.

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

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

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

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

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

105 15. The protection of public investment in infrastructure systems.

106 16. The efficient use of energy and the reduction of pollution from energy generation,
107 including the promotion of renewable energy sources and associated technologies, protection of
108 solar access, and reduced dependence on fossil fuel energy generation.

109 17. The adequate provision of employment opportunities within the city or town and the
110 region, including redevelopment of pre-existing sites, home-based occupations, sustainable

111 natural-resource-based occupations, and housing to support the employment opportunities within
112 the city or town and the region.

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

115 19. The accommodation of regional growth in a fair, equitable, and sustainable manner
116 among municipalities, including coordination of land uses with contiguous municipalities, other
117 municipalities, the state, and other agencies, as appropriate, especially with regard to resources
118 and facilities that extend beyond municipal boundaries or have a direct impact on other
119 municipalities.

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

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

132 40A:2. Definitions

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

134 “Affordable housing”, A dwelling unit restricted for purchase or rent by a household with
135 an income at or below 80 percent of the median family income for the applicable metropolitan or
136 non-metropolitan area, as determined by the U.S. Department of Housing and Urban
137 Development (HUD). Affordable housing shall be subject to an affordable housing restriction in
138 accordance with sections 31 and 32 of chapter 184, or, if ineligible under said sections, restricted
139 by other means as required in an ordinance or by-law.

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

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

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

151 “Cluster development” means a class of residential development in which reduced
152 dimensional requirements allow the developed areas to be concentrated in order to permanently
153 preserve natural or cultural resources elsewhere on the plot. This general class of development

154 may also be referred to in local zoning by other names such as open space design, open space
155 residential design, conservation design/development, or flexible development.

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

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

166 “Form-based zoning”, text and graphics in a zoning ordinance or by-law that specify the
167 built form of the community, general intensity of use, and the relationship between buildings and
168 the outdoor public spaces they shape. Form-based codes may regulate building type, exterior
169 building materials, minimum and maximum building heights, frontage type, build-to lines, street
170 type, street and streetscape design, public open spaces, and any other parameter of the built or
171 natural environment which gives form to the exterior of buildings and the spaces between them.
172 Form-based codes may combine in a single document standards for new subdivision streets,
173 existing and new public streets and sidewalks, and use and dimensional standards. Such
174 combined standards may be in the form of a “regulating plan” that integrates building,
175 dimensional, use, street, sidewalk, and parking requirements. Form-based codes may also specify

176 lot-by-lot in a detailed regulating plan, building forms and allowed use mixes, even if such
177 specification is not uniform throughout a zoning district, provided that it is based upon a plan for
178 the area subject to the code. Form-based codes may specify prescribed future lot division lines
179 which will be allowed as a matter of right in any future division of land.

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

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

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

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

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

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

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

215 “Site plan”, the submission made to a municipality that includes documents and drawings
216 required by an ordinance or by-law to determine whether a proposed use of land or structures or
217 development is in compliance with applicable local ordinances or by-laws, to evaluate the
218 impacts of the proposed use of land or structures on the neighborhood and/or community, and to

219 evaluate and propose site or structural design modifications or required conditions that will
220 lessen those impacts. Such site plan may be required independently of or as a required
221 component of a special permit, variance, or other discretionary zoning approval.

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

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

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

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

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

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

239 “Unified development ordinance or by-law”, An ordinance or bylaw that combines in a
240 single document standards and procedures for land use approvals that derive from different
241 chapters of the General Laws, including but not limited to chapters 40A, 40B, 40C, and 41,
242 combining procedures for subdivision, comprehensive permits, historic districts, streets and
243 sidewalks, as well as the use and dimensional standards typically found in zoning.

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

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

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

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

255 40A:3. Consistency with Master Plan

256 A. Requirement: After January 1, 2018, no zoning ordinance or by-law may be
257 inconsistent with a plan adopted in compliance with section 81D of chapter 41. No zoning
258 ordinance or by-law shall be deemed inconsistent with the plan if it furthers, or at least does not

259 impede, the achievement of the plan's goals and policies, and if it is not incompatible with the
260 plan's proposed land uses and development patterns.

261 B. Rebuttable Presumption: After the effective date of the plan, a zoning ordinance or by-
262 law shall enjoy a rebuttable presumption in any action, suit, or administrative proceeding that its
263 provisions are not inconsistent with the plan. If the presumption is rebutted, inconsistency may
264 serve as the basis upon which a court or administrative agency may declare any relevant zoning
265 ordinance or by-law provision to be invalid as applied to the property which is the subject of the
266 action, suit, or administrative proceeding. For any amendment to a plan adopted after January 1,
267 2018, no such declaration of invalidity may be made in any action, suit, or administrative
268 proceeding for a period of 12 months after the effective date of such plan amendment.

269 C. Exception: In Barnstable or Dukes Counties inconsistency with a local comprehensive
270 plan adopted pursuant to St. 1989, c. 716, as amended, or St. 1977, c. 831, as amended, and the
271 regional policy plans and regulations adopted thereunder to serve as a municipality's master plan
272 for purposes of Chapter 41, Section 81D shall not serve as a basis for declaring a zoning
273 ordinance or bylaw provision to be invalid under this section.

274 40A:4. Powers of Cities and Towns

275 A. Powers Enumerated: To resolve uncertainty regarding the authority of cities and towns
276 to assert powers conferred by Article 89 of the Articles of Amendment to the Constitution of the
277 Commonwealth and by general or special laws, this chapter confers or confirms the following
278 zoning powers:

279 1. to impose development impact fees subject to the requirements set forth in Section 9F;

280 2. to use inclusionary zoning techniques, subject to the requirements set forth in Section
281 9E;

282 3. to enact unified development ordinances or by-laws and form-based zoning, as defined
283 herein, which are based upon multiple sources of statutory authority to regulate land use;

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

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

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

300 7. to require advisory Health Impact Assessments, as defined herein, of proposed projects
301 so that permit granting authorities may be fully informed of the environmental, safety, and

302 transportation-related health effects of a proposal and can pursue appropriate mitigation as
303 needed.

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

308 40A:5. Exemptions from Zoning, Limitations on Local Authority

309 A. Building Code: No zoning ordinance or by-law shall regulate or restrict the use of
310 materials, or methods of construction of structures regulated by the state building code. This
311 shall not prevent the regulation of exterior materials on existing or new buildings under form-
312 based codes or in zones specifically identified by statute, ordinance, or by-law as having historic
313 or architectural significance.

314 B. Flood Plain, Wetlands: No zoning ordinance or by-law shall exempt land or structures
315 from flood plain or wetlands

316 regulations established pursuant to general law.

317 C. Agriculture:

318 1. No zoning ordinance or by-law regulating the use of agricultural lands, shall prohibit,
319 unreasonably regulate, or require a special permit for the use of land for the primary purpose of
320 commercial agriculture, nor prohibit, unreasonably regulate or require a special permit for the
321 use, expansion, reconstruction, or construction of structures thereon for the primary purpose of
322 commercial agriculture. In areas not zoned for commercial agriculture, however, all such

323 activities may be limited to parcels of 5 acres or more or to parcels 2 acres or more if the sale of
324 products produced from commercial agricultural on the parcel generates at least \$1,000 per acre
325 based on gross sales dollars. For such purposes, land divided by a public or private way or a
326 waterway shall be construed as one parcel.

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

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

333 b. Annually at least 25 percent of such products have been produced by the owner or
334 lessee of the land on which the facility is located, and at least an additional 50 per cent of such
335 products shall have been produced in Massachusetts on land, other than that on which the facility
336 is located, used for the primary purpose of commercial agriculture, whether by the owner or
337 lessee of the land on which the facility is located or by another.

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

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

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

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

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

350 4. Renewable Energy on Agricultural Land for Municipal Uses: The planning board, with
351 the approval of the chief executive officer of the city or town, may grant a special permit for
352 renewable energy generating facilities, as defined in 220 CMR 18.02, whether directly or under a
353 net-metering arrangement approved by the Commissioner of the Department of Agricultural
354 Resources, on agricultural land to serve the energy needs of municipally owned or controlled
355 facilities, provided that: (1) the parcel on which the renewable energy generating facility is
356 located is not less than five acres and remains primarily in commercial agricultural use as
357 defined in Section 5C(3); (2) the location and design of all renewable energy generating
358 structures and equipment have been approved by the Commissioner of the Department of
359 Agricultural Resources to assure the least possible use of or adverse impact on agricultural
360 resources, prime agricultural soils, or farm viability; and (3) the renewable energy capacity of
361 any farm is limited to one megawatt (1,000 kilowatts), unless waived up to a limit of two
362 megawatts (2,000 kilowatts) by the Commissioner of Agricultural Resources, provided that such
363 waiver is approved by the planning board and the chief executive officer of the municipality.

364 The Department of Agricultural Resources shall promulgate regulations governing the
365 siting, construction, operation, and decommissioning of such facilities, which may include

366 prescription or approval of the commercial relationships created to own and operate such
367 facilities.

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

371 E. Religious, Educational Purposes: No zoning ordinance or by-law shall prohibit,
372 regulate or restrict the use of land or structures for religious purposes or for educational purposes
373 on land owned or leased by the commonwealth or any of its agencies, subdivisions, or bodies
374 politic, or by a religious sect or denomination, or by a nonprofit educational corporation.
375 However, such land or structures may be subject to reasonable regulations concerning the bulk
376 and height of structures and determining yard sizes, lot area, setbacks, open space, parking, and
377 building coverage requirements.

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

388 determine the exemptions required and find that the present or proposed use of the land or
389 structure is reasonably necessary for the convenience or welfare of the public.

390 G. Child Care Facility:

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

393 2. No zoning ordinance or by-law in any city or town shall prohibit, or require a special
394 permit for, the use of land or structures or the expansion of existing structures for the primary,
395 accessory, or incidental purpose of operating a child care facility. Such land or structures may be
396 subject to reasonable regulations concerning the bulk and height of structures and determining
397 yard sizes, lot area, setbacks, open space, parking, and building coverage requirements.

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

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

413 I. Disabled Persons, Congregate Living Arrangements: Notwithstanding any general or
414 special law to the contrary, local land use and health and safety laws, regulations, practices,
415 ordinances, by-laws, and decisions of a city or town shall not discriminate against a disabled
416 person. Imposition of health and safety laws or land-use requirements on congregate living
417 arrangements among unrelated persons with disabilities that are not imposed on families and
418 groups of similar size of other unrelated persons shall constitute discrimination. The provisions
419 of this paragraph shall apply to every city or town, including, but not limited to the City of
420 Boston and the City of Cambridge.

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

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

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

433 M. Amateur Radio Antennas: No zoning ordinance or by-law shall prohibit the
434 construction or use of an antenna structure by a federally licensed amateur radio operator.
435 Zoning ordinances and by-laws may reasonably regulate the location and height of such antenna
436 structures for the purposes of health, safety, or aesthetics; provided, however, that such
437 ordinances and by-laws reasonably allow for sufficient height of such antenna structures so as to
438 effectively accommodate amateur radio communications by federally licensed amateur radio
439 operators and constitute the minimum practicable regulation necessary to accomplish the
440 legitimate purposes of the city or town enacting such ordinance or by-law.

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

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

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

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

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

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

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

473 P. Solid Waste Disposal Facilities: A facility, as defined in section 150A of chapter 111,
474 which has received a site assignment pursuant to said section 150A, shall be permitted to be
475 constructed or expanded on any locus zoned for industrial use unless specifically prohibited by
476 the ordinances and by-laws of the city or town in which such facility is proposed to be
477 constructed or expanded, in effect as of July 1, 1987; provided, however, that all permits and
478 licenses required by law have been issued to the proposed operator. A city or town shall not
479 adopt an ordinance or by-law prohibiting the siting of such a facility or the expansion of an
480 existing facility on any locus zoned for industrial use, or require a license or permit granted by
481 said city or town, except a special permit imposing reasonable conditions on the construction or
482 operation of the facility, unless such prohibition, license or permit was in effect on or before July
483 1, 1987. A city or town may adopt and enforce a zoning or non-zoning ordinance or by-law of
484 general application that has the effect of prohibiting the siting or expansion of a facility in the
485 following areas: recharge areas of surface drinking water supplies as shall be reasonably defined
486 by rules and regulations of the Department of Environmental Protection, areas subject to section
487 40 of chapter 131, and the regulations promulgated thereunder; and areas within the zone of
488 contribution of existing or potential public supply wells as defined by said department. No
489 special permit authorized by this section may be denied for any such facility by any city or town;
490 provided, however, that a special permit granting authority may impose reasonable conditions on
491 the construction or operation of the facility, which shall be enforceable pursuant to the provisions
492 of section 10.

493 Q. Exclusionary Zoning: All cities and towns shall, in their zoning ordinances and by-
494 laws, provide opportunities for the creation of at least their municipality's fair share of housing
495 for households of median income, with due regard for regional housing needs as established by

496 the regional planning agency and/or the Department of Housing and Community Development.
497 This shall not preclude the establishment of zoning districts where only low-density development
498 is permitted in order to protect natural and cultural resources, provided that the city or town has
499 made adequate accommodation for a range of housing types and income levels in other zoning
500 districts.

501 40A:6. Nonconformities and Vested Rights

502 A. Nonconforming Lots, Structures, and Uses

503 1. Nonconforming Residential Lots:

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

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

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

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

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

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

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

524 2. Nonconforming Structures and Uses:

525 a. A nonconforming structure or use shall mean a structure or use lawfully in existence on
526 the date of the first publication of notice of the public hearing on such ordinance or by-law
527 required by section 7 rendering such structure or use nonconforming. For the purposes of this
528 section, the term lawfully in existence shall not mean a structure or use that on such date was
529 either in violation of the zoning ordinance or by-law or was a structure that had been built or
530 altered without a legally required building permit.

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

533 (i) an existing nonconforming structure or use; and

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

537 c. A zoning ordinance or by-law may regulate a previously existing nonconforming
538 structure or use if abandoned or discontinued for a period of 2 years or more. Abandonment shall
539 consist of any overt act, or failure to act, that would indicate that the owner neither claims nor
540 retains any intent to continue the nonconforming structure or use, unless the owner can
541 demonstrate through credible evidence the intent not to abandon it. An involuntary interruption
542 of a nonconforming structure or use, such as by fire or natural disaster, does not alone establish
543 the intent to abandon such structure or use.

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

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

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

553 b. A zoning ordinance or by-law may permit, by right or by special permit,
554 nonconforming structures to be altered, reconstructed, extended, or structurally changed, and

555 nonconforming uses to be extended or changed, provided, in either case, that such actions do not
556 increase the specific nonconformity of the structure or use.

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

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

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

568 B. Vested Rights: Effective Date of Zoning Amendments

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

570 a. Adoption or amendment of a zoning ordinance or by-law shall not apply to the work or
571 use proposed in a building permit, special permit, or definitive subdivision plan applied for in a
572 complete application submitted prior to the adoption or amendment required by section 7,
573 provided that:

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

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

579 2. General Provisions:

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

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

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

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

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

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

595 d. The record owner of the land shall have the right, at any time, by an instrument duly
596 recorded in the registry of deeds for the district in which the land lies, a copy of which shall be

597 filed with the building inspector and city or town clerk, to waive all of the provisions of this
598 section 6B, in which case the zoning ordinance or by-law then or thereafter in effect shall apply.

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

604 40A:7. Adoption and Amendment of Zoning Ordinances and By-laws

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

607 A. Initiation: Adoption or change of zoning ordinances or by-laws may be initiated by the
608 chief administrative officer of the city or town, by the chief executive officer, if different, by the
609 board of appeals, by an individual owning land to be affected by change or adoption, by request
610 of registered voters of a town pursuant to section 10 of chapter 39, by 10 registered voters in a
611 city, by a planning board, by a regional planning agency, or by other methods provided by
612 municipal charter, ordinance, or by-law. The chief administrative officer shall within 14 days of
613 receipt of such zoning ordinance or by-law submit it to the planning board for review, unless the
614 proposal had been initiated by the planning board itself.

615 B. Hearings Required: No zoning ordinance or by-law or amendment thereto shall be
616 adopted until after the planning board in a city or town, and the legislative body of a city or a
617 committee designated or appointed for the purpose by said legislative body, has each held a
618 public hearing thereon, together or separately, at which interested persons shall be given an

619 opportunity to be heard. Said public hearing shall be held within 65 days after the proposed
620 zoning ordinance or by-law is submitted to the planning board or if there is no planning board,
621 within 65 days after the proposed zoning ordinance or by-law is submitted to the chief
622 administrative officer.

623 C. Notice: Notice of the time and place of such public hearing, of the subject matter,
624 sufficient for identification, and of the place where texts and maps thereof may be inspected shall
625 be published in a newspaper of general circulation in the city or town once in each of 2
626 successive weeks, the first publication to be not less than 14 days before the day of said hearing,
627 and by posting such notice in a conspicuous place in the city or town hall for a period of not less
628 than 14 days before the day of said hearing. Notice of said hearing shall also be sent by mail,
629 postage prepaid to the regional planning agency, if any, and to the planning board of each
630 abutting city and town. The regional planning agency, the planning boards of all abutting cities
631 and towns, and nonresident property owners who may not have received notice by mail as
632 specified in this section, may grant a waiver of notice or submit an affidavit of actual notice to
633 the city or town clerk prior to action by the legislative body on a proposed zoning ordinance, by-
634 law or change thereto. Zoning ordinances or by-laws may provide that a separate, conspicuous
635 statement shall be included with property tax bills sent to nonresident property owners, stating
636 that notice of such hearings under this chapter shall be sent by mail, postage prepaid, to any such
637 owner who files an annual request for such notice with the city or town clerk no later than
638 January first, and pays a reasonable fee established by such ordinance or by-law. In cases
639 involving boundary, density or use changes within a district, notice shall be sent to any such
640 nonresident property owner who has filed such a request with the city or town clerk and whose
641 property lies in the district where the change is sought. No defect in the form of any notice under

642 this chapter shall invalidate any zoning ordinances or by-laws unless such defect is found to be
643 misleading. Notice shall be provided to all municipal departments, which shall be accorded the
644 opportunity to provide advisory comments to the board in writing.

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

653 E. Planning Board Report: No vote to adopt any such proposed ordinance or by-law or
654 amendment thereto shall be taken until a report with recommendations by a planning board has
655 been submitted to the legislative body, or 21 days after said hearing has elapsed without
656 submission of such report. After such notice, hearing and report, or after 21 days shall have
657 elapsed after such hearing without submission of such report, the legislative body may adopt,
658 reject, or amend and adopt any such proposed ordinance or by-law.

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

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

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

674 I. Review by the Attorney General: When zoning by-laws or amendments thereto are
675 submitted to the attorney general for approval as required by section 32 of chapter 40, the
676 attorney general shall also be furnished with a statement which may be prepared by the planning
677 board explaining the by-laws or amendments proposed, which statement may be accompanied by
678 explanatory maps or plans.

679 J. Effective Date: The effective date of the adoption or amendment of any zoning
680 ordinance or by-law shall be the date on which such adoption or amendment was voted upon by
681 the legislative body, provided, however, that in towns the posting and publication requirements
682 of section 32 of chapter 40 have been satisfied. If, in a town, said by-law is subsequently
683 disapproved, in whole or in part, by the attorney general, the previous zoning by-law, to the
684 extent that such previous zoning by-law was changed by the disapproved by-law or portion
685 thereof, shall be deemed to have been in effect from the date of such vote. In a municipality

686 which is not required to submit zoning ordinances to the attorney general for approval pursuant
687 to section 32 of chapter 40, the effective date of such ordinance or amendment shall be the date
688 established by charter or ordinance.

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

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

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

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

706 O. Uniformity: No zoning ordinance or by-law shall regulate uses or structures in a
707 manner that is not uniformly applicable within a zoning district except where such regulations

708 are supported by a valid planning or zoning basis rationally related to the distinguishing
709 characteristics of such structures or uses.

710 40A:8. Boards of Appeal, Zoning Administrators

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

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

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

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

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

725 F. Associate Members: Zoning ordinances or by-laws may provide for the appointments
726 in like manner of associate members of the board of appeals; and, if provision for associate
727 members has been made, the chairman of the board may designate any such associate member to
728 sit on the board in case of absence, inability to act or conflict of interest on the part of any

729 member thereof, or in the event of a vacancy on the board until said vacancy is filled in the
730 manner provided in this section.

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

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

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

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

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

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

742 H. Appeals to the Zoning Board of Appeals: An appeal to the zoning board of appeals
743 may be taken by any person aggrieved by reason of the appellant's inability to obtain a permit or
744 an enforcement action from any administrative officer under the provisions of this chapter, by
745 the regional planning agency in whose area the city or town is situated, or by any person
746 including an officer or board of the city or town, or of an abutting city or town aggrieved by an
747 order or decision of the inspector of buildings, or other administrative official, in violation of any
748 provision of this chapter or any ordinance or by-law adopted thereunder.

749 1. Any appeal shall be taken within 30 days from the date of the order or decision which
750 is being appealed. The appellant shall file a notice of appeal specifying the grounds thereof, with
751 the city or town clerk, and a copy of said notice, including the date and time of filing certified by
752 the town clerk, shall be filed forthwith by the petitioner with the officer or board whose order or
753 decision is being appealed, and to the permit granting authority, specifying in the notice grounds
754 for such appeal. Such officer or board shall forthwith transmit to the board of appeals all
755 documents and papers constituting the record of the case in which the appeal is taken.

756 2. Any appeal to a board of appeals from the order or decision of a zoning administrator,
757 if any, appointed in accordance with this section shall be taken within 30 days of the date of such
758 order or decision or within 30 days from the date on which the appeal, application or petition in
759 question shall have been deemed denied in accordance with said section 8J, as the case may be,
760 by having the appellant file a notice of appeal, specifying the grounds thereof with the city or
761 town clerk and a copy of said notice including the date and time of filing certified by the city or
762 town clerk shall be filed forthwith in the office of the zoning administrator and in the case of an
763 appeal under this subsection 8I with the officer whose decision was the subject of the initial
764 appeal to said zoning administrator. The zoning administrator shall forthwith transmit to the
765 board of appeals all documents and papers constituting the record of the case in which the appeal
766 is taken.

767 I. Procedures:

768 1. Meetings: Meetings of the board shall be held at the call of the chairman or when
769 called in such other manner as the board shall determine in its rules. The board of appeals shall
770 hold a hearing on any appeal, application, or petition within 65 days from the receipt of notice by

771 the board of such appeal, application or petition. The board shall cause notice of such hearing to
772 be published and sent to parties in interest as provided in section 9D. The chair, or in his absence
773 the acting chair, may administer oaths, summon witnesses, and call for the production of papers.

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

780 3. Hearings, Decisions, and Appeals: All hearings of the board of appeals shall be open to
781 the public and held in accordance with section 9D. The decision of the board shall be made and
782 recorded with the municipal clerk within 114 days after the date of the filing of an appeal,
783 application or petition, except in regard to special permits, as provided for in section 9A. The
784 required time limits for a public hearing and said action may be extended by written agreement
785 between the applicant and the board of appeals. A copy of such agreement shall be filed in the
786 office of the city or town clerk. Failure by the board to take final action within said 114 days or
787 extended time, if applicable, shall be deemed to be the grant of the appeal, application, or
788 petition. The petitioner who seeks such approval by reason of the failure of the board to take
789 final action within the time prescribed shall notify the city or town clerk, in writing, within 14
790 days from the expiration of said 114 days or extended time, if applicable, of such approval and
791 that notice has been sent by the petitioner to parties in interest. The petitioner shall send such
792 notice to parties in interest, by mail and each notice shall specify that appeals, if any, shall be
793 made pursuant to section 11 and shall be filed within 20 days after the date the city or town clerk

794 received such written notice from the petitioner that the board failed to take final action within
795 the time prescribed. After the expiration of 20 days without notice of appeal pursuant to section
796 11, or, if appeal has been taken, after receipt of certified records of the court in which such
797 appeal is adjudicated, indicating that such approval has become final, the city or town clerk shall
798 issue a certificate stating the date of approval, the fact that the board failed to take final action
799 and that the approval resulting from such failure has become final, and such certificate shall be
800 forwarded to the petitioner. The board shall, within the 114 day time limit, cause to be made a
801 detailed record of its proceedings, indicating the vote of each member upon each question, or if
802 absent or failing to vote, indicating such fact, and setting forth clearly the reason for its decision
803 and of its official actions, copies of all of which shall be filed in the office of the city or town
804 clerk and shall be a public record. Notice of the decision shall be mailed forthwith to the
805 petitioner, applicant or appellant, to the parties in interest designated in section 9D, and to every
806 person present at the hearing who requested that notice be sent to him and stated the address to
807 which such notice was to be sent. Each notice shall specify that appeals, if any, shall be made
808 pursuant to section 11 and shall be filed within 20 days after the date of filing of such notice in
809 the office of the city or town clerk.

810 J. Zoning Administrator: A zoning ordinance or by-law may authorize the appointment of
811 a zoning administrator, who, unless otherwise provided by charter, shall be appointed by the
812 board of appeals, subject to confirmation by the city council or board of selectmen, to serve at
813 the pleasure of the board of appeals pursuant to such qualifications as may be established by the
814 city council or board of selectmen. The board of appeals may delegate to said zoning
815 administrator some of its powers and duties by a concurring vote of all members of the board of
816 appeals consisting of 3 members, and a concurring vote of all except one member of a board

817 consisting of 5 members. Any person aggrieved by a decision or order of the zoning
818 administrator, whether or not previously a party to the proceeding, or any municipal office or
819 board, may appeal to the board of appeals, as provided in this section, within 30 days after the
820 decision of the zoning administrator has been filed in the office of the city or town clerk. Any
821 appeal, application or petition filed with said zoning administrator as to which no decision has
822 issued within 35 days from the date of filing shall be deemed denied and shall be subject to
823 appeal to the board of appeals as provided in this section 8.

824 K. Rules: The board of appeals shall adopt rules, not inconsistent with the provisions of
825 the zoning ordinance or by-law for the conduct of its business and for purposes of this chapter
826 and shall file a copy of said rules with the city or town clerk. If a board of appeals has appointed
827 a zoning administrator in accordance with subsection 8J, said rules shall set forth the fact of such
828 appointment, the identity of the persons from time to time appointed to such position, the powers
829 and duties delegated to such individual and any limitations thereon.

830 40A:9. Permits and Approvals, Procedures, and Zoning Tools

831 A. Special Permits

832 1. Requirements:

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

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

847 c. Increases in Density or Intensity: Any zoning ordinance or by-law that provides for
848 special permits authorizing increases in permissible density of population or intensity of a
849 particular use shall provide that the petitioner or applicant shall, as a condition for the grant of
850 the special permit, provide improvements or amenities in the public interest. Such zoning
851 ordinances or by-laws shall state the specific types of improvements or amenities required, and
852 the maximum increases in density of population or intensity of use which may be authorized by
853 such special permits.

854 2. Procedures:

855 a. Application, Hearing, and Vote Majorities: Each application for a special permit shall
856 be filed by the petitioner with the city or town clerk and a copy of said application, including the
857 date and time of filing certified by the city or town clerk, shall be filed forthwith by the petitioner
858 with the special permit granting authority. The special permit granting authority shall hold a
859 public hearing, for which notice has been given as provided in subsection 9D, on any application
860 for a special permit within 65 days from the date of filing of such application; provided,

861 however, that a city council having more than 5 members designated to act upon such
862 applications may appoint a committee of such council to hold the public hearing. The decision of
863 the special permit granting authority shall be made within 90 days following the date of the close
864 of such public hearing. The required time limits for a public hearing and said action may be
865 extended by written agreement between the petitioner and the special permit granting authority.
866 A copy of such agreement shall be filed in the office of the city or town clerk. Unless a lesser
867 majority is specified in the zoning ordinance or by-law, issuance of a special permit under this
868 section shall require a vote of two-thirds of the entire special permit granting authority in the
869 case of an authority with more than 5 members, the vote of at least 4 members of a 5-member
870 authority, or the vote of all members of an authority comprised of fewer than 5 members.

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

879 c. Final Action, Failure to Take Final Action, Appeal: The special permit granting
880 authority shall cause to be made a detailed record of its proceedings, indicating the vote of each
881 member upon each question, or if absent or failing to vote, indicating such fact, and setting forth
882 clearly the reason for its decision and of its official actions, copies of all of which shall be filed
883 within 14 days in the office of the city or town clerk and shall be deemed a public record, and

884 notice of the decision shall be mailed forthwith to the petitioner, applicant or appellant, to the
885 parties in interest designated in section 9D, and to every person present at the hearing who
886 requested that notice be sent to him and stated the address to which such notice was to be sent.
887 Each such notice shall specify that appeals, if any, shall be made pursuant to section 11 and shall
888 be filed within 20 days after the date of filing of such notice in the office of the city or town
889 clerk. Failure by the special permit granting authority to take final action within said 90 days or
890 extended time, if applicable, shall be deemed to be a grant of the special permit. The petitioner
891 who seeks such approval by reason of the failure of the special permit granting authority to act
892 within such time prescribed, shall notify the city or town clerk, in writing within 14 days from
893 the expiration of said 90 days or extended time, if applicable, of such approval and that notice
894 has been sent by the petitioner to parties in interest. The petitioner shall send such notice to
895 parties in interest by mail and each such notice shall specify that appeals, if any, shall be made
896 pursuant to section 11 and shall be filed within 20 days after the date the city or town clerk
897 received such written notice from the petitioner that the special permit granting authority failed
898 to act within the time prescribed. After the expiration of 20 days without notice of appeal
899 pursuant to section 11, or, if appeal has been taken, after receipt of certified records of the court
900 in which such appeal is adjudicated, indicating that such approval has become final, the city or
901 town clerk shall issue a certificate stating the date of approval, the fact that the special permit
902 granting authority failed to take final action and that the approval resulting from such failure has
903 become final, and such certificate shall be forwarded to the petitioner.

904 d. Recordation of Special Permit: A special permit, or any extension, modification or
905 renewal thereof, shall not take effect until a copy of the decision bearing the certification of the
906 city or town clerk that 20 days have elapsed after the decision has been filed in the office of the

907 city or town clerk is recorded in the registry of deeds for the county and district in which the land
908 is located and indexed in the grantor index under the name of the owner of record or is recorded
909 and noted on the owner's certificate of title.

910 The certification shall include either:

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

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

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

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

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

928 construction, if construction has not begun by such date except for good cause due to
929 circumstances beyond the control of the petitioner. The period of time before which a special
930 permit shall lapse shall not include the time required to pursue or await the determination of an
931 appeal from the grant thereof referred to in section 11. Upon written application by the grantee of
932 a special permit, the special permit granting authority in its discretion and with or without a
933 public hearing as provided in the ordinance or bylaw may, by the same vote majority originally
934 required to approve the special permit, extend the time for the exercise of such special permit for
935 a period of time not to exceed the original duration of the special permit. Such application must
936 be filed no later than 65 days prior to the lapse of the special permit. If the permit granting
937 authority does not grant the extension within 65 days of the date of application therefor, upon the
938 lapse of the special permit, the special permit may be re-established only after notice and a new
939 hearing pursuant to the provisions of this section.

940 3. Special Permits for Specific Uses:

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

945 b. Adult Uses, Live Nudity: Any zoning ordinance or by-law that provides for special
946 permits authorizing the establishment of adult bookstores, adult motion picture theaters, adult
947 paraphernalia stores, adult video stores or establishments which display live nudity for their
948 patrons as hereinafter defined may state the specific improvements, amenities or locations of
949 proposed uses for which such permit may be granted and may provide that the proposed use be a

950 specific distance from any district designated by zoning ordinance or by-law for any residential
951 use or from any other adult bookstore or adult motion picture theatre or from any establishment
952 licensed under the provisions of section 12 of chapter 138. Such zoning ordinance or by-law
953 shall prohibit the issuance of such special permits to any person convicted of violating the
954 provisions of section 63 of chapter 119 or section 28 of chapter 272.

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

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

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

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

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

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

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

980 B. Site Plan Review

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

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

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

987 c. set forth what constitutes a complete application;

988 d. establish the submission, review, and approval process, which may or may not include
989 a requirement for a public hearing under section 9D. Approval of a site plan under this section, if
990 reviewed by a board, shall require no greater than a simple majority vote of the full board and
991 shall be made within the time limits prescribed by ordinance or by-law, not to exceed 95 days

992 from the filing of a complete application. Approval of a site plan by staff or other municipal
993 official or officials shall be as specified in the ordinance or by-law. If no decision is issued
994 within the time limit prescribed and no written extension of the time limit has been granted by
995 the person seeking the site plan review, the site plan shall be deemed constructively approved as
996 provided in section 9A.2.c of this chapter;

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

999 f. contain provisions that make the terms, conditions, and content of the approved site
1000 plan enforceable by the municipality, which may include the requirement of performance
1001 guarantees.

1002 2. Approval Criteria for Uses Allowed By-right: This section does not allow a permit
1003 granting authority, in a decision on a site plan, to prohibit or deny a use that is permitted by-right
1004 in the applicable zoning district. A site plan submitted for the use of specific land or structures
1005 allowed by-right shall be approved if the site plan:

1006 a. satisfies the procedural and submission requirements of the site plan review process
1007 applicable to the specific land or structures;

1008 b. complies with the regulations applicable to such land or structures in the local zoning
1009 ordinance or by-law; and

1010 c. meets such standards and criteria as the local zoning ordinance or by-law provides by
1011 which the use of land or structures and its impact on the neighborhood shall be evaluated, or may
1012 be conditioned to meet such standards and criteria.

1013 3. Conditions, Safeguards, and Limitations:

1014 a. A site plan approved hereunder may include reasonable conditions, safeguards, and
1015 limitations to mitigate the impacts of a specific use of land or structures on the neighborhood.
1016 The permit granting authority may adopt such conditions which, in its opinion, are directly
1017 related to standards and criteria described in the site plan review ordinance or by-law, provided
1018 such conditions do not conflict with or waive any other applicable requirement of the zoning
1019 ordinance or by-law. The permit granting authority shall base any conditions it adopts on
1020 competent, credible evidence it shall incorporate into the record of its decision. If the permit
1021 granting authority adopts conditions pursuant to this paragraph, the site plan shall be revised to
1022 include such conditions before the development permit is issued.

1023 b. Site plan review may not require the payment or performance of any off-site
1024 mitigation, except to mitigate any extraordinary adverse impacts of the project on adjacent
1025 properties or public infrastructure, or when the site plan approval is subject to development
1026 impact fees imposed in accordance with the provisions of section 9F of this chapter, or when a
1027 site plan is required in connection with the issuance of a special permit or variance.

1028 4. Appeals: Decisions on uses allowed by-right shall be appealable as specified in the
1029 ordinance or by law, which may include direct judicial review pursuant to section 11.

1030 5. Duration, Lapse, Extensions: Zoning ordinances or by-laws shall provide that a site
1031 plan approval for a use allowed by-right shall lapse within a specified period of time, not less
1032 than 2 years from the date of the filing of such approval with the city or town clerk, if a building
1033 permit has not been obtained or substantial use or construction has not yet begun, except as

1034 extended for good cause by the permit granting authority. Such period of time shall not include
1035 time required to pursue or await the determination of an appeal under subsection 4, above.

1036 6. Consultant Fees: The board designated by ordinance or by-law to review site plans
1037 under this section may, by rules and regulations adopted by such board, provide for the
1038 imposition of reasonable fees for the employment of outside consultants in the same manner as
1039 set forth in section 53G of chapter 44.

1040 7. Discretionary Approvals: Where an ordinance or by-law provides that a variance,
1041 special permit, or other discretionary zoning approval shall also require site plan review, the
1042 review of the site plan shall be integrated into the processing of the variance, special permit, or
1043 other discretionary zoning approval and not made the subject of a separate proceeding, hearing,
1044 or decision. In such case, the content requirements and approval criteria for a site plan as
1045 specified in the zoning ordinance or by-law shall be followed, but this section 9B shall not
1046 otherwise apply.

1047 8. Transition Provision: In cities or towns that have adopted a zoning ordinance or by-law
1048 requiring a form of site plan review or site plan approval prior to the effective date of this act, the
1049 provisions of this section 9B shall not be effective with respect to such zoning ordinance or by-
1050 law until the date 2 years after the effective date of this act.

1051 C. Variances

1052 1. Authority: Where a literal enforcement of the provisions of the zoning ordinance or by-
1053 law would cause substantial hardship to the petitioner, upon appeal or upon petition with respect
1054 to particular land or structures, the permit granting authority shall have the discretionary
1055 authority to grant a variance from the terms of the applicable zoning ordinance or by-law

1056 following a public hearing for which notice has been given by publication and posting as
1057 provided in section 9D and by mailing to the planning board and all parties in interest.

1058 2. Standards: In making its determination, the permit granting authority shall take into
1059 consideration the benefit to the applicant if the variance is granted, as weighed against the
1060 detriment to the health, safety and welfare of the neighborhood or community by such grant. The
1061 permit granting authority may also take into consideration the extent to which the claimed
1062 hardship is self-created. In order to grant a variance the permit granting authority shall make all
1063 of the following findings:

1064 a. the benefit sought by the applicant cannot be achieved by some method, feasible for
1065 the applicant to pursue, other than a variance;

1066 b. the variance will not have a substantial undesirable effect on nearby properties, or the
1067 character of the neighborhood, or on the environment;

1068 c. the variance will not nullify or substantially derogate from the intent or purpose of such
1069 ordinance or by-law or the master plan under section 81D of chapter 41 upon which the
1070 ordinance or by-law is based; and

1071 d. the claimed hardship relating to the property in question is unique, and does not apply
1072 to a substantial portion of the district or neighborhood.

1073 In the granting of variances, the permit granting authority shall grant the minimum
1074 variance that it shall deem necessary to relieve the hardship.

1075 3. Use Variances: Use variances are not allowed unless expressly so authorized by an
1076 ordinance or by-law. If so authorized, use variances shall be subject to all the provisions of this
1077 section and to any additional more stringent criteria contained in the ordinance or by-law.

1078 4. Conditions, Safeguards, and Limitations: The permit granting authority may impose
1079 conditions, safeguards and limitations both of time and of use, including the continued existence
1080 of any particular structures.

1081 5. Duration: Variances shall run with the land, except that a use variance may run with
1082 land only if so determined by the permit granting authority acting pursuant to an ordinance or by-
1083 law enabling such a determination.

1084 6. Recordation of Variance: No variance, or any extension, modification or renewal
1085 thereof, shall take effect until a copy of the decision bearing the certification of the city or town
1086 clerk that 20 days have elapsed after the decision has been filed in the office of the city or town
1087 clerk is recorded in the registry of deeds for the county and district in which the land is located
1088 and indexed in the grantor index under the name of the owner of record or is recorded and noted
1089 on the owner's certificate of title.

1090 The certification shall include either:

1091 a. a statement that no appeal has been filed or that if such appeal has been filed, that it has
1092 been dismissed or denied, or;

1093 b. if it is a variance which has been approved by reason of the failure of the permit
1094 granting authority to act thereon within the time prescribed, a copy of the petition for the
1095 variance accompanied by the statement of the city or town clerk stating the fact that the permit

1096 granting authority failed to act within the time prescribed, and no appeal has been filed, and that
1097 the grant of the petition resulting from such failure to act has become final or that if such appeal
1098 has been filed, that it has been dismissed or denied.

1099 The fee for recording or registering shall be paid by the owner or applicant.

1100 7. Lapse, Extension: If the rights authorized by a variance are not exercised within two
1101 years of the date of the grant of the variance such variance shall lapse; provided, however, that
1102 upon written application by the grantee of such variance, the permit granting authority in its
1103 discretion may extend, either with or without a public hearing as provided in the zoning
1104 ordinance or bylaw, the time for exercise of such rights for a period not to exceed one year. Such
1105 application must be filed no later than 65 days prior to the lapse of the variance. If the permit
1106 granting authority does not grant the extension within 65 days of the date of application therefor,
1107 upon the lapse of the variance, the variance may be re-established only after notice and a new
1108 hearing pursuant to the provisions of this section.

1109 D. Procedures for Applications, Hearings, and Decisions

1110 Unless otherwise provided for in this chapter, applications, hearings, and decisions shall
1111 be in accordance with this section 9D.

1112 1. Applications: An application for a special permit or site plan review, or petition for a
1113 variance or appeal shall be filed by the applicant or petitioner with the city or town clerk, and a
1114 copy of said appeal, application, or petition, including the date and time of filing, certified by the
1115 city or town clerk, shall be transmitted forthwith by the applicant or petitioner to the permit
1116 granting authority or special permit granting authority as the case may be.

1117 2. Public Hearings:

1118 a. Notice of Hearing: In all cases where notice of a public hearing is required notice shall
1119 be given by publication in a newspaper of general circulation in the city or town once in each of
1120 2 successive weeks, the first publication to be not less than 14 days before the day of the hearing
1121 and by posting such notice in a conspicuous place in the city or town hall for a period of not less
1122 than 14 days before the day of such hearing. In all cases where notice to individuals or specific
1123 boards or other agencies is required, notice shall be sent by mail, postage prepaid. "Parties in
1124 interest" as used in this chapter shall mean the petitioner, abutters, owners of land directly
1125 opposite on any public or private street or way, and abutters to the abutters within 300 feet of the
1126 property line of the petitioner as they appear on the most recent applicable tax list,
1127 notwithstanding that the land of any such owner is located in another city or town, the planning
1128 board of the city or town, and the planning board of every abutting city or town. The assessors
1129 maintaining any applicable tax list shall certify to the permit granting authority or special permit
1130 granting authority the names and addresses of parties in interest and such certification shall be
1131 conclusive for all purposes. The permit granting authority or special permit granting authority
1132 may accept a waiver of notice from, or an affidavit of actual notice to any party in interest or, in
1133 his stead, any successor owner of record who may not have received a notice by mail, and may
1134 order special notice to any such person, giving not less than 5 nor more than 10 additional days
1135 to reply. Notice shall be provided to all municipal departments, which shall be accorded the
1136 opportunity to provide advisory comments to the board in writing.

1137 b. Content of Notice: Publications and notices required by this section shall contain the
1138 name of the petitioner, a description of the area or premises, street address, if any, or other
1139 adequate identification of the location, of the area or premises which is the subject of the

1140 petition, the date, time and place of the public hearing, the subject matter of the hearing, and the
1141 nature of action or relief requested if any. No such hearing shall be held on any day on which a
1142 state or municipal election, caucus or primary is held in such city or town.

1143 c. Consolidated Public Hearing on Special Permit for Subdivision: When a planning
1144 board or department is also the special permit granting authority for a special permit applicable
1145 to a subdivision plan, the planning board or department may hold the special permit public
1146 hearing together with a public hearing required by sections 81K to 81GG inclusive of chapter 41
1147 and allow for the publication of a single advertisement giving notice of the consolidated hearing.

1148 3. Decisions:

1149 a. Notice of Decision: Upon the granting of a variance, special permit, site plan review,
1150 or any extension, modification or

1151 renewal thereof, the permit granting authority or special permit granting authority shall
1152 issue to the owner and to the applicant if other than the owner a copy of its decision, certified by
1153 the permit granting authority or special permit granting authority, containing the name and
1154 address of the owner, identifying the land affected, setting forth compliance with the statutory
1155 requirements for the issuance of such variance, special permit, or site plan review and certifying
1156 that copies of the decision and all plans referred to in the decision have been filed with the
1157 planning board and city or town clerk.

1158 b. Final Unfavorable Decisions, Reconsideration: No appeal, application or petition
1159 which has been unfavorably and finally acted upon by the special permit granting or permit
1160 granting authority shall be acted favorably upon within 2 years after the date of final unfavorable
1161 action unless said special permit granting authority or permit granting authority finds, by a

1162 unanimous vote of a board of 3 members or by a vote of 4 members of a board of 5 members or
1163 two-thirds vote of a board of more than 5 members, specific and material changes in the
1164 conditions upon which the previous unfavorable action was based, and describes such changes in
1165 the record of its proceedings, and unless all but one of the members of the planning board
1166 consents thereto and after notice is given to parties in interest of the time and place of the
1167 proceedings when the question of such consent will be considered. The aforesaid restriction upon
1168 reconsideration shall not apply to applications for site plan review for uses allowed by-right.

1169 c. *Withdrawal of Petition or Application*: Any petition for a variance or application for a
1170 special permit or a site plan review which has been transmitted to the permit granting authority
1171 or special permit granting authority may be withdrawn, without prejudice by the petitioner prior
1172 to the publication of the notice of a public hearing thereon, but thereafter may be withdrawn
1173 without prejudice only with the approval of the special permit granting authority or permit
1174 granting authority.

1175 E. *Inclusionary Zoning*

1176 1. *Authority*: In furtherance of the purposes of zoning ordinances and by-laws stated in
1177 section 1 of this chapter and in the exercise of their home rule powers, a city or town, by
1178 ordinance or by-law, may require or provide incentives for the applicant for a residential
1179 development to provide inclusionary housing units within such development.

1180 2. *Off-Site Units, Land Dedications, Payment of Funds*: In lieu of constructing the
1181 required inclusionary housing units on-site, the ordinance or by-law may provide for the
1182 construction of such units off-site, the dedication of land for such purpose, or the payment of
1183 funds to a separate account created by the city or town sufficient for and dedicated to the

1184 provision of inclusionary housing, provided the applicant demonstrates to the satisfaction of the
1185 local approving authority that the units cannot be otherwise provided on-site or that an
1186 alternative proposal better meets the needs of the city or town with respect to the provision of
1187 inclusionary housing. Off-site units, land dedication, or payment in-lieu of units shall, in the
1188 opinion of the board or official designated by ordinance or by-law to administer the provisions of
1189 this section 9E and in consideration of local needs, provide inclusionary housing benefits roughly
1190 equivalent to the provision of on-site units.

1191 3. Dedicated Accounts: Cities and towns are authorized to establish a separate dedicated
1192 account for the deposit of funds received under this section, including Municipal Housing Trust
1193 Fund accounts under section 55C of chapter 44 or other dedicated accounts of similar purpose.
1194 Said funds shall be deposited with the treasurer and disbursed for inclusionary housing purposes
1195 in accordance with the ordinances, by-laws, or regulations of the city or town. Where the
1196 application of this section results in less than a full dwelling unit the board may accept a prorated
1197 payment of funds in lieu of unit creation.

1198 4. Price or Rent Restriction: The inclusionary housing units shall be subject to an
1199 affordable housing restriction in accordance with sections 31 and 32 of chapter 184 or, if
1200 ineligible under said sections, restricted by other means as required in an ordinance or by-law for
1201 a period of not less than 30 years.

1202 5. Eligibility for Subsidized Housing Inventory: The ordinance or by-law may further
1203 require some or all of the inclusionary housing units to be low- or moderate-income housing as
1204 defined in section 20-23 of chapter 40B, and be eligible for inclusion on the local subsidized
1205 housing inventory subject to and in accordance with applicable regulations and guidelines of the

1206 Department of Housing and Community Development or successor agency. Nothing in this
1207 section shall be construed to require the Department of Housing and Community Development to
1208 include affordable units created hereunder on the subsidized housing inventory.

1209 F. Development Impact Fees

1210 1. Authority:

1211 a. Any city or town that adopts a local ordinance or by-law requiring the payment of a
1212 development impact fee as a requirement of any permit or approval otherwise required for any
1213 proposed development having development impacts as defined in the ordinance or by-law, shall
1214 do so only in accordance with this section or any authority conferred by a special act. The
1215 development impact fee may be imposed only on construction, enlargement, expansion,
1216 substantial rehabilitation, or change of use of a development. The development impact fee shall
1217 be used solely for the purposes of defraying the costs of off-site public capital facilities to be
1218 provided or paid for by the city or town and which are either caused by or necessary to support
1219 or compensate for the proposed development, or, in the case of a city or town authorized to
1220 impose such fees under the provisions of a special act, then such fees may be used for the
1221 purposes set forth in the special act.

1222 b. Such off-site public capital facilities may include the provision of infrastructure,
1223 facilities, land, or studies including master plans under section 81D of chapter 41, partnership
1224 plans under chapter 40V, and impact fee studies required under subsection 3(a-c) herein
1225 associated with the following:

1226 (i) water supply, treatment, and distribution, both potable and for suppression of fires;

1227 (ii) wastewater treatment and sanitary sewerage;

1228 (iii) stormwater management and treatment;

1229 (iv) solid waste;

1230 (v) roads, public transportation, pedestrian ways, and bicycle paths; and

1231 (vi) parks, open space, and recreational facilities.

1232 c. Nothing in this section shall prohibit a city or town from imposing other fees or
1233 requirements for mitigation of development impacts which it may otherwise impose under state
1234 or local law.

1235 2. Limitations:

1236 a. No development impact fee under this section shall be imposed upon any affordable
1237 housing dwelling unit, regardless of how created or permitted, which is subject to a restriction on
1238 sale price or rent under the provisions of sections 31 and 32 of chapter 184 as amended ensuring
1239 that the unit will remain affordable for a period of at least 30 years. The foregoing limitation
1240 shall not apply to cities and towns imposing development impact fees under a special act.

1241 b. The fee shall not be expended for personnel costs, normal operation and maintenance
1242 costs, or to remedy deficiencies in existing facilities, except where such deficiencies are
1243 exacerbated by the new development, in which case the fee may be assessed only in proportion
1244 to the deficiency so exacerbated.

1245 3. Requirements:

1246 a. Prior to the imposition of development impact fees under this section, a city or town
1247 shall complete a study that:

1248 (i) analyzes any existing capital improvement plans and the infrastructure and capital
1249 facilities subject matter of a plan adopted under section 81D of chapter 41 or the capital facilities
1250 planning element of a local comprehensive plan adopted pursuant to Chapter 716 of the Acts of
1251 1989, as amended;

1252 (ii) estimates future development based on the then current zoning ordinance or by-law;

1253 (iii) assesses the impacts related to such development;

1254 (iv) determines the need for capital facilities required to address the impacts of the
1255 estimated development including excess facility capacity, if any, currently planned to
1256 accommodate future development;

1257 (v) develops cost projections for the needed capital facilities and documents costs of
1258 existing facilities with planned excess capacity; and

1259 (vi) establishes the amount of any development impact fee authorized under this section
1260 in accordance with a methodology determined pursuant to the study.

1261 b. The scope of the study may be limited to a geographic area and/or the category or
1262 categories of public capital facilities that development impact fees may be intended to address. A
1263 municipality may rely upon a recognized methodology for the study as approved by the
1264 Interagency Planning Board under chapter 40U.

1265 c. The study shall be updated periodically, at intervals of not greater than 10 years, to
1266 reflect actual development activity, actual costs of infrastructure improvements completed or
1267 underway, plan changes, or amendments to the zoning ordinance or by-law.

1268 d. A development impact fee shall have a rational nexus to, and shall be roughly
1269 proportionate to, the impacts created by the development as determined by said study evaluating
1270 said impacts, and it shall be applied to affected development in a consistent manner.
1271 Notwithstanding the foregoing, a city or town authorized to impose development impact fees
1272 pursuant to a special act shall comply with the standards set forth in such special act.

1273 e. The purposes for which the fee is expended shall reasonably benefit the proposed
1274 development.

1275 f. The fee may not be assessed more than once for the same impact, nor may the fee be
1276 assessed for impacts, or portions thereof, offset by other dedicated means, including state or
1277 federal grants or contributions made by the applicant undertaking the development.

1278 4. Administration:

1279 a. The ordinance or by-law may waive or reduce the development impact fee for any
1280 category of development that furthers an overriding public purpose as determined in a plan
1281 adopted by the city or town under section 81D of chapter 41 or other plan designed to set goals
1282 for the development of land within the city or town.

1283 b. If the proposed development is located in more than one municipality, the impact fee
1284 shall be apportioned among the municipalities in accordance with the land area or other equitable
1285 measure of the impacts of the proposed development in each city or town.

1286 c. Any development impact fee assessed under this section shall be payable no sooner
1287 than the issuance of a building permit, or in the case of a phased development, for a building
1288 permit for any phase thereof. The fee shall be deposited to a separate, interest bearing account in
1289 the city or town in which the proposed development is located. Unless subject to section 4d
1290 below, no development impact fee shall be paid to the general treasury or used as general
1291 revenues of the city or town subject to the provisions of section 53 of chapter 44.

1292 d. Any funds not expended or encumbered by the end of the calendar quarter immediately
1293 following 10 years from the date the development impact fee was paid shall, upon request of the
1294 applicant or its assigns, be returned with interest provided that an application for a refund
1295 prescribed in the ordinance or by-law has been submitted within one 180 calendar days prior to
1296 the expiration of the 10 year period. If no application for refund is received by the city or town
1297 within said period, any funds not expended or encumbered by the end of the calendar quarter
1298 shall then revert to and become part of the general fund under section 53 of chapter 44. In the
1299 event of any disagreement relative to who shall receive the refund, the city or town may retain
1300 said development impact fee pending instructions given in writing by the parties involved or by a
1301 court of competent jurisdiction. Notwithstanding the foregoing, a city or town authorized to
1302 impose development impact fees pursuant to a special act shall comply with the requirements set
1303 forth in such special act.

1304 e. The applicant and the municipality may agree that the applicant shall construct the
1305 public capital facility or a portion thereof for which the development impact fee was assessed in
1306 lieu of paying the development impact fee to the municipality, provided that the applicant shall
1307 not be required to construct such improvement if it chooses to pay the assessed development
1308 impact fee.

1309 G. Land Use Dispute Avoidance

1310 1. Applicability: As an optional means of avoiding or minimizing land use disputes, the
1311 owner of land or structures who has applied or intends to apply for a building permit, any permit
1312 or approval required under this chapter, an approval under sections 81K-GG of chapter 41, or a
1313 comprehensive permit under sections 20-23 of chapter 40B, may request of the public official or
1314 local board charged with acting on the application to undertake a land use dispute avoidance
1315 process as hereinafter provided.

1316 2. Initial Conflict Evaluation: The dispute avoidance process may include an initial
1317 conflict evaluation to determine if a further resolution effort is advisable, and if so, whether there
1318 should be subsequent resolution efforts to avoid or minimize disputes relating to the application.

1319 3. Participation: Both the conflict evaluation and any later resolution effort shall be
1320 voluntary for those participating requiring the joint written agreement of both the applicant and
1321 public official or local board which shall be filed with the city or town clerk.

1322 4. Neutral Facilitator: The conflict evaluation and any later resolution effort may be
1323 conducted by a neutral facilitator as defined in section 23C of chapter 233, selected from a list
1324 prepared by the Massachusetts Office of Dispute Resolution or its successor agency or its
1325 designee, or as chosen jointly by the applicant and the public official or local board. The
1326 facilitator and any associate assisting the facilitator shall comply with the standards of conduct of
1327 the Association for Conflict Resolution or as promulgated by the Massachusetts Office of
1328 Dispute Resolution or its successor agency or its designee.

1329 5. Costs: Funding for any conflict evaluation or resolution effort under this section may
1330 be as the applicant and the public official or local board may agree, or the public official or local

1331 board may provide for the imposition of reasonable fees for the employment of outside
1332 consultants, including the facilitator, in the same manner as set forth in section 53G of chapter
1333 44.

1334 6. Rules: Public officials or local boards may adopt, and from time to time amend, after a
1335 public hearing, rules to implement the conflict evaluation or resolution efforts undertaken
1336 pursuant to this section. Notice of the hearing on the proposed rules, including the location, date,
1337 and time of the hearing shall be filed with the city or town clerk and published once in a
1338 newspaper of general circulation in the city or town at least 14 days before the public hearing.

1339 7. Process of Conflict Evaluation: As part of the conflict evaluation, the facilitator may
1340 solicit information and opinions relating to the application, and may identify and notify those
1341 members of the public likely to be interested in or affected by the application. The facilitator
1342 may clarify the issues and investigate the willingness of all interested parties to work together
1343 with the applicant to resolve those issues. The facilitator may identify measures or community-
1344 enhancing features that would benefit the neighborhood, the larger community, and the project
1345 itself. Based upon the evaluation, the facilitator may determine whether further resolution effort
1346 would be productive in reaching a consensus of those participating, with the understanding that
1347 the outcome may be the withdrawal or substantial modification of the application.

1348 8. Special Provisions, Meetings: The facilitator may convene meetings or conduct
1349 interviews that shall be confidential and privileged from discovery under section 23C of chapter
1350 233. The facilitator shall have the protections provided under section 23C of chapter 233. To the
1351 extent that public agencies are participants, their deliberations shall be subject to the provisions
1352 of section 21(b) (9) of chapter 30A.

1353 9. Report on Conflict Evaluation: In preparing a report on conflict evaluation, or on a
1354 later resolution effort, the facilitator shall not attribute statements, positions, ideas, or interests to
1355 specific individuals, organizations, or persons interviewed, and shall distribute copies of the
1356 report to those participating without prior review or approval of any participant. The conflict
1357 evaluation report shall indicate whether and how a subsequent resolution effort might be
1358 appropriate for the application involved, including elaborating on how it might be undertaken
1359 and by whom.

1360 10. Conflict Resolution: Based upon the conflict evaluation, the applicant and the public
1361 official or local board may determine if a further resolution effort regarding an application is
1362 worth undertaking in accordance with the procedures set out in this section, or as they may
1363 otherwise in writing jointly agree. The applicant and the public official or local board may, by an
1364 agreement in writing filed with the city or town clerk, stipulate and agree to extend any
1365 otherwise applicable time requirements of state or local law.

1366 11. Conclusion of Process: At the conclusion of any conflict evaluation or resolution
1367 efforts, the application which initiated the conflict evaluation and resolution efforts may go
1368 forward in the ordinary course in accordance with the applicable statute, ordinance, or by-law,
1369 reflecting if possible the result of any resolution effort, including the opportunity for public
1370 hearing and comment if so provided by the applicable statute, ordinance, or by-law. If the parties
1371 so agree, any resolution may be incorporated into the action taken by the local board or official.
1372 Whether or not a resolution results, the applicant may nevertheless proceed with the application
1373 without prejudice for having participated in a conflict evaluation or resolution effort, and the
1374 application process shall proceed in due course as otherwise provided by statute, ordinance, or
1375 by-law.

1376 40A:10. Enforcement

1377 A. Zoning Enforcement Officer: The zoning enforcement officer shall be charged with
1378 the enforcement of the zoning ordinance or by-law.

1379 B. Compliance with Zoning: The zoning enforcement officer shall withhold a permit for
1380 the construction, alteration, or moving of any building or structure if the building or structure as
1381 constructed, altered or moved would be in violation of any zoning ordinance or by-law.

1382 C. Compliance with Zoning, New Uses: No permit or license shall be granted for a new
1383 use of a building, structure, or land which use would be in violation of any zoning ordinance or
1384 by-law.

1385 D. Enforcement Procedures: If the zoning enforcement officer is requested in writing to
1386 enforce such ordinances or by-laws against any person allegedly in violation of the same, said
1387 officer shall notify, in writing, the party requesting such enforcement of any action or refusal to
1388 act, and the reasons therefor, within 14 days of receipt of such request.

1389 E. Penalties for Violations: Notwithstanding any other provision of general or special
1390 law, zoning ordinances and by-laws may provide a penalty of up to 1,000 dollars per violation;
1391 provided, however, that nothing herein shall be construed to prohibit such laws from providing
1392 that each day such violation continues shall constitute a separate offense.

1393 F. Limits to Enforcement: No action, suit, or proceeding shall be maintained in any court,
1394 nor any administrative or other action taken to recover a fine or damages or to compel the
1395 removal, alteration, or relocation of any structure or part of a structure or alteration of a structure

1396 by reason of any violation of any zoning by-law or ordinance except in accordance with the
1397 provisions of this section, section 8, and section 11.

1398 G. Duration of Ability to Enforce, Building Permit: If real property has been improved
1399 and used in accordance with the terms of the original building permit issued by a person duly
1400 authorized to issue such permits, no action, criminal or civil, the effect or purpose of which is to
1401 compel the abandonment, limitation or modification of the use allowed by said permit or the
1402 removal, alteration or relocation of any structure erected in reliance upon said permit by reason
1403 of any alleged violation of the provisions of this chapter, or of any ordinance or by-law adopted
1404 thereunder, shall be maintained, unless such action, suit or proceeding is commenced and notice
1405 thereof recorded in the registry of deeds for each county or district in which the land lies within 6
1406 years next after the commencement of the alleged violation of law. Such a structure shall not be
1407 deemed to be a protected nonconforming structure under section 6A of this chapter unless such
1408 status is specifically conferred in the zoning ordinance or by-law.

1409 H. Duration of Ability to Enforce, Variance or Special Permit: No action, criminal or
1410 civil, the effect or purpose of which is to compel the removal, alteration, or relocation of any
1411 structure by reason of any alleged violation of the provisions of this chapter, or any ordinance or
1412 by-law adopted thereunder, or the conditions of any variance or special permit, shall be
1413 maintained, unless such action, suit or proceeding is commenced and notice thereof recorded in
1414 the registry of deeds for each county or district in which the land lies within 10 years next after
1415 the commencement of the alleged violation. Such notice shall include names of one or more of
1416 the owners of record, the name of the person initiating the action, and adequate identification of
1417 the structure and the alleged violation. Such a structure or use shall not be deemed to be a

1418 protected nonconforming structure or use under section 6A of this chapter unless such status is
1419 specifically conferred in the zoning ordinance or by-law.

1420 I. Judicial Review: The superior court and the land court shall have jurisdiction to enforce
1421 the provisions of this chapter and any ordinances or by-laws adopted thereunder and may restrain
1422 by injunction violations thereof.

1423 40A:11. Judicial Review Procedures and Standards

1424 A. Appeals: A person aggrieved and any municipal officer or board, whether or not
1425 previously a party to the proceeding, may appeal any decision or failure to act with respect to any
1426 matter governed by this chapter, as provided in this section. This section shall apply to:

1427 1. the decision of the board of appeals or any permit granting authority or special permit
1428 granting authority;

1429 2. the failure of the board of appeals to take final action concerning any appeal,
1430 application, or petition within the required time; and

1431 3. the failure of any permit granting authority or special permit granting authority to take
1432 final action concerning any application for a site plan review or special permit within the
1433 required time.

1434 The appeals shall be commenced by bringing an action within 20 days after the decision
1435 has been filed in the office of the city or town clerk, or within 20 days of the date by which the
1436 zoning authority was required to take final action. Notice of the action with a copy of the
1437 complaint shall be given to such city or town clerk so as to be received within such 20 days.

1438 The appeal shall be made to the land court department, the superior court department in
1439 which the land concerned is situated or, if the land is situated in Hampden county, either to said
1440 land court or, superior court department or to the division of the housing court department for
1441 said county, or if the land is situated in a county, region or area served by a division of the
1442 housing court department either to said land court or superior court department or to the division
1443 of said housing court department for said county, region or area, or to the division of the district
1444 court department within whose jurisdiction the land is situated except in Hampden county. If said
1445 appeal is made to said division of the district court department, any party shall have the right to
1446 file a claim for trial of said appeal in the superior court department within 25 days after service
1447 on the appeal is completed, subject to such rules as the supreme judicial court may prescribe.

1448 There shall be attached to the complaint a copy of the decision appealed from, bearing the
1449 date of filing thereof, certified by the city or town clerk with whom the decision was filed. The
1450 complaint shall allege that the decision exceeds the authority of the board or authority, and any
1451 facts pertinent to the issue, and shall contain a prayer that the decision be annulled.

1452 If the complaint is filed by someone other than the original applicant, appellant or
1453 petitioner, such original applicant, appellant, or petitioner and all members of the board of
1454 appeals, permit granting authority, or special permit granting authority shall be named as parties
1455 defendant with their addresses.

1456 B. Notice of Filing of Complaint: To avoid delay in the proceedings, instead of the usual
1457 service of process, the plaintiff shall within 14 days after the filing of the complaint, send written
1458 notice thereof, with a copy of the complaint, by delivery or certified mail to all defendants,
1459 including the members of the board of appeals, permit granting authority, or special permit

1460 granting authority and shall within 21 days after the entry of the complaint file with the clerk of
1461 the court an affidavit that such notice has been given. If no such affidavit is filed within such
1462 time the complaint shall be dismissed.

1463 C. Filing of Answer to Complaint: No answer shall be required but an answer may be
1464 filed and notice of such filing with a copy of the answer and an affidavit of such notice given to
1465 all parties as provided above within 7 days after the filing of the answer.

1466 D. Intervening Parties: Other persons may be permitted to intervene, upon motion.

1467 E. Hearing: The clerk of the court shall give notice of the hearing as in other cases
1468 without jury, to all parties whether or not they have appeared. The court shall hear all evidence
1469 pertinent to the authority of the board, permit granting authority, or special permit granting
1470 authority and determine the facts, and, upon the facts as so determined, annul such decision if
1471 found to exceed the authority of such board, permit granting authority, or special permit granting
1472 authority or make such other decree as justice and equity may require. The foregoing remedy
1473 shall be exclusive, notwithstanding any defect of procedure or of notice other than notice by
1474 publication, mailing or posting as required by this chapter, and the validity of any action shall not
1475 be questioned for matters relating to defects in procedure or of notice in any other proceedings
1476 except with respect to such publication, mailing or posting and then only by a proceeding
1477 commenced within 90 days after the decision has been filed in the office of the city or town
1478 clerk, but the parties shall have all rights of appeal and exception as in other equity cases.

1479 F. Special Provisions for Appealing Site Plan Review Decisions: Notwithstanding the
1480 foregoing, and except where a site plan is required in connection with the issuance of a special
1481 permit or variance, decisions made under site plan review pursuant to section 9B of this chapter,

1482 whether made pursuant to statutory or home rule authority, may be appealed using the
1483 procedures and standards applicable to a civil action in the nature of certiorari pursuant to section
1484 4 of chapter 249, and not otherwise. All issues in any proceeding under this subsection shall have
1485 precedence over all other civil actions and proceedings. A complainant challenging a site plan
1486 approval or conditional approval shall allege the specific reasons why the project fails to satisfy
1487 the requirements of section 9B, the zoning ordinance or by-law, or other applicable law and
1488 allege specific facts establishing how the plaintiff is aggrieved by such decision. A complaint
1489 challenging the denial or conditioned approval of a site plan shall similarly allege the specific
1490 reasons why the project properly satisfies the requirements of section 9B, the zoning ordinance
1491 or by-law, or other applicable law. The permit granting authority's decision in either case shall
1492 be affirmed unless the court concludes the permit granting authority abused its discretion under
1493 section 9B, the zoning ordinance or by-law, or other applicable law in approving the project,
1494 approving with conditions, or denying the project.

1495 G. Appeals by Cities or Towns: A city or town may provide any officer or board of such
1496 city or town with independent legal counsel for appealing, as provided in this section, a decision
1497 of a board of appeal, permit granting authority, or special permit granting authority and for
1498 taking such other subsequent action as parties are authorized to take.

1499 H. Costs: Costs shall not be allowed against the board, permit granting authority, or
1500 special permit granting authority unless it shall appear to the court that the board, permit granting
1501 authority, or special permit granting authority in making the decision appealed from acted with
1502 gross negligence, in bad faith or with malice. Costs shall not be allowed against the party
1503 appealing from the decision of the board, permit granting authority, or special permit granting

1504 authority unless it shall appear to the court that said appellant or appellants acted in bad faith or
1505 with malice in making the appeal to the court.

1506 I. Requirement to Post Bond: The court may require non-municipal appellants to post a
1507 surety or cash bond in a sum of not less than 2,000 nor more than 15,000 dollars to secure the
1508 payment of any costs incurred by the appellee as a result of the appeal of a zoning or subdivision
1509 plan approval decision if it appears to the court that said appellant or appellants acted in bad faith
1510 or with malice in making the appeal to the court.

1511 J. Precedence: All issues in any proceeding under this section shall have precedence over
1512 all other civil actions and proceedings.

1513 K. Mediation of Land Use Appeals:

1514 1. Initiation, Time Periods: After the filing of an appeal hereunder, the parties may agree
1515 to mediate the appeal. In all such cases, the parties shall file with the court a statement advising
1516 the court that the dispute has been submitted for mediation. If the parties agree to mediation, the
1517 mediation shall begin within 60 days of the date such statement was filed, or such other period as
1518 the parties may agree or the court may allow upon application by any party. The mediation shall
1519 conclude not later than 180 days after filing, provided that such period may be extended for an
1520 additional 180 days by joint written agreement of the parties, or for such other additional period
1521 as the court may allow upon application by any party.

1522 2. Selection of Mediator, Compensation, and Withdrawal from Mediation: The parties
1523 may select the mediator from a list provided by the court or otherwise as the parties may
1524 determine. The mediator shall be compensated by the parties as they may agree, or in the absence
1525 of agreement, as the court may determine. A party may withdraw from mediation at any time

1526 after written notification to the other parties and to the court, but shall remain responsible for that
1527 party's share of the costs of mediation until the time of withdrawal.

1528 3. Special Provisions: During the mediation, any appeal otherwise pending shall be
1529 stayed. The mediator shall have the protections provided under section 23C of chapter 233. To
1530 the extent that public agencies are participants in the mediation, their deliberations shall be
1531 subject to the provisions of section 21(a)(9) of chapter 30A.

1532 4. Conclusion of Mediation: At the conclusion of the mediation, the mediator shall file
1533 with the court a statement describing whether the parties have come to agreement. If unresolved,
1534 the appeal will then go forward; if the matter has been resolved, the appeal will be dismissed
1535 with prejudice. Mediation hereunder shall not be the only method of resolving a zoning appeal.

1536 40A:12. Transition Provisions

1537 Any rights under section 6 of chapter 40A and any zoning ordinance or by-law relating
1538 thereto that were finally acquired prior to [Date] , shall continue in full force and effect for the
1539 periods of time specified in said statute and local zoning law.

1540 SECTION 2. Section 81D of chapter 41 of the General Laws, as appearing in the 2010
1541 Official Edition, is hereby amended by striking out section 81D and inserting in place thereof the
1542 following section 81D:-

1543 41:81D. Master Plan

1544 1. Requirement to Plan: A planning board established in any city or town shall make a
1545 master plan for such city or town. The plan shall take effect upon adoption by the legislative
1546 body as provided in subsection 6, below. For a plan to remain in effect, from time to time not to

1547 exceed 10 years from the date of adoption, the planning board shall conduct a comprehensive
1548 review of the plan and may extend, revise, or remake the plan, and the plan or amendment
1549 thereto shall thereafter be re-adopted as provided in this section. The plan, once adopted, shall be
1550 the official master plan of the city or town, replacing any previously adopted master plans.

1551 2. General Description of Plan:

1552 a. The plan shall be a comprehensive framework, through text, maps, and illustrations
1553 that provides a basis for decision making about land use and the long term physical development
1554 of the municipality. Other completed and current plans, reports, and studies may be incorporated
1555 by reference to fulfill in whole or in part the requirements of each subject listed below, provided
1556 that such material will then be considered part the plan, including its implementation. The master
1557 plan shall be internally consistent in its policies, forecasts and standards, and shall support and
1558 provide a coherent rationale for the municipality's zoning ordinance or bylaws, subdivision
1559 regulations, and other laws, regulations, policies, and capital expenditures.

1560 b. The plan shall include the required subjects identified in subsection 3, any optional
1561 subjects in subsection 4 at the discretion of the municipality, and the regional plan self
1562 assessment in subsection 5. The plan subjects may be written as separate elements or organized
1563 and integrated as deemed appropriate by the planning board. Due to the wide range of
1564 community types, characteristics, and planning needs in the commonwealth it is recognized that
1565 the subjects addressed with a particular city or town in mind may be expanded upon or
1566 contracted as appropriate, and may vary greatly among communities in the focus and depth of
1567 their analysis.

1568 3. Required Subjects: The plan shall address the following 5 required subjects, described
1569 below in a general manner:

1570 a. Goals and Policies: A goals and policies statement that identifies the goals and policies
1571 of the municipality for its future growth, development, redevelopment, conservation, and
1572 preservation. Each community shall conduct a public participation process to determine
1573 community values, establish goals, and identify patterns of development, redevelopment,
1574 conservation, preservation, and protection of public health consistent with these goals. The goals
1575 and policies statement shall address the required and any additional selected optional plan
1576 subjects.

1577 b. Housing:

1578 (i) An inventory of local housing and population characteristics, an assessment and
1579 forecast of housing needs, and a statement of local housing goals, objectives, policies; and
1580 implementing measures. Where applicable, existing local housing plans and studies may be
1581 included by reference.

1582 (ii) An analysis of housing units by type of structure (e.g. single family, two family,
1583 multi-family); affordable housing and subsidized housing; housing available for rental; special
1584 needs housing; and housing for the elderly, including assisted living residences.

1585 (iii) An analysis of existing local policies, programs, laws, or regulations that encourage
1586 the preservation, improvement, and development of such housing, including an assessment of
1587 their adequacy.

1588 (iv) An evaluation of zoning and other policies to provide a variety of housing that meets
1589 a broad range of housing needs, including but not limited to the affordable housing needs of low,
1590 moderate, and median income households and the accessible housing needs of people with
1591 disabilities and special needs. The evaluation shall include specific measures for implementing
1592 the master plan in order to address these needs, including strategies, programs, and assistance for
1593 the preservation or rehabilitation of existing housing; the construction of new housing; and the
1594 adoption or amendment of local ordinances or bylaws and regulations permitting, encouraging,
1595 or requiring diversity in housing locations, types, designs, and area densities that offer
1596 alternatives to single family detached housing. A current housing production plan consistent with
1597 M.G.L. 760 CMR 56.03(4) shall constitute the subject matter relative to housing under this
1598 subsection b

1599 (v) A description of the impact of existing and forecasted housing characteristics and
1600 needs on the health of the community.

1601 c. Natural Resources and Energy Management:

1602 (i) A general overview of the significant natural and energy resources of the municipality.

1603 (ii) Identification of protected and unprotected wetlands and water resources, lands
1604 critical to sustaining surface and groundwater quality and quantity, environmentally sensitive
1605 lands, critical wildlife habitat and biodiversity, agricultural lands and forests. Priorities for
1606 protection of wildlife habitat, water resources, vistas and key landscapes, outdoor recreation
1607 facilities, and farm and forestry land shall be identified.

1608 (iii) An outline of local laws, regulations, policies, and strategies to address needs for the
1609 protection, restoration, and sustainable management of these resources and to promote
1610 development that respects and enhances the state’s natural resources.

1611 (iv) An energy component that explores locally feasible land use strategies to: maximize
1612 energy efficiency and renewable energy opportunities; support land, energy, water, and materials
1613 conservation strategies, local clean power generation, distributed generation technologies, and
1614 innovative industries; and address climate change by reducing greenhouse gas emissions and the
1615 consumption of fossil fuels.

1616 (v) A description of the impact of existing and forecasted natural resource and energy
1617 characteristics and needs on the health of the community.

1618 d. Land Use and Zoning:

1619 (i) An identification of historic settlement patterns and present land uses, and designation
1620 of the proposed distribution, location, and inter-relationship of public and private land uses in a
1621 general manner sufficient to guide the development of zoning ordinances or by-laws, and maps.

1622 (ii) Land use policies and related maps, which shall be based upon a land use suitability
1623 analysis identifying areas most suitable for development and related transportation infrastructure
1624 and facilities. Growth and development areas shall support the revitalization of city and town
1625 centers and neighborhoods by promoting development that is compact, conserves land, protects
1626 historic resources, integrates uses, and coordinates the provision of housing with the location of
1627 jobs, transit and services, and new infrastructure. The plan shall also identify areas for economic
1628 development and job creation, related public and private transportation and pedestrian
1629 connections, and encourage the creation or extension of pedestrian-friendly districts and

1630 neighborhoods that mix commercial, civic, cultural, educational, and recreational activities with
1631 open space and housing.

1632 (iii) A consideration of the relationship between proposed development intensity and the
1633 capacity of land and existing and planned public facilities and infrastructure.

1634 (iv) A land use map illustrating the general land use policies and desired future
1635 development patterns of the municipality and a proposed zoning map.

1636 (v) A description of the impact of existing and forecasted land use, zoning, and
1637 transportation characteristics and needs on the health of the community.

1638 e. Implementation: An implementation program that defines and schedules the specific
1639 municipal actions necessary to achieve the goals and objectives of the master plan in accordance
1640 with the policies outlined therein. This program may be separately written or integrated into the
1641 required and selected subject matter. This implementation program shall specify the course of
1642 action by which the municipality's regulatory structures, including zoning and subdivision
1643 control regulations, may need to be amended in order not to be inconsistent with the master plan.
1644 This element shall examine the current land use permitting process in a community and, if
1645 necessary, make recommendations for the development of clear, predictable, coordinated, and
1646 timely procedures thereunder, including an assessment of the adequacy and effectiveness of the
1647 existing structure of local government, including the roles and responsibilities of elected and
1648 appointed boards, officers, and personnel to implement the master plan through land use
1649 ordinances, by-laws, and regulations.

1650 4. Optional Subjects: The following 7 subjects are optional, and described below in a
1651 general manner:

1652 a. Economic Development:

1653 (i) An inventory and analysis of the local economic base, including: employment; local
1654 industries and business clusters; labor force characteristics; land and buildings used for
1655 nonresidential purposes, including vacant space; and office, retail, and industrial market
1656 conditions.

1657 (ii) An assessment of opportunities and barriers to economic development, including but
1658 not limited to identification of land use policies and available locations that: support the growth
1659 of jobs, the retention of existing businesses, and the provision of space for new businesses;
1660 encourage the reuse and rehabilitation of existing infrastructure, including brownfields, rather
1661 than the construction of new infrastructure in undeveloped areas; and facilitate larger-scale
1662 economic redevelopment or development in industry clusters consistent or compatible with the
1663 regional and local economy.

1664 (iii) An assessment of opportunities and barriers to agriculture, including all branches of
1665 farming and forestry, where applicable.

1666 (iv) An assessment of opportunities and barriers to self-employment and home
1667 occupations, including but not limited to consideration of land use policies, infrastructure and
1668 utilities, and technology.

1669 (v) A description of the impact of existing and forecasted economic base and economic
1670 development on the public health.

1671 b. Cultural Resources:

1672 (i) An inventory of the significant cultural, scenic, and historic structures, sites, and
1673 landscapes of the municipality, including archaeological resources.

1674 (ii) An assessment of policies and strategies to protect and manage the community's
1675 cultural resources, including but not limited to a community-wide preservation plan, ordinances
1676 or bylaws and incentives for historic preservation, and land use policies to facilitate the reuse of
1677 historic structures, where appropriate.

1678 (iii) Where applicable, a description of the impact of cultural resources on the public
1679 health shall be included.

1680 c. Open Space Protection and Recreation: An inventory of recreational facilities and open
1681 space areas of the municipality, and policies and strategies for the management, protection, and
1682 enhancement of such facilities and areas. A current Open Space and Recreational Plan approved
1683 by the Division of Conservation Services shall constitute the subject matter relative to open
1684 space and recreation hereunder. A description of the impact of existing and forecasted open
1685 space characteristics and needs on the public health.

1686 d. Infrastructure and Capital Facilities: An identification and analysis of existing and
1687 forecasted needs for infrastructure and facilities used by the public. Scheduled expansion or
1688 replacement of public facilities, infrastructure components such as water and sewer systems or
1689 circulation system components and the anticipated costs and revenues associated with
1690 accomplishment of such activities shall be detailed. This subject shall be required in a master
1691 plan if development impact fees are to be assessed under section 9F of chapter 40A. The master
1692 plan may be updated at any time to include this subject matter provided the requirements in

1693 subsections 5 and 6 are met. A description of the impact of existing and forecasted infrastructure
1694 and capital facilities characteristics and needs on the public health.

1695 e. Transportation:

1696 (i) An inventory of existing and proposed circulation, parking, and transportation
1697 systems.

1698 (ii) An assessment of opportunities and barriers to increasing access to available or
1699 feasible transportation options, including land and water based public transit, bicycling, walking,
1700 and transportation services for populations with disabilities.

1701 (iii) Identification of strategic investment options for transportation infrastructure to
1702 encourage smart growth, maximize mobility, conserve fuel, and improve air quality; and to
1703 facilitate the location of new development where a variety of transportation modes can be made
1704 available.

1705 (iv) A description of the impact of existing and forecasted transportation characteristics
1706 and needs of the public health.

1707 f. Partnership Planning: This subject shall be known as the “partnership plan,” and shall
1708 be required in a master plan if a city or town wishes to accept the provisions of chapter 40V. The
1709 partnership plan shall be consistent with this section 81D and the requirements set forth in
1710 chapter 40V relative thereto. A master plan may be updated at any time to include this subject
1711 matter provided the requirements in subsections 5 and 6 are met.

1712 5. Regional Plan, Self-Assessment: Any required or selected optional subjects above shall
1713 include a self assessment against similar subject matter in a regional plan adopted by the regional
1714 planning agency under section 5 of chapter 40B and in effect, if any.

1715 6. Adoption of Plan:

1716 a. Proposal of the Plan: The plan shall only be made, extended, revised, or remade from
1717 time to time by a simple majority vote of the planning board after a public hearing, notice of
1718 which shall be posted and published in the manner prescribed for zoning amendments under
1719 section 7 of chapter 40A

1720 b. Adoption of the Plan: Adoption of the plan, or the extension, revision, or remake of the
1721 plan, shall be by a simple majority vote of the legislative body of the city or town; however, no
1722 vote of the legislative body to alter the plan or amendment as proposed by the planning board
1723 shall be other than by a two-thirds vote.

1724 c. Distribution of the Plan: The planning board shall, upon adoption by the legislative
1725 body of any plan or report, or any change or amendment to a plan or report produced under this
1726 section, furnish a copy of such plan or report or amendment thereto, to the Department of
1727 Housing and Community Development.

1728 7. Regional Planning Agency, Optional Review and Certification of Plans:

1729 a. Review of Master Plan: Prior to local legislative adoption of a master plan under this
1730 section, the plan may, at the election of the planning board and chief executive officer, be
1731 referred to the applicable regional planning agency for review and certification. The regional
1732 planning agency may, at its election, review the plan for certification, but must provide written

1733 notice to the city or town within 15 days from receipt of the plan if it intends not to review the
1734 plan. If the regional planning agency has elected to review the plan it shall act within 90 days of
1735 receipt of the plan. Failure to act within 90 days shall be deemed a plan certification by the
1736 regional planning agency. The 90 day review period shall be extended by not longer than 90 days
1737 by the regional planning agency upon written request by the planning board of the city or town.

1738 b. Scope of Review of Master Plan: Review and certification by the regional planning
1739 agency shall be limited to an assessment of plan compliance with those requirements of this
1740 section that are applicable to the city or town with due regard for the regional context of the city
1741 or town. The review process may be interactive and iterative between the regional planning
1742 agency and the planning board; changes to the plan mutually agreed upon may be made by
1743 simple majority vote of the planning board during the review period or extensions thereof. Once
1744 the review is completed by the regional planning agency, with or without certification,
1745 comments, or outstanding issues, it may be brought to the local legislative body for adoption if
1746 the planning board so votes by a simple majority. A plan that has been certified by the regional
1747 planning agency and adopted by the city or town shall be presumed to be in compliance with this
1748 section. A plan that has not been so certified, for any reason including non-referral to the
1749 regional planning agency, shall not for that reason alone be presumed to be out of compliance
1750 with this section.

1751 c. Review of Partnership Plan: Review and certification by the regional planning agency
1752 of a partnership plan pursuant to Chapter 40V shall be in accordance with subsection 7.a, above,
1753 and shall consider whether a proposed partnership plan is: (i) complete ; and (ii) consistent with
1754 the commonwealth's land use objectives as set forth in Chapter 40V. A partnership plan shall be
1755 determined to be complete if, in addition to the requirements for required subjects set forth in

1756 subsection 3 of this section 81D it also contains all the elements required in section 4 of chapter
1757 40V. A partnership plan shall be determined to be consistent with the commonwealth's land use
1758 objectives if it satisfies the minimum standards for consistency in accordance with section 5 of
1759 chapter 40V. The review process may be interactive and iterative between the regional planning
1760 agency and the planning board; changes to the partnership plan mutually agreed upon may be
1761 made by simple majority vote of the planning board during the review period or extensions
1762 thereof. Once the review is completed by the regional planning agency and the partnership plan
1763 is certified as complete and consistent, it may be brought to the local legislative body for
1764 adoption if the planning board so votes by a simple majority. A partnership plan that has been
1765 certified by the regional planning agency and adopted by the city or town shall be presumed to
1766 be in compliance with this section 81D and chapter 40V. A partnership plan that has not been so
1767 certified, for any reason including non-referral to the regional planning agency, shall not be in
1768 compliance with this section 81D and chapter 40V.

1769 d. Consolidated Review of Master Plan and Partnership Plan: For the purposes of this
1770 subsection 7, and to meet the planning requirements of a partnership community under chapter
1771 40V, a master plan containing a partnership plan may be submitted to the regional planning
1772 agency for review and certification in a consolidated manner, provided the requirements of each
1773 plan are met.

1774 e. Barnstable and Dukes Counties: Instead of adopting a master plan pursuant to the
1775 requirements of this section 81D, a municipality in Barnstable or Dukes county may adopt a
1776 local comprehensive plan pursuant to the special acts that protect those two regions, St. 1989, c.
1777 716, as amended, and St. 1977, c. 831, as amended, respectively, and the regulations and
1778 regional policy plans adopted thereunder. The regional planning agency shall review the local

1779 comprehensive plan solely for consistency with the governing special act (St. 1989, c. 716 or St.
1780 1977, c. 831, as these acts may be amended) and any regulations and regional policy plans
1781 adopted thereunder, rather than the requirements for master plans set forth in this section 81D.
1782 The time limits and requirements set forth in subsection 7.a. through 7.d. of this section 81D
1783 shall not apply to the review of such local comprehensive plans. A local comprehensive plan
1784 certified by the regional planning agency as consistent with this subsection 7.e. shall be deemed
1785 a master plan in compliance with this section 81D and shall entitle the municipality to the
1786 partnership plan benefits enumerated in Chapter 40U, Sections 8.D.1, 8.D.3, 11, and 12. To be
1787 entitled to any other benefits in Chapter 40U, the municipality must comply with all partnership
1788 plan requirements of this section 81D and Chapter 40U.

1789 SECTION 3. Section 81L of chapter 41 of the General Laws, as appearing in the 2010
1790 Official Edition, is hereby amended by striking out, in lines 52-78 inclusive, the definition of
1791 “Subdivision” and inserting in place thereof the following definition:-

1792 “Subdivision” shall mean the division of a lot, tract, or parcel of land into 2 or more lots,
1793 tracts, or parcels of land and shall include re-subdivision. When appropriate to the context,
1794 subdivision shall include the process of subdivision or the land or territory subdivided. A change
1795 in the line of any lot, tract, or parcel created by recorded deed or shown on a recorded plan may
1796 be defined as a minor subdivision and, in such case, be governed by the provisions of section
1797 81P.

1798 SECTION 4. Section 81L of said chapter 41, as so appearing, is hereby amended by
1799 inserting the following definition:-

1800 “Minor Subdivision” shall mean a subdivision created in accordance with section 81P,
1801 provided however that until rules and regulations are adopted by a planning board under 81P
1802 therefor, “minor subdivision” shall solely mean the division of a lot, tract, or parcel of land into 2
1803 or more lots, tracts, or parcels where, at the time when it is made, every lot within the lot, tract or
1804 parcel so divided has frontage on: a) a public way or a way which the clerk of the city or town
1805 certifies is maintained and used as a public way; b) a way shown on a plan theretofore approved
1806 and endorsed in accordance with the subdivision control law; or c) a way in existence when the
1807 subdivision control law became effective in the city or town in which the land lies, having, in the
1808 opinion of the planning board, sufficient width, suitable grades and adequate construction to
1809 provide for the needs of vehicular traffic in relation to the proposed use of the land abutting
1810 thereon or served thereby, and for the installation of municipal services to serve such land and
1811 the buildings erected or to be erected thereon. Such frontage shall be of at least such distance as
1812 is then required by the zoning ordinance or by-law, if any, of said city or town for erection of a
1813 building on such lot, and if no distance is so required, such frontage shall be of at least 20 feet.

1814 SECTION 5. Chapter 41, as so appearing, is hereby amended by striking out section 81M
1815 and inserting in place thereof the following section 81M:–

1816 Section 81M. The subdivision control law has been enacted for the purpose of protecting
1817 the safety, convenience and welfare of the inhabitants of the cities and towns in which it is, or
1818 may hereafter be, put in effect by regulating the laying out and construction of ways in
1819 subdivisions providing access to the several lots therein, but which have not become public
1820 ways, ensuring sanitary conditions in subdivisions, promoting and protecting the public health,
1821 and in proper cases parks and open areas. The powers of a planning board and of a board of
1822 appeal under the subdivision control law shall be exercised with due regard for the provision of

1823 adequate access to all of the lots in a subdivision by ways that will be safe and convenient for
1824 travel; for lessening congestion in such ways and in the adjacent public ways; for reducing
1825 danger to life and limb in the operation of motor vehicles; for securing safety in the case of fire,
1826 flood, panic and other emergencies; for promoting and protecting the public health; for ensuring
1827 compliance with the applicable zoning ordinances or by-laws; for securing adequate provision
1828 for water, sewerage, drainage, underground utility services, fire, police, and other similar
1829 municipal equipment, and street lighting and other requirements where necessary in a
1830 subdivision; and for coordinating the ways in a subdivision with each other and with the public
1831 ways in the city or town in which it is located and with the ways in neighboring subdivisions.
1832 Such powers may also be exercised with due regard for the policy of the commonwealth to
1833 encourage the use of solar energy and protect the access to direct sunlight of solar energy
1834 systems, and for those aspects of a plan adopted by the city of town under section 81D of this
1835 chapter which are particular to the subdivision of land. It is the intent of the subdivision control
1836 law that any subdivision plan filed with the planning board shall receive the approval of such
1837 board if said plan conforms to the recommendation of the board of health and to the reasonable
1838 rules and regulations of the planning board pertaining to subdivisions of land; provided,
1839 however, that such board may, when appropriate, waive, as provided for in section eighty-one R,
1840 such portions of the rules and regulations as is deemed advisable.

1841 SECTION 6. Section 81O of said chapter 41, as so appearing, is hereby amended by
1842 striking out the second sentence in the first paragraph and inserting in place thereof the following
1843 sentences:- After the approval of a plan, the location and width of ways, and the number, shape,
1844 and size of the lots shown thereon, may not be changed unless the plan is amended as provided
1845 in section 81W. In the alternative, a planning board may adopt rules and regulations under

1846 sections 81P and 81Q of this chapter defining and regulating such changes as minor
1847 subdivisions.

1848 SECTION 7. Said section 81O of said chapter 41, as so appearing, is hereby amended by
1849 striking out the second paragraph and inserting in place thereof the following paragraph:-

1850 For the purposes of the time within which a planning board must act, a plan shall be
1851 deemed submitted under this section as of the date of the next regularly scheduled meeting of the
1852 planning board, provided that during posted business hours the plan is both received by the
1853 planning board and filed with the town clerk no later than 7 calendar days prior to said meeting
1854 date, or 35 calendar days after such receipt by the planning board and filing with the town clerk,
1855 whichever shall first occur. An incomplete submission or a submission not in accordance with
1856 submittal requirements may be the basis upon which the planning board may deny approval of
1857 the plan. Notwithstanding the foregoing, a planning board or its designee may give notice to the
1858 applicant of how the application is incomplete or not in accordance with said submittal
1859 requirements and may grant to the applicant additional time to effect corrective measures.

1860 SECTION 8. Said chapter 41, as so appearing, is hereby amended by striking out section
1861 81P and inserting in place thereof the following section 81P:-

1862 41:81P. Minor Subdivisions

1863 1) Applicability: Minor subdivisions, as defined in this chapter, and as may be further
1864 defined in the local subdivision rules and regulations, shall be governed by this section. Section
1865 81S and the public hearing requirements in section 81T of this chapter shall not apply to minor
1866 subdivisions. Except as provided below, all other sections of the subdivision control law that
1867 applies to subdivisions shall apply to minor subdivisions in so far as apt.

1868 2) Rules and Regulations, Transition Provision: A planning board may adopt alternative
1869 rules and regulations under section 81Q of this chapter relative to minor subdivisions, but in no
1870 case may such rules and regulations impose a procedural or substantive requirement more
1871 stringent than those specified in this chapter, this section 81P, or contained in the local rules and
1872 regulations otherwise applicable to subdivisions. Until such rules and regulations are adopted,
1873 the procedures under subsection 6 below shall apply to minor subdivisions.

1874 3) Rules and Regulations, Required Provisions: The rules and regulations for minor
1875 subdivisions shall: a) specify that an application for a minor subdivision may create up to 6
1876 additional residential lots within the meaning of the subdivision control law, either on ways
1877 described in the definition of minor subdivision or on new ways; b) set forth the reasonable
1878 requirements and standards of the board for those existing ways described in the definition of
1879 minor subdivision, provided that no requirements shall be made for the location of such ways or
1880 for a roadway width of greater than 22 feet; c) set forth the reasonable requirements and
1881 standards of the board for the proposed ways shown on a plan, provided that no requirement may
1882 be made for a roadway width of greater than 22 feet; and d) establish a time period for the
1883 planning board to take final action and to file with the city or town clerk a certificate of such
1884 action within 65 days or less in the case of an existing way, or 95 days or less in the case of a
1885 new way.

1886 4) Rules and Regulations, Optional Provisions: The rules and regulations for minor
1887 subdivisions may: a) notwithstanding subsection 1, above require a public hearing under Section
1888 81T of this chapter for minor subdivisions served by a new way; b) require that applications for
1889 minor subdivisions from the same lot, tract, or parcel from which the first minor subdivision was
1890 created not create more than the maximum number of additional lots in a set period of years; c)

1891 lessen or eliminate any requirement of section 81U of this chapter otherwise applicable to
1892 subdivisions; d) lessen or eliminate any local rule or regulation adopted under section 81Q of this
1893 chapter otherwise applicable to subdivisions.

1894 5) Rules and Regulations, Optional Provisions Requiring Ratification by Legislative
1895 Body: Subject to ratification by the local legislative body by a simple-majority vote, the rules
1896 and regulations for minor subdivisions may: a) increase the maximum number of additional lots
1897 created in an application for a minor subdivision to a number greater than 6; and b) define
1898 “minor subdivision” more broadly than in section 81L of this chapter.

1899 6) Alternate Procedures for Minor Subdivisions Until Rules and Regulations Adopted:
1900 Until such rules and regulations are adopted, any person wishing to cause to be recorded a plan
1901 of land situated in a city or town in which the subdivision control law is in effect, who believes
1902 that his plan does not require approval under the subdivision control law, may submit his plan to
1903 the planning board of such city or town in the manner prescribed in section 81T, and, if the board
1904 finds that the plan does not require such approval, it shall forthwith, without a public hearing,
1905 endorse thereon or cause to be endorsed thereon by a person authorized by it the words “approval
1906 under the subdivision control law not required” or words of similar import with appropriate name
1907 or names signed thereto, and such endorsement shall be conclusive on all persons. Such
1908 endorsement shall not be withheld unless such plan shows a subdivision. If the board shall
1909 determine that in its opinion the plan requires approval, it shall within 21 days of such submittal,
1910 give written notice of its determination to the clerk of the city or town and the person submitting
1911 the plan, and such person may submit his plan for approval as provided by law and the rules and
1912 regulations of the board, or he may appeal from the determination of the board in the manner
1913 provided in section 81BB. If the board fails to act upon a plan submitted under this section or

1914 fails to notify the clerk of the city or town and the person submitting the plan of its action within
1915 21 days after its submission, it shall be deemed to have determined that approval under the
1916 subdivision control law is not required, and it shall forthwith make such endorsement on said
1917 plan, and on its failure to do so forthwith the city or town clerk shall issue a certificate to the
1918 same effect. The plan bearing such endorsement or the plan and such certificate, as the case may
1919 be, shall be delivered by the planning board, or in case of the certificate, by the city or town
1920 clerk, to the person submitting such plan. The planning board of a city or town which has
1921 authorized any person, other than a majority of the board, to endorse on a plan the approval of
1922 the board or to make any other certificate under the subdivision control law, shall transmit a
1923 written statement to the register of deeds and the recorder of the land court, signed by a majority
1924 of the board, giving the name of the person so authorized.

1925 SECTION 9. Section 81Q of chapter 41, as so appearing, is hereby amended by inserting,
1926 after the first sentence, the sentence:- Notice shall be provided to all municipal departments,
1927 which shall be accorded the opportunity to provide advisory comments to the board in writing.

1928 SECTION 10. Section 81Q of said chapter 41, as so appearing, is hereby amended by
1929 inserting, after the second sentence, in line 22, the sentence:- Without limiting the foregoing,
1930 there shall be a rebuttable presumption that requirements for a roadway width of greater than 24
1931 feet are unlawfully excessive.

1932 SECTION 11. Said section 81Q of said chapter 41, as so appearing, is hereby amended
1933 by inserting after the word “thereof,” in line 69, the following words:- “except that the rules and
1934 regulations may require the plan to show a park or parks suitably located for playground or

1935 recreation purposes benefiting the lots in the subdivision or for providing light and air, and not
1936 exceeding 5 percent of the land being subdivided.”

1937 SECTION 12. Said section 81Q of said chapter 41, as so appearing, is hereby amended
1938 by inserting after the first paragraph the following paragraphs:-

1939 After January 1, 2018, no subdivision rule or regulation may be inconsistent with a plan
1940 adopted in compliance with section 81D of chapter 41. No subdivision rule or regulation shall be
1941 deemed inconsistent with the plan if it furthers, or at least does not impede, the achievement of
1942 the plan's goals and policies, and if it is not incompatible with the plan's proposed land uses and
1943 development patterns.

1944 After the effective date of the master plan, a subdivision rule or regulation shall enjoy a
1945 rebuttable presumption in any actionsuit, or administrative proceeding that its provisions are not
1946 inconsistent with the master plan. If the presumption is rebutted, inconsistency may serve as the
1947 basis upon which a court or administrative agency may declare any relevant subdivision rule or
1948 regulation to be invalid as applied to the property which is the subject of the actionsuit, or
1949 administrative proceeding. For any amendment to a plan adopted after January 1, 2018, no such
1950 declaration of invalidity may be made in any actionsuit, or administrative proceeding for a period
1951 of 12 months after the effective date of such master plan amendment.

1952 In Barnstable or Dukes Counties inconsistency with a local comprehensive plan adopted
1953 pursuant to St. 1989, c. 716, as amended, or St. 1977, c. 831, as amended, and the regional policy
1954 plans and regulations adopted thereunder to serve as a municipality’s master plan for purposes of
1955 Chapter 41, Section 81D shall not serve as a basis for declaring a subdivision regulation
1956 provision to be invalid under this section.

1957 SECTION 13. Section 81S of chapter 41, as so appearing is hereby amended by striking
1958 the first and second paragraphs and inserting in place thereof the following paragraph: -

1959 Any person before submitting his definitive subdivision plan for approval shall submit to
1960 the planning board and the board of health, a preliminary plan, and shall give notice to the clerk
1961 of such city or town by delivery or by registered mail, postage prepaid, that he has submitted
1962 such plan.

1963 SECTION 14. Section 81T of said chapter 41, as so appearing, is hereby amended by
1964 striking out, in lines 2-3 inclusive, the following words “or for a determination that approval is
1965 not required”.

1966 SECTION 15. Section 81T of chapter 41, as so appearing, is hereby amended by adding
1967 the following sentence:- Notice shall be provided to all municipal department, which shall be
1968 accorded the opportunity to provide advisory comments to the board in writing.

1969 SECTION 16. Said section 81U of said chapter 41, as so appearing, is hereby amended
1970 by striking out, in lines 173-174 inclusive, the words “for a period of not more than three years”.

1971 SECTION 17. Section 81X of said chapter 41, as so appearing, is hereby amended by
1972 striking out, in lines 12-13 inclusive, the following words “such plan bears the endorsement of
1973 the planning board that approval of such plan is not required, as provided in section eighty-one P,
1974 or (3)”.

1975 SECTION 18. Said section 81X of said chapter 41, as so appearing, is hereby amended
1976 by striking out, in lines 17-20 inclusive, the following words “or that it is a plan submitted

1977 pursuant to section eighty-one P and that it has been determined by failure of the planning board
1978 to act thereon within the prescribed time that approval is not required.”.

1979 SECTION 19. Said section 81X of said chapter 41, as so appearing, is hereby amended
1980 by striking out the fourth paragraph and inserting in place thereof the following paragraphs:-

1981 Perimeter Plans: Notwithstanding the foregoing provisions of this section, the register of
1982 deeds shall accept for recording, and the land court shall accept with a petition for registration or
1983 confirmation of title, any plan bearing a professional opinion by a registered professional land
1984 surveyor that the property lines shown are the lines dividing existing ownerships, and the lines of
1985 streets and ways shown are those of public or private streets or ways already established, and that
1986 no new lines for division of existing ownership or for new ways are shown.

1987 Lot Line Changes: The register of deeds and the land court shall accept for recording or
1988 registration any plan showing a change in the line of any lot, tract, or parcel bearing a
1989 professional opinion by a registered professional land surveyor and a certificate by the person or
1990 board charged with the enforcement of the zoning ordinance or by-law of the city or town that
1991 the property lines shown: do not create an additional building lot; do not create, add to, or alter
1992 the lines of a street or way; do not render an existing legal lot or structure illegal; do not render
1993 an existing nonconforming lot or structure more nonconforming; and are not subject to
1994 alternative local rules and regulations for minor subdivisions under section 81P of this chapter.
1995 The recording of such plan shall not relieve any owner from compliance with the provisions of
1996 the Subdivision Control Law or of any other applicable provision of law.

1997 SECTION 20. Said section 81BB of said chapter 41, as so appearing, is hereby amended
1998 by striking out the first paragraph and inserting in place thereof the following paragraph:-

1999 Section 81BB. Any person, whether or not previously a party to the proceedings, or any
2000 municipal officer or board, aggrieved by a decision of a board of appeals under section 81Y, or
2001 by any decision of a planning board concerning a plan of a subdivision or minor subdivision of
2002 land, or by the failure of such a board to take final action concerning such a plan within the
2003 required time, may appeal to the superior court for the county in which said land is situated or to
2004 the land court; provided, that such appeal is entered within 20 days after such decision has been
2005 recorded in the office of the city or town clerk or within 20 days after the expiration of the
2006 required time as aforesaid, as the case may be, and notice of such appeal is given to such city or
2007 town clerk so as to be received within such 20 days. A complaint by a plaintiff challenging a
2008 subdivision or minor subdivision approval under this section shall allege the specific reasons
2009 why the subdivision or minor subdivision fails to satisfy the requirements of the board's rules
2010 and regulations or other applicable law and allege specific facts establishing how the plaintiff is
2011 aggrieved by such decision. A complaint by an applicant challenging a subdivision or minor
2012 subdivision denial or conditioned approval under this section shall allege the specific reasons
2013 why the subdivision or minor subdivision properly satisfies the requirements of the board's rules
2014 and regulations or other applicable law. The board's decision in either case shall be affirmed
2015 unless the court concludes the board abused its discretion in approving, approving with
2016 conditions, or denying the subdivision or minor subdivision, as the case may be.

2017 SECTION 21. Section 53G of chapter 44 of the General Laws, as appearing in the 2010
2018 Official Edition, is hereby amended by inserting after the number "9", in line 2, the following
2019 numbers and letters:- A, 9B, 9G,

2020 SECTION 22. The General Laws are hereby amended by inserting after Chapter 40V the
2021 following chapter:- CHAPTER 40V LAND USE PARTNERSHIP ACT

2022	CHAPTER 40V
2023	LAND USE PARTNERSHIP ACT
2024	1. Preamble; Statement of the Commonwealth’s Land Use Objectives
2025	2. Definitions
2026	3. Preparation, Adoption, and Certification of a Partnership Plan
2027	4. Elements of a Partnership Plan
2028	5. Minimum Standards for Consistency with Commonwealth’s Land Use Objectives
2029	6. Preparation, Adoption, Review, and Certification of Implementing Regulations
2030	7. Partnership Community Effective Date
2031	8. Effect of Partnership Plan Status on Zoning and Land Use Regulation
2032	9. Review of Certification by Regional Planning Agency
2033	10. Expiration; Renewal of Certified Partnership Community Status; Amendments
2034	11. Priority for Infrastructure Funding
2035	12. Consideration Under State Programs
2036	40V:1. Preamble; Statement of the Commonwealth’s Land Use Objectives
2037	The sections herein this chapter shall be known and may be cited as the “Land Use
2038	Partnership Act.” The purposes of the act shall be to advance the commonwealth’s land use
2039	objectives, which are as follows:

2040 A) Support the revitalization of city and town centers and neighborhoods by promoting
2041 development that is compact, conserves land and integrates uses;

2042 B) Support the construction and rehabilitation of homes near jobs, infrastructure and
2043 transportation options to meet the needs of people of all abilities, income levels, and household
2044 types;

2045 C) Attract businesses and jobs to locations near housing, infrastructure, and
2046 transportation options;

2047 D) Protect environmentally sensitive lands, natural resources, agricultural lands, critical
2048 habitats, wetlands and water resources, and cultural and historic structures and landscapes;

2049 E) Construct and promote developments, buildings, and infrastructure that conserve
2050 natural resources by reducing waste and pollution through efficient use of land, energy and
2051 water;

2052 F) Support transportation options that maximize mobility, reduce congestion, conserve
2053 fuel and improve air quality;

2054 G) Maximize energy efficiency and renewable energy opportunities to reduce greenhouse
2055 gas emissions and consumption of fossil fuels;

2056 H) Promote equitable sharing of the benefits and burdens of development;

2057 I) Make regulatory and permitting processes for development clear, predictable,
2058 coordinated, and timely in accordance with smart growth and environmental stewardship; and

2059 J) Support the development and implementation of local and regional plans that have
2060 broad public support and are consistent with these purposes.

2061 K) Promotion of a physical and built environment that promotes and protects public
2062 health.

2063 40V:2. Definitions

2064 As used in this chapter, the following words shall, unless the context clearly requires
2065 otherwise, have the following meanings:

2066 “Affordable housing” shall have the definition found in Chapter 40A.

2067 “By-right” shall have the definition found in Chapter 40A.

2068 “Chief executive officer” shall have the definition found in Chapter 40A.

2069 “Constructively approved” means deemed approved by the failure of the granting
2070 authority to issue a decision or determination within the time prescribed, as it may be extended
2071 by written agreement between the applicant and the granting authority; provided that an
2072 applicant who seeks approval by reason of the failure of the granting authority to act within such
2073 time prescribed, shall so notify the city or town clerk, and parties in interest, in writing within 14
2074 days from the expiration of the time prescribed or extended time, if applicable, of such approval.

2075 “Development agreement”, a contract entered into between a municipality or
2076 municipalities and a holder of property development rights, the principal purpose of which is to
2077 establish the development regulations that will apply to the subject property during the term of
2078 the agreement and to establish the conditions to which the development will be subject including,
2079 without limitation, a schedule of development impact fees.

2080 “Economic development district” shall mean a zoning district that: permits or allows
2081 commercial and/or industrial use; or permits or allows mixed use including commercial and/or
2082 industrial use; and is an eligible location.

2083 “Eligible location” shall mean an area that by virtue of its physical and regulatory
2084 suitability for development, the adequacy of transportation and other infrastructure and the
2085 compatibility of proximate land uses is, in the determination of the regional planning agency, a
2086 suitable location for development of the type contemplated by a partnership plan. Any area that
2087 would qualify as an “eligible location” under chapter 40R shall automatically qualify as an
2088 “eligible location” for a residential development district.

2089 “Housing target number” shall mean a number equal to 5 percent of the total number of
2090 year-round housing units enumerated for the municipality in the latest available United States
2091 census as of the date on which the plan was submitted to the regional planning agency.

2092 “Implementing regulations” shall mean the local zoning ordinances or by-laws,
2093 subdivision rules and regulations, and other local land use regulations, or amendments thereof,
2094 necessary to effectuate the minimum standards for consistency with the commonwealth’s land
2095 use objectives established or required by a partnership plan.

2096 “Interagency planning board” shall mean a board comprised of the secretary of Housing
2097 and Economic Development, the secretary of Energy and Environmental Affairs, and the state
2098 permit ombudsman, or their designees, together with a representative designated by the
2099 Massachusetts Association of Regional Planning Agencies (the “regional representative”), a
2100 representative designated by the Massachusetts Municipal Association (the “municipal
2101 representative”), and a representative designated by the Massachusetts Association of Planning

2102 Directors (the “planning representative”). The state permit ombudsman shall serve as the chair of
2103 the board and shall vote only in the case of a tie.

2104 “Low impact development techniques” shall mean stormwater management techniques
2105 appropriate to the size, scale, and location of the development proposal that limit off-site
2106 stormwater runoff (both peak and non-peak flows) to levels substantially similar to natural
2107 hydrology (or, in the case of a redevelopment site, that reduce such flows from pre-existing
2108 conditions), by emphasizing decentralized management practices and the protection of on-site
2109 natural features.

2110 “Minimum area density” shall mean the land area required for a given unit of
2111 development, which shall not necessarily be expressed as a lot size requirement.

2112 “Natural resource protection zoning” shall have the meaning ascribed to it in chapter
2113 40A.

2114 “Open space residential design” shall mean a process for the cluster development of land
2115 that: requires identification of the significant natural features of the land and concentrates
2116 development by use of reduced dimensional requirements in order to preserve those natural
2117 features; preserves at least 50 percent of the land’s developable area in a natural, scenic or open
2118 condition or in agricultural, farming or forestry use; and permits the development of a number of
2119 new housing units at least equal to the quotient of the land’s developable area divided by the
2120 minimum lot area per housing unit required by the zoning ordinance or by-law. For the purposes
2121 of this definition, the land’s developable area shall be determined pursuant to applicable state
2122 and local land use and environmental laws and regulations, and the zoning ordinance or by-law,

2123 without regard in either case to the suitability of soils or groundwater for on-site wastewater
2124 disposal.

2125 “Other local land use regulations” shall mean all local legislative, regulatory, or other
2126 actions which are more restrictive than state requirements, if any, including subdivision and
2127 board of health rules and regulations, local wetlands ordinances or by-laws, and other local
2128 ordinances, by-laws, codes, and regulations.

2129 “Partnership community” shall mean a community for which a partnership plan and
2130 implementing regulations have been certified by the applicable regional planning agency,
2131 adopted by the municipality, and remain in effect.

2132 “Partnership plan” shall mean the subject matter contained in section 81D.4.f of chapter
2133 41 prepared by the planning board in accordance with sections 4 and 5 of this chapter 40V and
2134 which has been certified by the applicable regional planning agency.

2135 “Prompt and predictable permitting” shall mean that zoning and other local land use
2136 regulations allow development to proceed by right by means of permitting processes that are
2137 designed to result in final written decisions on all local permits and approvals in less than 180
2138 days from the date of the filing of a complete application. For commercial and industrial
2139 development, local permitting pursuant to chapter 43D shall also be deemed prompt and
2140 predictable permitting.

2141 “Rate of development” local legislative or regulatory measures adopted by cities and
2142 towns under this chapter to regulate the number of permits for new construction or approvals of
2143 new building lots issued in a defined period of time or otherwise in accordance with defined
2144 standards and criteria.

2145 “Regional planning agency” shall mean the regional or district planning commission
2146 established pursuant to chapter 40B for the region within which a municipality is located. The
2147 term shall also mean the Martha’s Vineyard Commission, as described in Chapter 831 of the
2148 Acts of 1977, the Nantucket Planning and Economic Development Commission, as described in
2149 Chapter 561 of the Acts of 1973, the Cape Cod Commission, as described in Chapter 716 of the
2150 Acts of 1989, the Franklin Regional Council of Governments, as described in Chapter 151 of the
2151 Acts of 1996, and the Northern Middlesex Council of Governments, as described in Chapter 420
2152 of the Acts of 1989.

2153 “Residential development district” shall mean a zoning district that: permits or allows
2154 residential use at a density of not less than 4 units per acre of developable land for single-family
2155 residential use, not less than 8 units per acre of developable land for two- and three-family and
2156 attached townhouse residential use, and/or not less than 12 units per acre of developable land for
2157 multi-family residential use, or permits or allows mixed use including residential use at such
2158 density; is in an eligible location; and does not impose other requirements that add unreasonable
2159 costs or otherwise unreasonably impair the economic feasibility of residential development at
2160 such density. A zoning district that permits or allows mixed use may qualify as both an economic
2161 development district and a residential development district, if the standards for both districts are
2162 met. The implementing regulations for any residential development district that permits or allows
2163 mixed use shall contain adequate provisions to ensure that any contemplated contribution
2164 towards the housing target number to be provided by such district will be achieved. To achieve
2165 the minimum densities and housing target number, the implementing regulations may employ
2166 zoning techniques such as infill development, cottage zoning, transfer of development rights, and
2167 accessory dwelling units. The foregoing minimum density for single-family residential use may

2168 be reduced to not less than 2 units per acre of developable land upon a determination by the
2169 regional planning agency that the lack of adequate water supply and/or wastewater infrastructure
2170 within the municipality prevents full compliance with the minimum density standard. If there is
2171 no public water supply or public wastewater infrastructure existing anywhere within the
2172 municipality, then the minimum density for single-family residential use may be reduced to not
2173 less than 2 units per acre of developable land without the need for a determination by the
2174 regional planning agency.

2175 40V:3. Preparation, Adoption, and Certification of a Partnership Plan

2176 A. A planning board may prepare, and from time to time amend or renew, a proposed
2177 partnership plan for a municipality.

2178 B. The partnership plan shall be reviewed, certified, and adopted pursuant to the
2179 requirements of subsections 4-7 of section 81D of chapter 41.

2180 40V:4. Subjects of a Partnership Plan

2181 A partnership plan shall be consistent with section 81D of chapter 41 and in addition shall
2182 address at least the following five areas: economic development, housing, open space protection,
2183 water management, and energy management.

2184 The partnership plan shall contain:

2185 A. an overall statement of the land use goals and objectives of the municipality for its
2186 future growth and development, including specific reference to each of the five areas;

2187 B. a description of the zoning and other land use regulation policies that will be used to
2188 implement those goals and objectives, including with respect to each of the five areas;

2189 C. an assessment of the infrastructure improvements needed to support the
2190 implementation policies and strategies identified in B, above;

2191 D. an overall assessment of the plan's consistency with the commonwealth's land use
2192 objectives set forth in section 1 herein; and

2193 E. an assessment of the plan's specific compliance with the minimum standards for
2194 consistency set forth in section 5, below.

2195 The partnership plan may include materials prepared within the last 5 years as part of a
2196 local planning document, including a master plan prepared pursuant to section 81D of chapter
2197 41.

2198 The partnership plan shall be established and implemented in ways that protect and
2199 affirmatively promote equal opportunity and diversity, consistent with stated goals of the
2200 commonwealth. Each municipality, in preparing and implementing its partnership plan, shall
2201 consider the likely effects that the plan will have on achieving non-discrimination, diversity, and
2202 equal opportunity.

2203 40V:5. Minimum Standards for Consistency with Commonwealth's Land Use Objectives

2204 The minimum standards for consistency with the commonwealth's land use objectives
2205 may be set forth in regulations duly promulgated by the Interagency Planning Board.

2206 Notwithstanding the foregoing, for plans submitted for certification within the first 5
2207 years of the effective date of passage of this act, a determination of consistency with the
2208 commonwealth's land use objectives shall be mandatory if the following minimum standards
2209 have been satisfied:

2210 A. The plan establishes prompt and predictable permitting of commercial and/or
2211 industrial development within one or more economic development districts. This standard may
2212 be waived or modified upon a determination by the regional planning agency that adequate
2213 alternatives for economic development exist elsewhere in the region and are more appropriately
2214 located there.

2215 B. The plan establishes prompt and predictable permitting of residential development
2216 within one or more residential development districts that can collectively accommodate, in the
2217 determination of the regional planning agency, a number of new housing units (excluding new
2218 housing units, other than accessory apartments, which are restricted, through zoning or other
2219 legal means, as to the number of bedrooms or as to the age of their residents) equal to the
2220 housing target number. For the initial certification of a plan, a municipality's housing target
2221 number shall be reduced by the number of new housing units for which building permits were
2222 issued within 2 years prior to the municipality's effective date, to the extent such building
2223 permits were issued within residential development districts for which there was prompt and
2224 predictable permitting at the time of building permit issuance.

2225 C. The plan requires that, for any zoning district that requires a minimum lot area of
2226 40,000 square feet or more for single-family residential development, development of 5 or more
2227 new housing units utilize open space residential design, except upon a determination by the
2228 regional planning agency that open space residential design is not feasible. In districts requiring
2229 minimum lot areas of between 40,000 and 80,000 square feet in nitrogen sensitive areas as
2230 defined under Title 5 of the Environmental Code, the minimum preservation requirement of 50
2231 percent set forth in section 2, Open Space Residential Design, shall be modified to equal the

2232 percentage resulting from the subtraction of 40,000 square feet from the lot size requirement,
2233 divided by the lot size requirement, and multiplied by 100.

2234 D. The plan requires, through zoning or general ordinances or by-laws, all development
2235 that disturbs more than one acre of land, including development by-right, utilize low impact
2236 development techniques.

2237 E. The plan establishes prompt and predictable permitting of renewable or alternative
2238 energy generating facilities, renewable or alternative energy research and development facilities,
2239 or renewable or alternative energy manufacturing facilities, within one or more zoning districts
2240 that are eligible locations.

2241 The Interagency Planning board shall promulgate regulations to effect the purposes of
2242 this act. To assist municipalities in this effort, the regulations to be promulgated by the
2243 Interagency Planning Board hereunder shall include at least one model provision for
2244 implementing regulations for open space residential design, low impact development, and clean
2245 energy generation/cogeneration facilities that would satisfy the standards hereof.

2246 40V:6. Adoption, Review, and Certification of a Partnership Plan

2247 Adoption, review, and certification of a partnership plan shall be in accordance with,
2248 sections 81D(6) and (7) of chapter 41.

2249 40V:6. Preparation, Adoption, Review, and Certification of Implementing Regulations

2250 A. Prior to or following municipal adoption of a partnership plan, the city or town may
2251 prepare proposed implementing regulations for the partnership plan.

2252 B. Upon completion of the proposed implementing regulations, the planning board and
2253 chief executive officer may submit the proposed implementing regulations to the regional
2254 planning agency for certification.

2255 C. Within 90 days of receiving a submission, the regional planning agency shall
2256 determine whether the proposed implementing regulations are consistent with the certified
2257 partnership plan. The implementing regulations shall be deemed consistent with the certified
2258 partnership plan if they effectuate the minimum standards for consistency with the
2259 commonwealth’s land use objectives established or required by the certified partnership plan. If
2260 the regional planning agency determines that the implementing regulations are consistent with
2261 the certified partnership plan, then the agency shall issue a written certification to that effect. If
2262 the regional planning agency determines that the regulations do not effectuate the minimum
2263 standards for consistency, then the agency shall provide the municipality with a written statement
2264 of the reasons for its determination. A municipality may re-submit for certification at any time
2265 modified implementing regulations that address the issues set forth in the agency’s statement of
2266 reasons. If the regional planning agency does not issue a certification or provide a statement of
2267 reasons within 90 days after receiving implementing regulations (including re-submitted
2268 implementing regulations), then the implementing regulations shall be deemed certified. The
2269 municipality shall have the option of submitting its implementing regulations together with its
2270 submission of its partnership plan pursuant to section 4 herein, in which case the regional
2271 planning agency shall review both the partnership plan and the implementing regulations within
2272 the same 90 day period.

2273 D. Following certification by the regional planning agency, the implementing regulations
2274 may be adopted by the municipality according to the procedures and requirements for each type
2275 of local law or regulation.

2276 E. The town clerk shall within 20 days of the final approval of all implementing
2277 regulations file a true copy of the implementing regulations with the regional planning agency.

2278 F. Amendments to the Implementing Regulations by the legislative body or a board made
2279 subsequent to certification may lead to withdrawal of certification by the regional planning
2280 agency.

2281 40V:7. Partnership Community Effective Date

2282 Within 15 days of receipt by the regional planning agency of a true copy of certified
2283 implementing regulations duly adopted by the city or town pursuant to a certified partnership
2284 plan, the agency shall notify the municipality in writing that it is deemed a “partnership
2285 community”. The date of that notification shall be deemed the “municipality’s effective date”.

2286 40V:8. Effect of Partnership Plan Status on Zoning and Land Use Regulation

2287 A. Following the municipality’s effective date, local zoning ordinances or by-laws,
2288 subdivision rules and regulations, and other local land use regulations (other than certified
2289 implementing regulations) which are determined to be inconsistent with the certified partnership
2290 plan or the certified implementing regulations shall be deemed invalid Such a determination may
2291 be sought and obtained through any means otherwise available by statute for the determination of
2292 the validity of such land use regulations. Any material amendment to a certified partnership plan
2293 or certified implementing regulations that has not been prepared, certified, and adopted in

2294 accordance with the provisions of section 81D of chapter 41 and this chapter shall be presumed
2295 to be inconsistent with the certified partnership plan.

2296 B. If a municipality has issued, at the time of the municipality's effective date, a special
2297 permit that in itself allows new housing units equal to one-half or more of the municipality's
2298 housing target number, and if such special permit remains in effect for at least 2 years after the
2299 municipality's effective date, then residential development under such special permit which
2300 otherwise qualifies hereunder shall also be deemed by right.

2301 C. If at any time more than 2 years after the municipality's effective date the total number
2302 of housing units for which building permits have been applied for within the residential
2303 development districts since the municipality's effective date is greater than the housing target
2304 number (adjusted pro rata for the number of years since the municipality's effective date divided
2305 by the ten-year time frame of the plan), but the total number of housing units for which building
2306 permits have been issued within the residential development districts is less than the pro rata
2307 housing target number, then the provisions of this subsection shall be in effect. During such time
2308 period, any applications for building permits or other local land use permits for residential
2309 development within such residential development districts shall deemed constructively approved
2310 if not acted upon within 180 days after receipt of permit applications. In addition, an application
2311 received under this section shall be subject only to those conditions that are necessary to ensure
2312 substantial compliance of the proposed development project with applicable laws and
2313 regulations; and it may be denied only on the grounds that the proposed development project
2314 does not substantially comply with applicable laws and regulations or the applicant failed to
2315 submit information and fees required by applicable laws and regulations and necessary for an
2316 adequate and timely review of the development project. The foregoing provisions shall no longer

2317 be in effect once the total number of housing units for which building permits have been issued
2318 within such residential development districts equals or exceed the pro rata housing target
2319 number.

2320 D. Following the municipality’s effective date, in addition to those powers conferred
2321 upon cities and towns clarified and enumerated in chapter 40A, partnership communities shall
2322 have the following additional powers:

2323 1. Rate of Development: The power to regulate rate of development, as defined herein. A
2324 zoning ordinance or by-law that limits the rate of development of new housing units (a “rate of
2325 development measure”) shall not be declared exclusionary, a denial of substantive due process,
2326 or otherwise against public policy, provided that it complies with the following conditions.
2327 Within residential development districts identified under section 5.B, above, the rate of
2328 development measure may limit the number of building permits issued in any twelve-month
2329 period to an amount equal to or greater than one-half of the housing target number. In the event
2330 the municipality meets its housing target number prior to the expiration of the 10-year term of
2331 the plan, it may amend said ordinance or by-law to restrict the by-right development of new
2332 housing units within residential development districts for the remainder of the term. For areas not
2333 located within residential development districts identified under section 5.B, above, any rate of
2334 development measure shall be consistent with the following additional element of the partnership
2335 plan. The plan shall contain consistent policies and strategies for the implementation of rate of
2336 development measures that include a study of the need for such measures, a methodology by
2337 which to determine a reasonable rate of issuance of either permits for new construction or
2338 approvals of new building lots, a time horizon within which such measures shall remain in effect,
2339 and a periodic review schedule. A rate of development measure shall not restrict the construction

2340 of, or creation of building lots for, affordable housing units as that term is defined under chapter
2341 40A and it shall not apply to structures accessory to residential uses nor to construction work
2342 upon an existing dwelling unit.

2343 2. Natural Resource Protection Zoning: A zoning ordinance or by-law that requires a
2344 minimum area density of 10 acres or more per dwelling unit to protect areas designated by the
2345 state, a regional planning agency, or by a city or town as having significant natural resource
2346 values shall not for that reason alone be declared exclusionary, a denial of substantive due
2347 process, or otherwise against public policy. Such land types deemed appropriate for these
2348 measures shall be identified in the partnership plan. The zoning ordinance or by-law may require
2349 dwelling units and other development to be concentrated on a portion of the parcel in a manner
2350 consistent with the natural resource protection goals of the ordinance or by-law. Natural resource
2351 protection zoning measures that specifically require individual lot sizes greater than 2 acres shall
2352 be subject to the requirements of section 5.C of this chapter 40V.

2353 3. Vested Rights: Notwithstanding section 6B of chapter 40A, the minimum vesting
2354 period for a definitive subdivision plan in a partnership community shall not be 8 years, but shall
2355 instead be 4 years. This provision shall not apply to the 3 year minimum vesting period for minor
2356 subdivisions in said section 6B of chapter 40A.

2357 4. Development Agreements: The power to enter into development agreements as defined
2358 herein. A development agreement is a contract between the applicant and a city or town under
2359 which the applicant may agree to contribute public capital facilities to serve the proposed
2360 development and the municipality or both, to build affordable housing either on site or off site, to
2361 dedicate or reserve land for open space community facilities or recreational use or to contribute

2362 funds for any of these purposes. The development agreement shall function as a bona fide local
2363 land use regulation, establishing the permitted uses and densities within the development, and
2364 any other terms or conditions mutually agreed upon between the applicant and the municipality.
2365 A development agreement shall vest land use and development rights in the property, and such
2366 rights would not be subject to subsequent changes in development laws or regulations for the
2367 duration of the agreement. Any such development agreement shall be consistent with the
2368 partnership plan and may be entered into by the chief executive officer following a majority vote
2369 of the legislative body.

2370 5. Development Impact Fees: Development impact fees imposed pursuant to section 9F
2371 of chapter 40A may, in addition to the off-site public capital facilities listed in subsection 1.b of
2372 said section, be used to defray the costs of the following off-site public capital facilities: public
2373 elementary and secondary schools, libraries, municipal offices, affordable housing, and public
2374 safety facilities.

2375 40V:9. Review of Certification by Regional Planning Agency

2376 A. Any certification or determination of non-certification by a regional planning agency
2377 with respect to a partnership plan or implementing regulations or a material amendment of either
2378 is subject to review by the Interagency Planning Board. The Interagency Planning Board may,
2379 upon the request of the subject municipality or upon its own motion, review any such decision in
2380 an informal, non-adjudicatory proceeding, may request information from any third party and may
2381 modify or reverse such decision if the same does not comply with the provisions hereof.

2382 B. If a municipality provides written notice to the Interagency Planning Board of the
2383 certification by a regional planning agency of a partnership plan or implementing regulations or a

2384 material amendment of either, including a deemed certification resulting from a regional
2385 planning agency's failure to act, then the board may only review such certification if it
2386 commences such review with 60 days of such certification.

2387 C. The Interagency Planning Board may through regulation establish a procedure for
2388 reviewing and approving guidelines prepared by regional planning agencies to be used in the
2389 certification of plans, implementing regulations and material amendments. If a certification or
2390 determination of non-certification under review by the Interagency Planning Board has been
2391 issued by the regional planning agency based upon an approved guideline, then the board may
2392 only modify or reverse such decision for inconsistency with the approved guideline.

2393 40V:10. Expiration; Renewal of Certified Partnership Community Status; Amendments

2394 A. A municipality's status as a partnership community shall expire 10 years after the
2395 municipality's effective date, unless a renewal partnership plan, together with any necessary
2396 implementing regulations, is prepared, certified, and adopted in accordance with the provisions
2397 of section 81D of chapter 41 and this chapter prior to such date. Each such renewal plan shall
2398 also expire in 10 years. Notwithstanding the foregoing, the expiration of a municipality's status
2399 as a partnership community shall not affect the vesting provisions currently applicable to the
2400 municipality under section 8 of this chapter 40V. Notwithstanding the foregoing, the previously
2401 certified implementing regulations shall continue to be deemed valid until such time as the
2402 community duly adopts new regulations.

2403 B. From and after a municipality's effective date, any material amendment to a
2404 partnership plan or to any certified implementing regulations shall be prepared, certified and
2405 adopted in accordance with the provisions of section 81D of chapter 41 and this chapter. The

2406 Interagency Planning Board may by regulation define categories of amendments that shall be
2407 deemed non-material.

2408 40V:11. Priority for Infrastructure Funding

2409 The Executive Office of Housing and Economic Development, the Executive Office of
2410 Energy and Environmental Affairs, the Executive Office of Transportation, and the Executive
2411 Office of Administration and Finance shall, when awarding discretionary funds for local
2412 infrastructure improvements, give priority consideration to infrastructure improvements
2413 identified in the partnership plans of partnership communities. Within 90 days of the effective
2414 date of this act, the governor shall issue regulations providing a priority in the allocation of state
2415 discretionary funding for partnership communities. Said regulations shall apply to the
2416 distribution of funds, whether appropriated or derived through bonding, for all programs listed in
2417 the Commonwealth Capital program, so-called, as it is administered by the Executive Office of
2418 Energy and Environmental Affairs; the programs of the Massachusetts School Building
2419 Authority; the programs for roadway, bridge, transit, bicycle, and pedestrian improvements
2420 overseen by the Executive Office of Transportation and Public Works; and such other programs
2421 as the governor may indicate by regulation, provided however that no priority consideration
2422 issued pursuant to this act will be allowed to deny funding to a municipality that might otherwise
2423 qualify for grants or loans which may be needed to protect the immediate public safety, as
2424 determined in a waiver from the provisions of this section issued by the secretary of the
2425 responsible executive office. Said regulations will ensure that all decision-making bodies of the
2426 commonwealth shall, in regard to the programs listed above, increase the score of the applicant
2427 municipality by 20 percent for any partnership community, above the score it would otherwise
2428 achieve. This 20 percent bonus shall be in addition to, rather than as a substitute for other

2429 elements of the scoring process which might reasonably be related to criteria associated with the
2430 Commonwealth's Sustainable Development Principles, so-called, as issued and approved from
2431 time to time by the governor. Nothing herein shall be construed to reduce the scoring preference
2432 already provided to municipalities participating in the Commonwealth Capital program.

2433 40V:12. Consideration under State Programs

2434 State agencies responsible for regulatory and/or capital spending programs that have a
2435 material effect on land use and development within partnership communities shall take into
2436 account the land use goals, objectives and policies of such communities, as set forth in their
2437 partnership plans, in administering such programs.

2438 Capital Funding

2439 To provide for a capital outlay program to fund local and regional planning for the
2440 several purposes and subject to the conditions specified in this act, are hereby made available
2441 subject to the laws regulating the disbursement of public funds-

2442 7006-xxxx For a technical assistance program in the form of grants to municipalities or
2443 regional planning agencies for the preparation of plans under section 81D of chapter 41, within
2444 Barnstable and Dukes Counties local comprehensive plans adopted pursuant to St. 1989, c. 716,
2445 as amended, or St. 1977, c. 831, as amended, sections 3-5 of chapter 40V, and regional plans in
2446 the manner described in section 5 of chapter 40B created by any regional planning agency
2447 including those created under special law or act, provided that the grants are to be administered
2448 by the Interagency Planning Board; and provided further, priority for the municipal grants
2449 administered by the Interagency Planning Board shall be given to those municipalities identified
2450 by the applicable regional planning agencies as being most likely to prepare and adopt

2451 partnership plans and implementing regulations under chapter 40U, if provided with financial
2452 assistance; provided further, that no expenditure shall be made from this item without the prior
2453 approval of the secretary for administration and finance.....\$11,000,000.