SENATE DOCKET, NO. 303 FILED ON: 1/14/2015

SENATE . . . . . No. 116

The Commonwealth of Massachusetts

PRESENTED BY:

Marc R. Pacheco

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 to promote livable communities and zoning reform act.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Marc R. Pacheco	*First Plymouth and Bristol*
Anne M. Gobi	*Worcester, Hampden, Hampshire and Middlesex*
Mary S. Keefe	*15th Worcester*
Brian A. Joyce	*Norfolk, Bristol and Plymouth*

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SENATE . . . . . No. 116

By Mr. Pacheco, a petition (accompanied by bill, Senate, No. 116) of Marc R. Pacheco, Mary S. Keefe and Brian A. Joyce for legislation to promote livable communities and zoning reform act. Community Development and Small Businesses.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *74* OF 2013-2014.]

The Commonwealth of Massachusetts

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

An Act to promote livable communities and zoning reform act.

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

SECTION 1. (a) the land and waters within the Commonwealth possess distinct natural, scientific, historical, scenic, cultural, architectural, archeological, recreational, economic, agricultural and other values

(b) there is a national, regional, state, and local, interest in preserving and enhancing these values; and these values are being threatened and may be irreparably damaged by uncoordinated or inappropriate uses of the Commonwealth's land and resources.

(c) the obligation to protect the many valuable resources of the Commonwealth is shared by local, regional, state and national governments, civic organizations, businesses and the general public.

(d) these resources are being adversely affected by a lack of effective and coordinated planning among the various levels of government and a lack of adequate funding and technical assistance for municipalities.

(e) these resources can be protected if each level of government participates in sustainable planning for smart growth.

SECTION 2.(a) State principles and goals

(1) state policies and spending decisions should encourage growth in appropriate and identified places.

(2) state resources should be targeted to support development in areas where infrastructure is already in place.

(3) state polices and spending decisions should not encourage or subsidize sprawl.

(4) state policies and spending decisions should discourage growth in environmentally sensitive areas in order to protect the Commonwealth's most valuable remaining natural resources before they are lost.

(b) To that end it shall be the policy of the Commonwealth to :

(1) discourage wasteful use of land, water and energy resources;

(2) support revitalization and reinvestment in urban areas and older suburbs;

(3) encourage the reuse and rehabilitation of existing infrastructure rather than the construction of new infrastructure in undeveloped areas

(4) protect, to the maximum extent possible, environmentally sensitive lands, natural resources, wildlife habitats. and cultural, natural, and historic landscapes;

(5) support a range of convenient and affordable transportation choices;

(6) protect economically productive natural areas including farmland and forests;

(7) provide an adequate supply of affordable housing for all income levels throughout each community; particularly for households earning 50 per cent or less of the area median income, as defined by the federal Department of Housing and Urban Development.

(8) encourage a clear and transparent development approval process;

(9) encourage regional solutions and approaches to planning issues as appropriate, e.g., transportation, housing supply, and water supply;

(10) assist municipalities and regions in planning for growth;

(11) require coordination among state agencies so that sustainable development efforts by one agency are not undermined by other state decisions and policies;

(12) Encourage coordination and cooperation among levels of government; and

(13) Ensure that permitting, funding, and construction activities by state agencies do not enable, contribute to, or perpetuate development that is inconsistent with state, regional and local sustainable development plans.

Section 3. For purposes of this chapter, the following words shall have the following meanings:

"Agency" any agency, department, board, commission, authority, and instrumentality of the Commonwealth and any authority or any political subdivision which is responsible for siting, designing, funding, constructing or permitting of infrastructure projects, public facilities or private development or which is responsible for which is responsible for transportation, water supply, waste water treatment and disposal and solid waste management facilities or infrastructure.

"Secondary growth impacts", growth that occurs as a result of making infrastructure available.

"Sustainable", purposefully designed to bring about efficient, safe, healthy, prosperous communities that include a sufficient amount of affordable housing while simultaneously maintaining and enhancing the environment, the natural resource base and the ongoing functioning of natural ecosystems that are fundamental to sustaining life and prosperity for current as well as future generations.

Section 4. (a) There shall be a council for a sustainable commonwealth, known in this chapter as the council, to be chaired by the governor or his designee. The council shall consist of the following voting members: the director of housing and community development or her designee, the secretary of environmental affairs or his designee, the secretary of transportation and construction or his designee, the secretary of administration and finance or his designee and the director of economic development or his designee. The council shall also include the following non-voting members, who shall serve in an advisory capacity: the chairman of the Massachusetts Water Resources Authority or his designee, the chairman of the Massachusetts Bay Transit Authority or his designee, the secretary of the commonwealth acting as chairman of

the Massachusetts historical commission or his designee, two chairs of regional planning agencies nominated by the governor, a municipal planning representative appointed by the governor and a professional planner appointed by the governor.

(b) the council for a sustainable commonwealth shall have the following primary responsibilities, to:

(1) consider, coordinate and, where appropriate, recommend modifications to the capital planning done by each state agency;

(2) resolve inconsistencies among and between each of the capital and operating plans of the agencies and regional sustainable development plans, and any inconsistencies that cannot be resolved through discussion and mediation shall be resolved by a majority vote of the voting members of the council;

(3) encourage the state agencies to consider secondary growth impacts in their capital planning and to encourage agencies to site facilities in areas where infrastructure already exists or to create infrastructure in developed areas, rather than in undeveloped areas; and

(4) determine and direct the appropriate agency or agencies to provide technical assistance, on an as needed basis, to municipalities as they seek to implement their plans.

(5) develop guidelines for an urban initiative program that will be part of each regional sustainable development plan.

Section 5. (a) By March 15 of every odd year, each agency shall develop a five-year agency sustainable development plan, known in this chapter as an agency plan that is consistent

with the state goals, principles and policies outlined in section 2 and that meets the following criteria:

(1) all agencies shall promote, assist and pursue the rehabilitation and revitalization of infrastructure, structures, sites, and areas previously developed and still suitable for economic reuse. Such rehabilitation and revitalization, where practicable, shall be deemed preferable over construction of new facilities or development of areas with significant value in terms of environmental quality and resources. However, all agencies shall recognize that a lack of low and moderate-income housing may necessitate new construction of affordable and mixed income housing in areas in which there is an imbalance between housing supply and demand.

(2) all agency plans, and all infrastructure spending under them, shall seek to minimize unnecessary loss or depletion of environmental quality and resources that might result from such activity.

(3) all agencies shall consider secondary growth impacts in the development of their agency plans.

(4) all agency plans and all infrastructure spending under them, shall consider any applicable regional sustainable development plans created under section 5 of chapter 40B as amended by this act, that are in effect on the date of publication of the agency plans, and conform to the regional plans, where feasible.

Section 6. (a) the executive office of environmental affairs, the department of economic development, the department of housing and community development, and the executive office of transportation and construction, when awarding discretionary grants to municipalities, excluding any grants made under chapter 90, shall give priority to municipalities that have

adopted certified local sustainable development plans pursuant to chapter 41, section 81D as amended by this Act.

(b) the executive office of environmental affairs, the department of economic development, the department of housing and community development, and the executive office of transportation and construction, when awarding grants that require a municipal match, shall reduce the match requirement by no less than 10% for municipalities that have adopted certified local sustainable development plans.

SECTION 2. Section 6 of chapter 132C of the General Laws shall be effective 3 years after the effective date of this act.

SECTION 3. Section 62A of chapter 30 of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by adding the following paragraph:

The secretary of environmental affairs shall consider in his review of any project under this section the consistency of that project with chapter 132C and its consistency with plans created under section 81D of chapter 41 as amended by this act.

SECTION 4. The secretary, chairman or director of every agency subject to chapter 132C of the General Laws, within one year from the effective date of this act, and thereafter on an annual basis, shall report on the status and effectiveness of their compliance with said chapter 132C. The reports shall be submitted to the governor, the clerks of the house of representatives and the senate and the chairs of the joint committee on natural resources and agriculture, and shall be made available by each agency for public review.

SECTION 5. The governor shall, within three months of the effective date of this Act, issue a guidance document for use by agencies in preparing their annual reports under Section 4 of this act and shall, within six months following the submission of the agencies' reports and after consideration of any comments received on such reports, submit to the council for a sustainable commonwealth a summary report and recommendations for the continued implementation of chapter 132C of the General Laws.

SECTION 6 Chapter 40B of the General Laws, as so appearing, is hereby amended by striking out Section 5 and inserting in place thereof the following section:

Section 5. (a) For purposes of this section, the following words shall have the following meanings:

"Concentrated Development Center", an area composed of concentrated mixed use development established by a municipality or collection of municipalities in conjunction with the regional planning commission.

"Council", the council for a sustainable commonwealth created under chapter 132C.

"Regional planning commission", regional or district planning commissions established under this chapter.

"Regional sustainable development plan", a regional plan.

"Sustainable", purposefully designed to bring about efficient, safe, healthy, economically vital communities that include a sufficient amount of affordable housing while simultaneously maintaining or enhancing the environment, the natural resource base and the ongoing functioning

of natural ecosystems that are fundamental to sustaining life and prosperity for current as well as future generations.

"Targeted Investment Area", an area of a municipality or collection of municipalities designated by a regional planning commission, based on municipal recommendations, which is consistent with resource-efficient development and which shall receive priority for public funds.

(b) (1) Each regional planning commission shall develop a regional sustainable development plan. This may include the revision or modification of a plan previously created under this chapter. Regional plans shall be revised or updated at least every 5 years. Regional plans shall contain the elements of a complete local sustainable development plan as provided in Chapter 41, Section 81D of the General Laws as amended by this Act. Each RPA shall adapt said elements to the regional plan. Regional plans also shall adhere to the policies of the commonwealth established by section 2 of chapter 132C.

(2) Regional plans shall consider all local sustainable development plans, created under section 81D of chapter 41 as amended by this Act, of municipalities within the planning region, which are in effect at the time the regional plan is being developed by the regional planning commission. If any local plans within a region's planning district are inconsistent with one another, the regional planning commission shall encourage the conflicting municipalities to create consistent plans and make recommendations for bringing the plans into compliance with one another.

(c) (1) The regional planning commissions may collectively establish uniform procedures under this section.

(2) In developing regional plans, the regional planning commissions shall each employ an open, inclusive and broadly participatory process. The regional planning commissions shall undertake public notification and participation procedures that are designed to seek widespread public participation in the regional planning process, including, but not limited to input from the following: local planning boards and other officials and residents of each municipality within the planning district; business and industry representatives; environmental and public health groups; housing advocates and providers, advocates for the local watershed area or areas; representatives of conservation commissions; officials and/or residents of a neighboring planning region with an interest, and representatives of the commonwealth's agencies and departments who have infrastructure or investments in the planning district.

(3) The executive committee of each regional planning commission shall review its regional plan for compliance with this section and internal consistency before forwarding it to its commission members for approval. If a regional plan is approved by a simple majority vote of the regional planning commission's members, the plan shall be considered approved and there shall be a rebuttable presumption that the plan is fully compliant with this section and internally consistent. Once the regional plan is approved by a majority vote of the commission members, the regional planning commission shall forward it to the council for sustainable commonwealth, created under chapter 132C, to enable the commonwealth's agencies to develop capital spending plans that are consistent with the regional plans.

(d) The regional planning commissions shall review all local sustainable development plans in their jurisdictions under subsection (d) of section 81D of chapter 41 as amended by this Act.

(e) The council shall develop minimum guidelines for regional urban initiative programs. Each regional plan shall include an urban initiative planning component. Each regional planning agency shall have the opportunity to expand and shape the urban initiative program to meet the needs of its region.

(1) A fundamental element of the urban initiative program shall include identification and designation of Targeted Investment Areas, based on municipal recommendations. Examples include: infill development in areas with infrastructure capacity; re-development of brownfield sites; and adaptive reuse of structures.

(2) The urban initiative program shall also require regional planning commissions to work with their municipal jurisdictions to develop criteria for and identify and designate Concentrated Development Centers. Such areas may vary in size and complexity depending on the degree of urbanization in the region or the area proposing designation. Concentrated Development Centers may be designated in the urban economic core, in urban growth areas, in subregional areas, and in suburban and rural centers.

(f) The regional planning commissions shall develop initial regional sustainable development plans under section 5 of chapter 40B of the General Laws no later than 18 months after the effective date of this act. Under no circumstances shall the failure of a regional planning commission to initiate or complete a regional plan prevent a municipality from developing a local sustainable development plan under section 81D of chapter 41of the General Laws as amended by this Act.

(g) Regional planning commissions shall be responsible for developing a process to review major developments affecting more than one community. Regional planning

commissions will establish a definition for major developments and procedures for comment and review. The Planning Board of any municipality within a region can request that the regional planning commission hold a public hearing on a major development. Any comments or recommendations that result from the review will be shared with the Massachusetts Environmental Policy Act (MEPA) office, if the project requires MEPA review, or with the appropriate decisionmaking and permitting authorities.

SECTION 7. Chapter 41 of the General Laws, as so appearing, is hereby amended by striking out section 81D and inserting in place thereof the following section:

Section 81D

(a) For purposes of this section, the following words shall have the following meanings:

"Council", the council for a sustainable commonwealth created under chapter 132C.

"Land use regulations", regulations, administered in whole or in part by a municipality, which materially affect the purposes of this section, including but not limited to: zoning, subdivisions, wetlands, public health and transportation.

"Local sustainable development plan", a local plan.

"Regional planning commissions", organizations established under chapter 40B.

"Regional sustainable development plans " or "regional plans", plans developed under section 5 of chapter 40B.

"Sustainable", purposefully designed to bring about efficient, safe, healthy, economically vital communities that include a sufficient amount of affordable housing, while simultaneously maintaining and enhancing the environment, the natural resource base and the ongoing functioning of natural ecosystems that are fundamental to sustaining life and prosperity for current as well as future generations.

(b) (1) A planning board, established in a municipality under section 81A, shall develop, in consultation with other elected and appointed municipal boards, a local sustainable development plan of the municipality and, may, from time to time, extend or perfect such plan. The local plan may be the revision or modification of a plan previously created pursuant to section 81D. The local plan shall be revised or updated at least every 5 years.

(2) The local sustainable development plan shall be a plan that is designed to provide a basis for decision-making regarding the long-term sustainable development of the municipality. The local plans shall adhere to policies identified in section 2 of chapter 132C.

(3) The local plan may include text, maps, illustrations or other forms of communication. The local plan shall include the following elements:

(i) A goals and policies statement which identifies the goals and policies of the municipality to protect its natural resources and to provide for its sustainable growth and development. Each community shall conduct an interactive process as described in subsection (4) to determine municipal priorities and goals, to determine the best way to make development in the municipality sustainable and to identify patterns of development that will be consistent with these goals.

(ii) Land use plan element illustrating present land uses and designating the proposed distribution, location, and inter-relationship of public and private land uses. This element shall relate population density and building intensity to the capacity of land available and to planned facilities and services. A land use plan map illustrating the land use policies of the municipality shall be included.

(iii) Natural and cultural resources element which provides an inventory of the significant natural, cultural, and historic resource areas of the municipality and policies and strategies for the protection and management of such areas. This element shall also include any strategies for protecting community character.

(iv) Watershed protection element which identifies ground and surface water resources contained in whole or in part within a municipality, future needs, and threats, including the impact of development on water supply, water quality, river and stream flow and wildlife habitat.

(v) Housing element which identifies and analyzes existing and forecasted housing needs and objectives including programs for the preservation, improvement and development of housing, particularly housing that is affordable to residents of the municipality who are low and moderate income as defined by the federal Department of Housing and Urban Development. This element shall identify policies and strategies to provide a range of local affordable housing opportunities and strategies to rezone areas to allow the development of multi-family housing.

(vi) Economic development element which identifies policies and strategies for the expansion or stabilization of the local economic base and the promotion of employment opportunities.

(vii) Open space and recreation element which provides an inventory of recreational resources and open space areas of the municipality, and policies and strategies for the management and protection of such resources and areas.

(viii) Services and facilities element which identifies and analyzes existing and forecasted needs for facilities and services used by the public, including, but not limited to facilities for: education, public safety, water and sewer services, energy demands and energy conservation, and other utilities.

(ix) Transportation element which identifies existing and proposed intermodal transportation systems including roads, mass transit, pedestrian, bicycle, and waterways, as well as the impacts of such systems on land uses within the municipality.

(x) Implementation program element which defines and schedules the specific municipal actions, including the identification of the anticipated costs and revenues, associated with each element of the plan. Scheduled expansion or replacement of public facilities or circulation system components and the anticipated costs and revenues associated with accomplishments of such activities shall be detailed in this element. This element shall specify the process by which the municipality's regulatory structure shall be amended so as to be consistent with the plan.

(xi) Bylaw or ordinance element that shall outline appropriate land use regulations consistent with the Plan and reasonably necessary to implement the elements of the Plan.

(4) In developing local plans, the municipalities shall each employ an open, inclusive and broadly participatory process. The municipalities shall undertake public notification and participation procedures that are designed to seek widespread public participation in the local

planning process, including but not limited to input from the following: local officials and residents of the municipality, neighborhood representatives, business and industry representatives in the community, environmental and public health groups, housing advocates and providers, advocates for the local watershed area or areas; conservation commissions; the appropriate regional planning commission, representatives of neighboring municipalities and representatives of the commonwealth's agencies and departments that have infrastructure or investments in the municipality.

(5) To the extent that one or more of the elements of the plan is already addressed in another plan, such as an open space and recreation plan, such plan(s) may be included as a component of the local plan in order to satisfy that particular element of the Plan.

(6) A municipality which has an established local sustainable development plan and applies for a state grant from the commonwealth shall prepare and keep on file within the municipality an economic development supplement; but the municipality shall not be required to prepare the supplement if the municipality has a supplement on file . The supplement shall be at least one page in length and shall contain the goals of the municipality with respect to industrial or commercial development, affordable housing, and preservation of parks and open space.

(7) All local sustainable development plans shall be internally consistent in their policies, forecasts and standards, shall be consistent with the applicable regional sustainable development plan and shall consider the local sustainable development plans of neighboring municipalities.

(8) A local plan shall not be in effect until the plan has been reviewed by the applicable regional planning commission in accordance with subsection (c) and the plan has received local approval in accordance with subsection (d).

(c) A municipality shall present its completed plan to the applicable regional planning commission for review. The regional planning commission shall, within 60 days of receipt of the plan, prepare and submit to the municipality a written review of the plan that shall certify whether the plan satisfies all the goals and elements required by subsection (b), whether it is both internally consistent and consistent with the applicable regional sustainable development plan, and whether it has given consideration to the local sustainable development plans of neighboring municipalities. The review shall identify any deficiency or omission with respect to each required element and goal described in subsection (b). The review shall include, where appropriate, recommendations as to how any omissions or deficiencies may be rectified. Upon receipt of the regional planning commission's certification indicating satisfactory compliance with this section, the planning board shall file the local plan with the office of the clerk of the municipality.

(d) Upon receiving certification from the applicable regional planning commission, the planning board shall present the local plan to the municipality's legislative body for approval with an outline of changes needed in the municipalities zoning ordinances, land use regulations or other municipal law to make the plan effective. Any additions to, modifications of, or amendments to the local plan must be presented to and approved by the local legislative body in the same manner. The local plan or local plan modifications shall, upon approval so described, be made part of the public record and a copy of the plan or plan modifications shall be submitted to the department of housing and community development and the executive office of

environmental affairs. The plan and any modifications to the plan shall be filed with the office of the clerk of the municipality and made available to the public.

(e) Municipalities shall have five years to make substantial progress towards implementation of their plans. If after five years from the date of certification, the applicable regional planning commission deems that little or no progress has been made towards implementation of the plan through changes in bylaws or ordinances, the plan will be decertified and the regional planning commission shall notify the council of the decertification.

SECTION 8 (a) There is hereby established and set up on the books of the commonwealth a Sustainable Development Grant Fund, into which shall be credited monies contributed by the commonwealth including any appropriations or other monies authorized by the general court and specifically designated to be credited to said fund. The fund shall be administered by the council. Amounts credited to said fund shall be provided as grants to municipalities and regional planning commissions for activities relating to the development and preparation of local and regional sustainable development plans under this Act.

(b) The council shall adopt regulations establishing the grant program created under this section of the act including, but not limited to: the factors to be used by the Council in determining the amount of the grant funds that will be awarded to each municipality; an application process for municipalities that choose to apply for grant funds; and provisions governing the funding of regional planning commissions in the conducting of their responsibilities under this Act.

(c) Factors to be used by the council in determining the amount of grant funds to be provided to each municipality shall include, but not be limited to: complexity of the planning

issues confronting each municipality, the planning capacity of the municipality, and the capacity of each municipality to fund the planning process. Regulations shall also create an incentive program for multi-municipal planning.

(d) Provided further that chapters 236 and 246 of the acts and resolves of 2010 be amended to authorize and direct the secretary of environmental affairs and the secretary of transportation to appropriate existing funds not to exceed $35,000,000 for the purposes outlined in this act. Of this amount, $5,500,000 will be for one time grants to be made to the regional planning commissions established under chapter 40B of the General Laws to facilitate compliance with section 5 of said chapter 40B as amended by this act, in accordance with the following formula: base funding of $100,000 per year per regional planning commission, plus 70 cents per capita based upon the most recent U.S. Census data on population.

SECTION 9. Chapter 40A of the General Laws is hereby amended by inserting after section 1 the following section:-

40A:2. General Purposes of Zoning Ordinances and Bylaws

(a) The purpose of the zoning ordinances and bylaws as amended by this act is to provide guidance to municipalities in their regulation of land use, growth, and development through the exercise of home rule powers conferred by article 89 of the Massachusetts constitution. Except as hereinafter provided, cities and towns may adopt zoning ordinances and by-laws in furtherance of the purposes contained in this section for the benefit of their present and future inhabitants to the full extent of the powers of such cities and towns, whether such power is independently authorized by the constitution of the Commonwealth or here by the general court incident to power granted to it by the constitution. The Commonwealth shall limit these powers

only where necessary to ensure consistency in zoning and promote regional and statewide interests as specifically provided herein.

(b) These zoning ordinances and bylaws are intended to advance the following public purposes of the Commonwealth, each with equal priority and numbered for reference purposes only. The general court recognizes that cities and towns may advance some or all of the purposes listed below or may advance other purposes not listed below as they deem appropriate.

(1) Implementation of a plan adopted by the city or town under section 81D of chapter 41 as amended by this Act.

(2) Achievement of a balance of housing choices, types and opportunities for all income levels and groups, to assure the health, safety and welfare of all citizens and their rights to affordable, accessible, safe, and sanitary housing.

(3) Orderly and sustainable growth and development which recognizes:

(i) the goals and patterns of land use contained in a plan adopted by the city or town under section 81D of chapter 41 as amended by this Act;

(ii) the natural characteristics of the land, including its suitability for use based on soil characteristics, topography, and susceptibility to surface or groundwater pollution;

(iii) the values and dynamic nature of watersheds, coastal and freshwater ponds, the shoreline, and freshwater and coastal wetlands;

(iv) the values of unique or valuable natural resources and features;

(v) the availability and capacity of existing and planned public and/or private services and facilities;

(vi) the need to balance the “built” environment with the “natural” environment; and

(vii) the use of innovative development regulations and techniques such as development agreements, impact fees, inter-municipal transfers of development rights, agricultural zoning, inclusionary zoning, mediation and dispute resolution, and urban growth boundaries.

(4) Control, protection or abatement of air, water, groundwater, noise and light pollution, and soil erosion and sedimentation.

(5) Protection of the natural, historic, cultural, aesthetic, and scenic character of the city or town or areas therein.

(6) Preservation and promotion of agricultural production, forestry, aquaculture, and open space.

(7) Protection of the environment and natural resources, including but not limited to farmland, forestland, water quality and quantity, shore lands, ridgelines, recreational resources, open spaces, special habitats and ecosystems and other qualities of the environment and natural resources set forth in article 97 of the Massachusetts constitution.

(8) Protection of public investment in transportation, water, storm water management systems, sewage treatment and disposal, solid waste treatment and disposal, schools, recreation, public facilities, open space, and other public requirements.

(9) Improvement and expansion of existing infrastructure and construction of new infrastructure in support of a plan adopted by the city or town under section 81D of chapter 41 as amended by this Act and the purposes listed herein.

(10) An energy efficient, convenient and safe transportation infrastructure with as wide a choice of modes as practical, including, wherever possible, maximal access to public transit systems.

(11) Sustained or enhanced economic viability of the community and the region.

(12) Coordination of land uses with contiguous municipalities, other municipalities, the state, and other agencies, as appropriate, especially with regard to resources and facilities that extend beyond municipal boundaries or have a direct impact on that municipality.

(13) Accommodation of regional growth in a fair and equitable, but sustainable manner among municipalities.

(14) Efficient, fair and timely review of development proposals, to clarify and expedite the zoning approval process.

(15) Effective procedures for the administration of the zoning ordinance or bylaw, including, but not limited to, variances, special permits, other locally-adopted zoning permits, reviews or procedures, and, where adopted, procedures for modification.

(16) Protection of the public health, safety, and general welfare.

(17) A range of uses and intensities of use appropriate to the character of the city or town and reflecting current and expected sustainable future needs.

(18) Safety from fire, flood, and other natural or man-made disasters.

(19) High level of quality in the design and development of private and public facilities.

(20) Conservation of the value of land and buildings.

(21) Conservation and enhancement of community amenities.

(22) Efficiency in energy usage and the reduction of pollution from energy generation, including the promotion of renewable energy sources and associated technologies.

SECTION 10. Section 3 of chapter 40A of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by inserting, after the word “the”, in line 25, the following word:- minimum.

SECTION 11. Said section 3 of said chapter 40A, as so appearing, is hereby further amended by striking out, in lines 26-34 inclusive, the words "nor shall any such ordinance or by-law prohibit, regulate or restrict the use of land or structures for religious purposes or for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic, or by a religious sect or denomination, or by a nonprofit educational corporation; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements.".

SECTION 12. Said section 3 of said chapter 40A, as so appearing, is hereby further amended by striking out the third paragraph and inserting in place thereof the following paragraph:-.

Zoning ordinances or bylaws shall not prohibit the use of land or structures thereon for: a) educational purposes on land owned or leased by the Commonwealth or any of its agencies, subdivisions or bodies politic or by a nonprofit educational corporation; b) religious purposes by a religious sect or denomination; c) the purposes of operating a child care facility or d) the purposes of operating a community residential program. As used in this section the following words shall have the following meanings: a) "educational purposes" means public and nonprofit private primary, secondary and higher educational purposes; b) "child care facility" means a day care center or school age child care program, as those terms are defined in section 9 of chapter 28A; c) “community residential program” means a residential facility licensed by the Commonwealth to provide care or shelter or supervision or education to a maximum of eight (8) individuals with a mental or physical disability or to victims of crime, of physical or mental abuse, or of neglect in a small-scale residential setting with on-site or off-site supervision. The land or structures used for such purposes may, however, be subject to reasonable regulations regarding the bulk and height of structures, yard sizes, frontage, lot area, building coverage requirements, setbacks, floor area ratio, parking, access and egress, lighting, drainage, landscaping, buffering and open space, and similar matters. Compliance with such regulations may be determined as provided by ordinance or bylaw in each city or town, including through site plan review under which reasonable conditions, safeguards, and limitations to mitigate the impact of a specific use of land or structures on the neighborhood may be imposed pursuant to section 7A of this chapter. In addition, the application of such regulations to particular land or structures used for such purposes may be waived in whole or in part by special permit, and reasonable conditions may be imposed as part of the special permit. The waiver may be granted if the special permit granting authority finds, based upon the evidence presented by the person

seeking the waiver, that the waiver will not result in substantially more detriment to the neighborhood than the use of the particular land or structures for such purposes without the waiver."

SECTION 13. Section 5 of said chapter 40A, as so appearing, is hereby amended by inserting, after the tenth paragraph, the following paragraphs:-

A zoning ordinance or bylaw adopted or amended under this chapter shall not be inconsistent with a plan prepared by the city or town under section 81D of chapter 41 as amended by this Act. Said ordinances or bylaws shall provide that in the instance of uncertainty in the construction or application of any section therein, the ordinance or by-law shall be construed in a manner that will further the implementation of, and not be contrary to, the goals, policies and applicable elements of said plan. This paragraph shall not become effective until five years after it is enacted in the General Laws.

SECTION 14. Chapter 40A of the General Laws is hereby amended by striking out section 6 and inserting in place thereof the following section:-.

40A:6. Applicability of Zoning Ordinances and Bylaws

40A:6A. Nonconforming Lots, Structures and Uses

(a) Residential Lot Exemption

Increases in lot area, frontage, width or depth, or building setback requirements of a zoning ordinance or bylaw shall not apply to a lot for single- or two-family residential use which immediately prior to the effective date of the zoning amendment that rendered the lot nonconforming:

(1) was shown or described as a separate lot on a recorded plan or deed or on an assessors map or plat and has access to and frontage on an existing public way, or if not, to a way of sufficient width, grade and construction to provide safe access to such lot as the planning board or its designee may determine; and

(2) conformed to the then existing lot area, frontage and lot width or depth requirements; and

(3) had at least five thousand square feet of area and fifty feet of frontage in the case of a single-family residential use and at least seventy-five thousand square feet of area and seventy-five feet of frontage in the case of two-family residential use; and

(4) was not held in common ownership with any adjoining land. For the purposes of this section, common ownership shall include lots held by separate legal entities, persons or trusts under common control or with common beneficial interests.

(b) Lawfully Nonconforming Structures and Uses

(1) For the purposes of this section, a lawfully nonconforming structure or use shall be a structure or use lawfully in existence at the time of the effective date of the zoning amendment rendering such structure or use nonconforming.

(2) Adoption or amendment of a zoning ordinance or bylaw shall not apply to lawfully nonconforming structures or uses and shall not apply to structures and uses lawfully begun prior to the first publication of notice of the public hearing on the adoption or amendment of the relevant zoning ordinance or bylaw required by section five.

(3) A zoning ordinance or bylaw may provide that, if a nonconforming use or structure is abandoned for a period of two years or more, it may not be reestablished. Abandonment shall consist of some overt act, or failure to act, which would lead one to believe that the owner neither claims or retains any interest in continuing the nonconforming use or structure, unless the owner can demonstrate an intent not to abandon it. An involuntary interruption of a nonconforming structure or use, such as by fire and natural catastrophe, does not establish the intent to abandon. However, if a nonconforming structure or use is halted, unused or vacated for a period of two years, the owner shall be presumed to have abandoned it.

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

(c) Alteration, Reconstruction, Extension or Structural Change of Lawfully Nonconforming Structures and Uses

(1) A zoning ordinance or bylaw shall not prohibit the alteration, reconstruction, extension, or structural change to a lawfully nonconforming single- or two-family residential structure, provided there is no increase in the degree of nonconformity of the structure.

(2) A zoning ordinance or bylaw may permit, as of right or by special permit, lawfully nonconforming structures or uses to be altered, reconstructed, extended or structurally changed provided that such actions shall not increase the degree of nonconformity of the structure or use.

(3) A zoning ordinance or bylaw may permit, by special permit, lawfully nonconforming structures or uses to be altered, reconstructed, extended or structurally changed in a manner that increases the degree of nonconformity of the structure or use, provided that the

permit granting authority finds that such actions shall not be substantially more detrimental to the neighborhood than the lawfully nonconforming structure or use.

(4) A zoning ordinance or bylaw may regulate nonconforming structures differently than nonconforming uses.

(5) A zoning ordinance or bylaw may vary by zoning district(s) the requirements for the alteration, reconstruction, extension or structural change for all lawfully nonconforming structures and uses, except single- and two-family residential structures.

40A:6B. Vested Rights: Effective Date of Zoning Amendments

(a) Building Permits and Special Permits

(1) Adoption or amendment of a zoning ordinance or bylaw shall not apply to a building permit issued or special permit granted prior to the first publication of notice of the public hearing on the adoption or amendment of the relevant zoning ordinance or bylaw required by section five.

(2) The provisions of subsection 6B(a)(1) shall not apply to building permits unless construction under the permit is commenced within six months after issuance and is carried through to completion as continuously and expeditiously as is reasonable.

(3) The provisions of subsection 6B (a)(1) shall not apply to special permits unless the use or construction authorized under such permit is commenced within two years.

(b) Subdivision Plans

(1) Adoption or amendment of a zoning ordinance or bylaw shall not apply to a definitive subdivision plan approved prior to the first publication of notice of the public hearing on the adoption or amendment of the relevant zoning ordinance or bylaw required by section five.

(2) The provisions of subsection 6B(b)(1) shall apply for a period of three years.

(c) General Provisions

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

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

(ii)the period of an appeal from the decision of any applicable local board or authority taken under applicable provisions of law on a building permit, special permit or definitive subdivision plan; and

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

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

SECTION 15. Chapter 40A of the General Laws is hereby amended by inserting after section 7 the following section:-

40A:7. Site Plan Review

(a) As used in this section, a "site plan" is a submission made to a municipality that includes documents and drawings required by an ordinance or bylaw and used by the municipality to determine whether a proposed use of land or structures is in compliance with applicable local ordinances or bylaws, to evaluate the effects of the proposed use of land or structures on the neighborhood and/or community, and to evaluate and propose site design modifications that will lessen those impacts.

(b) A city or town may adopt a local ordinance or bylaw requiring the submission, review and approval of a site plan before authorization is granted for the use of land or structures governed by a zoning ordinance or bylaw.

(c) Such ordinance or bylaw for site plan review shall:

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

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

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

(4) establish the submission and review process for applications not governed by the procedures for review of discretionary zoning approval under subsection (c)(3) above, which may include the requirement of a public hearing held pursuant to the provisions in section 11 of this chapter. A decision under this subsection (4) shall require a vote by no more than a majority

of the full board and shall be made within the time limits prescribed in the ordinance or bylaw, not to exceed the time limits for special permits contained in section 9 of this chapter. If no decision is issued within the prescribed time limit, the applicant shall be entitled to constructive approval of the site plan submitted as provided in section 9, paragraph (12) of this chapter;

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

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

(d) The local board or official charged with review of site plans may adopt, and from time to time amend, after a public hearing, rules to implement the local site plan ordinance or bylaw adopted under this section. Notice of the proposed rules and of the location, date and time of the public hearing shall be filed with the city or town clerk and published in a newspaper of general circulation in the city or town at least 14 days before the public hearing.

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

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

(2) complies with the regulations applicable to such land or structures in the local zoning ordinance or bylaw; and

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

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

(g) Decisions made under site plan review may be appealed as specified in the ordinance or by law, which may include direct judicial review pursuant to section 17 of this chapter.

(h) Zoning ordinances or bylaws shall provide that a site plan approval granted under this section shall lapse within a specified period of time, not more than two years from the date of the filing of such approval with the city or town clerk, so long as substantial use or construction has not yet begun, except as extended for good cause by the approving authority designated pursuant to (c)(2) above. Such time shall not include time required to pursue or await the determination of an appeal pursuant to subsection (g) above.

SECTION 16. Section 9 of chapter 40A of the General Laws is hereby amended by striking out the fourth paragraph, inserted by section 1 of chapter 197 of the acts of 2014, and inserting in place thereof the following paragraph:-

Zoning ordinances or bylaws may provide for the authorization of the transfer of development rights of land within or between districts. Such authorization may be by special permit or by other methods, including but not limited to the applicable provisions of sections 81K to 81GG, inclusive, of chapter 41 and in accordance with a planning board's rules and regulations governing subdivision control.

SECTION 17. Section 1A of chapter 40A of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by inserting the following definition:-

"Development impact fees" a contribution paid to a city or town by the applicant undertaking a development for the purpose of offsetting the impacts related to the development.

SECTION 18. Chapter 40A of the General Laws is hereby amended by inserting after section 9C the following section:-

40A:9D. Development Impact Fees

(a) Authority

Cities and towns may adopt ordinances and bylaws establishing and governing the procedure by which they may calculate, assess and impose development impact fees on proposed developments, including procedures to allow waiver or reduction of development impact fees for affordable housing developments.

(b) Administration

(1) Any development impact fee assessed under this section shall be paid to and held in a separate account in the city or town in which the proposed development is located. In the event that the proposed development is located in more than one municipality, the impact fee shall be apportioned among the municipalities in accordance with the land area or other equitable unit measure of the impacts of the proposed development in each city or town having adopted an ordinance or bylaw under this section.

(2) Any development impact fee imposed or permitted under this section shall comply with the following:

(i) The fee shall be rationally related and reasonably proportional to an impact directly or indirectly created by the development.

(ii) The purposes for which the fee is expended shall reasonably benefit the proposed development.

(iii) The fee shall be expended for the creation or improvement of capital facilities in accordance with a municipal plan, including, but not limited to, the creation or improvement of streets, sewers, water supplies, pollution abatement, parks, schools and similar capital facilities.

(3) Nothing in this section shall prevent a municipality from imposing fees or conditions which it may otherwise impose under applicable laws and constitutional provisions.

SECTION 19. Section 17 of chapter 40A of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by inserting after the seventh paragraph the following paragraph:-

Mediation of land use appeals: After the filing of an appeal hereunder, the parties may agree to mediate the decision that was appealed. In all events, the parties shall file a statement advising the court in which such appeal was filed that the dispute has been considered for mediation, and if they agree to mediation, such mediation shall begin within within 60 days of the date such statement was filed, or such other period as the parties may agree or the court may allow upon application by any party. Such mediation shall conclude not more than 180 days of such filing, provided that such period may be extended for an additional 180 days upon mutual agreement of the parties, or for such additional period as the court may allow upon application by any party. Mediators may be chosen from a list to be provided by the court in which the appeal was filed or by a mediator selected by the parties and approved by the court upon

application. The mediator shall be compensated by the parties as they may agree, or under terms approved by the court as a cost of such appeal as hereinafter provided. During such mediation, however, any appeal otherwise pending is stayed. A party may withdraw from mediation at any time after written notification to the other parties and to the court in which such appeal was filed, but shall remain responsible for that party's share of the costs of mediation until the time of withdrawal. The mediator shall have the protections provided under section 23C of Chapter 233, and to the extent that public agencies are participants in such mediations, their deliberations shall not be subject to the provisions of Chapter 39, Section 29B. At the conclusion of such mediation, the mediator shall file with the court a statement describing whether the parties have come to agreement or not. If unresolved, the appeal will then go forward, and if the matter has been resolved, the appeal will be dismissed with prejudice. The cost of mediation will be distributed among the parties as costs of the appeal as the parties may agree and if not, as the court in which such appeal was filed may determine. Mediation hereunder shall not be the only method of resolving a zoning appeal.

SECTION 20. Section 81L of chapter 41 of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by striking out, in lines 52-78 inclusive, the definition of "Subdivision" and inserting in place thereof the following definition:-

"Subdivision" shall mean the division of a tract of land into one or more lots and shall include resubdivision. When appropriate to the context, subdivision shall include the process of subdivision or the land or territory subdivided. Except as provided in this chapter, any adjustments to existing lot lines of a recorded lot by any means shall be considered a subdivision. Lot area and frontage shall be of at least such dimension as is then required by zoning or other ordinance or bylaw, if any, of said city or town for erection of a building on such lot. If no such

dimensions are so required, such area shall be at least five thousand square feet and such frontage shall be at least fifty feet.

SECTION 21. Section 81O of said chapter 41, as so appearing, is hereby amended by striking out the second sentence in the first paragraph and inserting in place thereof the following sentence:- After the approval of a plan the location and width of ways, or the number, shape, and size of the lots shown thereon shall not be changed unless the plan is amended accordingly under section eighty-one W, except that the planning board may adopt alternate rules and regulations pursuant to sections eighty-one P and eighty-one Q of this chapter defining and regulating changes to the number, shape, and size of the lots shown thereon as minor subdivisions.

SECTION 22. Said chapter 41, as so appearing, is hereby amended by striking out section 81P and inserting in place thereof the following section:-

41:81P. Alternative Approvals for Minor Subdivisions

Under section eighty-one Q, a planning board may adopt rules and regulations defining and regulating minor subdivisions in a more expeditious manner than would apply to other subdivisions. Such rules and regulations may establish reduced procedural requirements, review periods, fee schedules, performance guarantees, and construction and design standards than would otherwise apply.

SECTION 23. Section 81T of said chapter 41, as so appearing, is hereby amended by striking out, in lines 2-3 inclusive, the following words:- “or for a determination that approval is not required”.

SECTION 24. Section 81X of said chapter 41, as so appearing, is hereby amended by striking out, in lines 12-13 inclusive, the following words:- “such plan bears the endorsement of the planning board that approval of such plan is not required, as provided in section eighty-one P, or (3)”.

SECTION 25. Section 81X of said chapter 41, as so appearing, is hereby further amended by striking out, in lines 17-20 inclusive, the following words:- “or that it is a plan submitted pursuant to section eighty-one P and that it has been determined by failure of the planning board to act thereon within the prescribed time that approval is not required,”.

SECTION 26. Section 81X of said chapter 41, as so appearing, is hereby further amended by striking out the fourth paragraph and inserting in place thereof the following paragraph:-

Not withstanding the foregoing provisions of this section, the register of deeds shall accept for recording and the land court shall accept with a petition for registration or confirmation of title any plan bearing a certificate by a registered land surveyor that 1) the property lines shown are the lines dividing existing ownerships, and the lines of streets and ways shown are those of public or private streets or ways already established, and that no new lines for division of existing ownership or for new ways are shown, or 2) unless subject to section eighty-one 0 of this chapter or subject to alternate rules and regulations pursuant to section eighty-one P and eighty-one Q of this chapter, the property lines shown do not create a new lot or render an existing lot nonconforming or more nonconforming. The recording of such plan shall not relieve any owner from compliance with the provisions of the subdivision control law or of any other applicable provision of law.

SECTION 27. Section 81M of said chapter 41, as so appearing, is hereby amended by inserting, after the word “systems”, in the third sentence, the words:- , and for a plan adopted by the city or town under section 81-D of this chapter.

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

A plan shall be deemed submitted under this section at the next regularly-scheduled meeting of the planning board provided it is 1) sent by registered mail or delivered to the planning board and received by said board seven days prior to said meeting, and 2) determined to be complete by the board or their designee at said meeting in accordance with the planning board’s rules and regulations.

SECTION 29. Section 81Q of said chapter 41, as so appearing, is hereby amended by inserting after the first paragraph the following paragraphs:-

Notwithstanding anything to the contrary in this section, a planning board may adopt a rule or regulation that a plan for a residential subdivision show a lot or lots that shall be reserved for the required construction by the applicant of dwelling units affordable to persons whose household income does not exceed a percentage of the area median income, as such income is determined by the federal Department of Housing and Urban Development. Such requirements shall not exceed fifteen percent of the dwelling units within the subdivision. In lieu of the construction of the required affordable dwelling units within a subdivision, a planning board rule or regulation may allow for the construction of such units off-site, the dedication of land for such purpose, or the payment of sufficient funds to a separate account created by the city or town for

such purpose. Cities and towns are hereby empowered to establish said separate accounts to be administered by the treasurer of the city or town.

Rules and regulations adopted or amended under this chapter shall not be inconsistent with a plan prepared under section 81D of chapter 41 as amended by this Act. Said rules and regulations shall provide that in the instance of uncertainty in the construction or application of any section therein, the rules and regulations shall be construed in a manner that will further the implementation of, and not be contrary to, the goals, policies and applicable elements of said plan. This paragraph shall not become effective until five years after it is enacted in the General Laws.

SECTION 30. Section 81Q of said chapter 41, as so appearing, is hereby amended by striking out, in lines 62-69 inclusive, the words "No rule or regulation shall require, and no planning board shall impose, as a condition of approval of a subdivision, that any of the land within said subdivision be dedicated to the public use, or conveyed or released to the commonwealth or to the county, city or town in which the subdivision is located, for use as a public way, public park or playground, or for any other public purpose, without just compensation to the owner thereof." and inserting in place thereof the following words:- The rules and regulations may require the plan to show a park or parks suitably located for playground or recreation purposes or for providing light and air and not unreasonable in area in relation to the area of land being subdivided and the prospective uses of such land.

SECTION 31. Section 81U of said chapter 41, as so appearing, is hereby amended by striking out, in lines 174-175 inclusive, the words "for a period of not more than three years".

SECTION 32. Section 81U of said chapter 41, as so appearing, is hereby amended by inserting, after the word “applicant”, in line 79, the words “, subject to the discretion and approval of the planning board”.