

SENATE No. 2311

The Commonwealth of Massachusetts

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

SENATE, Thursday, June 2, 2016

The committee on Ways and Means, to whom was referred the Senate Bill promoting the planning and development of sustainable communities (Senate, No. 2144),-- reports, recommending that the same ought to pass with an amendment substituting a new draft entitled "An Act promoting housing and sustainable development" (Senate, No. 2311) [Estimated cost: \$500,000].

For the committee,
Karen E. Spilka

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An Act promoting housing and sustainable development.

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

1 SECTION 1. Section 3 of chapter 23B of the General Laws, as appearing in the 2014
2 Official Edition, is hereby amended by inserting after clause (v) the following subsection:-

3 (w) establish, conduct and maintain an annual program of education and training for
4 members of local planning boards and zoning boards of appeals; provided, however that the
5 department shall consult with the Massachusetts Association of Regional Planning Agencies
6 regarding development of the program; provided further, the department may contract with the
7 Massachusetts Citizen Planner Training Collaborative at the University of Massachusetts to
8 provide such education and training. The department may charge a reasonable fee to board
9 members to participate in the program. To the extent practicable, the education and training
10 programs shall be offered in various locations throughout the commonwealth.

11 SECTION 2. Said chapter 23B of the General Laws is hereby amended by adding the
12 following section:-

13 Section 31. (a) The secretary of housing and economic development, in consultation with
14 the secretary of energy and environmental affairs, the secretary of transportation and the attorney
15 general following a public hearing and opportunity for stakeholder feedback, shall develop a
16 municipal opt-in program to advance the state’s economic, environmental and social well-being
17 through enhanced planning for economic growth, land conservation, workforce housing creation
18 and mobility. The program shall include guidelines and criteria to evaluate municipal
19 applications. Applications meeting program guidelines and criteria shall receive status as a
20 certified community. Certified communities shall be entitled to certain privileges and powers
21 and shall be required to provide certain incentives to benefit persons seeking local permits and
22 local land use approvals.

23 (b) The executive office of housing and economic development shall develop guidelines
24 for a city or town to receive status as a certified community. The guidelines shall promote: (i)
25 prompt and predictable permitting of commercial or industrial development within economic
26 development districts that allow for an appropriate amount of development to proceed as of right
27 and within a specific reasonable time; (ii) prompt and predictable permitting of residential
28 development within residential development districts that allow for the appropriate amount of
29 development to proceed as of right and within a specific reasonable time; (iii) open space
30 residential design for certain zoning districts meeting minimum lot area thresholds for single-
31 family residential development; (iv) low impact development techniques; (v) natural resource
32 protection zoning in areas of significant natural or cultural resources; (vi) development
33 agreement contracts between a municipality and a holder of development rights to express the
34 conditions to which the development will be subject; (vii) consolidated hearings and permitting
35 for large development projects; and (viii) joint applications from 2 or more contiguous

36 municipalities who together meet the goals of the program and agree to the requirements of
37 clauses (i) to (vii), inclusive.

38 (c) A city or town may apply to the executive office of housing and economic
39 development to become a certified community. A regional planning commission shall make
40 itself available to a city or town during the application process to facilitate best practices. A
41 regional planning commission, in consultation with stakeholders and after a public hearing, shall
42 develop model by-laws, ordinances and rules and regulations which may be used or incorporated
43 by communities within the planning commission region in its application to the executive office
44 of housing and economic development or the regional planning commission may make model
45 by-laws, ordinances and rules and regulations for a specific community within the region which
46 may be used or incorporated by a city or town in its application to the department.

47 (d) The executive office of housing and economic development shall develop criteria to
48 evaluate a submission by a city or town to become a certified community. Applications from a
49 city or town with the endorsement of a regional planning agency may be presumed to meet the
50 criteria or the endorsement may be favorably factored into a determination by the department. If
51 the executive office of housing and economic development determines that it is unable to issue a
52 certification, it shall provide the applicant with a written statement of the reasons for its
53 determination and the applicant shall be allowed to reapply. A municipality's certification shall
54 be for a period of up to 10 years and may be renewed at the discretion of the executive office of
55 housing and economic development.

56 (e) The executive office of housing and economic development shall develop incentives
57 based upon program goals and guidelines in certified communities. Incentives shall benefit both

58 municipal applicants and persons seeking municipal approval for permits and development.
59 Incentives shall be based upon the program guidelines and criteria. The incentives offered to
60 municipalities may include, but shall not be limited to: (i) reducing the minimum vesting period
61 for a definitive subdivision plan under section 6 of chapter 40A; (ii) authorizing zoning
62 ordinances or bylaws that impose natural resource protection zoning that requires percentages of
63 preserved land of 80 per cent or greater; and (iii) authorizing development impact fees imposed
64 pursuant to section 9E of said chapter 40A to be applied to additional off-site public capital
65 facilities; provided, however, that all impact fees shall have a rational nexus to, and shall be
66 roughly proportionate to, the impacts created by the development.

67 (f) To advance economic, environmental and social well-being through enhanced
68 planning for economic growth, land conservation, workforce housing creation and mobility, the
69 commonwealth, when awarding discretionary funds for municipal infrastructure or other
70 discretionary funds or grants administered through the executive office of housing and economic
71 development, the executive office of energy and environmental affairs, the Massachusetts
72 department of transportation and the executive office for administration and finance, shall give
73 priority consideration to certified communities.

74 State agencies responsible for regulatory or capital spending programs that have a
75 material effect on local land use and development shall take into account the land use goals,
76 objectives and policies as set forth in master plans adopted under section 81D of chapter 41 in
77 administering the programs in certified communities.

78 When awarding discretionary funds for municipal infrastructure and land preservation
79 investments within communities for which there exists a regional plan under section 5 of chapter

80 40B, under chapter 716 of the acts of 1989 or under chapter 831 of the acts of 1977, respectively,
81 the commonwealth shall cause the awards to be consistent with the plan to the maximum extent
82 feasible.

83 (g) The executive office of housing and economic development may issue regulations
84 necessary and appropriate for the implementation of this section.

85 SECTION 3. Section 1A of Chapter 40A of the General Laws, as appearing in the 2014
86 Official Edition, is hereby amended by striking out the definition of “Permit granting authority”
87 and inserting in place thereof the following 9 definitions:-

88 “Affordable housing”, a dwelling unit restricted for purchase or rent by a household with
89 an income at or below 80 per cent of the area median income for the applicable metropolitan or
90 non-metropolitan area, as determined by the United States Department of Housing and Urban
91 Development; provided, however, that affordable housing shall be subject to an affordable
92 housing restriction in accordance with sections 31 to 33, inclusive, of chapter 184 or, if ineligible
93 under said sections 31 to 33, inclusive, of said chapter 184, restricted by other means as required
94 in an ordinance or by-law.

95 “By-right” or “as of right”, development that may proceed under a zoning ordinance or
96 by-law without the need for a special permit, variance, zoning amendment, waiver or other
97 discretionary zoning approval; provided, however, that “by-right” or “as of right” development
98 may be subject to site plan review under section 9D.

99 “Cluster development or open space residential development”, a class of residential
100 development in which reduced dimensional requirements allow the developed areas to be

101 concentrated in order to permanently preserve open land for natural, agricultural or cultural
102 resources elsewhere on the plot.

103 “Development impact fee”, an assessment imposed by a zoning ordinance or by-law to
104 offset the impacts of a development, in an amount roughly proportionate to the impact of the
105 development, and in accordance with section 9E.

106 “Inclusionary housing”, an affordable housing unit or a housing unit restricted for
107 purchase or rent by a household with an income at or below 120 per cent of the median family
108 income determined by the United States Department of Housing and Urban Development for the
109 applicable metropolitan or nonmetropolitan area; provided, however, that a municipality may set
110 the income thresholds for inclusionary housing at a level at or below 120 per cent of median
111 income.

112 “Inclusionary zoning”, zoning ordinances or by-laws that require the creation of
113 affordable housing or inclusionary housing, in accordance with section 9F.

114 “Municipal affordable housing concessions”, measures adopted by a municipality to
115 contribute to the economic feasibility of an inclusionary-zoned residential or mixed use
116 development including, but not limited to, increases in the otherwise maximum allowable
117 density, floor-area ratio or height or reductions in otherwise applicable parking requirements,
118 permitting fees and timeframes.

119 “Natural resource protection zoning”, zoning ordinances or by-laws enacted principally
120 to protect natural resources by establishing higher underlying density divisors relative to other
121 areas, a formulaic method to calculate development rights and compact patterns of development
122 so that a significant majority of the land remains permanently undeveloped and available for

123 agriculture, forestry, recreation, watershed management, carbon sequestration, wildlife habitat or
124 other natural resource values.

125 “Permit granting authority”, the board of appeals or zoning administrator.

126 SECTION 3A. Said section 1A of said chapter 40A, as so appearing, is hereby further
127 amended by inserting after the definition of “Special permit granting authority” the following
128 definition:-

129 “Transfer of development rights”, the regulatory procedure whereby the owner of a
130 parcel may convey development rights to the owner of another parcel and where the
131 development rights so conveyed are extinguished on the first parcel and may be exercised on the
132 second parcel in addition to the development rights already existing regarding that parcel.

133 SECTION 4. Said chapter 40A is hereby further amended by inserting after section 1A
134 the following section:-

135 Section 1B. (a) This chapter shall be construed to give full effect to the home rule
136 authority of cities and towns. Nothing in this chapter shall be construed as limiting the
137 constitutional authority of cities and towns unless expressly stated by this chapter. Wherever the
138 language of this chapter purports to authorize or enable, it shall be so construed only where such
139 authority is not otherwise available to cities and towns under the constitution or laws of the
140 commonwealth, and in all other cases such language shall be considered illustrative only.

141 (b) Nothing in this chapter shall limit the authority of the regional planning agencies
142 under chapter 716 of the acts of 1989, chapter 561 of the acts of 1973 and chapter 831 of the acts
143 of 1977 or of any municipality within Barnstable or Nantucket County or the county of Dukes

144 County acting under said chapter 716, said chapter 561 and said chapter 831 including, but not
145 limited to, the designation of districts of critical planning concern, the adoption of regulations for
146 such districts, the review of developments of regional impact and the imposition development
147 impact fees. If this chapter conflicts with these special acts and any regulations, ordinances,
148 regional policy plans or decisions issued or adopted under these special acts, the latter shall
149 control.

150 SECTION 5. Section 3 of said chapter 40A, as appearing in the 2014 Official Edition, is
151 hereby amended by adding the following paragraph:-

152 No zoning ordinance or by-law shall prohibit or require a special permit for the use of
153 land or structures for an accessory dwelling unit or the rental thereof in a single-family
154 residential zoning district on a lot with 5,000 square feet or more or on a lot of sufficient area to
155 meet the requirements of title 5 of the state environmental code established by section 13 of
156 chapter 21A, if applicable, but such land or structures may be subject to reasonable regulations
157 concerning dimensional setbacks and the bulk and height of structures. The zoning ordinance or
158 by-law may require that the principal dwelling or the accessory dwelling unit be owner-occupied
159 and may limit the total number of accessory dwelling units in the municipality to a percentage
160 not lower than 5 per cent of the total non-seasonal housing units in the municipality. Not more
161 than 1 additional parking space shall be required for an accessory dwelling unit but, if parking is
162 required for the principal dwelling, that parking shall either be retained or replaced. As used in
163 this paragraph, “accessory dwelling unit” shall mean a self-contained housing unit, inclusive of
164 sleeping, cooking and sanitary facilities, incorporated within the same structure as the principal
165 dwelling or in a detached accessory structure and that: (i) is located on the same lot as the
166 principal dwelling; (ii) maintains a separate entrance, either directly from the outside or through

167 an entry hall or corridor shared with the principal dwelling; (iii) shall not be sold separately from
168 the principal dwelling; and (iv) is not larger in floor area than 1/2 the floor area of the principal
169 dwelling or 900 square feet, whichever is smaller. Nothing in this paragraph shall authorize an
170 accessory dwelling unit to violate the building, fire, health or sanitary codes or wetlands laws,
171 ordinances or by-laws.

172 SECTION 6. Said chapter 40A is hereby further amended by inserting after section 3 the
173 following section:-

174 Section 3A. (1) (a) For the purposes of this section, the following words shall have the
175 following meanings unless the context clearly requires otherwise:

176 “Department”, the department of housing and community development.

177 “Eligible locations”, as defined in section 2 of chapter 40R.

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

181 “Lot”, an area of land with definite boundaries that are used or available for use as the
182 site of a building.

183 “Multi-family housing”, a residential building with 3 or more dwelling units or 2 or
184 more residential buildings on the same lot with more than 1 dwelling unit in each building.

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

187 (b) Zoning ordinances and by-laws shall provide at least 1 district of reasonable
188 size in which multi-family housing is a permitted use as of right. For the purposes of this
189 section, “district” shall: (i) include multi-family housing without age restrictions which is
190 suitable for families with children; (ii) have a minimum gross density of 8 units per acre in rural
191 towns and a minimum gross density of 15 units per acre in all other municipalities, subject to any
192 further limitations imposed by section 40 of chapter 131 and title 5 of the state environmental
193 code established by section 13 of chapter 21A; provided, however, that multi-family housing
194 districts shall align to the extent possible with existing or planned water, sewer and
195 transportation infrastructure; and (iii) be in eligible locations.

196 A city or town may satisfy the requirement of this subsection by obtaining a
197 determination from the department, acting directly or through a regional planning agency as its
198 designee, that the multi-family provisions of its zoning ordinance or by-law are consistent with
199 the department’s regulations established pursuant to subsection (c). If a city or town obtains a
200 determination from the department or regional planning agency under this section, the city or
201 town may use the determination as verification of compliance when applying for discretionary
202 funding by state agency programs that have included a preference or priority for multi-family
203 zoning pursuant to this section.

204 The department may waive or modify the requirements of this subsection for rural
205 municipalities or if a determination is made that no eligible locations exist within a municipality.

206 (c) The department shall promulgate regulations which shall be used to determine
207 if a city or town has satisfied the requirements established in this subsection.

208 (2) Zoning ordinances or by-laws shall provide for open space residential developments
209 as of right. These ordinances or by-laws shall provide that open space residential developments
210 shall be allowed either in a specific district within that district or in multiple districts through
211 overlay zoning. These ordinances or by-laws shall provide that open space residential
212 developments shall be permitted upon review and approval by a planning board pursuant to
213 section 81K to 81GG, inclusive, of chapter 41 and in accordance with a planning board's rules
214 and regulations governing subdivision control.

215 An open space residential development shall be permitted only on a plot of land of such
216 minimum size as a zoning ordinance or by-law may specify which is divided into building lots
217 with dimensional control, density, open land and use restrictions for such building lots varying
218 from those otherwise permitted by the ordinance or by-law. Such open land, when added to the
219 building lots, shall be at least equal in area to the land area required by the ordinance or by-law
220 for the total number of units or buildings contemplated in the development.

221 A municipality may require either a yield plan or a calculation that deducts for roadways,
222 wetlands and other site constraints in order to determine the yield of housing units in an open
223 space residential development. The open land may be situated to promote and protect maximum
224 solar access within the development. The open land shall either be conveyed to the city or town
225 and accepted by it for park or open space use or be conveyed to a nonprofit organization the
226 principal purpose of which is the conservation of open space or be conveyed to a corporation or
227 trust owned or to be owned by the owners of lots or residential units within the development. If
228 the corporation or trust is utilized, ownership thereof shall pass with conveyances of the lots or
229 residential units. Where the land is not conveyed to the city or town or other governmental

230 agency as dedicated open space, a restriction under sections 31 to 33, inclusive, of chapter 184
231 shall be recorded.

232 Allowance of open space residential development by right in accordance with this section
233 shall not preclude establishment of zoning districts which provide for increases in the
234 permissible density of population or intensity of a particular use within an open space residential
235 development by special permit as provided in section 9.

236 The department of housing and community development and the executive office of
237 energy and environmental affairs shall jointly publish guidelines which may be used to
238 determine if a city or town has satisfied the requirements established in this subclause.

239 (3) If a zoning ordinance or by-law fails to comply with this section, the superior court or
240 the land court may award appropriate declaratory and injunctive relief in a civil action brought
241 by the attorney general on behalf of the department or by an aggrieved applicant for a local
242 permit.

243 SECTION 7. Section 5 of said chapter 40A, as appearing in the 2014 Official Edition, is
244 hereby amended striking out, in line 78, the word “No” and inserting in place thereof the
245 following words:- Unless otherwise prescribed in a zoning ordinance or by-law, no.

246 SECTION 8. Said section 5 of said chapter 40A, as so appearing, is hereby further
247 amended by inserting after the word “meeting” in line 82, the following words:- “; provided,
248 however, that if a city or town has failed to meet the minimum requirements of clause (1) or (2)
249 section 3A, a zoning ordinance or by-law that is consistent with these requirements shall be
250 adopted by a vote of a simple majority of all members of the town council or of the city council

251 where there is a commission form of government or a single branch or of each branch where
252 there are 2 branches or by a vote of a simple majority of town meeting”.

253 SECTION 9. The fourth paragraph of said section 5 of said chapter 40A, as so appearing,
254 is hereby amended by inserting after the first sentence the following sentence:- The report shall
255 evaluate the consistency of the proposed ordinance or by-law or amendment thereto with a
256 master plan under section 81D of chapter 41, if any, in effect.

257 SECTION 10. The fifth paragraph of said section 5 of said chapter 40A, as so appearing,
258 is hereby amended by adding the following sentence:- Any change in the voting majority
259 required to adopt a zoning ordinance, by-law or amendment shall be made by the voting majority
260 then in effect and shall not become effective until 6 months have elapsed after the vote;
261 provided, however, that a voting change shall be limited to a range between a simple majority
262 and a 2/3 majority vote. A majority vote of less than 2/3 shall not be allowed for a specific
263 zoning amendment if the amendment is the subject of a landowner protest.

264 SECTION 11. Section 6 of said chapter 40A, as so appearing, is hereby amended by
265 striking out, in lines 3 to 5, inclusive, the words “or to a building or special permit issued before
266 the first publication of notice of the public hearing on such ordinance or by-law required by
267 section five,”.

268 SECTION 12. Said section 6 of said chapter 40A, as so appearing, is hereby further
269 amended by striking out, in lines 6 and 7, the words “to a building or special permit issued after
270 the first notice of said public hearing,”.

271 SECTION 13. Said section 6 of said chapter 40A, as so appearing, is hereby further
272 amended by striking out the second paragraph and inserting in place thereof the following
273 paragraph:-

274 If a complete application for a building permit or special permit is duly submitted and
275 received, including receipt of payment for any applicable fees, and written notice of the
276 submission has been given to the city or town clerk before the first publication of notice of the
277 public hearing on the ordinance or by-law as required by section 5, the permit shall be governed
278 by the applicable provisions of the zoning ordinance or by-law, if any, in effect at the time of the
279 first submission and receipt while any permit is being processed and, if the permit or an
280 amendment of the permit is finally approved, for 2 years in the case of a building permit and 3
281 years in the case of a special permit from the date of the granting of approval. The period of 2 or
282 3 years shall be extended by a period equal to the time a city or town imposes or has imposed
283 upon it by a state, a federal agency or a court, a moratorium on construction, the issuance of
284 permits or utility connections.

285 SECTION 14. The fourth paragraph of said section 6 of said chapter 40A, as so
286 appearing, is hereby amended by striking out the second sentence.

287 SECTION 15. Said section 6 of said chapter 40A, as so appearing, is hereby amended by
288 striking out the fifth paragraph and inserting in place thereof the following paragraph:-

289 If a complete application for a definitive plan, or a preliminary plan followed within 7
290 months by a definitive plan that is substantially similar to the preliminary plan, is duly submitted
291 to a planning board for approval under the subdivision control law and written notice of the
292 submission has been given to the city or town clerk before the public hearing on the ordinance or

293 by-law required by section 5, the land on the plan shall be governed by the applicable provisions
294 of the zoning ordinance or by-law, if any, in effect at the time of the first submission while any
295 plan is being processed under the subdivision control law and, if the definitive plan or an
296 amendment to the definitive plan is finally approved, for 8 years from the date of the
297 endorsement of the approval; provided, however, that in the case of a minor subdivision in a city
298 or town that has accepted section 81HH of chapter 41, the applicable provisions of the zoning
299 ordinance or by-law shall govern for 4 years from the date of the endorsement of approval. The
300 period of 8 or 4 years shall be extended by a period equal to the time which a city or town
301 imposes or has imposed upon it by a state, a federal agency or a court, a moratorium on
302 construction, the issuance of permits or utility connections.

303 SECTION 16. Section 9 of said chapter 40A, as so appearing, is hereby amended by
304 striking out the third to ninth paragraphs, inclusive.

305 SECTION 17. The twelfth paragraph of said section 9 of said chapter 40A, as so
306 appearing, is hereby amended by striking out the last sentence and inserting in place thereof the
307 following 2 sentences:- Unless a greater majority is specified in the zoning ordinance or by-law,
308 issuance of a special permit under this section shall require an affirmative vote of a simple
309 majority of the special permit granting authority. A greater majority vote requirement specified
310 in a zoning ordinance or by-law shall not exceed a vote of 2/3 of the special permit-granting
311 authority in a board with more than 5 members or a vote of 4 members in a 5-member board.

312 SECTION 18. Said section 9 of said chapter 40A, as so appearing, is hereby further
313 amended by striking out the fourteenth paragraph and inserting in place thereof the following 2
314 paragraphs:-

315 A special permit granted under this section shall state that it shall lapse within a period of
316 time specified by the special permit granting authority, which shall be not less than 3 years if a
317 substantial use thereof has not sooner commenced except for good cause or, in the case of a
318 permit for construction, if construction has not begun by the specified date except for good
319 cause. The minimum period of 3 years may, by ordinance or by-law, be increased to a longer
320 minimum period. The period of time before which a special permit shall lapse shall not include
321 the time required to pursue or await the determination of an appeal from the grant thereof, as
322 referenced in section 17.

323 Upon written application by the grantee of a special permit, the special permit-granting
324 authority, in its discretion, and after notice and a public hearing, unless under local ordinance or
325 by-law a public hearing is not required, vote by a majority to extend the time for the exercise of a
326 special permit for a period of time not to exceed the original duration of the special permit. The
327 application shall be filed not later than 65 days before the lapse of the special permit. If the
328 permit granting authority does not grant the extension within 65 days of the date of application
329 therefor, upon the lapse of the special permit, the special permit shall only be re-established
330 pursuant to the requirements of this section.

331 SECTION 19. Said section 9 of said chapter 40A, as so appearing, is hereby further
332 amended by inserting after the word “zoned”, in line 201, the following word:- principally.

333 SECTION 20. Said section 9 of said chapter 40A, as so appearing, is hereby further
334 amended by inserting after the word “zoned”, in line 216, the following word:- principally.

335 SECTION 21. Said chapter 40A is hereby further amended by inserting after section 9C
336 the following 4 sections:-

337 Section 9D. (a) As used in this section, “site plan” shall mean the submission made to a
338 municipality that includes documents and drawings required by an ordinance or by-law showing
339 the proposed on-site arrangement of buildings, structures, parking, pedestrian and vehicle
340 circulation, utilities, grading and other site features and improvements existing or to be placed on
341 a parcel of land in connection with the proposed use of land or structures.

342 (b) A zoning ordinance or by-law that requires site plan review for uses allowed by-right
343 shall: (i) establish the different types, scales or categories of uses of land, structures or
344 development subject to site plan review; (ii) specify the local boards or officials charged with
345 reviewing and approving site plans which may differ for different types, scales or categories of
346 uses of land or structures; (iii) set forth what shall be considered a complete application; (iv)
347 establish the process for submission, review and approval for a site plan; (v) establish standards
348 and criteria by which the project and its direct adverse impacts on that portion of properties and
349 public infrastructure located within 300 feet of the parcel boundary shall be evaluated; and (vi)
350 include provisions making the terms, conditions and content of the approved site plan
351 enforceable by the municipality which may include the requirement of performance guarantees.

352 (c) Approval of a site plan under this section, if reviewed by a board, shall require not
353 more than a simple majority vote of the full board and shall be made within the time limits
354 prescribed by ordinance or by-law not to exceed 120 days from the filing of a complete
355 application. Procedures for the administrative review and approval of a site plan by staff or other
356 municipal officials shall be as specified in the ordinance or by-law but the 120-day time limit for
357 a decision shall not be increased unless granted in writing by the person seeking the site plan
358 approval. If no decision is issued within the time limit prescribed and no written extension of the
359 time limit has been granted by the person seeking the site plan review, the site plan shall be

360 deemed constructively approved as provided in section 9; provided, however, that the petitioner
361 shall comply with the constructive approval procedures under said section 9. Copies of the
362 approved site plan submission shall be kept on file by the town or city clerk, the permit granting
363 authority and the municipal building department.

364 (d) A site plan submitted for the use of specific land or structures allowed by-right shall
365 not be denied unless: (i) the proposed site plan cannot be conditioned to meet the requirements
366 set forth in the zoning ordinance or by-law; (ii) the applicant fails to submit the information and
367 fees required by the zoning ordinance or by-law necessary for an adequate and timely review of
368 the design of the proposed land or structures; or (iii) there is no feasible site design change or
369 condition that would adequately mitigate any direct adverse impacts of the proposed
370 improvements on that portion of properties and public infrastructure located within 300 feet of
371 the parcel boundary.

372 (e) A site plan approved under this section may include reasonable conditions,
373 safeguards and limitations to mitigate the direct adverse impacts of the project on that portion of
374 properties and public infrastructure located within 300 feet of the parcel boundary. Conditions
375 may be approved that are directly related to standards and criteria described in the site plan
376 review ordinance or by-law; provided, however, that such conditions shall not conflict with or
377 waive any other applicable requirement of the zoning ordinance or by-law. The record of the
378 decision shall state the reasons for any conditions imposed. If conditions are adopted pursuant to
379 this subsection, the site plan shall be revised to include those conditions before the development
380 permit is issued.

381 (f) Site plan review may not require payment for or performance of any off-site
382 mitigation except when the site plan approval is subject to development impact fees imposed in
383 accordance with section 9E or when a site plan is required in connection with the issuance of a
384 special permit, variance or any other discretionary zoning approval.

385 (g) Except where site plan review is required in connection with the issuance of a special
386 permit, variance or other discretionary zoning approval, decisions made under this section may
387 be appealed pursuant to section 4 of chapter 249. Such civil action may be brought in the
388 superior court or in the land court and shall be commenced within 20 days after the filing of the
389 decision of the site plan review approving authority with the city or town clerk. Notice of such
390 appeal must be given to the city or town clerk so as to be received within 20 days. A complaint
391 by a plaintiff challenging a site plan approval under this section shall allege the specific reasons
392 why the project failed to satisfy the requirements of this section, the zoning ordinance or by-law
393 or other applicable law and shall allege specific facts establishing how the plaintiff is aggrieved
394 by such decision. A complaint by an applicant for site plan review challenging the denial or
395 conditioned approval of a site plan shall similarly allege the specific reasons why the project
396 properly satisfied the requirements of this section, the zoning ordinance or by-law or other
397 applicable law.

398 (h) A site plan, or any extension, modification or renewal thereof, shall not take effect
399 until a notice of site plan approval, identifying the permit granting authority and the date upon
400 which approval was granted, is recorded in the registry of deeds for the county or district in
401 which the land is located and indexed in the grantor index under the name of the owner of record
402 or is recorded and noted on the owner's certificate of title.

403 (i) Zoning ordinances or by-laws shall provide that a site plan approval for a use allowed
404 by-right shall lapse within a specified period of time, not less than 2 years from the date of the
405 filing of the approval with the city or town clerk, if a building permit has not been obtained or
406 substantial use or construction has not yet begun except where extended for good cause by the
407 permit-granting authority either with or without a public hearing, as provided in the zoning
408 ordinance or by-law. Such period of time shall not include the time required to pursue or await
409 the determination of an appeal and shall be measured from the date of the dismissal of the appeal
410 or the entry of final judgment in favor of the applicant.

411 (j) Where an ordinance or by-law provides that a variance, special permit or other
412 discretionary zoning approval shall also require site plan review, the review of the site plan shall
413 be integrated into the processing of the variance, special permit or other discretionary zoning
414 approval and shall not be made the subject of a separate proceeding, hearing or decision. In such
415 a case, the content requirements and approval criteria for a site plan as specified in the zoning
416 ordinance or by-law shall be followed but this section shall not otherwise apply.

417 Section 9E. (a) A local ordinance or by-law that requires the payment of a development
418 impact fee for a permit or approval shall comply with this section. A development impact fee
419 shall have a rational nexus to, and shall be roughly proportionate to, the impacts created by the
420 development. A development impact fee shall reasonably benefit the proposed development and
421 shall be used solely for the purposes of defraying the costs of off-site public capital facilities
422 necessary to support or compensate for the proposed development. Development impact fees
423 shall be applied in a consistent manner pursuant to a proportionate share development impact fee
424 study conducted in accordance with subsection (f).

425 (b) The development impact fee shall be imposed only on construction, enlargement,
426 expansion, substantial rehabilitation or change of use that results in a net increase of demand or
427 service. Impact fees shall be limited to mitigating the impact of the development on the
428 following capital facilities: (i) water supply, treatment and distribution, both potable and for
429 suppression of fires; (ii) wastewater treatment and sanitary sewerage; (iii) drainage, storm water
430 management and treatment; (iv) solid waste; (v) roads, intersections, traffic improvements,
431 public transportation, pedestrian ways and bicycle paths; and (vi) parks and recreational
432 facilities. Impact fees may be expended on such facilities for the payment of debt service or for
433 studies with a rational nexus to the development, including master plans made in accordance
434 with section 81D of chapter 41 and proportionate share impact fee studies under section 9F. A
435 development impact fee shall not be assessed or expended for personnel costs, normal operation
436 and maintenance costs or to remedy deficiencies in existing facilities; provided, however, that an
437 impact fee may be assessed for mitigation on a facility with a preexisting deficiency to the extent
438 that the preexisting deficiency is exacerbated and not solely to remedy the preexisting deficiency.

439 (c) No development impact fee shall be imposed on a farming or agricultural use
440 recognized in section 1A of chapter 128 or on a dwelling unit with an affordable housing
441 restriction, as defined by section 31 of chapter 184, of not less than 30 years. To the extent that a
442 development contains a nonexclusively farming or agricultural use or nonexclusively affordable
443 housing restricted unit, and the per cent of farming or agricultural use or affordable housing
444 restricted units is not trivial, the by-law or ordinance shall prorate or eliminate the development
445 impact fee.

446 Development impact fees shall be proportionately reduced to the extent that a
447 municipality imposes other fees or requirements, otherwise imposed by law, for mitigation of

448 development including, but not limited to, fees imposed under chapter 40C and section 40 of
449 chapter 131. No fee shall be assessed more than once for the same impact. If, and to the extent
450 that, a municipality receives state or federal funds for mitigation of the development impacts or
451 other grants or contributions for mitigation of development impacts, those funds shall be
452 accounted for in the development impact fee or applied to the development impact fee
453 proportional share development impact study.

454 (d) A development impact fee assessed under this section shall be due and payable not
455 earlier than the issuance of the building permit upon commencement of construction, which may
456 include site preparation work. The fee shall be deposited in a separate, segregated, interest-
457 bearing account in the city or town in which the proposed development is located and no
458 development impact fee shall be paid to the general treasury or used as general expenses of the
459 city or town.

460 Any funds not expended or encumbered by the end of the calendar quarter immediately
461 following 6 years from the date the development impact fee was paid shall be returned with
462 interest. If disagreement exists relative to who shall receive the unexpended or unencumbered
463 fees, the city or town may retain the development impact fee pending instructions given in
464 writing by the parties involved or by a court of competent jurisdiction.

465 (e) A zoning ordinance or by-law may provide that the applicant or developer may
466 construct the public capital facility or a portion thereof for which the development impact fee
467 was assessed or may enter into any other mutual agreement in lieu of paying the development
468 impact fee; provided, however, that the applicant or developer shall not be required to construct

469 the public capital facility or a portion thereof or enter into an alternative agreement if instead the
470 applicant or developer chooses to pay the assessed development impact fee.

471 (f) No development impact fee shall be assessed unless it is assessed pursuant to a valid
472 proportionate-share development impact fee study. A proportionate-share development impact
473 fee study shall establish the proportionate share development impact fee for capital facilities and
474 detail the methodology used to set the fee. The scope of the study may be jurisdiction-wide or
475 limited to a geographic area or category of public capital facilities that development impact fees
476 may be intended to address. A municipality may rely upon credible and professionally
477 recognized methodologies for the study. The study shall be updated not less than every 10 years
478 to reflect actual development activity, actual costs of infrastructure improvements completed or
479 underway, plan changes or amendments to the zoning ordinance or by-law. The study shall
480 identify any preexisting deficiencies in the public capital facilities and shall set forth a feasible
481 implementation plan for how those deficiencies shall be remedied. A proportionate share
482 development impact fee study shall not be valid and no development impact fees shall be
483 assessed if 10 years have passed since the study's creation or its most recent update.

484 An ordinance or by-law may waive or reduce the development impact fee for
485 development that furthers a public purpose as determined in a master plan adopted by the city or
486 town under section 81D of chapter 41 or other formally approved plan designed to set goals for
487 the development of land within the city or town.

488 Notwithstanding this section, a city or town authorized to impose development impact
489 fees pursuant to a special act shall comply with the standards set forth in the special act.

490 Section 9F. (a) A zoning ordinance or by-law may require the applicant for a residential
491 or mixed use development to provide inclusionary housing units in return for municipal
492 affordable housing concessions. In establishing any such ordinance or by-law, the city or town
493 shall consider the likely impacts of development on the affordable housing assets of the
494 municipality, the ability of the community to meet local and regional housing needs and the
495 economic feasibility of development.

496 (b) An inclusionary housing ordinance or by-law shall provide municipal affordable
497 housing concessions which shall be applied among affected developments in a reasonable and
498 consistent manner.

499 (c) In lieu of constructing the required inclusionary housing units onsite, the ordinance or
500 by-law may provide for the construction of such units off-site, the dedication of land for that
501 purpose or the payment of funds to a separate account created by the city or town sufficient for
502 and dedicated to inclusionary housing if the applicant demonstrates to the satisfaction of the local
503 approving authority that the units cannot be otherwise provided onsite or that an alternative
504 proposal better meets the needs of the city or town with respect to the provision of inclusionary
505 housing. Off-site units, land dedication or payment in lieu of units, in the opinion of the board or
506 official designated by ordinance or by-law to administer this section and in consideration of local
507 needs, shall provide inclusionary housing benefits substantially equivalent to the provision of
508 onsite units.

509 (d) A city or town may establish a separate dedicated account for the deposit of funds
510 received under this section, including a Municipal Affordable Housing Trust Fund account under
511 section 55C of chapter 44 or other dedicated accounts of similar purpose. These funds shall be

512 deposited with the treasurer and disbursed for inclusionary housing in accordance with the
513 ordinances, by-laws or regulations of the city or town. If the application of this section results in
514 less than a full dwelling unit, the board may accept a prorated payment of funds in lieu of unit
515 creation.

516 (e) The inclusionary housing units shall be subject to an affordable housing restriction for
517 not less than 30 years, in accordance with sections 31 to 33, inclusive, of chapter 184 or, if
518 ineligible under said sections 31 to 33, inclusive, of said chapter 184, restricted by other means
519 as required in an ordinance or by-law.

520 (f) The ordinance or by-law may require some or all of the inclusionary housing units to
521 be low-income or moderate-income housing as defined in sections 20 to 23, inclusive, of chapter
522 40B, and shall be eligible for inclusion on the local subsidized housing inventory subject to and
523 in accordance with applicable regulations and guidelines of the department of housing and
524 community development. Nothing in this section shall require the department to include
525 affordable units created under this section on the subsidized housing inventory.

526 Section 9G. No ordinance or by-law shall prohibit an owner of land or structures who
527 has applied or intends to apply for a building permit, any permit or approval required under this
528 chapter, an approval under sections 81K to 81GG, inclusive, of chapter 41 or a comprehensive
529 permit under sections 20 to 23, inclusive, of chapter 40B from requesting of the public official or
530 local board charged with acting on the application to undertake a land use dispute avoidance
531 process.

532 If the applicant and the public official or local board agree to a land use dispute
533 avoidance process, the mediator or facilitator for the dispute avoidance process may convene

534 meetings or conduct interviews that shall be confidential and privileged from discovery in
535 accordance with section 23C of chapter 233. The mediator or facilitator shall have the
536 protections provided under said section 23C of said chapter 233. To the extent that public bodies
537 are participants, their deliberations may be held in executive session to the extent permitted by
538 clause 9 of subsection (a) of section 21 of chapter 30A.

539 The applicant and the public official or local board shall, by an agreement in writing filed
540 with the city or town clerk, stipulate and agree to extend any otherwise applicable time
541 requirements of state or local law. Whether a resolution results, the applicant may proceed with
542 the application without prejudice for having participated in a conflict evaluation or resolution
543 effort and the application process shall proceed in due course as otherwise provided by law,
544 ordinance or by-law.

545 SECTION 22. Said chapter 40A is hereby further amended by striking out section 10, as
546 appearing in the 2014 Official Edition, and inserting in place thereof the following section:-

547 Section 10. Where literal enforcement of the zoning ordinance or by-law would result in
548 practical difficulty, financial or otherwise, to the petitioner, upon appeal or upon petition with
549 respect to particular land or structures, the permit-granting authority may grant a variance from
550 the terms of the applicable zoning ordinance or by-law following a public hearing for which
551 notice has been given by publication and posting as provided in section 11 and by mailing notice
552 to all interested parties. The practical difficulty necessitating the variance shall relate to the
553 physical characteristics including, but not limited to, soil conditions, shape or topography or
554 location of the site or of the structures thereon.

555 In making its determination, the permit-granting authority shall take into consideration
556 the benefit to the applicant if the variance is granted as well as the detriments to the health, safety
557 and welfare of the neighborhood or community if the variance is granted. In order to grant a
558 variance, the permit-granting authority shall make all of the following findings: (i) the benefit
559 sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue,
560 other than a variance; (ii) the variance will not have a disproportionately adverse effect on
561 nearby properties, the character of the neighborhood or the environment; (iii) the variance will
562 not nullify or substantially derogate from the intent or purpose of the ordinance or by-law or a
563 master plan under section 81D of chapter 41 if a master plan is in effect; and (iv) the claimed
564 difficulty relating to the property in question is unique and does not also apply to a substantial
565 portion of the district or neighborhood. The permit-granting authority may also take into
566 consideration the extent to which the claimed difficulty is self-created and may base a denial
567 solely upon a finding that the claimed difficulty is self-created. In the granting of variances, the
568 permit-granting authority shall grant the minimum variance that it deems necessary to relieve the
569 difficulty.

570 The permit-granting authority may impose conditions, safeguards and limitations both of
571 time and of use, including the continued existence of any particular structures, but excluding any
572 condition, safeguards or limitation based upon the continued ownership of the land or structures
573 to which the variance pertains by the applicant, petitioner or an owner.

574 Except where local ordinances or by-laws expressly permit variances for use, no variance
575 may authorize a use or activity not otherwise permitted in the district in which the land or
576 structure is located. No variance may authorize a use or activity not otherwise permitted in the
577 district in which the land or structure is located unless the permit-granting authority specifically

578 finds that owing to circumstances relating to the soil conditions, shape or topography of the land
579 or structures and especially affecting such land or structures but not affecting generally the
580 zoning district in which it is located, a literal enforcement of the ordinance or by-law would
581 involve substantial hardship, financial or otherwise, to the petitioner or appellant and that
582 desirable relief may be granted without detriment to the public good and without nullifying or
583 substantially derogating from the intent or purpose of such ordinance or by-law. Variances for
584 use shall be subject to all of this section and any more stringent criteria contained in an ordinance
585 or by-law. Variances for use properly granted prior to January 1, 1976 but limited in time, may
586 be extended on the same terms and conditions that were in effect for that variance upon the
587 effective date.

588 Once exercised, variances shall run with the land but a use variance may run with the
589 land only if determined by the permit-granting authority acting pursuant to an ordinance or by-
590 law enabling such a determination.

591 If the rights authorized by a variance are not exercised within 2 years after the date of the
592 grant of the variance, the variance shall lapse; provided, however, that upon written application
593 by the grantee of the variance, the permit-granting authority may extend, without a public
594 hearing unless so required by a zoning ordinance or by-law, the time to exercise such rights for
595 up to 1 year. The application shall be filed not later than 65 days before the lapse of the
596 variance. If the permit-granting authority does not grant the extension before the lapse of the
597 variance then, upon the lapse of the variance the variance may be reestablished only after notice
598 and a new hearing pursuant to this section.

599 SECTION 23. Section 11 of said chapter 40A, as so appearing, is hereby amended by
600 inserting after the word “town” , in line 15, the following words:- , the board of health of the city
601 or town.

602 SECTION 24. Section 17 of said chapter 40A, as so appearing, is hereby amended by
603 inserting after the sixth paragraph the following paragraph:-

604 The court, in its discretion, may require non-municipal plaintiffs in an action under this
605 section to post a surety or cash bond in an amount not to exceed \$15,000 to secure the payment
606 of costs in appeals of decisions approving special permits, variances and site plans where the
607 court finds that the harm to the defendants or to the public interest resulting from the delays of
608 appeal outweighs the burden of the surety or cash bond on the plaintiffs. When making a
609 decision regarding surety or cash bond requirements, the court may consider the relative merits
610 of the appeal and the relative financial means of the appellant and the defendants.

611 SECTION 25. Said chapter 41 is hereby further amended by striking out section 81D, as
612 so appearing, and inserting in place thereof the following section:-

613 Section 81D. (a) A planning board established in a city or town shall make a master plan
614 for the city or town in accordance with this section. The plan shall take effect upon adoption by
615 the legislative body as provided herein. The planning board shall, from time to time, not to
616 exceed 10 years from the date of adoption, conduct a comprehensive review of the plan and may
617 extend, revise or remake the plan subject to approval as provided in this section. The plan, once
618 adopted, shall be the official master plan of the city or town and shall replace any previously
619 adopted master plan.

620 (b) The plan shall be a comprehensive framework, through text, maps and illustrations
621 that provides a basis for decision-making about land use and the long-term physical development
622 of the municipality. The plan shall be internally consistent in its policies, forecasts and standards
623 and may support and provide a rationale for the municipality's zoning ordinance or by-laws,
624 subdivision regulations and other land use laws, regulations, policies and capital expenditures.

625 (c) The plan shall include the elements required by this section and may include any
626 optional subjects at the discretion of the municipality. The plan shall address the following
627 elements:

628 (i) goals and objectives statement of the municipality for its future growth,
629 development, redevelopment, conservation and preservation; provided, however, that each
630 community shall conduct a public participation process to determine community values, establish
631 goals and identify patterns of development, redevelopment, conservation and preservation
632 consistent with these goals; and provided further, that at a minimum, the goals and objectives
633 statement shall address the elements required to be included in the plan;

634 (ii) a housing element that shall include: (A) an inventory of local demographic
635 characteristics, an assessment and forecast of housing needs and a statement of local housing
636 policies; (B) an analysis of housing units by type of structure, affordable housing and subsidized
637 housing, housing available for rental, special needs housing and housing for the elderly; (C) an
638 assessment of existing local policies, programs, laws or regulations that encourage the
639 preservation, improvement and development of housing; and (D) an evaluation of zoning and
640 other land use policies designed to meet local housing needs including, but not limited to, the
641 affordable housing needs of low, moderate and median income households and the accessible

642 housing needs of people with disabilities and special needs; provided, however, that a current
643 housing production plan consistent with sections 20 to 23, inclusive, of chapter 40B or any
644 regulations thereto may fulfill the evaluation requirement of this clause;

645 (iii) a natural resources and energy management element that shall include: (A)
646 identification of the significant natural and energy resources of the municipality; (B)
647 identification of protected and unprotected wetlands and water resources, lands critical to
648 sustaining surface and groundwater quality and quantity, environmentally sensitive lands, critical
649 wildlife habitat and biodiversity, agricultural lands and forests, protection of wildlife habitat,
650 water resources, vistas and key landscapes, outdoor recreation facilities and farm and forestry
651 land; provided, however, that in cities and towns with agricultural commissions created by the
652 legislative or executive body of the city or town, those elements of the plan dealing with
653 agricultural topics shall be prepared jointly by the agricultural commission and the planning
654 board; (C) an examination of local laws, regulations, policies and strategies to address needs for
655 the protection, restoration and sustainable management of natural resources; and (D) an energy
656 component that explores locally feasible land use strategies to maximize energy efficiency and
657 renewable energy opportunities, support land, energy, water and materials conservation
658 strategies, local clean power generation, distributed generation technologies and innovative
659 industries and addresses global climate change by reducing greenhouse gas emissions, which
660 may include addressing a development's impact on carbon emissions, and reducing the
661 consumption of fossil fuels;

662 (iv) a land use and zoning element that includes: (A) an identification of historic
663 settlement patterns and present land uses and designation of the proposed distribution, location
664 and interrelationship of public and private land uses; (B) land use policies and related maps

665 which shall be based upon a land use suitability analysis identifying areas most suitable for
666 development and related transportation infrastructure and facilities; (C) growth and development
667 areas that support the revitalization of city and town centers and neighborhoods by promoting
668 development that is compact and walkable, conserves land, protects historic resources, integrates
669 uses and coordinates the provision of housing with the location of jobs, transit and services and
670 new infrastructure; (D) an identification of areas for economic development and job creation,
671 related public and private transportation and pedestrian connections and encourages the creation
672 or extension of pedestrian-accessible districts and neighborhoods that mix commercial, civic,
673 cultural, educational and recreational activities with open space and housing; (E) consideration
674 of the relationship between proposed development intensity and the capacity of land and existing
675 and planned public facilities and infrastructure; and (F) a land use map illustrating the land use
676 policies and desired future development patterns of the municipality and a proposed zoning map;
677 and

678 (v) an implementation program element that defines and prioritizes the actions
679 necessary to achieve the goals and objectives of the master plan; provided, however, that the
680 implementation program shall specify the recommended course of action by which the
681 municipality's regulatory structures, including zoning and subdivision control regulations, may
682 need to be amended in order to be consistent with the master plan.

683 (d) In addition to elements required by this section, the master plan may include,
684 depending on community characteristics, any of the following elements:

685 (i) an economic development element that includes: (A) an inventory and
686 analysis of the local economic base; (B) an assessment of opportunities and barriers to economic

687 development; (C) an assessment of opportunities and barriers to agriculture, including all
688 branches of farming and forestry; and (D) an assessment of opportunities and barriers to self-
689 employment and home-based occupations;

690 (ii) a cultural resources element that identifies the significant cultural, scenic and
691 historic structures, sites and landscapes of the municipality, including archaeological resources
692 and policies and strategies to protect and manage the community's cultural resources;

693 (iii) an open space protection and recreation element that inventories recreational
694 facilities and open space areas of the municipality and policies and strategies for the
695 management, protection and enhancement of those facilities and areas as essential public health
696 infrastructure; provided, however, that an open space and recreational plan approved by the
697 division of conservation services shall constitute the open space protection and recreation
698 element under this subsection;

699 (iv) an infrastructure and capital facilities element to identify and analyze
700 existing and forecasted needs for infrastructure and facilities used by the public; provided,
701 however, that the element shall detail scheduled expansion or replacement of public facilities,
702 infrastructure components or circulation system components and the anticipated costs and
703 revenues associated with those activities;

704 (v) a transportation element including: (A) an inventory of existing and proposed
705 circulation, parking and transportation systems; (B) an assessment of opportunities and barriers
706 to increasing access to transportation options, including land and water-based public transit,
707 bicycling, walking, and transportation services for populations with disabilities; and (C)
708 identification of strategic investment options for transportation infrastructure to encourage smart

709 growth, maximize mobility, conserve fuel and improve air quality and to facilitate the location of
710 new development where a variety of transportation modes can be made available;

711 (vi) a water management element that shall include: (A) an inventory of current
712 and potential municipal sources of water supply, including capacity and safe yield and an
713 assessment of water demand including types of water users, changes in water consumption over
714 time and water billing rate structure; (B) an assessment of the adequacy of existing and proposed
715 water supplies to meet projected demands, water quality and treatment issues, existing measures
716 for water supply protection, water conservation drought management and emergency
717 interconnections; (C) an assessment of the ability of stormwater regulations and practices to
718 limit off-site stormwater runoff to levels substantially similar to natural hydrology through
719 decentralized management practices and the protection of onsite natural features; (D) an analysis
720 of municipal need and capacity for wastewater disposal, including the suitability of sites and
721 water bodies for the discharge of treated wastewater; and (E) recommended strategies for water
722 supply provision and protection, water conservation, wastewater disposal, stormwater
723 management, drought management and emergency interconnections and needed improvements
724 to meet future water resource needs; and.

725 (vii) a public health element that shall include: (A) an inventory of conditions and
726 assets in the natural and built environment which contribute to or constitute a barrier to health,
727 including a description of conditions with a disproportionate impact on residents based on
728 geography, ethnicity, income, immigration status or other characteristics; (B) an assessment of
729 opportunities and barriers to increasing access to conditions and assets in the natural or built
730 environment that contribute to health; and (C) recommendations of available implementation

731 policies and strategies, including zoning and other local laws and regulations, affecting health
732 needs related to the natural or built environment.

733 Any elements included in a master plan shall include a self assessment against similar
734 subject matter in a regional plan adopted by the regional planning agency under section 5 of
735 chapter 40B in effect, if any, or under any special act.

736 (e) A master plan shall only be made, extended, revised or remade by a simple majority
737 vote of the planning board after a public hearing, notice of which shall be posted and published
738 in the manner prescribed for zoning amendments under section 5 of chapter 40A. Following any
739 vote of the planning board, the planning board shall transmit the plan to the chief executive
740 officer of the city or town and the plan shall be an agenda item or warrant article on a subsequent
741 legislative session of the city or town. Adoption of the plan or the extension, revision or remake
742 of the plan shall be by a simple majority vote of the legislative body of the city or town;
743 provided, however, that no vote of the legislative body to alter the plan or amendment as
744 proposed by the planning board shall be other than by a 2/3 majority. The planning board, upon
745 adoption by the legislative body of a plan or report or any change or amendment to a plan or
746 report produced under this section, shall furnish a copy of the plan or report or any change or
747 amendment to the department of housing and community development.

748 (f) A municipality in Barnstable County or the county of Dukes County may adopt a local
749 comprehensive plan pursuant to chapter 716 of the acts of 1989 or chapter 831 of the acts of
750 1977 and the regulations and regional policy plans adopted thereunder. The regional planning
751 agency shall review the local comprehensive plan solely for consistency with the governing
752 special act and any applicable regulations and regional policy plans; provided, however, that the

753 time requirements of this section shall not apply to the review of local comprehensive plans. An
754 adopted local comprehensive plan certified by the regional planning agency as consistent with
755 this section shall be deemed a master plan in compliance with this section and shall entitle the
756 municipality to any statutory benefits of having an adopted master plan.

757 SECTION 26. Section 81L of said chapter 41, as so appearing, is hereby amended by
758 inserting after the word “thereon”, in line 72, the following words:- ; provided, however, that the
759 division may be deemed a minor subdivision if the city or town has adopted a minor subdivision
760 ordinance or by-law.

761 SECTION 27. Said section 81L of said chapter 41, as so appearing, is hereby further
762 amended by striking out the definition of the word “Lot” and inserting in place thereof the
763 following 2 definitions:-

764 “Lot”, an area of land in 1-ownership, with defined boundaries, used or available for use
765 as the site of 1 or more buildings.

766 “Minor subdivision”, in accordance with section 81HH, the division of a lot, tract or
767 parcel of land into 2 or more lots, tracts or parcels where, at the time when it is made, every lot
768 within the lot, tract or parcel so divided has frontage on: (i) a public way or a way which the
769 clerk of the city or town certifies is maintained and used as a public way; (ii) a way shown on a
770 plan approved and endorsed in accordance with the subdivision control law; or (iii) a way in
771 existence when the subdivision control law became effective in the city or town in which the
772 land lies having, in the opinion of the planning board, sufficient width, suitable grades and
773 adequate construction to provide for the needs of vehicular traffic in relation to the proposed use
774 of the land abutting thereon or served thereby and for the installation of municipal services to

775 serve the land and the buildings erected or to be erected thereon; provided, however, that the
776 frontage shall be of at least the distance as is then required by the zoning ordinance or by-law, if
777 any, of the city or town for erection of a building on the lot and, if no distance is so required, the
778 frontage shall be of at least 20 feet.

779 SECTION 28. Section 81O of said chapter 41, as so appearing, is hereby amended by
780 inserting after the word “effect”, in line 2, the following words:- and a minor subdivision
781 ordinance or by-law is not in effect.

782 SECTION 29. Said section 81O of said chapter 41, as so appearing, is hereby further
783 amended by inserting after the word “feet”, in line 17, the following words:- , unless the city or
784 town has adopted a minor subdivision ordinance or by-law, in which case it shall be approved
785 accordingly.

786 SECTION 30. Section 81Q of said chapter 41, as so appearing, is hereby amended by
787 inserting after the fourth sentence the following sentence:- Design and dimensional requirements
788 for total travel lane widths not greater than 24 feet shall be presumed not to be excessive.

789 SECTION 31. Section 81U of said chapter 41, as so appearing, is hereby amended by
790 striking out, in line 187, the words “for a period of not more than three years”.

791 SECTION 32. Section 81X of said chapter 41, as so appearing, is hereby amended by
792 striking out the fourth paragraph and inserting in place thereof the following 2 paragraphs:-

793 Notwithstanding any other provision of this section, the register of deeds shall accept for
794 recording and the land court shall accept with a petition for registration or confirmation of title,
795 any plan bearing a professional opinion by a registered professional land surveyor that the

796 property lines shown are the lines dividing existing ownerships and the lines of streets and ways
797 shown are those of public or private streets or ways already established and that no new lines for
798 division of existing ownership or for new ways are shown.

799 The register of deeds and the land court shall accept for recording and the land court shall
800 accept with a petition for registration any plan showing a change in the line of any lot, tract or
801 parcel bearing a professional opinion by a registered professional land surveyor and a certificate
802 by the person or board charged with the enforcement of the zoning ordinance or by-law of the
803 city or town that the property lines shown: (i) do not create an additional building lot; (ii) do not
804 create, add to or alter the lines of a street or way; (iii) do not render an existing legal lot or
805 structure illegal; (iv) do not render an existing nonconforming lot or structure more
806 nonconforming; and (v) are not subject to alternative local rules and regulations for minor
807 subdivisions under section 81HH. A request for such a certificate shall be acted upon within 21
808 days and shall not be withheld unless a finding is made that the plan violates any of the aforesaid
809 criteria and the finding is stated in writing to the person making the request. Failure to so act
810 within 21 days shall be deemed an approval of the lot line change. All plans, if approved and as
811 recorded, shall be filed with the planning board and the board of assessors of the city or town.
812 The recording of such a plan shall not relieve any owner from compliance with the subdivision
813 control law or any other applicable law.

814 SECTION 33. Paragraph 1 of section 81BB of said chapter 41, as so appearing, is hereby
815 amended by striking out the second and third sentences and inserting in place thereof the
816 following 4 sentences:- Such civil action shall be in the nature of certiorari pursuant to section 4
817 of chapter 249. A complaint by a plaintiff challenging a subdivision or minor subdivision
818 approval under this section shall allege the specific reasons why the subdivision or minor

819 subdivision fails to satisfy the requirements of the board's rules and regulations or other
820 applicable law and allege specific facts establishing how the plaintiff is aggrieved by the
821 decision. A complaint by an applicant challenging a subdivision or minor subdivision denial or
822 conditioned approval under this section shall similarly allege the specific reasons why the
823 subdivision or minor subdivision properly satisfies the requirements of the board's rules and
824 regulations or other applicable law. The fourth to seventh paragraphs, inclusive, of section 17 of
825 chapter 40A shall govern the allowance of costs and the requirement of a surety or cash bond for
826 actions under this section.

827 SECTION 34. Said chapter 41 is hereby further amended by inserting after section
828 81GG the following section:-

829 Section 81HH. (a) Notwithstanding any general or special law to the contrary, a city or
830 town may, by 2/3 vote, to adopt an ordinance or by-law indicating the city's or town's intent to
831 regulate a minor subdivision consistent with this section.

832 (b) A minor subdivision shall, except as provided for in this section, be controlled by the
833 subdivision control law. An applicant for a minor subdivision may create up to 6 lots; provided,
834 however, that a local legislative body by a simple majority vote may increase the maximum
835 number of additional lots created in an application for a minor subdivision to a number greater
836 than 6.

837 (c) No application for a minor subdivision shall be: (i) subject to a public hearing if every
838 lot within the lot has frontage on an existing way; (ii) subject to the requirements of section 81S;
839 (iii) subject to requirements for the location of a way; (iv) subject to a requirement that total
840 travelled lanes' widths shall be greater than 22 feet in a residential minor subdivision; (v) subject

841 to a procedural or substantive requirement more stringent than those specified in this chapter or
842 contained in a city or town's local rules and regulations otherwise applicable to subdivisions; and
843 (vi) denied unless such denial is approved by a vote of 2/3 of the members of the planning board.

844 (d) For a minor subdivision on an existing way, the planning board shall take final action
845 and file with the city or town clerk a certificate of such action within 65 days. Failure to take
846 final action and file with the city or town clerk a certificate of such action within 65 days shall be
847 deemed an approval of a minor subdivision on an existing way.

848 (e) For a minor subdivision on a new way, the planning board shall take final action and
849 file with the city or town clerk a certificate of such final action within 95 days. Failure to take
850 final action and file such certificate within 95 days shall be deemed an approval of a minor
851 subdivision on a new way.

852 (f) Nothing in this section shall prohibit a city or town, subject to ratification by the local
853 legislative body by a simple-majority vote, from: (i) defining "minor subdivision" more broadly;
854 (ii) lessening or eliminating a requirement otherwise applicable to subdivisions; or (iii) creating a
855 means by which the planning board may, by agreement with the applicant, accept payments from
856 the applicant in lieu of otherwise required improvements to an existing way; provided, however,
857 that those improvements shall be completed by the city or town in a reasonable period of time.

858 (g) Notwithstanding any provision of this section, the owner of a parcel of land that is in
859 forest, agricultural or horticultural use and that has for at least the prior 2 years from the date of
860 application satisfied the statutory requirements for tax classification under chapter 61 or 61A,
861 may, in a 365-day period, submit to the planning board a plan of lots showing a division of the
862 parcel to create therefrom up to 2 additional lots as if the city or town had not adopted a minor

863 subdivision by-law or ordinance. The plan shall be accompanied by sufficient evidence upon
864 which the planning board shall find that the statutory requirements for tax classification of the
865 original parcel, other than the filing of an application, have been verified and that the number of
866 division lots created from the original parcel, including the lots shown on the plan, does not
867 cumulatively exceeded 6 lots. In any case where that area of the original parcel remaining after
868 any division under this paragraph would be insufficient to qualify the remaining original parcel
869 for tax classification, division lots created under this paragraph shall not exceed 2 acres or the
870 area required by the applicable zoning ordinance or by-law by more than 50 per cent, whichever
871 is greater. Where a division lot exceeds 2 acres or exceeds the area required by the applicable
872 zoning ordinance or by-law by more than 50 per cent, whichever is greater, the aggregate area of
873 all division lots shall not exceed 10 per cent of the total area of the original parcel as it existed on
874 the date of first application under this paragraph. Division lots created under this paragraph shall
875 be subject to the vested rights protections for minor subdivisions under the fifth paragraph of
876 section 6 of chapter 40A. Nothing in this paragraph shall prevent further division of any lots or
877 parcels under this chapter. Nothing in this paragraph shall be construed as a requirement to
878 retain the remainder parcel as open space to determine roll-back taxes under said chapter 61 or
879 61A. As used in this paragraph, an “original parcel” shall constitute the area of land bounded by
880 the parcel at the time of first application under this paragraph regardless of how later divided or
881 reconfigured. For the purposes of this paragraph, “original parcel” shall mean any parcel of land
882 that is in forest, agricultural or horticultural use and that has for at least 2 years prior to the date
883 of application satisfied the statutory requirements for tax classification under said chapter 61 or
884 chapter 61A, “division lots” shall mean the 2 additional lots divided from the original parcel
885 subject to the frontage requirements defined in section 81L under minor subdivisions and which

886 may be approved as if the city or town had not adopted a minor subdivision by-law or ordinance
887 and “remainder parcel” shall mean the area of the original parcel remaining after any division
888 under this paragraph.

889 SECTION 35. Section 3A of chapter 185 of the General Laws, as so appearing, is hereby
890 amended by striking out the third and fourth paragraphs and inserting in place thereof the
891 following 2 paragraphs:-

892 The permit session shall have original jurisdiction, concurrently with the superior court
893 department, over civil actions in whole or part: (1) based on or arising out of the appeal of any
894 municipal, regional, or state permit, order, certificate or approval, or the denial thereof,
895 concerning the use or development of real property for residential, commercial, or industrial
896 purposes (or any combination thereof), including without limitation appeals of such permits,
897 orders, certificates or approvals, or denials thereof, arising under or based on or relating to
898 chapter 21, sections 61 to 62H, inclusive, of chapter 30, chapters 30A, 40A to 40C, inclusive,
899 40R, 41, 43D, 91, 131, 131A, or sections 4 and 5 of chapter 249, or chapter 665 of the acts of
900 1956; or any local bylaw or ordinance; (2) seeking equitable or declaratory relief designed to
901 secure or protect the issuance of any municipal, regional, or state permit or approval concerning
902 the use or development of real property, or challenging the interpretation or application of any
903 municipal, regional, or state rule, regulation, statute, law, by-law, or ordinance concerning any
904 permit or approval; (3) claims under section 6F of chapter 231, or for malicious prosecution,
905 abuse of process, intentional or negligent interference with advantageous relations, or intentional
906 or negligent interference with contractual relations arising out of, based upon, or relating to the
907 appeal of any municipal, regional, state permit or approval concerning the use or development of
908 real property; and (4) any other claims between persons holding any right, title, or interest in land

909 and any municipal, regional or state board, authority, commission, or public official based on or
910 arising out of any action taken with respect to any permit or approval concerning the use or
911 development of real property but in all such cases of claims (1) to (4), inclusive, only if (a) the
912 action does not contain any claim of right to a jury trial, and (b) the underlying project or
913 development, in the case of a development that is residential or a mix of residential and
914 commercial components, involves either 25 or more dwelling units or the construction or
915 alteration of 25,000 square feet or more of gross floor area or both or, in the case of a
916 commercial or industrial development, involves the construction or alteration of 25,000 square
917 feet or more of gross floor area.

918 Notwithstanding any other general or special law to the contrary, any action not
919 commenced in the permit session, but within the jurisdiction of the permit session as provided in
920 this section, shall be transferred to the permit session upon the filing by any party of a notice
921 demonstrating compliance with the jurisdictional requirements of this section filed with the court
922 where the action was originally commenced with a copy to the chief justice of the land court.
923 Unless the court where the action was originally commenced receives notice within 10 days from
924 the land court that the case to be transferred does not meet the jurisdictional requirements of this
925 section, the original court shall transfer the case file to the land court permit session within 20
926 days after its receipt of the notice of transfer from the party. In the event the court receives
927 notice of noncompliance with jurisdictional requirements, the court where the action was
928 originally commenced shall decide the matter on motion filed by the party claiming
929 noncompliance. If a party to an action commenced in or transferred to the permit session claims
930 a valid right to a jury trial, then the action shall be transferred to the superior court for a jury trial.

931 SECTION 36. Section 4 of chapter 249 of the General Laws, as so appearing, is hereby
932 amended by striking out the second sentence and inserting in its place thereof the following
933 sentence:- Except as otherwise provided by law, such action shall be commenced within 60 days
934 after the proceeding complained of.

935 SECTION 37. A city or town that had adopted a zoning ordinance or by-law under
936 chapter 40A requiring a form of inclusionary zoning before the effective date of this act shall,
937 within 3 years after that effective date, revise the ordinance or by-law to conform to section 9F of
938 chapter 40A of the General Laws. Following 3 years after the effective date of this act, any
939 provision of such a preexisting inclusionary zoning ordinance or by-law that does not conform to
940 said section 9F of said chapter 40A shall only apply to the extent and in a manner consistent with
941 said section 9F of said chapter 40A.

942 SECTION 38. A master plan adopted pursuant to section 81D of chapter 41 of the
943 General Laws and in effect on or before the effective date of this act may continue in full force
944 and effect, including minor amendments to update or perfect the plan; provided, however, that
945 the plan shall be revised to conform to said section 81D of said chapter 41 within 10 years after
946 the effective date of this act.

947 SECTION 39. Any city or town that had adopted a zoning ordinance or by-law under
948 chapter 40A requiring site plan review before the effective date of this act shall, within 3 years
949 after that date, revise the ordinance or by-law to conform to section 9D of chapter 40A of the
950 General Laws. Following 3 years after the effective date of this act, any provision of a
951 preexisting site plan review ordinance or by-law that does not conform to said section 9D of said

952 chapter 40A shall only apply to the extent and manner consistent with said section 9D of said
953 chapter 40A.

954 SECTION 40. Any city or town that adopted a zoning ordinance or by-law relating to
955 zoning variances prior to the effective date of this act shall, within 3 years of the effective date of
956 this act, revise the ordinance or by-law to conform to section 10 of chapter 40A of the General
957 Laws, as amended by section 22. Three years after the effective date of this act, any provision of
958 a preexisting variance zoning ordinance or by-law that does not conform to said section 10 of
959 said chapter 40A shall only apply to the extent and manner that it is consistent with said section
960 10 of said chapter 40A.

961 SECTION 41. Any variance granted prior to the effective date of this act shall be
962 governed by the terms of the variance and shall run with the land unless a condition, safeguard or
963 limitation contained therein prescribes otherwise.

964 SECTION 42. Section 5 shall apply to local approvals submitted on or after July 1, 2017.

965 SECTION 43. Section 9E of chapter 40A, as inserted by section 21, shall take effect on
966 January 1, 2018.

967 SECTION 44. Sections 6 and 8 shall take effect on July 1, 2019.