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SENATE . . . . . No. 2327

Senate, June 9. 2016 – Text of the Senate Bill promoting housing and sustainable development (Senate, No. 2327) (being the text of Senate, No. 2311, printed as amended)

The Commonwealth of Massachusetts

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

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:

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

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

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

Section 31. (a) The secretary of housing and economic development, in consultation with the secretary of energy and environmental affairs, the secretary of transportation and the attorney general, following a public hearing and opportunity for stakeholder feedback, shall develop a municipal opt-in program to advance the state's economic, environmental and social well-being through enhanced planning for economic growth, land conservation, greenhouse gas emissions reductions, workforce housing creation and mobility. The program shall include guidelines and criteria to evaluate municipal applications. Applications meeting program guidelines and criteria shall receive status as a certified community. Certified communities shall be entitled to certain privileges and powers after the certified communities take actions defined in the program to encourage residential development, commercial or industrial development and the conservation of critical land and resources and, as appropriate, to provide incentives to entities seeking local permits and local land use approvals.

(b) The executive office of housing and economic development shall develop guidelines for a city or town to receive status as a certified community. The guidelines shall promote: (i) prompt and predictable permitting of commercial or industrial development within economic development districts that allow for an appropriate amount of development to proceed as of right and within a specific reasonable time; (ii) prompt and predictable permitting of residential development within residential development districts that allow for the appropriate amount of development to proceed as of right and within a specific reasonable time; (iii) open space residential design or cluster development as defined in section 1A of chapter 40A and developed in accordance with paragraph (2) of section 3A of said chapter 40A; (iv) low impact development techniques; (v) natural resource protection zoning in areas of significant natural or cultural resources; (vi) reductions in greenhouse gas emissions; (vii) development agreement

contracts between a municipality and a holder of development rights to express the responsibilities of both parties and conditions to which the development will be subject; (viii) consolidated hearings and permitting for large development projects; and (ix) joint applications from 2 or more contiguous municipalities who together meet the goals of the program and agree to the requirements of the program .

(c) A city or town may apply to the executive office of housing and economic development to become a certified community. A regional planning agency shall make itself available to a city or town during the application process to facilitate best practices. A regional planning agency, in consultation with stakeholders, shall develop model by-laws, ordinances and rules and regulations which may be used or incorporated by communities within the planning agency region in its application to the executive office of housing and economic development or the regional planning agency may recommend model by-laws, ordinances and rules and regulations for a specific community within the region which may be used or incorporated by a city or town in its application to the department.

(d) The executive office of housing and economic development shall develop criteria to evaluate a submission by a city or town to become a certified community. At the discretion of the executive office of housing and economic development, applications from a city or town with the endorsement of a regional planning agency may be presumed to meet the criteria or the endorsement may be favorably factored into a determination by the department. If the executive office of housing and economic development determines that it is unable to issue a certification, it shall provide the applicant with a written statement of the reasons for its determination and the applicant shall be allowed to reapply. A municipality’s certification shall be for a period of up to

10 years and may be renewed at the discretion of the executive office of housing and economic development.

(e) The executive office of housing and economic development shall develop incentives to encourage municipal participation in the program. Incentives shall be based upon the program guidelines and criteria. The incentives offered to municipalities may include, but shall not be limited to: (i) reducing the minimum vesting period for a definitive subdivision plan under section 6 of chapter 40A; (ii) authorizing zoning ordinances or bylaws that impose natural resource protection zoning that requires percentages of preserved land of 80 per cent or greater; and (iii) authorizing development impact fees imposed pursuant to section 9E of said chapter 40A to be applied to additional off-site public capital facilities; provided, however, that all impact fees shall have a rational nexus to, and shall be roughly proportionate to, the impacts created by the development, and shall otherwise comply with section 9E.

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

State agencies responsible for regulatory or capital spending programs that have a material effect on local land use and development shall take into account the land use goals,

objectives and policies as set forth in master plans adopted under section 81D of chapter 41 in administering regulatory or capital spending programs in certified communities.

When awarding discretionary funds for municipal infrastructure and land preservation investments within communities for which there exists a regional plan under section 5 of chapter 40B, under chapter 716 of the acts of 1989 or under chapter 831 of the acts of 1977, respectively, the commonwealth shall cause the awards to be consistent with the plan to the maximum extent feasible.

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

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

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

"By-right" or "as of right", development that may proceed under a zoning ordinance or by-law without the need for a special permit, variance, zoning amendment, waiver or other

discretionary zoning approval; provided, however, that “by-right” or “as of right” development may be subject to site plan review under section 9D.

“Cluster development or open space residential development”, a class of residential development in which reduced dimensional requirements allow the developed areas to be concentrated in order to permanently preserve open land for natural, agricultural or cultural resources elsewhere on the plot.

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

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

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

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

"Natural resource protection zoning", zoning ordinances or by-laws enacted principally to protect natural resources by establishing higher underlying density divisors relative to other areas, a formulaic method to calculate development rights and compact patterns of development so that a significant majority of the land remains permanently undeveloped and available for agriculture, forestry, recreation, watershed management, carbon sequestration, wildlife habitat or other natural resource values.

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

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

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

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

Section 1B. (a) This chapter shall be construed to give full effect to the home rule authority of cities and towns. Nothing in this chapter shall be construed as limiting the constitutional authority of cities and towns unless expressly stated by this chapter. Wherever the language of this chapter purports to authorize or enable, it shall be so construed only where such

authority is not otherwise available to cities and towns under the constitution or laws of the commonwealth, and in all other cases such language shall be considered illustrative only.

(b) Nothing in this chapter shall limit the authority of the regional planning agencies under chapter 716 of the acts of 1989, chapter 561 of the acts of 1973 and chapter 831 of the acts of 1977 or of any municipality within Barnstable or Nantucket County or the county of Dukes County acting under said chapter 716, said chapter 561 and said chapter 831 including, but not limited to, the designation of districts of critical planning concern, the adoption of regulations for such districts, the review of developments of regional impact and the imposition development impact fees. If this chapter or a regulation issued pursuant to this chapter conflicts with these special acts and any regulations, ordinances, regional policy plans or decisions issued or adopted under these special acts, the latter shall control.

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

No zoning ordinance or by-law shall prohibit or require a special permit for the use of land or structures for an accessory dwelling unit located internally within a single-family dwelling or the rental thereof on a lot not less than 5,000 square feet or on a lot of sufficient area to meet the requirements of title 5 of the state environmental code established by section 13 of chapter 21A, if applicable; provided, however, that such land or structures may be subject to reasonable regulations concerning dimensional setbacks, screening and the bulk and height of structures. The zoning ordinance or by-law may require that the principal dwelling or the accessory dwelling unit be continuously owner-occupied and may limit the total number of accessory dwelling units in the municipality to not less than 5 per cent of the total non-seasonal

single-family housing units in the municipality. Not more than 1 additional parking space shall be required for an accessory dwelling unit; provided, however, that, if parking is required for the principal dwelling, that parking shall be retained or replaced. As used in this paragraph, "accessory dwelling unit" shall mean a self-contained housing unit, inclusive of sleeping, cooking and sanitary facilities, incorporated within the same structure as the principal dwelling that: (i) maintains a separate entrance, either directly from the outside or through an entry hall or corridor shared with the principal dwelling sufficient to meet the requirements of the state building code for safe egress; (ii) shall not be sold separately from the principal dwelling; and (iii) is not larger in floor area than 1/2 the floor area of the principal dwelling or 900 square feet, whichever is smaller. Exterior alterations of the principal dwelling to allow separate primary or emergency access to the accessory dwelling unit shall be allowed without a special permit if such alterations are within applicable dimensional setback requirements. Nothing in this paragraph shall authorize an accessory dwelling unit to violate or avoid compliance with the building, fire, health or sanitary codes, historic or wetlands laws, ordinances or by-laws or title 5 of the state environmental code established by said section 13 of said chapter 21A, if applicable. The department of housing and community development may by regulation exempt a municipality from this paragraph if the department determines that: (1) the municipality has a number of multifamily units greater than required under section 3A by a number of housing units not less than 5 per cent of the total non-seasonal housing units in the municipality; or (2) housing sale prices in the municipality have declined over the previous 3-year period.

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

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

"Department", the department of housing and community development.

"Eligible locations", as defined in section 2 of chapter 40R.

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

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

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

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

(b) Zoning ordinances and by-laws shall provide at least 1 district of reasonable size in which multi-family housing is a permitted use as of right, which may include business, commercial or mixed use zones in eligible locations. For the purposes of this paragraph, "district" shall: (i) include multi-family housing without age restrictions which is suitable for families with children; (ii) have a minimum gross density of 8 units per acre in rural towns and a minimum gross density of 14units per acre in all other municipalities, subject to any further limitations imposed by section 40 of chapter 131 and title 5 of the state environmental code established by section 13 of chapter 21A; provided, however, that multi-family housing districts

shall align to the extent possible with existing or planned water, sewer and transportation infrastructure; (iii) be in eligible locations; and (iv) accommodate a reasonable share of the regional need for multi-family housing.

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

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

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

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

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

A municipality may require either a yield plan or a calculation that deducts for roadways, wetlands and other site constraints in order to determine the yield of housing units in an open space residential development. The open land may be situated to promote and protect maximum solar access within the development. The open land shall either be conveyed to the city or town and accepted by it for park or open space use or be conveyed to a nonprofit organization the principal purpose of which is the conservation of open space or be conveyed to a corporation or trust owned or to be owned by the owners of lots or residential units within the development. If the corporation or trust is utilized, ownership thereof shall pass with conveyances of the lots or residential units. Where the land is not conveyed to the city or town or other governmental agency as dedicated open space, a restriction under sections 31 to 33, inclusive, of chapter 184 shall be recorded.

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

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

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

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

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

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

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

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

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

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

If a complete application for a building permit or special permit is duly submitted and received, including receipt of payment for any applicable fees, and written notice of the submission has been given to the city or town clerk before the first publication of notice of the public hearing on the ordinance or by-law as required by section 5, the permit shall be governed by the applicable provisions of the zoning ordinance or by-law, if any, in effect at the time of the

first submission and receipt while any permit is being processed and, if the permit or an amendment of the permit is finally approved, for 2 years in the case of a building permit and 3 years in the case of a special permit from the date of the granting of approval. The period of 2 or 3 years shall be extended by a period equal to the time a city or town imposes or has imposed upon it by a state, a federal agency or a court, a moratorium on construction, the issuance of permits or utility connections.

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

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

If a complete application for a definitive plan, or a preliminary plan followed within 7 months by a definitive plan that is substantially similar to the preliminary plan, is duly submitted to a planning board for approval under the subdivision control law and written notice of the submission has been given to the city or town clerk before the public hearing on the ordinance or by-law required by section 5, the land on the plan shall be governed by the applicable provisions of the zoning ordinance or by-law, if any, in effect at the time of the first submission while any plan is being processed under the subdivision control law and, if the definitive plan or an amendment to the definitive plan is finally approved, for 8 years from the date of the endorsement of the approval; provided, however, that in the case of a minor subdivision in a city or town that has accepted section 81HH of chapter 41, the applicable provisions of the zoning ordinance or by-law shall govern for 4 years from the date of the endorsement of approval. The period of 8 or 4 years shall be extended by a period equal to the time which a city or town

imposes or has imposed upon it by a state, a federal agency or a court, a moratorium on construction, the issuance of permits or utility connections.

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

SECTION 17. Said section 9 of said chapter 40A, as so appearing, is hereby further amended by inserting after the word “seven”, in line 241, the following words:- “; provided, however, that a city or town may amend its by-laws to provide that issuance of a special permit shall require an affirmative vote of not less than a simple majority of the special permit granting authority.

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

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

Upon written application by the grantee of a special permit, the special permit-granting authority, in its discretion, and after notice and a public hearing, unless under local ordinance or

by-law a public hearing is not required, vote by a majority to extend the time for the exercise of a special permit for a period of time not to exceed the original duration of the special permit. The application shall be filed not later than 65 days before the lapse of the special permit. If the permit granting authority does not grant the extension within 65 days of the date of application therefor, upon the lapse of the special permit, the special permit shall only be re-established pursuant to the requirements of this section.

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

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

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

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

(b) A zoning ordinance or by-law that requires site plan review for uses allowed by-right shall: (i) establish the different types, scales or categories of uses of land, structures or development subject to site plan review; (ii) specify the local boards or officials charged with reviewing and approving site plans which may differ for different types, scales or categories of uses of land or structures; (iii) set forth what shall be considered a complete application; (iv)

establish the process for submission, review and approval for a site plan; (v) establish standards and criteria by which the project and its direct adverse impacts on that portion of properties and public infrastructure located within 300 feet of the parcel boundary shall be evaluated; and (vi) include provisions making the terms, conditions and content of the approved site plan enforceable by the municipality which may include the requirement of performance guarantees.

(c) Approval of a site plan under this section, if reviewed by a board, shall require not more than a simple majority vote of the full board and shall be made within the time limits prescribed by ordinance or by-law not to exceed 120 days from the filing of a complete application. Procedures for the administrative review and approval of a site plan by staff or other municipal officials shall be as specified in the ordinance or by-law but the 120-day time limit for a decision shall not be increased unless granted in writing by the person seeking the site plan approval. If no decision is issued within the time limit prescribed and no written extension of the time limit has been granted by the person seeking the site plan review, the site plan shall be deemed constructively approved as provided in section 9; provided, however, that the petitioner shall comply with the constructive approval procedures under said section 9. Copies of the approved site plan submission shall be kept on file by the town or city clerk, the permit granting authority and the municipal building department.

(d) A site plan submitted for the use of specific land or structures allowed by-right shall not be denied unless: (i) the proposed site plan cannot be conditioned to meet the requirements set forth in the zoning ordinance or by-law; (ii) the applicant fails to submit the information and fees required by the zoning ordinance or by-law necessary for an adequate and timely review of the design of the proposed land or structures; or (iii) there is no feasible site design change or condition that would adequately mitigate any direct adverse impacts of the proposed

improvements on that portion of properties and public infrastructure located within 300 feet of the parcel boundary.

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

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

(g) Except where site plan review is required in connection with the issuance of a special permit, variance or other discretionary zoning approval, decisions made under this section may be appealed pursuant to section 4 of chapter 249. Such civil action may be brought in the superior court or in the land court and shall be commenced within 20 days after the filing of the decision of the site plan review approving authority with the city or town clerk. Notice of such appeal must be given to the city or town clerk so as to be received within 20 days. A complaint by a plaintiff challenging a site plan approval under this section shall allege the specific reasons

why the project failed to satisfy the requirements of this section, the zoning ordinance or by-law or other applicable law and shall allege specific facts establishing how the plaintiff is aggrieved by such decision. A complaint by an applicant for site plan review challenging the denial or conditioned approval of a site plan shall similarly allege the specific reasons why the project properly satisfied the requirements of this section, the zoning ordinance or by-law or other applicable law.

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

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

(j) Where an ordinance or by-law provides that a variance, special permit or other discretionary zoning approval shall also require site plan review, the review of the site plan shall be integrated into the processing of the variance, special permit or other discretionary zoning

approval and shall not be made the subject of a separate proceeding, hearing or decision. In such a case, the content requirements and approval criteria for a site plan as specified in the zoning ordinance or by-law shall be followed but this section shall not otherwise apply.

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

(b) Development impact fees shall be limited to mitigating the impact of the development on the following capital facilities: (i) water supply, treatment and distribution, both potable and for suppression of fires; (ii) wastewater treatment and sanitary sewerage; (iii) drainage, storm water management and treatment; (iv) solid waste; (v) roads, intersections, traffic improvements, public transportation, pedestrian ways and bicycle paths; (vi) parks and recreational facilities; and (vii) publicly owned or publicly financed electric power generation or transmission. Impact fees may be expended on such facilities for the payment of debt service or for studies with a rational nexus to the development, including master plans made in accordance with section 81D of chapter 41 and proportionate share impact fee studies under section 9F. A development impact fee shall not be assessed or expended for personnel costs, normal operation and maintenance costs or to remedy deficiencies in existing facilities; provided, however, that an

impact fee may be assessed for mitigation on a facility with a preexisting deficiency to the extent that the preexisting deficiency is exacerbated and not solely to remedy the preexisting deficiency.

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

Development impact fees shall be proportionately reduced to the extent that a municipality imposes other fees or requirements, otherwise imposed by law, for mitigation of development including, but not limited to, fees imposed under chapter 40C and section 40 of chapter 131. No fee shall be assessed more than once for the same impact. If, and to the extent that, a municipality receives state or federal funds for mitigation of the development impacts or other grants or contributions for mitigation of development impacts, those funds shall be accounted for in the development impact fee or applied to the development impact fee proportional share development impact study.

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

development impact fee shall be paid to the general treasury or used as general expenses of the city or town.

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

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

(f) No development impact fee shall be assessed unless it is assessed pursuant to a valid proportionate-share development impact fee study. A proportionate-share development impact fee study shall establish the proportionate share development impact fee for capital facilities and detail the methodology used to set the fee. The scope of the study may be jurisdiction-wide or limited to a geographic area or category of public capital facilities that development impact fees may be intended to address. A municipality may rely upon credible and professionally recognized methodologies for the study. The study shall be updated not less than every 10 years to reflect actual development activity, actual costs of infrastructure improvements completed or underway, plan changes or amendments to the zoning ordinance or by-law. The study shall

identify any preexisting deficiencies in the public capital facilities and shall set forth a feasible implementation plan for how those deficiencies shall be remedied. A proportionate share development impact fee study shall not be valid and no development impact fees shall be assessed if 10 years have passed since the study's creation or its most recent update.

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

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

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

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

(c) In lieu of constructing the required inclusionary housing units onsite, the ordinance or by-law may provide for the construction of such units off-site, the dedication of land for that purpose or the payment of funds to a separate account created by the city or town sufficient for and dedicated to inclusionary housing if the applicant demonstrates to the satisfaction of the local

approving authority that the units cannot be otherwise provided onsite or that an alternative proposal better meets the needs of the city or town with respect to the provision of inclusionary housing. Off-site units, land dedication or payment in lieu of units, in the opinion of the board or official designated by ordinance or by-law to administer this section and in consideration of local needs, shall provide inclusionary housing benefits substantially equivalent to the provision of onsite units.

(d) A city or town may establish a separate dedicated account for the deposit of funds received under this section, including a Municipal Affordable Housing Trust Fund account under section 55C of chapter 44 or other dedicated accounts of similar purpose. These funds shall be deposited with the treasurer and disbursed for inclusionary housing in accordance with the ordinances, by-laws or regulations of the city or town. If the application of this section results in less than a full dwelling unit, the board may accept a prorated payment of funds in lieu of unit creation.

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

(f) The ordinance or by-law may require some or all of the inclusionary housing units to be low-income or moderate-income housing as defined in sections 20 to 23, inclusive, of chapter 40B, and shall be eligible for inclusion on the local subsidized housing inventory subject to and in accordance with applicable regulations and guidelines of the department of housing and

community development. Nothing in this section shall require the department to include affordable units created under this section on the subsidized housing inventory.

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

If the applicant and the public official or local board agree to a land use dispute avoidance process, the mediator or facilitator for the dispute avoidance process may convene meetings or conduct interviews that shall be confidential and privileged from discovery in accordance with section 23C of chapter 233. The mediator or facilitator shall have the protections provided under said section 23C of said chapter 233. To the extent that public bodies are participants, their deliberations may be held in executive session to the extent permitted by clause 9 of subsection (a) of section 21of chapter 30A.

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

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

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

In making its determination, the permit-granting authority shall take into consideration the benefit to the applicant if the variance is granted as well as the detriments to the health, safety and welfare of the neighborhood or community if the variance is granted. The permit-granting authority shall also consider if: (i) the benefit sought by the applicant can be achieved by another method feasible for the applicant to pursue, other than a variance; (ii) the variance will have a disproportionately adverse effect on nearby properties, the character of the neighborhood or the environment; (iii) the variance will nullify or substantially derogate from the intent or purpose of the ordinance or by-law or a master plan under section 81D of chapter 41 if a master plan is in effect; and (iv) the claimed difficulty relating to the property in question is unique and does not also apply to a substantial portion of the district or neighborhood. The permit-granting authority may also take into consideration the extent to which the claimed difficulty is self-created and may base a denial solely upon a finding that the claimed difficulty is self-created. In the granting

of variances, the permit-granting authority shall grant the minimum variance that it deems necessary to relieve the difficulty.

Except where local ordinances or by-laws expressly permit variances for use, no variance may authorize a use or activity not otherwise permitted in the district in which the land or structure is located. No variance may authorize a use or activity not otherwise permitted in the district in which the land or structure is located unless the permit-granting authority specifically finds that owing to circumstances relating to the soil conditions, shape or topography of the land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant and that desirable relief may be granted without detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law. Variances for use shall be subject to all of this section and any more stringent criteria contained in an ordinance or by-law. Variances for use properly granted prior to January 1, 1976 but limited in time, may be extended on the same terms and conditions that were in effect for that variance upon the effective date.

The permit-granting authority may impose conditions, safeguards and limitations on the time and use of a variance, including on the continued existence of particular structures; provided, however, that the permit-granting authority shall not impose conditions, safeguards or limitations based on the continued ownership of the land or structures to which the variance pertains by the applicant, petitioner or an owner.

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

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

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

The court, in its discretion, may require non-municipal plaintiffs in an action under this section to post a surety or cash bond in an amount not to exceed $15,000 or the bond requirement in section 11 of chapter 40R, whichever is greater, to secure the payment of costs in appeals of decisions approving special permits, variances and site plans where the court finds that the harm to the defendants or to the public interest resulting from the delays of appeal outweighs the burden of the surety or cash bond on the plaintiffs. When making a decision regarding surety or cash bond requirements, the court may consider the relative merits of the appeal and the relative financial means of the appellant and the defendants.

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

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

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

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

(i) goals and objectives statement of the municipality for its future growth, development, redevelopment, conservation and preservation; provided, however, that each community shall conduct a public participation process to determine community values, establish goals and identify patterns of development, redevelopment, conservation and preservation

consistent with these goals; and provided further, that at a minimum, the goals and objectives statement shall address the elements required to be included in the plan;

(ii) a housing element that shall include: (A) an inventory of local demographic characteristics, an assessment and forecast of housing needs and a statement of local housing policies; (B) an analysis of housing units by type of structure, affordable housing and subsidized housing, housing available for rental, special needs housing and housing for the elderly; (C) an assessment of existing local policies, programs, laws or regulations that encourage the preservation, improvement and development of housing; and (D) an evaluation of zoning and other land use policies designed to meet local housing needs including, but not limited to, the affordable housing needs of low, moderate and median income households and the accessible housing needs of people with disabilities and special needs; provided, however, that a current housing production plan consistent with sections 20 to 23, inclusive, of chapter 40B or any regulations thereto may fulfill the evaluation requirement of this clause;

(iii) a natural resources and energy management element that shall include: (A) identification of the significant natural and energy resources of the municipality; (B) identification of protected and unprotected wetlands and water resources, lands critical to sustaining surface and groundwater quality and quantity, environmentally sensitive lands, critical wildlife habitat and biodiversity, agricultural lands and forests, protection of wildlife habitat, water resources, vistas and key landscapes, outdoor recreation facilities and farm and forestry land; provided, however, that in cities and towns with agricultural commissions created by the legislative or executive body of the city or town, those elements of the plan dealing with agricultural topics shall be prepared jointly by the agricultural commission and the planning board; (C) an examination of local laws, regulations, policies and strategies to address needs for

the protection, restoration and sustainable management of natural resources; and (D) an evaluation of locally feasible land use and development strategies to maximize energy efficiency and renewable energy, support land, energy, water and materials conservation strategies, local clean power generation, distributed generation technologies and innovative industries and reduce greenhouse gas emissions and the consumption of fossil fuels;

(iv) a land use and zoning element that includes: (A) an identification of historic settlement patterns and present land uses and designation of the proposed distribution, location and interrelationship of public and private land uses; (B) land use policies and related maps which shall be based upon a land use suitability analysis identifying areas most suitable for development and related transportation infrastructure and facilities; (C) growth and development areas that support the revitalization of city and town centers and neighborhoods by promoting development that is compact and walkable, cyclable, conducive to the use of public transportation, conserves land, protects historic resources, integrates uses and coordinates the provision of housing with the location of jobs, transit and services and new infrastructure; (D) an identification of areas for economic development and job creation, related public and private transportation and pedestrian connections and the creation or extension of pedestrian-accessible districts and neighborhoods that mix commercial, civic, cultural, educational and recreational activities with open space and housing; (E) consideration of the relationship between proposed development intensity and the capacity of land and existing and planned public facilities and infrastructure; and (F) a land use map illustrating the land use policies and desired future development patterns of the municipality and a proposed zoning map; and

(v) an implementation program element that defines and prioritizes the actions necessary to achieve the goals and objectives of the master plan; provided, however, that the

implementation program shall specify the recommended course of action by which the municipality's regulatory structures, including zoning and subdivision control regulations, may need to be amended in order to be consistent with the master plan.

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

(i) an economic development element that includes: (A) an inventory and analysis of the local economic base; (B) an assessment of opportunities and barriers to economic development; (C) an assessment of opportunities and barriers to agriculture, including all branches of farming and forestry; and (D) an assessment of opportunities and barriers to self-employment and home-based occupations;

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

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

(iv) an infrastructure and capital facilities element to identify and analyze existing and forecasted needs for infrastructure and facilities used by the public; provided, however, that the element shall detail scheduled expansion or replacement of public facilities,

infrastructure components or circulation system components and the anticipated costs and revenues associated with those activities;

(v) a transportation element including: (A) an inventory of existing and proposed circulation, parking and transportation systems; (B) an assessment of opportunities and barriers to increasing access to transportation options, including land and water-based public transit, bicycling, walking, and transportation services for populations with disabilities; and (C) identification of strategic investment options for transportation infrastructure to encourage smart growth, maximize mobility, conserve fuel, reduce greenhouse gas emissions and improve air quality and to facilitate the location of new development where a variety of transportation modes can be made available;

(vi) a water management element that includes: (A) an inventory of current and potential municipal sources of water supply, including capacity and safe yield and an assessment of water demand including types of water users, changes in water consumption over time and water billing rate structure; (B) an assessment of the adequacy of existing and proposed water supplies to meet projected demands, water quality and treatment issues, existing measures for water supply protection, water conservation drought management and emergency interconnections; (C) an assessment of the ability of stormwater regulations and practices to limit off-site stormwater runoff to levels substantially similar to natural hydrology through decentralized management practices and the protection of onsite natural features; (D) an analysis of municipal need and capacity for wastewater disposal, including the suitability of sites and water bodies for the discharge of treated wastewater; and (E) recommended strategies for water supply provision and protection, water conservation, wastewater disposal, stormwater

management, drought management and emergency interconnections and needed improvements to meet future water resource needs; and

(vii) a public health element that includes: (A) an inventory of conditions and assets in the natural and built environment which contribute to or constitute a barrier to health, including a description of conditions with a disproportionate impact on residents based on geography, ethnicity, race, age, socioeconomic status, disability status, immigration status or other characteristics; (B) an assessment of opportunities and barriers to increasing access to conditions and assets in the natural or built environment that contribute to health; and (C) recommendations of available implementation policies and strategies, including zoning and other local laws and regulations, affecting health needs related to the natural or built environment.

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

(e) A master plan shall only be made, extended, revised or remade by a simple majority vote of the planning board after a public hearing, notice of which shall be posted and published in the manner prescribed for zoning amendments under section 5 of chapter 40A. Following any vote of the planning board, the planning board shall transmit the plan to the chief executive officer of the city or town and the plan shall be an agenda item or warrant article on a subsequent legislative session of the city or town. Adoption of the plan or the extension, revision or remake of the plan, including any vote of the legislative body to alter the plan or amendment as proposed by the planning board, shall be by a simple majority vote of the legislative body of the city or town. The planning board, upon adoption by the legislative body of a plan or report or any

change or amendment to a plan or report produced under this section, shall furnish a copy of the plan or report or any change or amendment to the department of housing and community development.

(f) A municipality in Barnstable County or the county of Dukes County may adopt a local comprehensive plan pursuant to chapter 716 of the acts of 1989 or chapter 831 of the acts of 1977 and the regulations and regional policy plans adopted thereunder. The regional planning agency shall review the local comprehensive plan solely for consistency with the governing special act and any applicable regulations and regional policy plans; provided, however, that the time requirements of this section shall not apply to the review of local comprehensive plans. An adopted local comprehensive plan certified by the regional planning agency as consistent with this section shall be deemed a master plan in compliance with this section and shall entitle the municipality to any statutory benefits of having an adopted master plan.

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

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

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

"Minor subdivision", in accordance with section 81HH, the division of a lot, tract or parcel of land into 2 or more lots, tracts or parcels where, at the time when it is made, every lot within the lot, tract or parcel so divided has frontage on: (i) a public way or a way which the clerk of the city or town certifies is maintained and used as a public way; (ii) a way shown on a plan approved and endorsed in accordance with the subdivision control law; or (iii) a way in existence when the subdivision control law became effective in the city or town in which the land lies having, in the opinion of the planning board, sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby and for the installation of municipal services to serve the land and the buildings erected or to be erected thereon; provided, however, that the frontage shall be of at least the distance as is then required by the zoning ordinance or by-law, if any, of the city or town for erection of a building on the lot and, if no distance is so required, the frontage shall be of at least 20 feet.

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

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

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

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

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

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

The register of deeds and the land court shall accept for recording and the land court shall accept with a petition for registration any plan showing a change in the line of any lot, tract or parcel bearing a professional opinion by a registered professional land surveyor and a certificate by the person or board charged with the enforcement of the zoning ordinance or by-law of the city or town that the property lines shown: (i) do not create an additional building lot; (ii) do not create, add to or alter the lines of a street or way; (iii) do not render an existing legal lot or structure illegal; (iv) do not render an existing nonconforming lot or structure more nonconforming; and (v) are not subject to alternative local rules and regulations for minor subdivisions under section 81HH. A request for such a certificate shall be acted upon within 21

days and shall not be withheld unless a finding is made that the plan violates any of the aforesaid criteria and the finding is stated in writing to the person making the request. Failure to so act within 21 days shall be deemed an approval of the lot line change. All plans, if approved and as recorded, shall be filed with the planning board and the board of assessors of the city or town. The recording of such a plan shall not relieve any owner from compliance with the subdivision control law or any other applicable law.

SECTION 33. Paragraph 1 of section 81BB of said chapter 41, as so appearing, is hereby amended by striking out the second and third sentences and inserting in place thereof the following 4 sentences:- Such civil action shall be in the nature of certiorari pursuant to section 4 of chapter 249. A complaint by a plaintiff challenging a subdivision or minor subdivision approval under this section shall allege the specific reasons why the subdivision or minor subdivision fails to satisfy the requirements of the board's rules and regulations or other applicable law and allege specific facts establishing how the plaintiff is aggrieved by the decision. A complaint by an applicant challenging a subdivision or minor subdivision denial or conditioned approval under this section shall similarly allege the specific reasons why the subdivision or minor subdivision properly satisfies the requirements of the board's rules and regulations or other applicable law. The fourth to seventh paragraphs, inclusive, of section 17 of chapter 40A shall govern the allowance of costs and the requirement of a surety or cash bond for actions under this section.

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

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

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

(c) No application for a minor subdivision shall be: (i) subject to a public hearing if every lot within the lot has frontage on an existing way; (ii) subject to the requirements of section 81S; (iii) subject to requirements for the location of a way; (iv) subject to a requirement that total travelled lanes' widths shall be greater than 22 feet in a residential minor subdivision; (v) subject to a procedural or substantive requirement more stringent than those specified in this chapter or contained in a city or town's local rules and regulations otherwise applicable to subdivisions; and (vi) denied unless such denial is approved by a vote of 2/3 of the members of the planning board.

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

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

final action and file such certificate within 95 days shall be deemed an approval of a minor subdivision on a new way.

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

(g) Notwithstanding any provision of this section, the owner of a parcel of land that is in forest, agricultural or horticultural use and that has for at least the prior 2 years from the date of application satisfied the statutory requirements for tax classification under chapter 61 or 61A, may, in a 365-day period, submit to the planning board a plan of lots showing a division of the parcel to create therefrom up to 2 additional lots as if the city or town had not adopted a minor subdivision by-law or ordinance. The plan shall be accompanied by sufficient evidence upon which the planning board shall find that the statutory requirements for tax classification of the original parcel, other than the filing of an application, have been verified and that the number of division lots created from the original parcel, including the lots shown on the plan, does not cumulatively exceed 6 lots. In any case where that area of the original parcel remaining after any division under this paragraph would be insufficient to qualify the remaining original parcel for tax classification, division lots created under this paragraph shall not exceed 2 acres or the area required by the applicable zoning ordinance or by-law by more than 50 per cent, whichever is greater. Where a division lot exceeds 2 acres or exceeds the area required by the applicable zoning ordinance or by-law by more than 50 per cent, whichever is greater, the aggregate area of

all division lots shall not exceed 10 per cent of the total area of the original parcel as it existed on the date of first application under this paragraph. Division lots created under this paragraph shall be subject to the vested rights protections for minor subdivisions under the fifth paragraph of section 6 of chapter 40A. Nothing in this paragraph shall prevent further division of any lots or parcels under this chapter. Nothing in this paragraph shall be construed as a requirement to retain the remainder parcel as open space to determine roll-back taxes under said chapter 61 or 61A. As used in this paragraph, an "original parcel" shall constitute the area of land bounded by the parcel at the time of first application under this paragraph regardless of how later divided or reconfigured. For the purposes of this paragraph, "original parcel" shall mean any parcel of land that is in forest, agricultural or horticultural use and that has for at least 2 years prior to the date of application satisfied the statutory requirements for tax classification under said chapter 61 or chapter 61A, "division lots" shall mean the 2 additional lots divided from the original parcel subject to the frontage requirements defined in section 81L under minor subdivisions and which may be approved as if the city or town had not adopted a minor subdivision by-law or ordinance and "remainder parcel" shall mean the area of the original parcel remaining after any division under this paragraph.

SECTION 34A. Section 4 of chapter 151B of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by adding the following paragraph:-

20. For a local or state administrative, legislative or regulatory body or instrumentality to engage in a discriminatory land use practice. For the purposes of this paragraph, a "discriminatory land use practice" shall mean: (i) enacting or enforcing any land use regulation, policy or ordinance; (ii) making a permitting or funding decision with respect to housing or proposed housing; or (iii) taking any other action the purpose or effect of which would limit or

exclude: (a) housing accommodations for families or individuals with incomes at or below 80 per cent of the area median income as defined by the United States Department of Housing and Urban Development; (b) housing accommodations with sufficient bedrooms for families with children; or (c) families or individuals based on race, color, religious creed, national origin, sex, gender identity, sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, age, genetic information, ancestry, marital status, veteran status or membership in the armed forces, familial status, disability condition, blindness, hearing impairment or because a person possesses a trained dog guide as a consequence of blindness, hearing impairment or other handicap.

It shall not be a violation of this chapter if a local government entity whose action or inaction has an unintended discriminatory effect proves that the action or inaction was motivated and justified by a substantial, legitimate, nondiscriminatory, bona fide governmental interest and the complaining party is unable to prove that those interests can be served by any other practice that has a less discriminatory effect.

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

The permit session shall have original jurisdiction, concurrently with the superior court department, over civil actions in whole or part: (1) based on or arising out of the appeal of any municipal, regional, or state permit, order, certificate or approval, or the denial thereof, concerning the use or development of real property for residential, commercial, or industrial purposes (or any combination thereof), including without limitation appeals of such permits,

orders, certificates or approvals, or denials thereof, arising under or based on or relating to chapter 21, sections 61 to 62H, inclusive, of chapter 30, chapters 30A, 40A to 40C, inclusive, 40R, 41, 43D, 91, 131, 131A, or sections 4 and 5 of chapter 249, or chapter 665 of the acts of 1956; or any local by-law or ordinance; (2) seeking equitable or declaratory relief designed to secure or protect the issuance of any municipal, regional, or state permit or approval concerning the use or development of real property, or challenging the interpretation or application of any municipal, regional, or state rule, regulation, statute, law, by-law, or ordinance concerning any permit or approval; (3) claims under section 6F of chapter 231, or for malicious prosecution, abuse of process, intentional or negligent interference with advantageous relations, or intentional or negligent interference with contractual relations arising out of, based upon, or relating to the appeal of any municipal, regional, state permit or approval concerning the use or development of real property; and (4) any other claims between persons holding any right, title, or interest in land and any municipal, regional or state board, authority, commission, or public official based on or arising out of any action taken with respect to any permit or approval concerning the use or development of real property but in all such cases of claims (1) to (4), inclusive, only if (a) the action does not contain any claim of right to a jury trial, and (b) the underlying project or development, in the case of a development that is residential or a mix of residential and commercial components, involves either 25 or more dwelling units or the construction or alteration of 25,000 square feet or more of gross floor area or both or, in the case of a commercial or industrial development, involves the construction or alteration of 25,000 square feet or more of gross floor area.

Notwithstanding any other general or special law to the contrary, any action not commenced in the permit session, but within the jurisdiction of the permit session as provided in

this section, shall be transferred to the permit session upon the filing by any party of a notice demonstrating compliance with the jurisdictional requirements of this section filed with the court where the action was originally commenced with a copy to the chief justice of the land court. Unless the court where the action was originally commenced receives notice within 10 days from the land court that the case to be transferred does not meet the jurisdictional requirements of this section, the original court shall transfer the case file to the land court permit session within 20 days after its receipt of the notice of transfer from the party. In the event the court receives notice of noncompliance with jurisdictional requirements, the court where the action was originally commenced shall decide the matter on motion filed by the party claiming noncompliance. If a party to an action commenced in or transferred to the permit session claims a valid right to a jury trial, then the action shall be transferred to the superior court for a jury trial.

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

SECTION 36A. Notwithstanding any general or special law to the contrary, there shall be a special commission to study the use and effectiveness of the zoning approval process of educational uses under section 3 of chapter 40A of the General Laws.

The commission shall consist of the secretary of housing and economic development or a designee; the secretary of the executive office of education or a designee; 2 members appointed by the president of the senate, including the senate chair of the joint committee on municipalities and regional government and the senate chair of the joint committee on housing; 1 member

appointed by the senate minority leader; 2 members appointed by the speaker of the house of representatives, including the house chair of the joint committee on municipalities and regional government and the house chair of the joint committee on housing; 1 member appointed by the house minority leader; and 5 members to be appointed by the governor, 1 of whom shall be a local official with expertise in zoning, 1 of whom shall be a member of a non-profit social services agency, 1 of whom shall be a member of a non-profit school or higher education institution, 1 of whom shall be a member of an independent non-profit primary or secondary school and 1 of whom shall be a member of an association that represents community-based early education programs.

The commission shall study the impact of the education exemption provided by said section 3 of said chapter 40A on municipalities and nonprofit education institutions, which shall include a review of the types of building projects sited under the protection of that educational exemption and the case law decided based on the educational exemption. The commission shall solicit public testimony by holding public hearings or through surveys.

The commission shall file the results of its study, together with recommendations for legislation, which shall include a proposed definition of "educational purposes", with the clerks of the senate and house of representatives not later than June 30, 2017.

SECTION 36B. The executive office of housing and economic development shall promulgate regulations necessary and appropriate to implement section 31 of chapter 23B of the General Laws not later than 180 days after the effective date of this act.

SECTION 37. A city or town that had adopted a zoning ordinance or by-law under chapter 40A requiring a form of inclusionary zoning before the effective date of this act shall,

within 3 years after that effective date, revise the ordinance or by-law to conform to section 9F of chapter 40A of the General Laws. Following 3 years after the effective date of this act, any provision of such a preexisting inclusionary zoning ordinance or by-law that does not conform to said section 9F of said chapter 40A shall only apply to the extent and in a manner consistent with said section 9F of said chapter 40A.

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

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

SECTION 40. Any city or town that adopted a zoning ordinance or by-law relating to zoning variances prior to the effective date of this act shall, within 3 years of the effective date of this act, revise the ordinance or by-law to conform to section 10 of chapter 40A of the General Laws, as amended by section 22. Three years after the effective date of this act, any provision of a preexisting variance zoning ordinance or by-law that does not conform to said section 10 of

said chapter 40A shall only apply to the extent and manner that it is consistent with said section 10 of said chapter 40A.

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

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

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

SECTION 44. Sections 6 and 8 shall take effect on July 1, 2019; provided, however, that subsection (c) of paragraph (1) of section 3A of chapter 40A of the General Laws, as appearing in said section 6, shall take effect on the effective date of this act.