The Commonwealth of Massachusetts

PRESENTED BY:

Stephen Kulik and Sarah K. Peake

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act building for the future of the Commonwealth.

PETITION OF:

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<td>Stephen Kulik</td>
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The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

An Act building for the future of the Commonwealth.

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, self-evaluation 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 Planning Directors, Massachusetts Association of Regional Planning Agencies and American Planning Association, Massachusetts Chapter, regarding development of the program; provided further, that the department may contract with the Massachusetts Citizen Planner Training Collaborative to provide such education, self-evaluation and training. To the extent practicable, the education, self-evaluation and training programs shall be offered online and in various locations throughout the commonwealth.
SECTION 2. 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 12 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.

“Artist,” a person regularly engaged in and who derives a substantial portion of his/her annual income from art or creative work.

“Art use,” the production of art or other creative work, including painting or other like picture, traditional and fine crafts, sculpture, writing, creating film, creating animation, the composition of music, choreography and the performing arts. Art use may include the display or sale of an artist’s work, and may include classes taught by an artist, at the site of production. Art use does not include mass production or distribution, or performance for audiences.

“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.

“Form-based zoning”, means text and graphics in a zoning ordinance or by-law that specify the built form of the community, general intensity of use, and the relationship between buildings and the outdoor public spaces they shape.

“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 3. 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 for multi-family
housing.

“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 reasonable and realistic
opportunities for the development of multi-family housing (i) in eligible locations and (ii) that
meets a reasonable share of the regional need for multi-family housing, including the need for
multi-family housing without age restrictions and which is suitable for families with children.
The department may waive or modify the requirements of this subsection for rural towns. In making such determinations, which may apply to individual rural towns or to a category or categories of rural towns, the department may consider (i) the regional need for multi-family housing and (ii) the existing or planned water, sewer and transportation infrastructure in the town.

(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) For any zoning district that requires a minimum lot area of 40,000 square feet or greater for a single-family residential dwelling, the zoning ordinance or by-laws must provide that development of five or more new single-family dwellings on a parcel as a subdivision under chapter 41 are allowed as of right to utilize the type of open space residential development set forth in this section, except upon a specific finding by the planning board that such development is not feasible or the land and natural resource conservation objectives of such development are achieved on the site through alternate means already adopted by the municipality, such as the transfer of development rights or natural resource protection zoning.

Such ordinance or by-law shall allow open space residential development as of right if the proposed development identifies the significant natural and cultural features of the land; concentrates development by use of reduced dimensional requirements to preserve those features; and permanently preserves a certain percentage of land, in accordance with this section, in a natural, scenic or open condition, or in agricultural, forestry, or passive outdoor recreational use. For the purposes of calculating the percentage of land to be preserved, the land’s developable area shall be determined pursuant to applicable state and local land use and...
environmental laws and regulations, and the zoning ordinance or by-law, without regard in either
case to the suitability of soils or groundwater for on-site wastewater disposal as such is
separately regulated by local boards of health.

At least 40 percent of the land’s developable area shall be preserved and this open space
shall be substantially contiguous. In districts where Title 5 of the Environmental Code is in
effect, and which are in nitrogen-sensitive areas where the number of bedrooms is calculated at
one bedroom per 10,000 square feet of land area, the provisions of this section shall not apply if
the required lot area is 40,000 square feet or less, unless the local board of health approves an
aggregate calculation of land area that includes the preserved land, and if the required lot area is
more than 40,000 square feet, the minimum preservation requirement set forth in this section
shall be modified to equal the percentage resulting from: the subtraction of 40,000 square feet
from the lot size requirement: that difference divided by the lot size requirement: and multiplied
by 100, except to the extent inconsistent with requirements adopted by a regional planning
agency under chapter 716 of the Acts of 1989 or chapter 831 of the Acts of 1977, as those acts
may be amended.

Such ordinance or by-laws shall provide that developments proposed under this section
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.

Such ordinance or by-laws shall permit the development of new dwellings at least equal
to the number allowed under a conventional subdivision plan. In order to confirm the accuracy of
such number a municipality may require either a conventional subdivision plan or a calculation
that deducts for roadways, wetlands and other site or legal constraints and divides by an underlying lot area requirement in order to determine the allowed housing units in the development. Allowance of open space residential development by right in accordance with this section shall not preclude increases in the permissible number of dwelling units within an open space residential development by special permit or otherwise.

The open land shall either be conveyed to: the city or town and accepted by it for park or open space use and conferred the protections afforded under Article 97 of the amendments of the Massachusetts Constitution; a nonprofit organization the principal purpose of which is the conservation of open space; a corporation or trust owned or to be owned by the owners of lots or residential units within the development; or an individual under a conservation restriction. 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.

(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 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 first publication of notice of the public hearing on the ordinance or by-law required by section 5, 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. Said section 6 of said chapter 40A, as so appearing, is hereby amended by striking out the sixth paragraph.

SECTION 17. Said section 6 of said chapter 40A, as so appearing, is hereby amended by striking out, in the second sentence of the seventh paragraph, the words “land shown on”.

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SECTION 18. Said section 6 of said Chapter 40A, as so appearing, is hereby amended by adding a new last paragraph:

Notwithstanding any provision of any general or special law, form-based zoning may regulate building type, exterior building materials, minimum and maximum building heights, frontage type, build-to lines, street type, street and streetscape design, public open spaces, and any other parameter of the built or natural environment which gives form to the exterior of buildings and the spaces between them. Form-based zoning may combine in a single document standards for new subdivision streets, existing and new public streets and sidewalks, and use and dimensional standards. Such combined standards may be in the form of a “regulating plan” that integrates building, dimensional, use, street, sidewalk, and parking requirements. Form-based zoning may also specify lot-by-lot in a detailed regulating plan, building forms and allowed use mixes, even if such specification is not uniform throughout a zoning district, provided that it is based upon a plan for the area subject to the code. Form-based zoning may specify prescribed future lot division lines which will be allowed as of right in any future division of land.

SECTION 19. Section 9 of said chapter 40A, as so appearing, is hereby amended by striking out the third to ninth paragraphs, inclusive.

SECTION 20. Said section 9 of said chapter 40A, as so appearing, is hereby further amended by striking out the last sentence in the twelfth paragraph and inserting in place thereof the following sentence:-

Unless a greater majority is specified in the zoning ordinance or by-law, issuance of a special permit under this section shall require an affirmative vote of a simple majority of the special permit granting authority. A greater majority vote requirement shall not exceed a vote of
two-thirds of the special permit granting authority in the case of a board with more than five
members, a vote of at least four members of a five member board, or a unanimous vote of a three
member board.

SECTION 21. 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 22. 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 23. 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 21 of 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 9H. The use of all or a portion of a building for both art use and the habitation of artists engaged in art use within the building shall be allowed, either by right or with a special permit.

SECTION 24. 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 substantial hardship, 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 substantial hardship 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. In order to grant a variance, the permit-granting authority shall make all the following findings: (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 hardship
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 hardship is self-created and may base a denial solely upon a finding
that the claimed hardship is self-created. In the granting of variances, the permit-granting
authority shall grant the minimum variance that it deems necessary to relieve the hardship

A local ordinance or by-law may allow petitioners to apply for a special permit seeking to
waive or modify a dimensional requirement, rather than use the variance process set forth in this
section. Such special permit process may be applied to all circumstances in which a petitioner
seeks to waive or modify dimensional requirements, or may be applied only to certain
dimensional requirements identified in the ordinance or by-law..

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. 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 25. 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 26. 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 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 27. Section 3 of said chapter 40R, as so appearing, is hereby amended by
inserting after the figure “40A,” in line 9, the following:
provided, however, that a smart growth zoning district or starter home zoning district ordinance or by-law shall be adopted, amended or repealed by a simple majority vote of all the 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 simple majority of a town meeting.

SECTION 28. Chapter 41, as so appearing, is hereby amended by striking out section 81D 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.
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 29. 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 rules and regulations under Section 81HH of this chapter are in effect.

SECTION 30. 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; (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, or (iv) a new way to be created by the subdivider.
SECTION 31. 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 minor subdivision rules and regulations under Section 81HH are in effect.

SECTION 32. 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 planning board of a city or town has adopted minor subdivision rules and regulations under section 81HH of this chapter, in which case it shall be approved accordingly.

SECTION 33. 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 34. 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 35. 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 36. 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 utilize the provisions of this section if it first, by simple majority vote, adopts a resolution indicating the city’s or town’s intent to regulate a minor subdivision consistent with this section and authorizes the planning board to adopt rules and regulations therefor.

(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) The rules and regulations for minor subdivisions may require that applications for minor subdivisions from the same lot, tract or parcel from which the first minor subdivision was created not result in more than the maximum of six or more allowed lots, as the case may be, in a set period of years; lessen or eliminate any requirement of section 81U of this chapter otherwise applicable to subdivisions; lessen or eliminate any local rule or regulation adopted under section 81Q of this chapter otherwise applicable to subdivisions; and describe 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 those improvements are completed by the city or town in a reasonable period of time.

(d) No application for a minor subdivision shall be subject to: (i) a public hearing if every lot within the lot has frontage on an existing way described in the definition of minor subdivision; (ii) the requirements of section 81S; (iii) subject to requirements for the relocation of an existing way outside of its existing right of way; (iv) a requirement for total travelled lanes’ widths of greater than 22 feet in a residential minor subdivision unless such width already exceeds 22 feet; (v) requirements for the paving of an existing unpaved way; (vi) requirements for travelled lane slopes of less than 10 percent on an existing way; (vii) or any procedural or substantive requirements more stringent than those specified in this chapter or contained in a city or town’s local rules and regulations otherwise applicable to subdivisions.

(e) 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.

(f) 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.

(g) Notwithstanding the adoption of local rules and regulations for minor subdivisions, the provisions of section 81P of this chapter shall continue to apply to: 1) a division of land where the entire lineal frontage required by local zoning is on a state-numbered route; or
2) a division of a parcel of land in any one year to create no more than two building lots subject to the frontage requirements set forth in subsections i-iii of the definition of minor subdivision in this chapter, meeting the lineal distance requirements of local zoning, and not exceeding 1.5 times the area required by local zoning, if at the time of application the parcel of land to be subdivided is forestland or farmland that has for 5 continuous years immediately previous been classified under chapters 61 or 61A, respectively or land that is under the same ownership and within the same parcel, or under the same ownership and immediately adjacent, and not classified under chapters 61 or 61A.

SECTION 37. 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 38. 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 39 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 40. 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 41. A master plan adopted pursuant to section 81D of chapter 41 of
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 42. 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 43. 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 44. 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 45. Section 5 shall apply to local approvals submitted on or after one
year from passage of this legislation.

SECTION 46. Section 9E of chapter 40A, as inserted by section 23, shall take
effect 18 months from passage of this legislation.

SECTION 47. Sections 6 and 8 shall take effect 3 years from passage of this
legislation; 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.