

HOUSE No. 3845

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, July 27, 2017.

The committee on Housing to whom were referred the joint petition (accompanied by bill, House, No. 673) of Kevin G. Honan and others for legislation to establish a community-scale housing development demonstration program within the Executive Office of Housing and Economic Development and the petition (accompanied by bill, House, No. 2237) of Christine P. Barber and others that zoning ordinances and by-laws provide districts containing multi-family housing, reports recommending that the accompanying bill (House, No. 3845) ought to pass [Representatives Diehl of Whitman and DeCoste of Norwell dissent].

For the committee,

KEVIN G. HONAN.

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

An Act relative to housing production.

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

1 SECTION 1. Chapter 6 of the General Laws is hereby amended by inserting after section
2 218 the following section:-

3 Section 219. There shall be a housing and economic growth cabinet including, without
4 limitation, the secretaries of housing and economic development, transportation, education, and
5 energy and environmental affairs or their designees, to promote a coordinated approach to data
6 collection, analysis, and policy relating to the orderly growth and development of the
7 commonwealth. This coordinated approach shall include, but is not limited to, analysis and
8 policy relative to population, employment and business growth trends, projected transportation
9 demand and transportation capacity, projected housing demand and housing production, state
10 and local fiscal impacts of development, projected state revenue growth needed to support
11 growth, impacts of local zoning and land use regulation, school capacity and projected
12 enrollment, open space consumption and preservation, and natural resource protection. The
13 growth planning cabinet shall be supported, to the greatest extent practicable, by existing

14 technical experts within the executive offices, quasi-public agencies, and regional planning
15 agencies of the commonwealth.

16 SECTION 2. Chapter 23A of the General Laws is hereby amended by inserting after
17 section 67 the following section:-

18 Section 68. There shall be in the executive office of housing and economic development
19 a community-scale housing development demonstration program to issue grants and loans for the
20 development of community scale residential homeownership or rental housing.

21 (a) For the purposes of this section, unless the context clearly requires otherwise, the
22 following words shall have the following meanings:

23 “Community-scale development”, a development with fewer than 20 units that was not
24 authorized, awarded, issued or in any other way made use of low-income housing tax credits
25 pursuant to section 6I of chapter 62, section 31H of chapter 63, or section 42 of the Code, and
26 was not built pursuant to chapter 58 of the acts of 2012.

27 (b) In a community-scale development with more than 3 homeownership or rental
28 residential units, no less than 25 per cent of the total residential units must be affordable to and
29 occupied by households whose annual income is no more than 80 per cent of the area median
30 income, as determined by the United States Department of Housing and Urban Development,
31 and no less than 50 per cent of the total residential units shall be affordable to and occupied by
32 households whose annual income is no more than 110 per cent of the area median income, as
33 determined by the United States Department of Housing and Urban Development.

34 (c) The secretary of housing and economic development shall promulgate regulations to
35 implement and administer this program.

36 (d) The secretary of housing and economic development shall report annually to the
37 clerks of the house of representatives and the senate, who shall forward the report to the house of
38 representatives and the senate, the chairs of the joint committee on housing, and the chairs of the
39 senate and house committees on ways and means, on the activities and status of the program,
40 including progress made towards creating not less than 1,000 units by the year 2022. The report
41 shall include a list and description of all projects that received grant funds through the program,
42 the grant amount awarded to each project, other sources of public funds that support each
43 project, and the private investment in each project.

44 SECTION 3. Section 4A of chapter 40 of the General Laws, as appearing in the 2014
45 Official Edition, is hereby amended by inserting after the last paragraph the following 2
46 paragraphs:-

47 By a two-thirds vote of its legislative body, and in conformance with its charter, a town
48 may enter into an agreement with a contiguous town or towns to establish an inter-municipal
49 planning board, zoning board of appeals, conservation commission or board of health or, in the
50 case of towns within the same regional planning district, to delegate the functions of such a
51 regional board or boards. Such regional boards shall have the same statutory authority as if they
52 existed within a single city or town. Agreements establishing inter-municipal planning boards or
53 inter-municipal zoning boards of appeal shall be subject to approval by the department of
54 housing and community development. Agreements establishing inter-municipal conservation
55 commissions shall be subject to approval by the department of environmental protection.

56 Agreements establishing inter-municipal boards of health shall be subject to approval by the
57 department of public health.

58 By a majority vote of their legislative bodies, and with the approval of the mayor, board
59 of selectmen or other chief elected official, any contiguous cities and towns may enter into an
60 agreement to allocate public infrastructure costs, municipal service costs and local tax revenue
61 associated with the development of an identified parcel or parcels or development within the
62 contiguous communities generally, provided that said agreement is approved by the executive
63 office of housing and economic development and by the department of revenue.

64 SECTION 4. Section 3 of chapter 40A of the General Laws, as so appearing, is hereby
65 amended by inserting after the last paragraph the following paragraph:-

66 No zoning ordinance or by-law shall prohibit or require a special permit for the use of
67 land or structures for an accessory dwelling unit located internally within a single-family
68 dwelling or the rental thereof on a lot not less than 5,000 square feet or on a lot of sufficient area
69 to meet the requirements of title 5 of the state environmental code established by section 13 of
70 chapter 21A, if applicable; provided, however, that such land or structures may be subject to
71 reasonable regulations concerning dimensional setbacks, screening and the bulk and height of
72 structures. The zoning ordinance or by-law may require that the principal dwelling or the
73 accessory dwelling unit be continuously owner-occupied and may limit the total number of
74 accessory dwelling units in the municipality to not less than 5 per cent of the total non-seasonal
75 single-family housing units in the municipality. Not more than 1 additional parking space shall
76 be required for an accessory dwelling unit; provided, however, that, if parking is required for the
77 principal dwelling, that parking shall be retained or replaced. As used in this paragraph,

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

95 SECTION 5. Said chapter 40A is hereby further amended by inserting after section 3 the
96 following sections:-

97 Section 3A.

98 (a) For the purposes of this section, the following words shall have the following
99 meanings unless the context clearly requires otherwise:

100 “As of right”, development may proceed under a zoning ordinance or by-law without the
101 need for a special permit, variance, zoning amendment, waiver, or other discretionary zoning
102 approval.

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

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

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

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

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

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

114 (b) Within 3 years of the effective date of this section, zoning ordinances and by-laws
115 shall provide a district or districts in which multi-family housing is a permitted use as of right.
116 For the purposes of this section, districts shall satisfy the following minimum requirements: (i)
117 include multi-family housing without age restrictions which is suitable for families with children;
118 (ii) a minimum gross density of 8 units per acre in rural towns subject to any further limitations
119 imposed by section 40 of chapter 131 and title 5 of the state environmental code established by
120 section 13 of chapter 21A. All other municipalities shall have a minimum gross density of 15

121 units per acre; provided, however, that multi-family housing districts shall align to the extent
122 possible with existing or planned water, sewer and transportation infrastructure; (iii) be in
123 eligible locations; and (iv) accommodate a reasonable share of the regional need for multi-family
124 housing.

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

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

135 (c) The department shall publish guidelines which shall be used to determine if a city or
136 town has satisfied the requirements established in subsection (b) of this section.

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

141 Section 3B.

142 (a) Zoning ordinances or by-laws shall provide for open space residential developments,
143 as defined in this chapter. Such ordinances or by-laws shall be adopted by cities and towns
144 within two years of the effective date of this section and shall provide that open space residential
145 developments shall be allowed either in a specific district or districts within said district, or in
146 multiple districts through overlay zoning. Such ordinances or by-laws shall provide that open
147 space residential developments shall be permitted upon review and approval by a planning board
148 pursuant to the applicable provisions of Section 81K to 81GG, inclusive, of Chapter 41 and in
149 accordance with its rules and regulations governing subdivision control. Allowance of open
150 space residential development by right in accordance with this section shall not preclude
151 establishment of zoning districts which provide for increases in the permissible density of
152 population or intensity of a particular use within an open space residential development by
153 special permit as provided in section nine of this chapter.

154 (b) The department shall publish guidelines which shall be used to determine if a city or
155 town has met the requirement established in subsection (a) of this section. Said guidelines shall
156 include the review and approval of a city or town zoning ordinance or by-law and subdivision
157 regulations, if any, including guidelines for determining density, lot layout and standards for the
158 completion of subdivision improvements.

159 SECTION 6. Section 5 of said chapter 40A, as so appearing, is hereby amended by
160 inserting after the word “meeting”, in line 82, the following words:- ; provided, however, that if a
161 city or town has failed to meet the minimum requirements of section 3A, a zoning ordinance or
162 by-law that is consistent with these requirements shall be adopted by a vote of a simple majority
163 of all members of the town council or of the city council where there is a commission form of

164 government or a single branch or of each branch where there are 2 branches or by a vote of a
165 simple majority of town meeting.

166 SECTION 7. Section 9 of said chapter 40A, as so appearing, is hereby amended by
167 striking out, in line 35, the word “cluster” and inserting in place thereof the following words:–
168 open space residential.

169 SECTION 8. Said section 9 of Chapter 40A, as so appearing, is hereby further amended
170 by striking out, in line 39, the word “cluster” and inserting in place thereof the following words:–
171 open space residential

172 SECTION 9. Said section 9 of chapter 40A, as so appearing, is hereby further amended
173 by striking out the seventh paragraph and inserting in place thereof the following paragraph:–

174 “Open space residential development” means a residential development in which the
175 buildings and accessory uses are clustered together into one or more groups separated from
176 adjacent property and other groups within the development by intervening open land. An open
177 space residential development shall be permitted only on a plot of land of such minimum size as
178 a zoning ordinance or by-law may specify which is divided into building lots with dimensional
179 control, density and use restrictions for such building lots varying from those otherwise
180 permitted by the ordinance or by-law and open land. Such open land when added to the building
181 lots shall be at least equal in area to the land area required by the ordinance or by-law for the
182 total number of units or buildings contemplated in the development. Such open land may be
183 situated to promote and protect maximum solar access within the development. Such open land
184 shall either be conveyed to the city or town and accepted by it for park or open space use, or be
185 conveyed to a non-profit organization the principal purpose of which is the conservation of open

186 space, or to be conveyed to a corporation or trust owned or to be owned by the owners of lots or
187 residential units within the development. If such corporation or trust is utilized, ownership
188 thereof shall pass with conveyances of the lots or residential units. In any case where such land is
189 not conveyed to the city or town, a restriction enforceable by the city or town shall be recorded
190 providing that such land shall be kept in an open or natural state and not be built for residential
191 use or developed for accessory uses such as parking or roadway.

192 SECTION 10. Section 3 of chapter 40R of the General Laws, as so appearing, is hereby
193 amended by inserting after the figure “40A”, in line 9, the following words:- ; provided,
194 however, that a smart growth zoning district or starter home zoning district ordinance or by-law
195 shall be adopted, amended or repealed by a simple majority vote of all the members of the town
196 council, or of the city council where there is a commission form of government or a single
197 branch, or of each branch where there are 2 branches, or by a simple majority vote of a town
198 meeting.

199 SECTION 11. Subsection (a) of section 6 of said chapter 40R, as most recently amended
200 by section 48 of chapter 219 of the acts of 2016, is hereby amended by striking out, in the first
201 sentence in the third paragraph, the word “cluster” and inserting in place thereof the following
202 words:- open space residential.

203 SECTION 12. Section 10 of said chapter 40R, as most recently amended by section 48 of
204 chapter 219 of the acts of 2016, is hereby amended by striking out, in the first sentence of the
205 first paragraph, the words:- or starter home zoning district.

206 SECTION 13. Said section 10 of chapter 40R, as most recently amended by section 48 of
207 chapter 219 of the acts of 2016, is hereby further amended by striking out, in the third sentence
208 in the second paragraph, the words:– or starter home zoning district.

209 SECTION 14. Section 1 of chapter 40S of the General Laws, as appearing in the 2014
210 Official Edition, is hereby amended by inserting after the second paragraph the following
211 paragraph:-

212 “Dense open residential development”, an open residential development that (a) occurs in
213 a residential district where open residential development is allowed as of right; (b) has a gross
214 density of at least 4 units per acre of developable land; (c) where no less than 20% of the total
215 residential units are affordable to and occupied by individuals and families whose annual income
216 is no more than 80% of the area median income as determined by the United States Department
217 of Housing and Urban Development; and (d) no less than 50% of the total residential units are
218 affordable to and occupied by individuals and families whose annual income is no more than
219 110% of area median income as determined by the United States Department of Housing and
220 Urban Development.

221 SECTION 15. Said section 1 of chapter 40S, as so appearing, is hereby further amended
222 by inserting after the fifth paragraph the following paragraph:-

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

226 SECTION 16. Said section 1 of said chapter 40S, as so appearing, is hereby further
227 amended by inserting after the definition of “Local smart growth revenues for education” the
228 following definition:-

229 “Multi-family zoning district”, a zoning district adopted by a community pursuant to
230 section 3A of Chapter 40A of the General Laws.

231 SECTION 17. Said section 1 of chapter 40S, as so appearing, is further amended by
232 inserting after the word “district,” in line 54, the following words:-

233 “; or any new residential development subject to the payment of local property taxes that:

234 (a) occurs in a multi-family housing district after the adoption of such zoning by the
235 community;

236 (b) where no less than 20% of the total residential units are affordable to and occupied by
237 individuals and families whose annual income is no more than 80% of the area median income as
238 determined by the United States Department of Housing and Urban Development; and

239 (c) no less than 50% of the total residential units are affordable to and occupied by
240 individuals and families whose annual income is no more than 110% of area median income as
241 determined by the United States Department of Housing and Urban Development; or any new
242 dense open space residential development”

243 SECTION 18. Said section 1 of chapter 40S, as so appearing, is hereby further amended
244 by striking out the definition “Smart growth zoning district” and inserting in place thereof the
245 following definition:-

246 “Smart growth zoning district”, a smart growth zoning district or a starter home zoning
247 district adopted by a community and approved by the department of housing and community
248 development which is eligible for density bonus payments under chapter 40R.

249 SECTION 19. Section 2 of chapter 40S, as so appearing, is hereby amended by inserting
250 after the first sentence, the following sentence:-

251 For each fiscal year commencing with fiscal year 2020, any city or town that has
252 established 1 or more smart growth zoning districts or 1 or more multi-family zoning districts
253 shall receive smart growth school cost reimbursement from the commonwealth.

254 SECTION 20. Section 3 of said chapter 40S, as so appearing, is hereby amended by
255 inserting after the word “district”, in line 2, the following words:- or a multifamily zoning
256 district.

257 SECTION 21. Subsection (b) of said section 3 of said chapter 40S, as so appearing, is
258 hereby amended by inserting after the word “district”, in line 10, the following words:- a multi-
259 family zoning district.

260 SECTION 22. Subsection (c) of said section 3 of chapter 40S, as so appearing, is hereby
261 amended by striking out, in line 26, the words “within a smart growth zoning district”.

262 SECTION 23. Section 11 of chapter 59 of the General Laws, as appearing in the 2014
263 Official Edition, is amended by striking out the first paragraph and inserting in place thereof the
264 following paragraph:-

265 Taxes on real estate shall be assessed, in the town where it lies, to the person who is the
266 owner on January 1, and the person appearing of record, in the records of the county, or of the

267 district, if such county is divided into districts, where the estate lies, as owner on January 1, even
268 though deceased, shall be held to be the true owner thereof; provided, that whenever the
269 assessors deem it proper, they may assess taxes upon real estate to the person who is in
270 possession thereof on January 1, and such person shall thereupon be held to be the true owner
271 thereof for the purposes of this section; provided, further, that whenever the assessors deem it
272 proper, they may assess taxes upon any present interest in real estate to the owner of such interest
273 on January 1; and provided, further, that in open space residential developments or planned unit
274 developments, as defined in section 9 of chapter 40A, the assessment of taxes on the common
275 land, so called, including open space residential development common land held under a
276 conservation restriction pursuant to section 31 of chapter 184, the beneficial interest in which is
277 owned by the owners of lots or residential units within the plot, may be included as an additional
278 assessment to each individual lot owner in the open space residential development. Real estate
279 held by a religious society as a ministerial fund shall be assessed to its treasurer in the town
280 where the land lies. Buildings erected on land leased by the commonwealth under section
281 twenty-six of chapter seventy-five shall be assessed to the lessees, or their assignees, at the value
282 of said buildings. Except as provided in the three following sections, mortgagors of real estate
283 shall for the purpose of taxation be deemed the owners until the mortgagee takes possession,
284 after which the mortgagee shall be deemed the owner.

285 SECTION 24. The Secretary of Administration and Finance and the Secretary of Housing
286 and Economic Development shall jointly submit a report to the Joint Committee on Housing
287 within one year of enactment which shall detail: (1) the net fiscal impacts of new housing needed
288 to support existing employment levels through 2040; (2) mechanisms to mitigate negative net
289 fiscal impact of new housing on Massachusetts cities and towns, including, but not limited to,

290 development impact fees, one-time incentive payments, recurring mitigation payments, or
291 changes to the current local aid formula; and (3) projections of state revenue growth to support
292 such mitigation.

293 SECTION 25. The secretary of housing and economic development, secretary of energy
294 and environmental affairs, the secretary of transportation, and the executive director of the
295 Massachusetts Development Finance Agency shall jointly submit a report to the joint committee
296 on housing identifying greyfields sites across the commonwealth, options for redevelopment or
297 reuse that may include housing, public use or facilities, mixed use development, or natural
298 restoration and open space, and identify programs within the appropriate state and quasi-public
299 agencies that can be used to support communities in repurposing underutilized land.

300 For the purposes of this act, the term greyfields may include, but is not limited to, land
301 with development that is outdated, underutilized, failing, or vacant. This term may also include
302 land that is owned by the commonwealth, its agencies, or its political subdivisions.