

HOUSE No. 4290

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, March 6, 2018.

The committee on Housing to whom was referred the message from His Excellency the Governor (accompanied by bill, House, No. 4075) of Charles D. Baker recommending legislation to promote housing choices, reports recommending that the accompanying bill (House, No. 4290), ought to pass [Representative Tyler of Boston dissents].

For the committee,

KEVIN G. HONAN.

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

An Act to Promote Housing Choices.

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

1 SECTION 1. Section 4A of chapter 40 of the General Laws, as appearing in the 2016
2 Official Edition, is hereby amended by adding the following paragraph:-

3 By a majority vote of their legislative bodies, and with the approval of the mayor, board
4 of selectmen or other chief executive officer, any contiguous cities and towns may enter into an
5 agreement to allocate public infrastructure costs, municipal service costs and local tax revenue
6 associated with the development of an identified parcel or parcels or development within the
7 contiguous communities generally, provided that said agreement is approved by the department
8 of revenue.

9 SECTION 2. Section 1A of chapter 40A of the General Laws, as so appearing, is hereby
10 amended by inserting after the introductory paragraph the following 9 definitions:-

11 “Accessory dwelling unit”, a self-contained housing unit, inclusive of sleeping, cooking
12 and sanitary facilities on the same lot as a principal dwelling, subject to otherwise applicable

13 dimensional and parking requirements, that: (i) maintains a separate entrance, either directly
14 from the outside or through an entry hall or corridor shared with the principal dwelling sufficient
15 to meet the requirements of the state building code for safe egress; (ii) is not larger in floor area
16 than 1/2 the floor area of the principal dwelling or 900 square feet, whichever is smaller; and (iii)
17 is subject to such additional restrictions as may be imposed by a municipality, including but not
18 limited to additional size restrictions, owner-occupancy requirements, and restrictions or
19 prohibitions on short-term rental of accessory dwelling units.

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

23 “Lot”, an area of land with definite boundaries that is used or available for use as the site
24 of a building or buildings.

25 “Mixed-use development”, development containing a mix of residential uses and non-
26 residential uses, including, without limitation: commercial, institutional, industrial or other uses;
27 all conceived, planned and integrated to create vibrant, workable, livable and attractive
28 neighborhoods.

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

31 “Natural resource protection zoning”, zoning ordinances or by-laws enacted principally
32 to protect natural resources by promoting compact patterns of development and concentrating
33 development within a portion of a parcel of land so that a significant majority of the land remains

34 permanently undeveloped and available for agriculture, forestry, recreation, watershed
35 management, carbon sequestration, wildlife habitat or other natural resource values.

36 “Open space residential development”, a residential development in which the buildings
37 and accessory uses are clustered together into one or more groups separated from adjacent
38 property and other groups within the development by intervening open land. An open space
39 residential development shall be permitted only on a plot of land of such minimum size as a
40 zoning ordinance or by-law may specify which is divided into building lots with dimensional
41 control, density and use restrictions for such building lots varying from those otherwise
42 permitted by the ordinance or by-law and open land. Such open land may be situated to promote
43 and protect maximum solar access within the development. Such open land shall either be
44 conveyed to the city or town and accepted by it for park or open space use, or be made subject to
45 a recorded use restriction enforceable by the city or town or a non-profit organization the
46 principal purpose of which is the conservation of open space, providing that such land shall be
47 kept in an open or natural state and not be built for residential use or developed for accessory
48 uses such as parking or roadway.

49 SECTION 3. Said section 1A of said chapter 40A, as so appearing, is hereby further
50 amended by inserting after the definition of “Special permit granting authority” the following 2
51 definitions:-

52 “TDR zoning”, zoning that authorizes transfer of development rights by permitting
53 landowners in specific preservation areas identified as sending areas to sell their development
54 rights to landowners in specific development districts identified as receiving areas.

55 “Transfer of development rights”, the regulatory procedure whereby the owner of a
56 parcel may convey development rights, extinguishing those rights on the first parcel, and where
57 the owner of another parcel may obtain and exercise those rights in addition to the development
58 rights already existing on that second parcel.

59 SECTION 4. Section 5 of said chapter 40A, as so appearing, is hereby amended by
60 striking out the fifth paragraph and inserting in place thereof the following paragraph:-

61 Except as provided herein, no zoning ordinance or by-law or amendment thereto shall be
62 adopted or changed except by a two-thirds vote of all the members of the town council, or of the
63 city council where there is a commission form of government or a single branch, or of each
64 branch where there are two branches, or by a two-thirds vote of a town meeting; provided,
65 however, the following shall be adopted by a vote of a simple majority of all members of the
66 town council or of the city council where there is a commission form of government or a single
67 branch or of each branch where there are two branches or by a vote of a simple majority of town
68 meeting:

69 (1) An amendment to a zoning ordinance or by-law to allow any of the following as
70 of right: (a) multifamily housing or mixed-use development in a location that would qualify as an
71 eligible location for a smart growth zoning district under section 2 of chapter 40R of the general
72 laws; (b) accessory dwelling units; or (c) open-space residential development.

73 (2) An amendment to a zoning ordinance or by-law to allow by special permit: (a)
74 multi-family housing or mixed-use development in a location that would qualify as an eligible
75 location for a smart growth zoning district under section 2 of chapter 40R of the general laws; (b)
76 an increase in the permissible density of population or intensity of a particular use in a proposed

77 development pursuant to section 9 of chapter 40A of the general laws; or (c) a diminution in the
78 amount of parking required for residential or mixed-use development pursuant to section 9 of
79 chapter 40A of the general laws;

80 (3) Zoning ordinances or by-laws or amendments thereto that (a) provide for TDR
81 zoning or natural resource protection zoning in instances where the adoption of such zoning
82 promotes concentration of development in areas that the municipality deems most appropriate for
83 such development, but will not result in a diminution in the maximum number of housing units
84 that could be developed within the municipality; or (b) modify regulations concerning the bulk
85 and height of structures, yard sizes, lot area, setbacks, open space, parking and building coverage
86 requirements to allow for additional housing units beyond what would otherwise be permitted
87 under the existing zoning ordinance or by-law.

88 (4) The adoption of a smart growth zoning district or starter home zoning district in
89 accordance with section 3 of chapter 40R of the general laws.

90 Provided, further, that any amendment that requires a simple majority vote shall not be
91 combined with amendments that require a two-thirds majority vote. provided, further, that if in a
92 city or town with a council of fewer than twenty-five members there is filed with the clerk prior
93 to final action by the council a written protest against a zoning change under this section, stating
94 the reasons duly signed by owners of fifty per cent or more of the area of the land proposed to be
95 included in such change or of the area of the land immediately adjacent extending three hundred
96 feet therefrom, no change of any such ordinance shall be adopted except by a two-thirds vote of
97 all members.

98 SECTION 5. Section 9 of said chapter 40A, as so appearing, is hereby amended by
99 inserting after the word “interests,” in line 34, the following words:- ; provided, however, that
100 nothing herein shall prohibit a zoning ordinance or by-law from allowing transfer of
101 development rights to be permitted as of right, without the need for a special permit or other
102 discretionary zoning approval.

103 SECTION 6. Said section 9 of said chapter 40A, as so appearing, is hereby further
104 amended by striking out, in line 35, the word “cluster” and inserting in place thereof the
105 following words:- open space residential.

106 SECTION 7. Said section 9 of said chapter 40A, as so appearing, is hereby further
107 amended by striking out, in line 39, the word “cluster” and inserting in place thereof the
108 following words:- open space residential.

109 SECTION 8. Said section 9 of said chapter 40A, as so appearing, is hereby further
110 amended by inserting, after the word “control,” in line 43, the following words:- ; provided,
111 however, that nothing herein shall prohibit a zoning ordinance or by-law from allowing open
112 space residential developments to be permitted as of right, without the need for a special permit
113 or other discretionary zoning approval.

114 SECTION 9. Said section 9 of said chapter 40A, as so appearing, is hereby further
115 amended by striking out the 7th paragraph and inserting in place thereof the following
116 paragraph:-

117 Zoning ordinances or by-laws may also provide that special permits may be granted for
118 reduced parking space to residential unit ratio requirements after a finding by the special permit

119 granting authority that the public good would be served and that the area in which the
120 development is located would not be adversely affected by such diminution in parking.

121 SECTION 10. Section 9, of chapter 40A, as appearing in the 2016 official edition, is
122 hereby further amended after the last sentence on line 127 by inserting the following:-

123 However, a special permit issued by a special permit granting authority shall require a
124 simple majority vote for any of the following:

125 (a) multifamily housing that is located within .5 miles of a commuter rail station, subway
126 station, ferry terminal, or bus station, provided, not less than 10 per cent of the housing is
127 affordable to and occupied by households whose annual income is less than 80 per cent of the
128 area wide median income as determined by the United States Department of Housing and Urban
129 Development and affordability is assured for a period of not less than 30 years through the use of
130 an affordable housing restriction as defined in section 31 of chapter 184.

131 (b) mixed-use development in centers of commercial activity within a municipality,
132 including town and city centers, other commercial districts in cities and towns, and rural village
133 districts, provided, not less than 10 per cent of the housing is affordable to and occupied by
134 households whose annual income is less than 80 per cent of the area wide median income as
135 determined by the United States Department of Housing and Urban Development and
136 affordability is assured for a period of not less than 30 years through the use of an affordable
137 housing restriction as defined in section 31 of chapter 184.

138 (c) A reduced parking space to residential unit ratio requirement, pursuant to this section,
139 provided that a reduction in the parking requirement will result in the production of additional
140 housing units.

141 SECTION 11. Section 3 of chapter 40R of the General Laws, as so appearing, is hereby
142 amended by inserting after the figure “40A,” in line 10, the following words:- ; provided,
143 however, that a smart growth zoning district or starter home zoning district ordinance or by-law
144 shall be adopted by a simple majority vote of all the members of the town council, or of the city
145 council where there is a commission form of government or a single branch, or of each branch
146 where there are two branches, or by a simple majority vote of a town meeting.

147 SECTION 12. Section 1 of chapter 40S of the General Laws, as so appearing, is hereby
148 amended by striking out the word “properties” in line 51 and inserting in place thereof the
149 following word:- buildings.

150 SECTION 13. Said section 1 of said chapter 40S, as so appearing, is hereby further
151 amended by inserting after the figure “40R,” in line 61, the following words:- including without
152 limitation smart growth zoning districts and starter home zoning districts as defined in section 1
153 of said chapter 40R.

154 SECTION 14. The secretary of housing and economic development shall report annually
155 to the clerks of the house of representatives and the senate, who shall forward the report to the
156 house of representatives and the senate, the chairs of the joint committee on housing, and the
157 chairs of the senate and house committees on ways and means, on the activities and status of the
158 Housing Choice Initiative, as described by the governor in a message to the general court dated
159 December 11, 2017, including progress made towards the production of 135,000 new units by
160 2025. The report also shall include a list of all cities and towns that qualify as “housing choice”
161 communities and a list and description of grant funds disbursed to such cities and towns and a
162 description of how the funds were used to support the production of new housing.