

SENATE No. 723

The Commonwealth of Massachusetts

PRESENTED BY:

Linda Dorcena Forry

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 relative to housing production.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Linda Dorcena Forry</i>	<i>First Suffolk</i>	
<i>Kevin G. Honan</i>	<i>17th Suffolk</i>	
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>	<i>2/1/2017</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>2/1/2017</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>2/2/2017</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>2/3/2017</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	<i>2/3/2017</i>
<i>Joseph A. Boncore</i>	<i>First Suffolk and Middlesex</i>	<i>7/25/2017</i>

SENATE No. 723

By Ms. Forry, a petition (accompanied by bill, Senate, No. 723) of Linda Dorcena Forry, Kevin G. Honan, Barbara A. L'Italien, James B. Eldridge and other members of the General Court for legislation relative to housing production. Housing.

The Commonwealth of Massachusetts

**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. Said chapter 23A is hereby amended by adding the following section:-

2 Section 67. There shall be in the executive office of housing and economic development
3 a community-scale housing development demonstration program to issue grants and loans for the
4 development of community scale residential homeownership or rental housing.

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

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

11 (b) In a community-scale development with more than 3 homeownership or rental
12 residential units, no less than 25 per cent of the total residential units must be affordable to and
13 occupied by households whose annual income is no more than 80 per cent of the area median
14 income, as determined by the United States Department of Housing and Urban Development,
15 and no less than 50 per cent of the total residential units shall be affordable to and occupied by
16 households whose annual income is no more than 110 per cent of the area median income, as
17 determined by the United States Department of Housing and Urban Development.

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

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

28 SECTION 2. Said chapter 40A is hereby further amended by inserting after section 3 the
29 following sections:-

30 Section 3A.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

74 Section 3B.

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

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

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

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

99 SECTION 4. Section 9 of chapter 40A, as so appearing, is hereby amended by striking
100 out, in line 33,, the word “cluster ” and inserting in place thereof the following:– open space
101 residential.

102 SECTION 5. Section 9 of Chapter 40A is hereby amended by striking out, in line 37, the
103 word “cluster” and inserting in place thereof the word:– open space residential

104 SECTION 6. Section 9 of chapter 40A, as so appearing, is hereby amended by striking
105 out the seventh paragraph and inserting in place thereof the following paragraph: –

106 “Open space residential development” means a residential development in which the
107 buildings and accessory uses are clustered together into one or more groups separated from
108 adjacent property and other groups within the development by intervening open land. An open
109 space residential development shall be permitted only on a plot of land of such minimum size as
110 a zoning ordinance or by-law may specify which is divided into building lots with dimensional
111 control, density and use restrictions for such building lots varying from those otherwise
112 permitted by the ordinance or by-law and open land. Such open land when added to the building
113 lots shall be at least equal in area to the land area required by the ordinance or by-law for the
114 total number of units or buildings contemplated in the development. Such open land may be
115 situated to promote and protect maximum solar access within the development. Such open land
116 shall either be conveyed to the city or town and accepted by it for park or open space use, or be
117 conveyed to a non-profit organization the principal purpose of which is the conservation of open
118 space, or to be conveyed to a corporation or trust owned or to be owned by the owners of lots or

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

124 SECTION 7. Said Section 1 of Chapter 40S, as so appearing, is further amended by
125 inserting after line 48 the following:-

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

128 SECTION 8. Said Section 1 of Chapter 40S, as so appearing, is further amended by
129 adding after the words “smart growth zoning district” the following words:-

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

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

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

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

140 SECTION 9. Section 2 of Chapter 40S, as so appearing, is hereby amended by inserting
141 after the first sentence, the following sentence:-

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

145 SECTION 10. Section 3 of said chapter 40S, as so appearing, is hereby amended by
146 inserting after the word “district”, in line 2, the following words:- or a multifamily zoning
147 district.

148 SECTION 11. Section 3 of said chapter 40S, as so appearing, is hereby amended by
149 inserting after the word “district”, in line 10, the following words:- a multi-family zoning district.

150 SECTION 12. Section 3 of chapter 40S, as so appearing, is hereby amended by striking
151 141 out, in line 26, the words “within a smart growth zoning district”.

152 SECTION 13. Section 3 of said chapter 40A, as so appearing, is hereby amended by
153 adding the following paragraph:-

154 No zoning ordinance or by-law shall prohibit or require a special permit for the use of
155 land or structures for an accessory dwelling unit located internally within a single-family
156 dwelling or the rental thereof on a lot not less than 5,000 square feet or on a lot of sufficient area
157 to meet the requirements of title 5 of the state environmental code established by section 13 of
158 chapter 21A, if applicable; provided, however, that such land or structures may be subject to
159 reasonable regulations concerning dimensional setbacks, screening and the bulk and height of
160 structures. The zoning ordinance or by-law may require that the principal dwelling or the

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

183 SECTION 14. Section 3 of said chapter 40R, as so appearing, is amended by inserting
184 after the figure “40A,” in line 9, the following:- ; provided, however, that a smart growth zoning
185 district ordinance or by-law shall be adopted, amended or repealed by a simple majority vote of
186 all the members of the town council, or of the city council where there is a commission form of
187 government or a single branch, or of each branch where there are 2 branches, or by a simple
188 majority vote of a town meeting.

189 SECTION 15. Section 4A of chapter 40 of the General Laws, as so appearing, is hereby
190 amended by adding the following 2 paragraphs:-

191 By a two-thirds vote of its legislative body, and in conformance with its charter, a town
192 may enter into an agreement with a contiguous town or towns to establish an inter-municipal
193 planning board, zoning board of appeals, conservation commission or board of health or, in the
194 case of towns within the same regional planning district, to delegate the functions of such a
195 regional board or boards. Such regional boards shall have the same statutory authority as if they
196 existed within a single city or town. Agreements establishing inter-municipal planning boards or
197 inter-municipal zoning boards of appeal shall be subject to approval by the department of
198 housing and community development. Agreements establishing inter-municipal conservation
199 commissions shall be subject to approval by the department of environmental protection.
200 Agreements establishing inter-municipal boards of health shall be subject to approval by the
201 department of public health.

202 By a majority vote of their legislative bodies, and with the approval of the mayor, board
203 of selectmen or other chief elected official, any contiguous cities and towns may enter into an
204 agreement to allocate public infrastructure costs, municipal service costs and local tax revenue

205 associated with the development of an identified parcel or parcels or development within the
206 contiguous communities generally, provided that said agreement is approved by the executive
207 office of housing and economic development and by the department of revenue.

208 SECTION 16. Chapter 6 of the General Laws is hereby amended by adding the following
209 section:-

210 Section 219. There shall be a housing and economic growth cabinet including, without
211 limitation, the secretaries of housing and economic development, transportation, education, and
212 energy and environmental affairs or their designees, to promote a coordinated approach to data
213 collection, analysis, and policy relating to the orderly growth and development of the
214 commonwealth. This coordinated approach shall include, but is not limited to, analysis and
215 policy relative to population, employment and business growth trends, projected transportation
216 demand and transportation capacity, projected housing demand and housing production, state
217 and local fiscal impacts of development, projected state revenue growth needed to support
218 growth, impacts of local zoning and land use regulation, school capacity and projected
219 enrollment, open space consumption and preservation, and natural resource protection. The
220 growth planning cabinet shall be supported, to the greatest extent practicable, by existing
221 technical experts within the executive offices, quasi-public agencies, and regional planning
222 agencies of the commonwealth.

223 SECTION 17. The Secretary of Administration and Finance and the Secretary of Housing
224 and Economic Development shall jointly submit a report to the Joint Committee on Housing
225 within one year of enactment which shall detail: (1) the net fiscal impacts of new housing needed
226 to support existing employment levels through 2040; (2) mechanisms to mitigate negative net

227 fiscal impact of new housing on Massachusetts cities and towns, including, but not limited to,
228 development impact fees, one-time incentive payments, recurring mitigation payments, or
229 changes to the current local aid formula; and (3) projections of state revenue growth to support
230 such mitigation.

231 SECTION 18. The secretary of housing and economic development, secretary of energy
232 and environmental affairs, the secretary of transportation, and the executive director of the
233 Massachusetts Development Finance Agency shall jointly submit a report to the joint committee
234 on housing identifying greyfields sites across the commonwealth, options for redevelopment or
235 reuse that may include housing, public use or facilities, mixed use development, or natural
236 restoration and open space, and identify programs within the appropriate state and quasi-public
237 agencies that can be used to support communities in repurposing underutilized land.

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