

HOUSE No. 3507

The Commonwealth of Massachusetts



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KARYN POLITO
LIEUTENANT GOVERNOR

February 27, 2019

To the Honorable Senate and House of Representatives,

In December 2017, the Baker-Polito Administration launched the Housing Choice Initiative. This program encourages cities and town to plan and build the additional housing that is vital to the success of our Commonwealth. By providing incentives, rewards and technical assistance to municipalities, the Housing Choice Initiative has put us on a path to produce 135,000 new units of housing by 2025. We are proud that nearly seventy communities have been designated Housing Choice communities and are participating in the program. Last fall we announced \$5 million in capital grants for thirty-one communities to assist them address crucial infrastructure needs to support local housing production efforts.

At the same time that we announced the Housing Choice Initiative, I filed legislation to address a significant barrier to housing production that the state has created. State law bars cities and towns in Massachusetts from adopting changes to zoning laws unless the municipality is able to secure a 2/3 “supermajority” vote of its legislative body. Only a handful of other states have similar requirements. None of our neighbors in New England place this sort of restriction on local decision making. This self-inflicted wound has damaged our ability to build the housing our residents need.

Our bill received widespread, bi-partisan support. Therefore, I am re-filing this legislation in the form in which it was reported favorably by the Joint Committee on Housing as “An Act to Promote Housing Choices.” As was the case with the original bill, this legislation

allows cities and towns to adopt the following local zoning by majority vote of their legislative bodies:

- Reducing dimensional requirements, such as minimum lot sizes, to allow homes to be built closer together
- Adopting smart growth zoning districts and starter home zoning districts
- Allowing multi-family housing as of right or by special permit in locations such as town centers, near transit and in other locations that would be eligible for a smart growth zoning district
- Allowing mixed-use developments by special permit in town and city centers, commercial districts and rural village districts
- Allowing a small accessory dwelling unit or “in-law” apartment in the same building or on the same lot as an existing home
- Providing for “Natural Resource Protection Zoning,” “Open Space Residential Development” and transfers of development rights to allow the clustering of new development while protecting open space or conservation land
- Allowing special permits to enable developments that have more density or fewer parking spaces.

When a majority of a city or town legislative body wants to adopt zoning that will encourage housing production, state law should not stand in the way. Each year that passes means another season of town meetings that come and go with the supermajority requirement in place. Each year is a missed opportunity to build needed housing in accordance with local decision-making governed by majority rule. Time is of the essence as we join together to meet our urgent housing needs. I urge your prompt enactment of this legislation.

Respectfully submitted

Charles D. Baker,
Governor

HOUSE No. 3507

A message from His Excellency the Governor recommending legislation relative to promoting housing choices (House, No. 3507). February 28, 2019.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

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 7 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 of
70 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) multi-
74 family housing or mixed-use development in a location that would qualify as an eligible location
75 for a smart growth zoning district under section 2 of chapter 40R of the general laws; (b) an
76 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 zoning
81 or natural resource protection zoning in instances where the adoption of such zoning promotes
82 concentration of development in areas that the municipality deems most appropriate for such
83 development, but will not result in a diminution in the maximum number of housing units that
84 could be developed within the municipality; or (b) modify regulations concerning the bulk and
85 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 25 five members there is filed with the clerk prior to
93 final action by the council a written protest against a zoning change under this section, stating the
94 reasons duly signed by owners of 50 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 300 feet
96 therefrom, no change of any such ordinance shall be adopted except by a two-thirds vote of all
97 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
119 permit 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. Said section 9 of said chapter 40A, as so appearing, is hereby further
122 amended by inserting after the 12th paragraph the following paragraph:-

123 However, a special permit issued by a special permit granting authority shall require a
124 simple majority vote for any of the following: (a) multifamily housing that is located within .5
125 miles of a commuter rail station, subway station, ferry terminal, or bus station, provided, not less
126 than 10 per cent of the housing is affordable to and occupied by households whose annual
127 income is less than 80 per cent of the area wide median income as determined by the United
128 States Department of Housing and Urban Development and affordability is assured for a period
129 of not less than 30 years through the use of an affordable housing restriction as defined in section
130 31 of chapter 184; (b) mixed-use development in centers of commercial activity within a
131 municipality, including town and city centers, other commercial districts in cities and towns, and
132 rural village districts, provided, not less than 10 per cent of the housing is affordable to and
133 occupied by households whose annual income is less than 80 per cent of the area wide median
134 income as determined by the United States Department of Housing and Urban Development and
135 affordability is assured for a period of not less than 30 years through the use of an affordable
136 housing restriction as defined in section 31 of chapter 184; or (c) A reduced parking space to
137 residential unit ratio requirement, pursuant to this section, provided that a reduction in the
138 parking requirement will result in the production of additional housing units.

139 SECTION 11. Section 3 of chapter 40R of the General Laws, as so appearing, is hereby
140 amended by inserting after the figure “40A,” in line 10, the following words:- ; provided,
141 however, that a smart growth zoning district or starter home zoning district ordinance or by-law
142 shall be adopted by a simple majority vote of all the members of the town council, or of the city

143 council where there is a commission form of government or a single branch, or of each branch
144 where there are two branches, or by a simple majority vote of a town meeting.

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

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

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