

HOUSE No. 4262

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, December 23, 2019.

The committee on Housing, to whom was referred the petition (accompanied by bill, House, No. 1288) of Kevin G. Honan, Andres X. Vargas and others relative to housing reform, reports recommending that the accompanying bill (House, No. 4262) ought to pass [Representative DeCoste of Norwell dissents].

For the committee,

KEVIN G. HONAN.

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

An Act relative to housing reform.

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 the principal dwelling, subject to otherwise applicable

dimensional and parking requirements, 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) is not larger in floor area than ½ the floor area of the principal dwelling or 900 square feet, whichever is smaller; and (iii) is subject to such additional restrictions as may be imposed by a municipality, including but not limited to additional size restrictions, owner-occupancy requirements, and restrictions or prohibitions on short-term rental of accessory dwelling units.

“As of right”, development 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.

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

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

“Eligible locations”, areas that by virtue of their infrastructure, transportation access, existing underutilized facilities, or location make highly suitable locations for residential or mixed use smart growth zoning districts or starter home zoning districts, including without limitation (1) areas near transit stations, including rapid transit, commuter rail and bus and ferry terminals; or (2) areas of concentrated development, including town and city centers, other existing commercial districts in cities and towns, and existing rural village districts.

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

“MBTA community,” A city or town that is enumerated in one of the following: (i) “51 cities and towns”, as defined in section 1 of chapter 161A of the General Laws; (ii) “Fourteen cities and towns”, as defined in section 1 of chapter 161A of the General Laws; or (iii) “Other served communities”, as defined in section 1 of chapter 161A of the General Laws; and such other municipalities as may be added in accordance with section 6 of chapter 161A of the General laws or in accordance with any special act to the area constituting the authority.

“Mixed-use development”, development containing a mix of residential uses and non-residential uses, including, without limitation: commercial, institutional, industrial, or other uses.

“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.

“Natural resource protection zoning”, zoning ordinances or by-laws enacted principally to protect natural resources by promoting compact patterns of development and concentrating development within a portion of a parcel of land 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.

“Open space residential development”, a residential development in which the buildings and accessory uses are clustered together into one or more groups separated from adjacent property and other groups within the development by intervening open land. An open space residential development shall be permitted only on a plot of land of such minimum size as a zoning ordinance or by-law may specify which is divided into building lots with dimensional control, density and use restrictions for such building lots varying from those otherwise permitted by the ordinance or by-law and open land. Such open land shall either be conveyed to

the city or town and accepted by it for park or open space use, or be made subject to a recorded use restriction enforceable by the city or town or a non-profit organization the principal purpose of which is the conservation of open space, providing that such land shall be kept in an open or natural state and not be built for residential use or developed for accessory uses such as parking or roadway.

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 2 definitions: -

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

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

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

Except as provided herein, no zoning ordinance or by-law or amendment thereto shall be adopted or changed except by a two-thirds 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 two branches, or by a two-thirds vote of a town meeting; provided, however, the following shall be adopted by a vote of a simple majority of all members of the

town council or the city council where there is a commission form of government or a single branch or of each branch where there are two branches or by a vote of a simple majority of town meeting:

(1) An amendment to a zoning ordinance or by-law to allow any of the following as of right: (a) multifamily housing or mixed-use development in an eligible location; (b) accessory dwelling units, whether within the principal dwelling or a detached structure on the same lot; or (c) open-space residential development.

(2) An amendment to a zoning ordinance or by-law to allow by special permit: (a) multifamily housing or mixed –use development in an eligible location; (b) an increase in the permissible density of population or intensity of a particular use in a proposed residential or mixed use development pursuant to section 9 of chapter 40A of the general laws; or (c) a diminution in the amount of parking required for residential or mixed-use development pursuant to section 9 of chapter 40A of the general laws; (d) accessory dwelling units.

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

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

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

SECTION 5. Section 9 of said chapter 40A, as so appearing, is hereby amended by inserting after the word "interests," in line 34, the following words:-

Provided, however, that nothing herein shall prohibit a zoning ordinance or by-law from allowing transfer of development rights to be permitted as of right, without the need for a special permit or other discretionary approval.

SECTION 6. Said section 9 of said chapter 40A, as so appearing, is hereby further amended by striking out, in line 39, the word "cluster" and inserting in place thereof the following words:--

open space residential.

119 SECTION 7. Said section 9 of said chapter 40A, as so appearing, is hereby further
120 amended by striking out, in line 35, the word “cluster” and inserting in place thereof the
121 following words: --

122 open space residential.

123 SECTION 8. Said section 9 of said chapter 40A, as so appearing, is hereby further
124 amended by inserting, after the word “control,” in line 43, the following words:-

125 Provided, however, that nothing herein shall prohibit a zoning ordinance or by-law from
126 allowing open space residential developments to be permitted as of right, without the need for a
127 special permit or other discretionary zoning approval.

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

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131 Zoning ordinances or by-laws may also provide that special permits may be granted for
132 reduced parking space to residential unit ratio requirement after a finding by the special permit
133 granting authority that the public good would be served and that the area in which the
134 development is located would not suffer from substantial adverse impacts from such diminution
135 in parking.

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

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

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

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

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

SECTION 11. Section 3 of chapter 40R of the general laws, as so appearing, is hereby amended by inserting after the figure “40A,” in line 10, the following words:-

; provided, however, that a smart growth zoning district or starter home district ordinance or by-law shall be adopted by a simple majority vote 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 two branches, or by a simple majority vote of a town meeting.

SECTION 12. Section 1 of chapter 40S of the general laws, as so appearing, is hereby amended by striking out the word “properties” in line 51 and inserting in place thereof the following words:-

buildings.

SECTION 13. Said section 1 of said chapter 40S, as so appearing, is hereby further amended by inserting after the figure “40R,” in line 61, the following words:-

including without limitation smart growth zoning districts and starter home zoning districts as defined in section 1 of said chapter 40R.

SECTION 14. The executive office of housing and economic development shall issue guidance to assist local officials determining the voting thresholds for various zoning amendments. Such guidance shall be assembled in consultation with the Department of Housing and Community Development, the Massachusetts Attorney General’s Municipal Law Unit, and Massachusetts Housing Partnership.

SECTION 15. The secretary of housing and economic development shall report annually to the clerks of the house of representatives and the senate, who shall forward the report to the house of representatives and the senate, the chairs of the joint committee on housing, and the chairs of the senate and house committee on ways and means, on the activities and status of the Housing Choice Initiative, as described by the governor in a message to the general court dated December 11, 2017. The report also shall include a list of all cities and towns that qualify as “housing choice” communities and a list and description of grant funds disbursed to such cities and towns and a description of how the funds were used to support the production of new housing.

The report shall also include progress made towards the goal of producing 427,000 new units of housing in Massachusetts by 2040. The housing production goal shall also include a goal of having 85,400 units of housing be created by 2040 that are affordable to households earning less than 80% of the Area Median Income, with at least 8,500 of these units affordable to households earning less than 30 percent of the Area Median Income. The report shall include a breakdown of market-rate units created; units created that are accessible or adaptable for persons with disabilities; units created for persons over the age of 55; and units created by deed restricted affordable housing available to households earning less than 80% Area Median Income, less than 60% Area Median Income, and less than 30% Area Median Income.

SECTION 16. Said chapter 40A, as so appearing, is hereby further amended by inserting after section 3 the following new section: -

Section 3A.

(a) Zoning ordinances and by-laws of a city or town that is an MBTA community, as defined in this chapter, shall provide at least one district of reasonable size in which multi-family housing is a permitted use as of right. For the purposes of this paragraph, a “district of reasonable size” shall include: (i) multi-family housing without age restrictions which is suitable for families with children; (ii) have a minimum gross density of 15 units per acre, subject to any further limitations imposed by section 40 of chapter 131 and title 5 of the state environmental code, established by section 13 of chapter 21A; and (iii) be in a location as described in subsection (b) of this section.

If a city or town that is an MBTA community fails to comply with this section, that city or town shall be ineligible for funds from the so-called Housing Choice Initiative as described by

the governor in a message to the general court dated December 11, 2017, (ii) the Local Capital Projects Fund under Section 2E of Chapter 29 of the General Laws; and (iii) the Massworks Infrastructure Program under section 63 of Chapter 23A.

(b) Districts shall be in the following locations:

(i) located within .5 miles of a commuter rail station, subway station, ferry terminal, or bus station.

(ii) located within .25 miles of a stop along a local bus route, key bus route, commuter bus route, as defined in the Massachusetts Bay Transportation Authority Service Delivery Policy as approved by the MBTA Fiscal and Management Control Board on January 23, 2017, and as it may be updated and approved from time to time.

(c) The department, in consultation with the Massachusetts Bay Transit Authority and the Massachusetts Department of Transportation, shall promulgate guidelines which shall be used to determine if a city or town has satisfied the requirements established in this section.

SECTION 17. Section 17 of chapter 40A of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by inserting after the second paragraph the following two paragraphs:-

Any appeal of a grant of zoning relief or denial of zoning enforcement by a person other than an applicant challenging conditions imposed on a permit shall be dismissed unless within forty-five days following the filing of appeal pursuant to this section the plaintiff files an affidavit setting forth with particularity the specific harm to the plaintiff's property interest alleged as a result of the decision appealed from and identifying persons with knowledge of said

227 harm and documents that support the allegations made in the complaint or described in the
228 affidavit.

229 In the event that a plaintiff identifies harm from traffic, drainage, or other impacts of a
230 similar nature, the filing referenced in the preceding section must include the affidavit of an
231 engineer or other expert qualified by training, certification and education to testify to the impact
232 of the alleged harm on the plaintiff's property interest.