

# **HOUSE . . . . . No. 4263**

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## The Commonwealth of Massachusetts

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HOUSE OF REPRESENTATIVES, December 23, 2019.

The committee on Housing, to whom was referred the message from His Excellency the Governor recommending legislation relative to promoting housing choices (House, No. 3507), reports recommending that the accompanying bill (House, No. 4263) ought to pass [Representative DeCoste of Norwell dissents].

For the committee,

KEVIN G. HONAN.

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**The Commonwealth of Massachusetts**

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**In the One Hundred and Ninety-First General Court  
(2019-2020)**  
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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 ‘Eligible locations’, areas that by virtue of their infrastructure, transportation access,  
26 existing underutilized facilities, or location make highly suitable locations for residential or  
27 mixed use smart growth zoning districts or starter home zoning districts, including without  
28 limitation (1) areas near transit stations, including rapid transit, commuter rail and bus and ferry  
29 terminals; or (2) areas of concentrated development, including town and city centers, other  
30 existing commercial districts in cities and towns, and existing rural village districts.

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

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

35           “Natural resource protection zoning”, zoning ordinances or by-laws enacted principally  
36 to protect natural resources by promoting compact patterns of development and concentrating  
37 development within a portion of a parcel of land so that a significant majority of the land remains  
38 permanently undeveloped and available for agriculture, forestry, recreation, watershed  
39 management, carbon sequestration, wildlife habitat or other natural resource values.

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

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

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

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

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

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

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

77           (2) An amendment to a zoning ordinance or by-law to allow by special permit: (a) multi-  
78 family housing or mixed-use development in an eligible location (b) an increase in the  
79 permissible density of population or intensity of a particular use in a proposed multi-family or  
80 mixed use development pursuant to section 9 of chapter 40A of the general laws; (c) accessory  
81 dwelling units in a detached structure on the same lot or (d) a diminution in the amount of  
82 parking required for residential or mixed-use development pursuant to section 9 of chapter 40A  
83 of the general laws;

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

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

94           Provided, further, that any amendment that requires a simple majority vote shall not be  
95 combined with amendments that require a two-thirds majority vote. provided, further, that if in a  
96 city or town with a council of fewer than 25 five members there is filed with the clerk prior to  
97 final action by the council a written protest against a zoning change under this section, stating the  
98 reasons duly signed by owners of 50 per cent or more of the area of the land proposed to be

99 included in such change or of the area of the land immediately adjacent extending 300 feet  
100 therefrom, no change of any such ordinance shall be adopted except by a two-thirds vote of all  
101 members.

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

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

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

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

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

121 Zoning ordinances or by-laws may also provide that special permits may be granted for  
122 reduced parking space to residential unit ratio requirements after a finding by the special  
123 permit granting authority that the public good would be served and that the area in which the  
124 development is located would not suffer a substantial adverse effect from such diminution in  
125 parking.

126 SECTION 10. Said section 9 of said chapter 40A, as so appearing, is hereby further  
127 amended by inserting after the 12th paragraph the following paragraph:-

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



142 residential unit ratio requirement, pursuant to this section, provided that a reduction in the  
143 parking requirement will result in the production of additional housing units.

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

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

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

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

162 SECTION 15. The secretary of housing and economic development shall report annually  
163 to the clerks of the house of representatives and the senate, who shall forward the report to the

164 house of representatives and the senate, the chairs of the joint committee on housing, and the  
165 chairs of the senate and house committees on ways and means, on the activities and status of the  
166 Housing Choice Initiative, as described by the governor in a message to the general court dated  
167 December 11, 2017, including progress made towards the production of 135,000 new units by  
168 2025. The report also shall include a list of all cities and towns that qualify as “housing choice”  
169 communities and a list and description of grant funds disbursed to such cities and towns and a  
170 description of how the funds were used to support the production of new housing.