

SENATE No. 2443

The Commonwealth of Massachusetts

**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
13 dimensional and parking requirements, that (i) maintains a separate entrance, either directly from

14 the outside or through an entry hall or corridor shared with the principal dwelling sufficient to
15 meet the requirements of the state building code for safe egress; (ii) is not larger in floor area
16 than ½ 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 “Department”, the department of housing and community development.

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

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

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

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

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

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

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

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

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

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

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

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

74 Except as provided herein, no zoning ordinance or by-law or amendment thereto shall be
75 adopted or changed except by a two-thirds vote of all the members of the town council, or of the
76 city council where there is a commission form of government or a single branch, or of each
77 branch where there are two branches, or by a two-thirds vote of a town meeting; provided,
78 however, the following shall be adopted by a vote of a simple majority of all members of the

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

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

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

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

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

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

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

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

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

118 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:

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

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

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

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

158 ; provided, however, that a smart growth zoning district or starter home district ordinance
159 or by-law shall be adopted by a simple majority vote of all members of the town council, or of
160 the city council where there is a commission form of government or a single branch, or of each
161 branch where there are two branches, or by a simple majority vote of a town meeting.

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

165 buildings.

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

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

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

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

184 The report shall also include progress made towards the goal of producing 427,000 new
185 units of housing in Massachusetts by 2040. The housing production goal shall also include a
186 goal of having 85,400 units of housing be created by 2040 that are affordable to households
187 earning less than 80% of the Area Median Income, with at least 8,500 of these units affordable to
188 households earning less than 30 percent of the Area Median Income. The report shall include a
189 breakdown of market-rate units created; units created that are accessible or adaptable for persons
190 with disabilities; units created for persons over the age of 55; and units created by deed restricted
191 affordable housing available to households earning less than 80% Area Median Income, less than
192 60% Area Median Income, and less than 30% Area Median Income.

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

195 Section 3A.

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

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

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

209 (b) Districts shall be in the following locations:

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

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

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

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

222 The court, in its discretion, may require non-municipal plaintiffs in an action under this
223 section to post a surety or cash bond in an amount not to exceed \$15,000 to secure the payment
224 of costs in appeals of decisions approving special permits, variances, and site plans where the
225 court finds that the harm to the defendants or to the public interest resulting from the delays of
226 appeal outweighs the burden of the surety or cash bond on the plaintiffs. When making a

227 decision regarding surety or cash bond requirements, the court may consider the relative merits
228 of the appeal and the relative financial means of the appellant and the defendants.