

# SENATE . . . . . No. 2852

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Senate, July 29, 2020 -- Text of the Senate amendment (Senator Tran) to the Senate Bill enabling partnerships for growth (Senate, No. 2842).

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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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1           by inserting after section \_ the following sections:-

2           "SECTION \_. Section 4A of chapter 40 of the General Laws, as appearing in the 2016  
3   Official Edition, is hereby amended by adding the following paragraph:-

4           By a majority vote of their legislative bodies, and with the approval of the mayor, board  
5   of selectmen or other chief executive officer, any contiguous cities and towns may enter into an  
6   agreement to allocate public infrastructure costs, municipal service costs and local tax revenue  
7   associated with the development of an identified parcel or parcels or development within the  
8   contiguous communities generally, provided that said agreement is approved by the department  
9   of revenue.

10          SECTION \_. Section 1A of chapter 40A of the General Laws, as so appearing, is hereby  
11   amended by inserting after the introductory paragraph the following 7 definitions:-

12          'Accessory dwelling unit', a self-contained housing unit, inclusive of sleeping, cooking  
13   and sanitary facilities on the same lot as a principal dwelling, subject to otherwise applicable  
14   dimensional and parking requirements, that: (i) maintains a separate entrance, either directly  
15   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 1/2 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.

'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.

'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.

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

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

54 SECTION \_\_. Said section 1A of said chapter 40A, as so appearing, is hereby further  
55 amended by inserting after the definition of "Special permit granting authority" the following 2  
56 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 that second parcel.

SECTION \_\_. 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 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 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) multi-family 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 multi-family or mixed use development pursuant to section 9 of chapter 40A of the general laws; (c) accessory dwelling units in a detached structure on the same lot or (d) 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;

(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 zoning 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 25 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 50 per cent or more of the area of the land proposed to be

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

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

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

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

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

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

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

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

However, a special permit issued by a special permit granting authority shall require a 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; or (c) A reduced parking space to

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

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

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

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

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

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

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