

SENATE No. 2862

The Commonwealth of Massachusetts

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

1 by inserting after section 37 the following sections:-

2 "SECTION XX. Section 4A of chapter 40 of the General Laws, as appearing in the 2018
3 Official Edition, is hereby amended by adding the following paragraph:-

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

9 SECTION XX. Section 1A of chapter 40A of the General Laws, as so appearing, is
10 hereby amended by striking out the definition of "Permit granting authority" and inserting in
11 place thereof the following 12 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
16 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 further restrictions as may be imposed by a municipality including, but not limited to, additional size restrictions, owner-occupancy requirements or restrictions or prohibitions on using an accessory dwelling unit as a short-term rental.

“As of right”, to proceed with a development 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.

“Eligible location”, an area that, due to the area’s infrastructure, transportation access, existing underutilized facilities or location, is highly suitable for a residential or mixed-use smart growth zoning district or starter home zoning district including, but not limited to: (i) an area near a transit station, including rapid transit, commuter rail and bus and ferry terminals; and (ii) an area of concentrated development, including a city or town center, another existing commercial district in a city or town and an existing rural village district.

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

“Lot”, an area of land with definite boundaries that is used or available for use as the site of at least 1 building.

“MBTA community”, a city or town that is: (i) one of the 51 cities and towns as defined in section 1 of chapter 161A; (ii) one of the fourteen cities and towns as defined in said section 1

of said chapter 161A; (iii) other served communities as defined in said section 1 of said chapter 161A; or (iv) a municipality that has been added to the Massachusetts Bay Transportation Authority under section 6 of chapter 161A or in accordance with any special law relative to the area constituting the authority.

“Mixed-use development”, development containing a mix of residential uses and nonresidential uses including, but not limited to, commercial, institutional or industrial uses.

“Multi-family housing”, (i) a building with not less than 3 residential dwelling units; or (ii) multiple buildings on the same lot with not less than 2 residential dwelling units in each building.

“Natural resource protection zoning”, a zoning ordinance or by-law 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 purposes.

“Open space residential development”, a residential development in which the buildings and accessory uses are clustered together into at least 1 group and separated from adjacent property and other groups within the development by intervening open land; provided, however, that an open space residential development shall be permitted only on a plot of land that is larger than the minimum size specified in a zoning ordinance or by-law and that is divided into: (i) building lots with dimensional control, density and use restrictions that vary from those otherwise permitted by the ordinance or by-law; and (ii) open land that is either conveyed to the city or town and accepted by the city or town for park or open space use or is made subject to a

recorded use restriction that: (A) is enforceable by the city or town or a nonprofit organization the principal purpose of which is for the preservation of open space; and (B) requires the open land to be kept in an open or natural state and not be developed for residential use or any accessory uses, including parking or roadways.

“Permit granting authority”, the board of appeals or zoning administrator.

SECTION XX. Said section 1A of said chapter 40A, as so appearing, is hereby further amended by striking out the definitions of “Transfer of development rights” and “Transfer of development rights zoning” and inserting in place thereof the following 2 definitions -

“Transfer of development rights”, a regulatory procedure whereby an owner of a parcel conveys development rights, thereby extinguishing those rights on the parcel, to the owner of another parcel and the owner of the other parcel may obtain and exercise those rights in addition to the development rights already existing on the other parcel.

“Transfer of development rights zoning”, zoning that authorizes the 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.

SECTION XX. Said chapter 40A is hereby further amended by inserting after section 3 the following section:-

Section 3A. (a) (1) An MBTA community shall have a zoning ordinance or by-law that provides for at least 1 district of reasonable size in which multi-family housing is permitted as of right; provided, however, that such multi-family housing shall be without age restrictions and

shall be suitable for families with children. For the purposes of this section, a district of reasonable size shall: (i) 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 pursuant to section 13 of chapter 21A; and (ii) be located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable.

(b) An MBTA community that fails to comply with this section shall not be eligible for funds from: (i) the 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 established in section 2EEEE of chapter 29; or (iii) the MassWorks infrastructure program established in section 63 of chapter 23A.

(c) The department, in consultation with the Massachusetts Bay Transportation Authority and the Massachusetts Department of Transportation, shall promulgate guidelines to determine if an MBTA community is in compliance with this section.

SECTION 5. Section 5 of said chapter 40A, as appearing in the 2018 Official Edition, is hereby amended by striking out the fifth paragraph and inserting in place thereof the following paragraph:-

Except as provided herein, a zoning ordinance or by-law or amendment thereto shall not be adopted or changed except by a two-thirds vote of all the members of the town council, city council or town meeting; provided, however, that a simple majority vote of all members of the town council, city council or town meeting shall be required for: (i) an amendment to a zoning ordinance or by-law to allow any of the following as of right: (A) multi-family housing or mixed-use development in an eligible location; (B) accessory dwelling units, whether within the

principal dwelling or within a detached structure on the same lot; or (C) open space residential development; (ii) 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 residential or mixed-use development pursuant to section 9; (C) a reduction in the amount of parking required for residential or mixed-use development pursuant to said section 9; or (D) accessory dwelling units; (iii) a zoning ordinance or by-law or amendment thereto that: (A) provides for transfer of development rights 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 reduction in the maximum number of housing units that could be developed within the municipality; or (B) modifies 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; (iv) a smart growth zoning district or starter home zoning district in accordance with section 3 of chapter 40R; or (v) an inclusionary zoning ordinance or by-law. A zoning ordinance or by-law or an amendment thereto that requires a simple majority vote under this paragraph shall not be combined with a zoning ordinance or by-law or an amendment thereto that requires a 2/3 majority vote; provided further, that if, in a city or town with a council of fewer than 25 members, a written protest against a zoning change under this section that requires a simple majority vote stating the reasons and duly signed by owners of not less than 50 per cent of the area of the land proposed to be included in such change and the area of the land immediately adjacent extending 300 feet therefrom is filed with the clerk prior to final action by the council, a change to or the adoption of such ordinance

or by-law shall require a 2/3 vote of all members; and provided further, that if, in a city or town with a council of fewer than 25 members, a written protest against a zoning change under this section that requires a two-thirds majority vote stating the reasons and duly signed by owners not less than 20 per cent of the area of the land proposed to be included in such change and the area of the land immediately adjacent extending 300 feet therefrom is filed with the clerk prior to final action by the council, a change to or adoption of any such ordinance or by-law shall require a 3/4 vote of all members.

SECTION XX. Section 9 of said chapter 40A, as so appearing, is hereby amended by striking out, in lines 39 and 43, the word “cluster” and inserting in place thereof, in each instance, the following words:- open space residential.

SECTION XX. Said section 9 of said chapter 40A, as so appearing, is hereby further amended by inserting after the word “control”, in line 43, the following words:- ; provided, however, that nothing herein shall prohibit a zoning ordinance or by-law from allowing an open space residential development to be permitted as of right.

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

Zoning ordinances or by-laws may also provide for special permits authorizing a reduced parking space to residential unit ratio requirement after a finding by the special permit granting authority that the reduction in parking would serve the public good and that the area in which the development is located would not suffer from substantial adverse impacts from the reduction in parking.

SECTION XX. Said section 9 of said chapter 40A, as so appearing, is hereby further amended by inserting after the word “board”, in line 131, the following words:- ; provided, however, that a special permit issued by a special permit granting authority shall require a simple majority vote for: (i) multi-family housing that is located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station and of which not less than 10 per cent is affordable to and to be occupied by households the annual income of which shall be not more than 80 per cent of the area median income as determined by the United States Department of Housing and Urban Development 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; (ii) mixed-use development in centers of commercial activity within a municipality, including city and town centers, other commercial districts in cities and towns and rural village districts and of which not less than 10 per cent of the housing is affordable to and to be occupied by, households the annual income of which shall be not more than 80 per cent of the area median income as determined by the United States Department of Housing and Urban Development for a period of not less than 30 years through the use of an affordable housing restriction as defined in said section 31 of said chapter 184; or (iii) a reduced parking space to residential unit ratio requirement pursuant to this section if the reduction will result in the production of additional housing units.

SECTION XX. Section 17 of said chapter 40A, as so appearing, is hereby amended by inserting after the second paragraph the following paragraph:-

The court, in its discretion, may require a plaintiff in an action under this section appealing a decision to approve a special permit, variance or site plan to post a surety or cash bond in an amount of not more than \$50,000 to secure the payment of costs if the court finds that the harm to the defendant or to the public interest resulting from delays caused by the appeal

171 outweighs the financial burden of the surety or cash bond on the plaintiffs. The court shall
172 consider the relative merits of the appeal and the relative financial means of the plaintiff and the
173 defendant.

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

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

182 SECTION XX. Said section 1 of said chapter 40S, as so appearing, is hereby further
183 amended by inserting after the figure “40R”, in line 61, the following words:- including, but not
184 limited to, a smart growth zoning district or starter home zoning district as defined in section 1 of
185 said chapter 40R.

186 SECTION XX. The executive office of housing and economic development shall issue
187 guidance to assist local officials in determining the voting thresholds for various zoning
188 amendments. The guidance shall be developed in consultation with the department of housing
189 and community development, the attorney general’s office and Massachusetts Housing
190 Partnership.

191 SECTION XX. (a) Annually, the secretary of housing and economic development shall
192 file a report with the clerks of the senate and the house of representatives, the joint committee on

housing and 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 shall include, but not be limited to: (i) a list of the cities and towns that qualify as housing choice communities; (ii) a list and description of grant funds disbursed to such cities and towns; (iii) a description of how the funds were utilized to support the production of new housing.

(b) The report shall also include an analysis of progress made towards a goal of producing 427,000 new units of housing by 2040, of which not less than 85,400 units shall be affordable to households the earnings of which shall be not more than 80 per cent of the area median income and not less than 8,500 units shall be affordable to households the earnings of which shall be not more than 30 per cent of the area median income. The report shall include a breakdown of: (i) market-rate units created; (ii) units created that are accessible or adaptable for persons with disabilities; (iii) units created for persons over the age of 55; and (iv) deed-restricted affordable housing units available to households earning not more than 80 per cent of the area median income, not more than 60 per cent of the area median income and not more than 30 per cent of the area median income.

(c) The department of housing and community development shall establish a commission to assist the executive office of housing and economic development in meeting the housing production goals in this section. The commission shall consult with regional housing nonprofit organizations, municipalities, municipal planning organizations, regional housing authorities, regional transportation authorities, the Massachusetts Department of Transportation, municipal transportation authorities, regional planning agencies, community development corporations and local private and public institutions of higher education to identify and set housing production

216 regions and targets therein. The commission shall file its first report not more than 1 year after
217 the effective date of this act with the clerks of the senate and house of representatives, the joint
218 committee on housing and the senate and house committees on ways and means. The report shall
219 include, but not be limited to, recommendations on: (i) regional housing production needs; (ii)
220 regional housing productions goals; (iii) funding mechanisms for housing production projects;
221 (iv) tax, subsidy or other incentives for municipalities or regions to meet the regional housing
222 production goals; (v) improving the permitting process for housing production projects; (vi)
223 optimal residential development zoning codes for housing production; and (vii) setting housing
224 affordability standards. The commission's final report shall be filed not later than December 31,
225 2039."