

SENATE No. 780

The Commonwealth of Massachusetts

PRESENTED BY:

Harriette L. Chandler

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act establishing a roadmap for housing solutions.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Harriette L. Chandler</i>	<i>First Worcester</i>	
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>	<i>1/28/2019</i>
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>	<i>1/29/2019</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>1/29/2019</i>
<i>Brian W. Murray</i>	<i>10th Worcester</i>	<i>1/29/2019</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	<i>1/30/2019</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>	<i>1/30/2019</i>
<i>José F. Tosado</i>	<i>9th Hampden</i>	<i>1/31/2019</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>2/1/2019</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>	<i>2/1/2019</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>2/1/2019</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>2/1/2019</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>2/4/2019</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>	<i>2/5/2019</i>

SENATE No. 780

By Ms. Chandler, a petition (accompanied by bill, Senate, No. 780) of Harriette L. Chandler, John J. Lawn, Jr., William N. Brownsberger, Michael J. Barrett and other members of the General Court for legislation to establish a roadmap for housing solutions. Housing.

The Commonwealth of Massachusetts

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

An Act establishing a roadmap for housing solutions.

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 3 of chapter 23B of the General Laws, as appearing in the 2016
2 Official Edition, is hereby amended by inserting after clause (v) the following subsection:-
3 (w) establish, conduct and maintain an annual program of education, self-evaluation and
4 training for members of local planning boards and zoning boards of appeals, at no cost to
5 municipalities; provided, however that the department shall consult with the Massachusetts
6 Association of Planning Directors, Massachusetts Association of Regional Planning Agencies
7 and American Planning Association, Massachusetts Chapter, regarding development of the
8 program; provided further, that the department may contract with the Massachusetts Citizen
9 Planner Training Collaborative to provide such education, self-evaluation and training. To the
10 extent practicable, the education, self-evaluation and training programs shall be offered online
11 and in various locations throughout the commonwealth.

12 SECTION 2 Section 4A of chapter 40 of the General Laws, as appearing in the 2016
13 Official Edition, is hereby amended by adding the following paragraph:-

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

20 SECTION 3 Section 1A of chapter 40A of the General Laws, as so appearing, is hereby
21 amended by inserting after the introductory paragraph the following 9 definitions:-

22 “Accessory dwelling unit”, a self-contained housing unit, inclusive of sleeping, cooking
23 and sanitary facilities on the same lot as a principal dwelling, subject to otherwise applicable
24 dimensional and parking requirements, that: (i) maintains a separate entrance, either directly
25 from the outside or through an entry hall or corridor shared with the principal dwelling sufficient
26 to meet the requirements of the state building code for safe egress; (ii) is not larger in floor area
27 than 1/2 the floor area of the principal dwelling or 900 square feet, whichever is smaller; and (iii)
28 is subject to such additional restrictions as may be imposed by a municipality, including but not
29 limited to additional size restrictions, owner-occupancy requirements, and restrictions or
30 prohibitions on short-term rental of accessory dwelling units..

31 “By-right” or “as of right”, development that may proceed under a zoning ordinance or
32 by-law without the need for a special permit, variance, zoning amendment, waiver or other
33 discretionary zoning approval.

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

36 “Mixed-use development”, development containing a mix of residential uses and non-
37 residential uses, including, without limitation: commercial, institutional, industrial or other uses;
38 all conceived, planned and integrated to create vibrant, workable, livable and attractive
39 neighborhoods.

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

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

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

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

60 SECTION 4 Said section 1A of said chapter 40A, as so appearing, is hereby further
61 amended by inserting after the definition of “Special permit granting authority” the following 2
62 definitions:-

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

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

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

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

78 branch or of each branch where there are two branches or by a vote of a simple majority of town
79 meeting:

80 (1) An amendment to a zoning ordinance or by-law to allow any of the following as
81 of right: (a) multifamily housing or mixed-use development in a location that would qualify as an
82 eligible location for a smart growth zoning district under section 2 of chapter 40R of the general
83 laws; (b) accessory dwelling units; or (c) open-space residential development.

84 (2) An amendment to a zoning ordinance or by-law to allow by special permit: (a)
85 multi-family housing or mixed-use development in a location that would qualify as an eligible
86 location for a smart growth zoning district under section 2 of chapter 40R of the general laws; (b)
87 an increase in the permissible density of population or intensity of a particular use in a proposed
88 development pursuant to section 9 of chapter 40A of the general laws; or (c) a diminution in the
89 amount of parking required for residential or mixed-use development pursuant to section 9 of
90 chapter 40A of the general laws;

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

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

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

109 SECTION 6 Section 9 of said chapter 40A, as so appearing, is hereby amended by
110 inserting after the word “interests,” in line 34, the following words:- ; provided, however, that
111 nothing herein shall prohibit a zoning ordinance or by-law from allowing transfer of
112 development rights to be permitted as of right, without the need for a special permit or other
113 discretionary zoning approval.

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

117 SECTION 8 Said section 9 of said chapter 40A, as so appearing, is hereby further
118 amended by striking out, in line 39, the word “cluster” and inserting in place thereof the
119 following words:- open space residential.

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

125 SECTION 10. Said section 9 of said chapter 40A, as so appearing, is hereby further
126 amended by striking out the 7th paragraph and inserting in place thereof the following paragraph:

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

131 SECTION 11 Section 9, of chapter 40A, as appearing in the 2016 official edition, is
132 hereby further amended after the last sentence on line 127 by inserting the following:-

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

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

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

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

150 SECTION 12 Said chapter 40A is hereby further amended by inserting after section 9C
151 the following section:-

152 Section 9D. No ordinance or by-law shall prohibit an owner of land or structures who
153 has applied or intends to apply for a building permit, any permit or approval required under this
154 chapter, an approval under sections 81K to 81GG, inclusive, of chapter 41 or a comprehensive
155 permit under sections 20 to 23, inclusive, of chapter 40B from requesting of the public official or
156 local board charged with acting on the application to undertake a land use dispute avoidance
157 process.

158 If the applicant and the public official or local board agree to a land use dispute
159 avoidance process, the mediator or facilitator for the dispute avoidance process may convene
160 meetings or conduct interviews that shall be confidential and privileged from discovery in
161 accordance with section 23C of chapter 233. The mediator or facilitator shall have the
162 protections provided under said section 23C of said chapter 233. To the extent that public bodies

163 are participants, their deliberations may be held in executive session to the extent permitted by
164 clause 9 of subsection (a) of section 21 of chapter 30A.

165 The applicant and the public official or local board shall, by an agreement in
166 writing filed with the city or town clerk, stipulate and agree to extend any otherwise applicable
167 time requirements of state or local law. Whether a resolution results, the applicant may proceed
168 with the application without prejudice for having participated in a conflict evaluation or
169 resolution effort and the application process shall proceed in due course as otherwise provided by
170 law, ordinance or by-law.

171 SECTION 13 Section 3 of chapter 40R of the General Laws, as so appearing, is hereby
172 amended by inserting after the figure “40A,” in line 10, the following words:- ; provided,
173 however, that a smart growth zoning district or starter home zoning district ordinance or by-law
174 shall be adopted by a simple majority vote of all the members of the town council, or of the city
175 council where there is a commission form of government or a single branch, or of each branch
176 where there are two branches, or by a simple majority vote of a town meeting.

177 SECTION 14 Section 1 of chapter 40S of the General Laws, as so appearing, is hereby
178 amended by striking out the word “properties” in line 51 and inserting in place thereof the
179 following word:- buildings.

180 SECTION 15 . Said section 1 of said chapter 40S, as so appearing, is hereby further
181 amended by inserting after the figure “40R,” in line 61, the following words:- including without
182 limitation smart growth zoning districts and starter home zoning districts as defined in section 1
183 of said chapter 40R.

184 SECTION 16 Paragraph 1 of section 81BB of said chapter 41, as so appearing, is hereby
185 amended by striking out the second and third sentences and inserting in place thereof the
186 following 4 sentences:- Such civil action shall be in the nature of certiorari pursuant to section 4
187 of chapter 249. A complaint by a plaintiff challenging a subdivision approval under this section
188 shall allege the specific reasons why the subdivision fails to satisfy the requirements of the
189 board’s rules and regulations or other applicable law and allege specific facts establishing how
190 the plaintiff is aggrieved by the decision. A complaint by an applicant challenging a subdivision
191 denial or conditioned approval under this section shall similarly allege the specific reasons why
192 the subdivision properly satisfies the requirements of the board’s rules and regulations or other
193 applicable law. The fourth to seventh paragraphs, inclusive, of section 17 of chapter 40A shall
194 govern the allowance of costs and the requirement of a surety or cash bond for actions under this
195 section.

196 SECTION 17. The secretary of housing and economic development shall report annually
197 to the clerks of the house of representatives and the senate, who shall forward the report to the
198 house of representatives and the senate, the chairs of the joint committee on housing, and the
199 chairs of the senate and house committees on ways and means, on the activities and status of the
200 Housing Choice Initiative, as described by the governor in a message to the general court dated
201 December 11, 2017, including progress made towards the production of 135,000 new units by
202 2025. The report also shall include a list of all cities and towns that qualify as “housing choice”
203 communities and a list and description of grant funds disbursed to such cities and towns and a
204 description of how the funds were used to support the production of new housing.

205 SECTION 18. The Undersecretary of Housing and Community Development shall
206 submit a report to the Joint Committee on Municipalities and Regional Government within one

207 year of enactment which shall provide recommendations on a certification program for members
208 of local planning boards and zoning boards of appeals, including what legislative and/or
209 executive branch actions would be necessary to create an effective certification program.

210 SECTION 19. There shall be a task force to examine and make recommendations on
211 promoting housing production, preservation and land use planning in the commonwealth. The
212 task force shall consist of: the senate and house chairs of the joint committee on housing, who
213 shall serve as co-chairs; 2 members of the house of representatives, 1 of whom shall be
214 appointed by the minority leader; 2 members of the senate, and 1 of whom shall be appointed by
215 the minority leader. The undersecretary of housing and community development or designee
216 shall serve as an “ex officio” member and the task force may ask for assistance as needed from
217 the department and the commonwealth’s quasi-public housing agencies. The chairs may, at their
218 discretion, name additional members representing stakeholder organizations and/or consult
219 informally with such stakeholders.

220 The task force’s scope shall include, but not be limited to: housing production and
221 preservation for a full range of incomes and of all housing types; strategies for addressing the
222 displacement of lower income households; modernizing the commonwealth’s zoning, planning
223 and permitting statutes; and promoting such development consistent with commonwealth’s smart
224 growth principles and environmental goals.

225 The task force shall file a report containing its findings and recommendations, including
226 draft legislation necessary to carry out its recommendations, with the clerks of the house of
227 representatives and senate, the senate and house chairs of the joint committee on housing and the

228 chairs of the house and senate committees on ways and means not later than 180 days after
229 enactment.