

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Garrett J. Bradley

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 passage of the accompanying bill:

An Act making chapter 40B, so called, more responsive to the Commonwealth's cities and towns.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Garrett J. Bradley	3rd Plymouth
James Cantwell	4th Plymouth

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1252 OF 2007-2008.]

The Commonwealth of Massachusetts

—————
In the Year Two Thousand and Nine
—————

AN ACT MAKING CHAPTER 40B, SO CALLED, MORE RESPONSIVE TO THE COMMONWEALTH'S CITIES AND TOWNS.

*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 20 of chapter 40B of the General Laws, as appearing in the 2000 Official Edition, is hereby
2 amended by inserting before the definition of “Low or moderate income housing”, the following definition:—
3 “Local Housing Authority”, any housing authority within a city or town as provided under chapter 121B of the
4 General Laws.

5 SECTION 2. Said section 20 of said chapter 40B, as so appearing, is hereby amended by striking out, in line 6, the
6 words “or state” and inserting in place thereof the following words:— , state or local.

7 SECTION 3. The definition of “Low or moderate income housing” in said section 20 of said chapter 40B is hereby
8 amended by adding the following sentence:— Such program shall not include any funding by the Federal Home
9 Loan Bank.

10 SECTION 4. The definition of “Low or moderate income housing” in said section 20 of said chapter 40B, as so
11 appearing, is hereby amended by adding the following 2 paragraphs:—
12 In calculating a city or town’s 80 per cent threshold of low or moderate income housing stock, the department of
13 housing and community development shall count all rental units and all units being offered for sale at market rate
14 constructed in accordance with this chapter.
15 The sale or rental of low or moderate income housing shall be calculated at 40 per cent of the income of those
16 persons whose income is 80 per cent or less of the area median income, as defined by the United States Department
17 of Housing and Urban Development.

18 SECTION 5. The definition of “Uneconomic” in said section 20 of said chapter 40B, as so appearing, is hereby
19 amended by adding the following paragraph:—
20 The profit realized by any developer of a comprehensive permit project shall not exceed 10 per cent. In calculating

21 the profit, the baseline acquisition cost shall be limited to either the last purchase price of a developer-owned parcel
22 with reasonable carrying costs or the fair market value of a property that is under a purchase and sale agreement.

23 SECTION 6. Said section 20 of said chapter 40B, as so appearing, is hereby further amended by striking out, in line
24 31, the words “board of zoning appeals” and inserting in place thereof the following words:— planning board.

25 SECTION 7. The definition of “Consistent with local needs” in said section 20 of said chapter 40B, as so appearing,
26 is hereby further amended by inserting after the first sentence the following 5 sentences:—

27 The applicant for a comprehensive permit shall be required to list any and all waivers to local regulations,
28 demonstrate the necessity for each waiver, the specific portion of the property to which each waiver applies and how
29 each waiver is required to sustain the economic viability of the development proposal. Local wetland by-laws and
30 board of health regulations may be waived by the planning board only if they apply to dimensional criteria such as
31 setbacks, lot areas and buffer zones and only if the applicant can demonstrate that such waivers will not adversely
32 affect the environment. The board may choose not to waive municipal sewer regulations or bylaws. The board shall
33 not waive any regulation that will prevent the development of environmentally or physically unsuitable land. The
34 applicant shall be required to establish that the subject property could physically support a conventional
35 development of at least 35 per cent of the number of units that are proposed under the comprehensive permit
36 process.

37 SECTION 8. Said section 20 of said chapter 40B, as so appearing, is hereby further amended by striking out, in line
38 33 the word “ten” and inserting in place thereof the following figure:— 8.

39 SECTION 9. The definition of “Consistent with local needs” in said section 20 of said chapter 40B, as so appearing,
40 is hereby amended by adding the following paragraph:—

41 Notwithstanding the provisions of any law or regulation to the contrary, in any municipality where at least 40 per
42 cent of the housing units for sale or rent can be occupied through conventional market based financing by
43 households whose income does not exceed 80 per cent of the area median income, as defined by the United States
44 Department of Housing and Urban Development, this chapter shall have no force or effect and shall not be allowed
45 to be used to achieve any site approval pursuant to this chapter.

46 SECTION 10. Said chapter 40B is hereby further amended by inserting after section 20 the following section:—
47 Section 20A. All low and moderate income housing units included in a comprehensive permit shall have a use
48 restriction in perpetuity and such restriction shall be recorded in the registry of deeds for the district in which the
49 land lies or the registry district of the land court.

50 SECTION 11. Section 21 of said chapter 40B, as appearing in the 2000 Official Edition, is hereby amended by
51 striking out, in lines 3 and 4, the words “board of appeals, established under section twelve of chapter forty A” and
52 inserting in place thereof the following words:—

53 planning board established under section 70 of chapter 41.

54 SECTION 12. Said section 21 of said chapter 40B, as so appearing, is hereby further amended, by striking out, in
55 lines 5, 9, 17, 20 and 24 the words “ board of appeals” and inserting in place thereof, in each instance, the following
56 words:—

57 planning board.

58 SECTION 13. Section 21 of said chapter 40B, as so appearing, is hereby further amended by inserting, after the
59 second sentence the following sentence:—

60 The planning board shall be entitled to charge the applicant a reasonable fee for the cost of reviewing a
61 comprehensive permit application in accordance with chapter 44, section 53G.

62 SECTION 14. Said section 21 of said chapter 40B, as so appearing, is hereby further amended by inserting after the
63 third sentence, the following sentence:—

64 The planning board shall have the power to attach to said permit or approval the condition that a certain percentage
65 of handicapped accessible units shall be built within the comprehensive permit development.

66 SECTION 15. Said section 21 of said chapter 40B, as so appearing, is hereby further amended by inserting after the
67 fourth sentence, the following sentence:—

68 The planning board shall receive and consider evidence that the density or pace of a proposed development will
69 unduly burden a city or town's ability to provide adequate services, including, but not limited to schools, water and
70 sewer and other municipal services.

71 SECTION 16. Said section 21 of said chapter 40B, as so appearing, is hereby further amended by adding the
72 following sentence:—

73 No application for a comprehensive permit shall be filed while a pending comprehensive permit application for
74 development in the same community is under review by the planning board or the housing appeals committee.

75 SECTION 17. Said chapter 40B is hereby further amended by inserting after section 21, the following section:—

76 Section 21A. If the planning board of a city or town develops an affordable housing plan that insures that a
77 minimum of 25 per cent of all new housing units constructed in the city or town are affordable, including, but not
78 limited to inclusionary, cluster and mixed use zoning provisions, and the proposal is approved by the community's
79 legislative body, the community shall be exempt from the provisions of this chapter. If the community does not
80 create a plan or the plan fails to make 25 per cent of its new housing construction affordable, the community shall
81 not be exempt from this chapter.

82 SECTION 18. Section 22 of said chapter 40B, as appearing in the 2000 Official Edition, is hereby amended by
83 striking out, in lines 7 and 10, the words "board of appeals" and inserting in place thereof, in each instance, the
84 following words:— planning board.

85 SECTION 19. Section 23 of said chapter 40B, as appearing in the 2000 Official Edition, is hereby amended by
86 striking out, in lines 4, 9, 23 and 30 the words, "board of appeals" and inserting in place thereof, in each instance,
87 the following words:— planning board.

88 SECTION 20. Said Section 23 of said chapter 40B, as so appearing, is hereby further amended by inserting after the
89 first sentence the following sentence:— The housing appeals committee shall consider evidence from a city or town
90 that the density or pace of a proposed development will unduly burden that city or town's ability to provide adequate
91 services, including, but not limited to schools, water and sewer and other municipal services.

92 SECTION 21. Said chapter 40B is hereby further amended by inserting after section 23 the following sections:—

93 Section 23A. The public agency or limited dividend or nonprofit organization proposing to build low or moderate
94 income housing shall be required to meet with the local housing authority prior to approval by the planning board.
95 The developer shall also pay any and all fees to the local housing authority necessary for the administration of the
96 rental or sale of the affordable units.
97 The local housing authority shall administer the process through which affordable housing units in developments are
98 rented or sold. The authority shall use its existing waiting lists to determine which local residents are eligible for the
99 affordable units. In making the determination of eligibility, the authority must require a criminal offender records

100 information check of all applicants and an annual certification of income. Those who are eligible for affordable
101 housing shall submit to an annual recertification of income by the local housing authority.

102 Section 23B. The department of housing and community development shall promulgate regulations to implement
103 these sections.