

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Ms. 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 passage of the accompanying bill:

An Act promoting affordable housing and community planning in the Commonwealth.

PETITION OF:

NAME:

Ms. Chandler

DISTRICT/ADDRESS:

First Worcester

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S00751 OF 2007-2008.]

The Commonwealth of Massachusetts

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

AN ACT PROMOTING AFFORDABLE HOUSING AND COMMUNITY PLANNING IN THE COMMONWEALTH.

*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 15 of chapter 19, of the General Laws, as appearing in the 2002 Official Edition, is
2 hereby amended by adding the following clause:-

3 (k) to collect and maintain information on the number of group home units in each community and
4 report such information, including the location of such group home units, to the department of housing
5 and community development on an annual basis. Such location shall be held by the department of
6 housing and community development subject to chapter 66A.

7 SECTION 2. clause (b) of section 15 of chapter 19B of the General Laws, as so appearing, is hereby
8 amended by adding the following sentence:-

9 The department of mental retardation shall report the number of group home units in each city or town
10 on an annual basis to the department of housing and community development. The department of
11 mental retardation shall also report the location of such group homes to the department of housing and

12 community development. Such location shall be held by the department of housing and community
13 development subject to chapter 66A.

14 SECTION 3. The second paragraph of section 3 of chapter 23B of the General Laws, as so appearing, is
15 hereby amended by adding the following clause:-

16 (w) count the number of low or moderate income housing units, as defined by chapter 40B and the
17 accompanying department of housing and community development regulations, in each city or town in
18 the commonwealth on a biennial basis.

19 SECTION 4. Section 20 of chapter 40B of the General Laws is hereby amended by striking out section 20,
20 as so appearing, and inserting in place thereof the following section:

21 Section 20 – Definitions The following words, wherever used in this section and in sections 20A to 23,
22 inclusive, shall, unless a different meaning clearly appears from the context, have the following
23 meanings:-

24 “Affordable Housing Threshold”, each city or town shall have a minimum affordable housing threshold
25 such that at least 10 percent of year round housing units meet the requirements for inclusion on the
26 subsidized housing inventory in a manner consistent with sections 20 through 23 of this chapter.

27 “Committee”, the housing appeals committee.

28 “Consistent with local needs”, shall have the meaning set forth in section 20A.

29 “Department”, the department of housing and community development.

30 “Family”, two or more persons who live or will live regularly in a unit as their primary residence whose
31 income and resources are available to meet the family’s needs and who are either related by blood,
32 marriage, operation of law or who have otherwise evidenced an inter-dependent relationship.

33 “Group Home Units”, community housing units or beds serving clients of the department of mental
34 retardation or the department of mental health which are located in a non-institutional setting. Each
35 such unit shall serve 1 client.

36 “Local Board”, any town or city board of survey, board of health, planning board, conservation
37 commission, building inspector or the officer or board having supervision of the construction of
38 buildings or the power of enforcing municipal building laws, or city council or board of selectmen or
39 other boards exercising power specified locally.

40 “Local Program”, a housing program established and administered by a city or town which has been
41 authorized and approved by the department.

42 “Low or moderate-income households”, individuals or families living in a housing unit with combined
43 incomes no higher than 80 percent of the median income for the metropolitan statistical area, primary
44 metropolitan statistical area, or the county in which the housing unit is located, whichever is lower, as
45 determined by the United States department of housing and urban development or, in the absence of
46 such a determination, by the department.

47 “Low or moderate-income housing”, any year round housing subsidized by the federal or state
48 government under any program, or subsidized by a local government under a local program authorized
49 and approved by the department, to produce housing which serves low or moderate-income
50 households as defined in this chapter. Low or moderate income-housing shall also include
51 manufactured homes, as such term is defined in G.L. c. 140, § 32Q.

52 “Subsidy”, the provision of: direct financial assistance; indirect financial assistance including insurance,
53 guarantees, or other means; in kind assistance; technical assistance; or of other supportive services

54 through a federal, state or local housing program to assist the construction of low or moderate-income
55 housing.

56 “Subsidizing Agency”, any agency or entity of state, federal or local government which subsidizes the
57 construction or substantial rehabilitation of low or moderate-income housing and any housing authority
58 acting pursuant to section 26(m) of chapter 121B.

59 “Uneconomic”, any condition brought about by any single factor or combination of factors to the extent
60 that such condition makes it impossible for a public agency or nonprofit organization to proceed in
61 building or operating low or moderate income housing without financial loss, or for a limited dividend
62 organization to proceed and still realize a reasonable return in building or operating such housing within
63 the limitations set by the subsidizing agency on the size or character of the development or on the
64 amount or nature of the subsidy or on the tenants, rentals and income permissible, and without
65 substantially changing the rent levels and units sizes proposed by the public, nonprofit or limited
66 dividend organizations. In calculating whether a condition or conditions render a project uneconomic,
67 the maximum land value shall be the lesser of: (i) actual amount paid by the applicant, or any party
68 related thereto, for the subject property in an arm’s length transaction, with all allowable carrying costs;
69 or (ii) the subject property’s as-is fair market value without the benefit of any waivers or variances from
70 local by-laws or regulations. In making such a calculation, an applicant shall also be bound by the actual
71 costs of development, and, accordingly, costs attributable to related parties shall be limited to the actual
72 costs expended by such parties.

73 SECTION 5. Said chapter is hereby further amended by inserting after section 20, the following new
74 section:-

75 Section 20A. Consistent with local needs.

76 Decisions and requirements by the zoning board of appeals shall be considered consistent with local
77 needs if they are reasonable in view of the regional need for low or moderate income housing
78 considered with the number of low and moderate income persons in the city or town affected and the
79 need to protect the health or safety of the occupants of the proposed housing or of the residents of the
80 city or town, to promote better site and building design in relation to the surroundings, or to preserve
81 open spaces, and if such decisions and requirements are applied as equally as possible to both
82 subsidized and unsubsidized housing. A zoning board of appeals is not required to grant waivers for use
83 restrictions in zoning districts that are limited to industrial uses.

84 Decisions and requirements shall also be deemed consistent with local needs when imposed by a board
85 of zoning appeals after comprehensive hearing in a city or town where:

86 (1) Low or moderate-income housing exists which is at least 10 per cent of the housing units reported in
87 the most recent federal decennial census of the city or town or on sites comprising one and one half per
88 cent or more of total land area zoned for residential, commercial or industrial use; (2) The development
89 is large scale for the city or town in which it is proposed. A proposed development shall be large scale if:

90 * in a city or town which has a total number of 7,500 or more housing units as enumerated in the
91 most recent federal decennial census, the application for a comprehensive permit involves construction
92 of more than 300 housing units or a number of housing units equal to or greater than 2 percent of all
93 housing units in the city or town, whichever number is greater; or

94 * in a city or town which has between 5,000 and 7,500 housing units exclusive, as so enumerated,
95 the application for a comprehensive permit involves construction of more than 250 housing units; or

96 * in a city or town which has between 2,500 and 5,000 housing units inclusive, as so enumerated,
97 the application for a comprehensive permit involves construction of more than 200 housing units; or

98 * in a city or town which has less than 2,500 housing units, as so enumerated, the application for a
99 comprehensive permit involves construction of more than 150 housing units; or

100 (3) The city or town has made recent progress toward attaining its affordable housing threshold. Recent
101 progress toward its affordable housing threshold shall mean that the number of housing units that have
102 been created during the twelve months prior to the date of the comprehensive permit application and
103 that are eligible to be included on the subsidized housing inventory equal to or greater than 2 percent of
104 the city or town's total housing units as enumerated in the most recent federal decennial census; or

105 (4) 12 months has not elapsed between the date of application for a comprehensive permit and the date
106 of the most recent pendency of a prior application for a variance, special permit, subdivision or other
107 approval related to construction on the same land if that prior application included no provision for low
108 or moderate income housing, provided that any such application shall not be considered a prior
109 application if it concerns only insubstantial changes to an existing use;

110 (5) the city or town has adopted an affordable housing plan approved by the department pursuant to
111 which there is an increase in its number of low or moderate-income housing units eligible for inclusion
112 on the subsidized housing inventory by at least one-half of 1 percent of total units every calendar year
113 until housing needs are met pursuant to this chapter, subject to paragraphs (a) and (b) below.

114 a. The affordable housing plan shall be based upon a comprehensive housing needs assessment, which
115 shall include an analysis of the most recent federal decennial census data of the city or town's
116 demographics and housing stock, development constraints as well as of the city or town's ability to
117 mitigate them, and the city or town's infrastructure.

118 b. The affordable housing plan shall address the matters set out in guidelines adopted by the
119 department, including:

120 * a mix of housing, such as rental and homeownership opportunities for families, individuals,
121 persons with disabilities or special needs, and the elderly that are consistent with local needs and
122 feasible within the housing market in which they will be situated;

123 * the strategy by which the city or town will achieve its housing goals based upon its
124 comprehensive needs assessment;

125 * the characteristics of projects the city or town prefers that are consistent with the guidelines
126 established by the department of smart growth and development including, but not limited to,
127 redevelopment and adaptive reuse, cluster housing, higher-density housing, transit or pedestrian-
128 oriented development which provides access to jobs and services, resource efficient buildings, and
129 development in locations with existing infrastructure;

130 * a description of the use restrictions which shall be imposed on low- or moderate-income
131 housing units to ensure that each unit will remain affordable to and occupied by low or moderate-
132 income households;

133 * the identification of zoning districts or geographic areas which permit residential uses which the
134 city or town proposes to modify or has created for the purposes of low or moderate-income housing
135 developments;

136 * the identification of specific sites or characteristics of sites for which the city or town will
137 encourage the filing of comprehensive permit applications pursuant to section 21 of this chapter; and

138 * city or town owned parcels, if any, for which the city or town commits to issue requests for
139 proposals to develop low or moderate-income housing.

140 c. Upon submission to the department, the plan shall also be submitted to the regional planning district
141 established pursuant to this chapter or the cape cod commission established pursuant to section 18 of

142 chapter 716 of the laws of 1989 as amended, or the martha's vineyard commission established pursuant
143 to chapter 831 of the laws of 1977, within such district or commission area such project is located or any
144 other regional planning district hereafter established by the general court, which shall have 30 days to
145 comment to the department on the implications of the plan for housing need, growth and development
146 concerns, and other relevant matters. Within 90 days after its submission to the department by a city or
147 town's chief executive officer, the department shall approve the plan if it meets the requirements
148 specified herein, otherwise, it shall disapprove the plan. The department shall notify the city or town of
149 its decision to either approve or disapprove a plan in writing. If the department disapproves a plan, the
150 notification shall include a statement of reasons for the disapproval. A city or town that originally
151 submitted a plan that had been disapproved may submit a new or revised plan to the department at any
152 time. A city or town may amend its plan from time to time if the department approves the amendment.
153 If the department fails to mail notice of approval or disapproval of a plan or plan amendment within 90
154 days after its receipt, the plan or plan amendment shall be deemed to be approved.

155 d. The department shall certify annually whether a city or town is in compliance with an approved plan.
156 The department shall determine whether a city or town is in compliance within 30 days of receipt of a
157 city or town's request for such a certification. A city or town shall be in compliance if it has reached the
158 benchmarks established in its approved plan and has made all changes necessary to accommodate
159 future planned development. If the department determines the city or town is in compliance with its
160 plan, the certification shall be retroactive to the date the certification was requested. Provided further if
161 a city or town fails to achieve the goals established in the approved plan and as documented on the
162 subsidized housing inventory the city or town shall not be in compliance with its plan and shall submit a
163 new plan for certification by the department.

164 e. Units which were created and which became eligible to be counted toward a city or town's affordable
165 housing threshold between August 1, 2002 and December 31, 2002 shall be credited toward the city or
166 town's affordable housing threshold for the first year of planned production under an approved
167 affordable housing plan, regardless of the date the plan is submitted to or certified by the department.
168 An approved plan shall take effect for the purpose of the definition of consistent with local needs in this
169 section only when the department certifies that the city or town has approved permits resulting in an
170 initial annual increase in its low-or moderate-income housing units of at least one-half of 1 percent of
171 total housing units in accordance with its plan. It is the responsibility of the city or town to request such
172 certification from the department. Once the department has made such a certification of initial
173 compliance and subsequent annual certifications of compliance:

174 * The board may, in its discretion, deny, or approve with conditions, any comprehensive permit
175 applications for the period of one year from any certification, and such denial or approval with
176 conditions shall be deemed consistent with local needs; or, alternatively,

177 * The board may, in its discretion, deny or approve with conditions any comprehensive permit
178 applications for the period of 2 years from any certification, if, in the year it was certified, the city or
179 town has increased its low or moderate-income housing stock by at least 1 percent of total housing units
180 in a manner consistent with the plan, or alternatively,

181 * The board may, in its discretion, deny, or approve with conditions, any comprehensive permit
182 applications for the period of 3 years from any certification, if, in the year it was certified, the city or
183 town has increased its low or moderate-income housing stock by at least 1 1/2 percent of total housing
184 units in a manner consistent with the plan; or

185 (6) the board has approved 3 or more comprehensive permits, at least 3 of which contain 20 or more
186 housing units each within 12 months preceding the filing of an application for a comprehensive permit
187 and those permits have become final.

188 SECTION 6. Said chapter is hereby further amended by inserting after section 20, the following new
189 section:-

190 Section 20B. Local determination of affordable housing threshold.

191 (a) Comprehensive permit requirements.

192 (1) To be eligible to submit an application for a comprehensive permit or to file or maintain an appeal
193 before the committee, the applicant and the project shall fulfill the following jurisdictional
194 requirements:

195 (i) The applicant shall be a public agency, a non-profit organization, or a limited dividend organization.

196 An applicant shall satisfy the limited dividend organization requirement if the comprehensive permit
197 contains a condition that the owner of the project execute a regulatory agreement with a subsidizing
198 agency which limits the owner's return on building or operating the project to: (i) 20% of total
199 development costs for a home-ownership project; and/or (ii) 10% per year for rental projects. Each
200 regulatory agreement shall affirmatively require that all excess profit shall be paid to the local
201 municipality for the exclusive use of developing, maintaining, or operating affordable housing, provided
202 that such housing is restricted for sale or lease to households earning no more than 120% of the
203 designated Area Median Income. Such regulatory agreement shall be recorded or filed prior to the
204 beginning of construction of the land records with the registry of deeds or land court in the registry
205 district or district office of the land court in which the project is located. In calculating the allowable
206 limited dividend, the maximum allowable land value shall be the lesser of: (i) actual amount paid by the

207 applicant, or a party related thereto, for the subject property in an arm's length transaction, with all
208 allowable carrying costs; or (ii) the subject property's as-is fair market value without the benefit of any
209 waivers or variances from local by-laws or regulations. In making such a calculation, an applicant shall
210 also be bound by the actual costs of development, and, accordingly, costs attributable to related parties
211 shall be limited to the actual costs expended by such parties. An applicant shall disclose, to the
212 municipality all documents which are used to determine the amount of the dividend or profit in the
213 projects and the local municipality is permitted to monitor an applicant's compliance with its limited
214 dividend obligations.

215 (ii) The project shall be fundable by a subsidizing agency under a low and moderate-income housing
216 subsidy program.

217 * The applicant shall control the site.

218 * The proposed development shall contain no less than 25 percent of its total housing units as
219 units affordable to low or moderate income households, or in the alternative a proposed development
220 may contain no less than 20 percent of its total housing units as affordable to households whose income
221 does not exceed 50 percent of the area median income.

222 Provided further the inclusion of commercial, recreational or other land uses which are in conjunction
223 with the housing development shall not preclude eligibility.

224 (2) Fundability shall be established by submission of a written determination of project eligibility by a
225 subsidizing agency as follows:

226 (i) A determination of project eligibility shall include:

227 1. the name and address of the applicant;

- 228 2. the address of the site and site description;
- 229 3. the number and type (homeownership or rental) of housing units proposed;
- 230 4. the name of the housing program or programs under which project eligibility is sought; and
- 231 5. relevant details of the particular project if not mandated by the housing program, including the
- 232 percentage of units for low or moderate income households, income eligibility standards, the duration
- 233 of use restrictions requiring occupancy by low or moderate income households, and the limited dividend
- 234 status of the developer;
- 235 (ii) A determination of project eligibility shall make the following findings:
- 236 1. that the proposed project appears generally eligible under the requirements of the housing
- 237 program or programs, subject to final review of eligibility and to final approval;
- 238 2. that the subsidizing agency has performed an on-site inspection of the site and has reviewed
- 239 pertinent information submitted by the applicant;
- 240 3. that the proposed housing design and density are generally appropriate for the site on which it
- 241 is located, taking into account surrounding land uses, proximity to transportation, services and public
- 242 utilities, and design to minimize land use impacts;
- 243 4. that the proposed project appears financially feasible within the housing market in which it will
- 244 be situated, based on comparable rentals or sales figures;
- 245 5. that an initial pro forma has been reviewed and the project appears financially feasible on the
- 246 basis of estimated development costs; and

247 F. that the developer of the proposed project meets the general eligibility standards of the housing
248 program or programs.

249 * In addition to the foregoing, a subsidizing agency shall consider the following in making a
250 determination of project eligibility: overall density and size; environmental impact, including watersheds
251 and existing land uses; consistency with principles of smart growth; impact on historical resources; the
252 impact of other pending applications for housing development; and other local concerns of the city or
253 town where the project is located.

254 * Within 10 days of filing of its application for a determination of project eligibility with a
255 subsidizing agency for preliminary approval of a project, the applicant shall serve written notice upon
256 the director of the department.

257 * Within 10 days of filing the application for a determination of project eligibility the applicant
258 shall provide written notice and a copy of such application to the chief executive officer of the involved
259 city or town and to the members of the general court representing such city or town. The applicant shall
260 also provide written notice of the application to the planning board, board of health, conservation
261 commission, water and sewer district, fire and police.. Within 30 days after such notice, the chief
262 executive officer or designee of the chief executive officer may schedule and hold a meeting at a
263 location within the involved city or town. The meeting shall be chaired by the city or town's chief
264 executive officer or designee and shall be attended by the applicant or its representative.

265 Representatives from local boards are encouraged to attend the meeting and provide written comment.

266 The purpose of the meeting is to allow the applicant and the city or town representatives to informally
267 discuss the preliminary proposal so that the parties involved can develop an understanding of the
268 proposal and to respond to concerns raised in an effort to achieve an outcome that meets the needs of
269 the involved city or town as well as the applicant. In addition, a representative from a public or quasi-

270 public housing agency, or a regional planning agency within the regional planning district or its designee
271 knowledgeable with respect to chapter 40B may provide technical assistance on topics including, but
272 not limited to, site design and density, open space, marketing, use restrictions, allowable costs and
273 profit limitations. Following the close of the meeting, the chief executive officer of the city or town, local
274 boards, and the regional planning district may issue written comments within 14 days to the subsidizing
275 agency. Project eligibility determinations must be made within 90 days from receipt of the
276 municipality's comments.

277 * Within 10 days of receipt of a written determination of project eligibility from the subsidizing
278 agency, the applicant shall serve a copy of that determination upon the director of the department.

279 (vii) An applicant which has obtained a determination of project eligibility shall be presumed to be
280 eligible to submit an application for comprehensive permit or to file or maintain an appeal before the
281 committee. Nothing set forth in this section 20B shall be deemed to confer upon any city or town, or any
282 of its boards, committees, commissions or officials, or upon any other person the right to appeal or
283 judicial review in any form the determination of project eligibility by the subsidizing agency, it being
284 intended that the rights of appeal conferred by sections 21 and 22 of this chapter shall be the exclusive
285 remedy for any party aggrieved by the issuance or denial of any comprehensive permit hereunder.

286 (viii) If project funding is provided through a non-governmental entity, a public or quasi-public entity
287 authorized by the department shall make the determination of project eligibility. The designated entity
288 that issued the project eligibility determination shall administer the project thereafter as specified in
289 program guidelines issued by the department.

290 (3) A showing that the applicant, or any entity 50 percent or more of which is owned by the applicant,
291 owns a 50 percent or greater interest, legal or equitable, in the proposed site, or holds any option or

292 contract to purchase the proposed site, shall be considered by the board or the housing appeals
293 committee to be conclusive evidence of the applicant's interest in the site.

294 (4) No determination of project eligibility shall be issued for a project sooner than 45 days after the filing
295 of its application with the subsidizing agency for preliminary approval of the project. A determination of
296 project eligibility shall be for a particular financing program or programs. An applicant may proceed
297 under alternative financing programs if the application to the board or appeal to the committee so
298 indicates and if full information concerning the project under the alternative financing arrangements is
299 provided.

300 (5) Failure of the applicant to fulfill any of the requirements in this section may be raised by the housing
301 appeals committee, the board, or a party at any time, and shall be cause for dismissal of the application
302 or appeal. No application or appeal shall be dismissed, however, unless the applicant has had at least 60
303 days to remedy the failure.

304 (b) Local Action Prerequisite to Appeal.

305 In order to appeal to the committee, an applicant shall have applied to the board for a comprehensive
306 permit in accordance with section 21 of this chapter and shall have been denied such permit or shall
307 have been granted such permit with conditions which it alleges make the building or operation of such
308 housing uneconomic.

309 (c) Local progress toward affordable housing threshold.

310 (1) Affordable housing thresholds. A city or town may record progress towards its affordable housing
311 threshold as documented in the subsidized housing inventory in the following manner:

312 i. Rental Housing Units: (a) If at least 25 percent of housing units within a development are restricted to
313 serve low or moderate-income households, 100 percent of housing units within the development shall

314 be eligible to be included toward the city or town's affordable housing threshold. If fewer than 25
315 percent of housing units within a development are restricted to serve low or moderate-income
316 households, only those units which serve low or moderate-income households shall be eligible to be
317 included toward the city or town's affordable housing threshold or (b) if at least 20 percent of housing
318 units within a development are restricted to serve households with household income at or below 50
319 percent of area median income, 100 percent of housing units within the development shall be eligible to
320 be included toward the city or town's affordable housing threshold. If fewer than 25 percent of housing
321 units within a development are restricted to serve low or moderate-income households, only such
322 restricted units shall be eligible to be included toward the city or town's affordable housing threshold;

323 ii. Homeownership Units: (a) if at least 25 percent of housing units within a development are restricted
324 to serve low or moderate-income households, 2 times the actual number of such restricted units, not to
325 exceed the total number of homeownership units authorized by the permit shall be included toward the
326 city or town's affordable housing threshold or (b) if at least 20 percent of housing units within a
327 development serve households earning at or below 50 percent of area median income, 2 times the
328 actual number of units serving such households, not to exceed the total number of homeownership
329 units authorized by the permit shall be included toward the city or town's affordable housing threshold.
330 If fewer than 25 percent of housing units within a development are restricted to serve low or moderate-
331 income households, only such units which are restricted to serve low or moderate-income households
332 shall be eligible to be included toward the city or town's affordable housing threshold;

333 iii. Community Preservation Act Housing Units: any community housing, as defined in chapter 44B which
334 is restricted to occupancy by persons of low or moderate income households, provided further, that
335 such housing payment exclusive of utilities shall not exceed 30 percent of monthly income of a

336 household at or below 80 percent of area median income, adjusted for household size, shall be eligible
337 to be included toward the city or town's affordable housing threshold;

338 iv. Accessory Apartment Units: any accessory apartment which is approved pursuant to a city or town's
339 ordinance or bylaw and is occupied by persons of low or moderate income, provided further that such
340 rental payment exclusive of utilities shall not exceed 30 percent of monthly income of a household
341 earning at or below 80 percent of area median income, adjusted for household size, shall be eligible to
342 be included toward the city or town's affordable housing threshold. Each such accessory apartment unit
343 shall be subject to a use restriction, which may be revocable upon the sale of the principal residence.
344 Each city or town shall certify annually the number of such accessory apartments within its borders;

345 v. Group Home Units: all group home units in each city or town as reported annually by the department
346 of mental health and the department of mental retardation to the department shall be eligible to be
347 included toward the city or town's affordable housing threshold;

348 vi. Local Housing Units: housing units created under a local program or subsidy or which qualify as local
349 initiative units pursuant to regulations promulgated by the department and restricted to serve low or
350 moderate income households as defined in this chapter shall be eligible to be included toward the city
351 or town's affordable housing threshold as documented on the subsidized housing inventory; and

352 vii. Urban Center Housing Tax Increment Financing Units: low or moderate income housing created
353 pursuant to section 60 of chapter 40 provided further, that such housing payment exclusive of utilities
354 shall not exceed 30 percent of monthly household income of a household earning at or below 80
355 percent of area median income shall be eligible to be included toward the city or town's affordable
356 housing threshold.

357 viii. Expiring Use Units: In instances where housing units were developed to serve low or moderate
358 income households and the use restriction has expired as a result of refinancing or operation of law or
359 otherwise, the department shall have the discretion to count such units pursuant to guidelines
360 promulgated by the department toward a city or town's affordable housing threshold as recorded in the
361 subsidized housing inventory. The approved affordable units in any project under G.L. c. 40B, Sections
362 20-23, shall remain affordable for the longer of: (a) the term of affordability contained in a recorded
363 restriction; or (2) the time which such project remains non-compliant with the city or town's zoning
364 ordinances or bylaws.

365 (d) Subsidized Housing Inventory.

366 The department shall maintain an inventory of low or moderate income housing units. Such inventory
367 shall be published biennially, provided further that such inventory shall be updated for a specific city or
368 town upon request by such city or town. Housing units authorized by a comprehensive permit or special
369 permit shall be eligible to be included toward a city or town's affordable housing threshold as recorded
370 on the subsidized housing inventory when the comprehensive permit or special permit becomes final,
371 provided that housing units for which building permits have not been issued within 1 year of the date
372 when the comprehensive permit or special permit became final shall no longer be eligible to be counted
373 toward the city or town's affordable housing threshold until the building permits have been issued. The
374 department may for good cause waive such time requirement. Low or moderate income housing units
375 not authorized pursuant to a comprehensive permit or special permit shall be eligible to be counted
376 toward the city or town's affordable housing threshold when a building or occupancy permit is issued.

377 SECTION 7. Said chapter is hereby further amended by inserting after section 20, the following section:-

378 Section 20C. A city or town, pursuant to sections 20 through 23 of chapter 40B, with a pending
379 comprehensive permit for an application of development of housing, that shares a contiguous border to

380 an adjacent city or town may propose to enter into an agreement with such city or town to share
381 infrastructure and service costs associated with such development. Pursuant to such agreement, if such
382 infrastructure and service costs are shared by a city or town, both cities and towns may share in
383 counting such units towards their affordable housing threshold pursuant to sections 20 through 23 of
384 chapter 40B. Any such proposed agreement shall be subject to approval by the department of housing
385 and community development, which shall set forth guidelines for such agreements. Provided further
386 such cities and towns may provide for a joint application to each city or town for a comprehensive
387 permit application and provide for a joint hearing process for consideration of such joint application by
388 such local zoning boards.

389 SECTION 8. Said chapter is hereby further amended by inserting after section 20, the following section:-

390 Section 20D. The Massachusetts Housing Partnership Fund board, as established by section 35 of
391 chapter 405 of the acts of 1985, or its designee, shall make technical assistance available to local zoning
392 boards of appeal to assist in their review of applications for comprehensive permits. No subsidizing
393 agency shall issue a determination of project eligibility or site approval unless a fee to defray the costs of
394 such technical assistance program has been collected from the applicant and remitted to the
395 Massachusetts Housing Partnership Fund board in accordance with a fee schedule adopted by the
396 department.

397 SECTION 9. Said chapter is hereby further amended by inserting after section 20, the following section:-

398 Section 20E. The department shall promulgate regulations and establish programs, policies, guidelines
399 and necessary fee schedules to implement sections 20 to 23, inclusive, of this chapter. The department
400 shall make available planning and housing development information and technical assistance to assist
401 cities and towns in reaching their affordable housing threshold as defined in this chapter.

402 SECTION 10. Section 23 of said chapter 40B, as so appearing, is hereby amended by inserting after the
403 first sentence the following sentence:-

404 The committee shall receive evidence of and shall consider the following matters: (1) a city or town's
405 master plan, comprehensive plan or community development plan, and (2) the results of the city or
406 town's efforts to implement such plans.

407 SECTION 11. The department of housing and community development in consultation with the
408 commonwealth development coordinating council shall create a pilot program under which 3 housing
409 regions may be established to address regional housing needs of cities and towns within a region. Such
410 cities or towns in a region may agree to meet affordable housing thresholds established under sections
411 20 through 23 of chapter 40B in one region. The department and the commonwealth development
412 coordinating council shall establish criteria for such housing region to include but not be limited to the
413 following:

414 1. only contiguous communities that have not exceeded 10 percent toward their affordable
415 housing thresholds on the subsidized housing inventory maintained by the department pursuant to
416 sections 20 through 23 of chapter 40B shall be eligible to participate in such region;

417 2. contiguous communities shall enter into an inter-municipal agreement and develop a joint
418 housing plan for the region consistent with development goals established by the department. Such plan
419 shall:

420 1. address how the communities will share the infrastructure or service costs and benefits of low-
421 and moderate-income housing development, and how credit for such affordable housing development
422 will be reflected on the subsidized housing inventory for each city or town within the region.

423 2. address how contiguous cities or towns will achieve their housing goals. The total housing goals
424 in the region shall be at a minimum, the sum of the goals established by section 20 of chapter 40B of
425 each city or town participating in the plan.

426 The authority granted by this section shall cease on June 30, 2006, and the department shall report the
427 results of said pilot program to the clerks of the house of representatives and the senate and the joint
428 committee on housing and urban development.

429 SECTION 12. Notwithstanding any general or special law to the contrary, no application for a
430 comprehensive permit filed before the effective date of this act shall be denied as a result of changes to
431 the General Laws pursuant to this act.

432 SECTION 13. This act shall become effective immediately upon passage.

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