

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

O'Leary, Robert (SEN)

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 Relative to Community Planning.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

O'Leary, Robert (SEN)

Cape and Islands

Stephen Kulik

1st Franklin

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO COMMUNITY PLANNING.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 WHEREAS, Article 89 of the amendments to the constitution of the commonwealth, which was ratified
2 by the voters in 1966, empowers municipalities to “exercise any power or function which the general
3 court has power to confer upon it, which is not inconsistent with the constitution or laws enacted by the
4 general court”;

5

6 WHEREAS, statutes governing municipal zoning, subdivision control, and planning in Massachusetts
7 have not been updated in over thirty years;

8

9 WHEREAS, credible studies and reports have documented that Massachusetts’ antiquated and confusing
10 framework of municipal, zoning, subdivision control, and planning laws promotes inefficient land use
11 practices that are contrary to smart growth;

12

13 WHEREAS, poorly planned residential, commercial, and industrial development exacerbates the
14 affordable housing shortage and threatens the natural and cultural heritage of Massachusetts;

15

16 WHEREAS, the Massachusetts legislature provided in 2000 through the passage of the community
17 preservation act a new financial tool for municipal open space protection, affordable housing, and historic
18 preservation;

19

20 NOW, THEREFORE, the time has arrived for the Massachusetts legislature to enhance and modernize
21 the regulatory tools for municipal zoning, subdivision control, and planning to guide local growth through
22 the following bill, which shall be known as the community planning act.

23

24 Be it enacted by the Senate and House of Representatives in General Court assembled, and by the
25 authority of the same, as follows:

26

27 SECTION 1. Section 1A of chapter 40A of the General Laws, as appearing in the 2006 official edition, is
28 hereby amended by inserting the following definition:-

29

30 “Development impact fee”, a fee imposed by city zoning ordinance or town zoning by-law for
31 the purpose of offsetting the impacts of a development, and in accordance with the provisions of
32 section 9D of this chapter.

33

34 SECTION 2. Said section 1A of said chapter 40A, as so appearing, is hereby amended by
35 inserting the following definition:-

36

37 “Rate of development”, local legislative or regulatory measures adopted by cities and towns
38 under section 9F of this chapter to regulate the number of permits for new construction or
39 approvals of new building lots issued in a defined period of time or otherwise in accordance with
40 defined standards and criteria.

41

42 SECTION 3. Said chapter 40A, as so appearing, is hereby amended by inserting after section 1A
43 the following section:-

44

45 **Section 40A:2. Construction and Purposes**

46

47 (A) Rule of Construction

48 This chapter shall be so construed as to give full effect to the home rule authority of cities and
49 towns to act with respect to land use planning and regulation under Article 89 of the amendments
50 to the constitution of the commonwealth. It is hereby acknowledged that the source of authority
51 of cities and towns with respect to zoning is article 60 of said amendments, derived through
52 article 89. Nothing in this chapter shall be construed as limiting the constitutional authority of
53 cities and towns unless the language in this chapter expressly so states. Wherever the language of
54 this chapter purports to authorize or enable, it shall be so construed only where such authority is
55 not otherwise available to cities and towns under the constitution or laws of the commonwealth,
56 and in all other cases such language shall be deemed illustrative only.

57 (B) Public Purposes

58

59 Cities and towns have the authority to adopt zoning ordinances and by-laws for the protection of
60 the public health, safety, and general welfare. Cities and towns have the authority to advance
61 some or all of the zoning objectives listed below and may advance other zoning objectives not so
62 listed as they deem appropriate.

- 63
64 (1) The implementation of a plan adopted by the city or town under section 81D of
65 chapter 41.
- 66
67 (2) The orderly and sustainable growth, development, redevelopment, conservation,
68 and preservation of a city or town which promotes the types, patterns, and
69 intensities of land use contained in a plan adopted by the city or town under
70 section 81D of chapter 41.
- 71
72 (3) The efficient, fair, and timely review of development proposals, including
73 standardized procedures for administration of zoning ordinances or by-laws.
- 74
75 (4) The efficient resolution of planning and regulatory conflicts involving public and
76 private interests.
- 77
78 (5) The use of innovative development laws, regulations, and planning practices such
79 as development agreements, development impact fees, mitigation measures,
80 design review, inter-municipal transfers of development rights, form-based
81 zoning, agricultural zoning, natural resource protection zoning, special district
82 overlays, village districts, inclusionary zoning provisions which require or
83 provide incentives for the creation of below-market-rate housing, mediation and
84 dispute resolution, and urban growth boundaries.
- 85
86 (6) The delineation and balancing of urban and rural development.
- 87
88 (7) The achievement of a balance of housing choices, types, and opportunities for all
89 income levels and groups, including the creation of below-market-rate housing,
90 the preservation of existing housing stock and the preservation of affordability in
91 housing.
- 92
93 (8) The integration of residential and commercial, civic, cultural, governmental,
94 recreational, and other compatible land uses at locations that maximize
95 efficiencies in transportation energy use.
- 96
97 (9) The adequate provision and distribution of educational, health, cultural, and
98 recreational facilities.
- 99
100 (10) The preservation or enhancement of community amenities or features of
101 significant architectural, historical, cultural, visual, aesthetic, scenic, or
102 archaeological interest.

103

- 104 (11) The protection of the environment and the conservation of natural resources,
105 including those qualities of the environment and natural resources set forth in
106 article 97 of the constitution of the commonwealth.
107
- 108 (12) The retention of open land for agricultural production, forest products,
109 horticulture, aquaculture, tourism, outdoor recreation, and freshwater and marine
110 fisheries.
111
- 112 (13) The protection of public investment in infrastructure systems.
113
- 114 (14) An energy efficient, convenient, and safe transportation infrastructure with as
115 wide a choice of modes as practical, including, wherever possible, maximal
116 access to public transit systems and non-motorized modes.
117
- 118 (15) The efficient use of energy and the reduction of pollution from energy generation,
119 including the promotion of renewable energy sources and associated technologies.
120
- 121 (16) The adequate provision of employment opportunities within the city or town and
122 the region, including redevelopment of pre-existing sites, home-based
123 occupations, sustainable natural-resource-based occupations, and housing to
124 support the employment opportunities within the city or town and the region.
125
- 126 (17) The conservation of the value of land and buildings, including the elimination of
127 blight and the rehabilitation of blighted areas.
128
- 129 (18) The accommodation of regional growth in a fair, equitable, and sustainable
130 manner among municipalities, including coordination of land uses with
131 contiguous municipalities, other municipalities, the state, and other agencies, as
132 appropriate, especially with regard to resources and facilities that extend beyond
133 municipal boundaries or have a direct impact on other municipalities.
134
- 135 (19) The implementation of rate of development measures of defined duration during
136 which planning or zoning studies are undertaken, and the longer-term use of such
137 measures in a manner consistent with a plan adopted by the city or town under
138 section 81D of chapter 41.
139
- 140 (20) The implementation of a plan adopted by a regional planning agency under
141 section 5 of chapter 40B.
142

143 SECTION 4. Section 3 of said chapter 40A, as so appearing, is hereby amended by inserting,
144 after the words “or restrict the”, in line 25, the following word:- minimum.
145

146 SECTION 5. Said section 3 of said chapter 40A, as so appearing, is hereby amended by striking
147 out, in line 66, the word “or”, and inserting in place thereof the word:- of.
148

149 SECTION 6. Section 4 of said chapter 40A, as so appearing, is hereby amended by inserting,
150 after the word “permitted.”, in line 3, the following words:- However, this requirement shall not
151 apply to any provision thereof not uniformly applicable where the ordinance or by-law states a
152 valid planning or zoning basis rationally related to the distinguishing characteristics of such
153 structures or uses.
154

155 SECTION 7. Section 5 of said chapter 40A, as so appearing, is hereby amended by inserting, at the
156 beginning of the fifth paragraph, the following words:- Except where a lesser majority vote has been
157 prescribed in a zoning ordinance or by-law adopted by a two-thirds vote of the local legislative body,
158

159 SECTION 8. Said section 5 of said chapter 40A, as so appearing, is hereby amended by striking
160 out, in lines 109-111, the words “provided, however, that such ordinance or amendment shall
161 subsequently be forwarded by the city clerk to the office of the attorney general.”.
162

163 SECTION 9. Said section 5 of said chapter 40A, as so appearing, is hereby amended by inserting, after
164 the tenth paragraph, the following paragraphs:-
165

166 After January 1, 2014, no zoning ordinance or by-law may be inconsistent with a plan adopted by the city
167 or town under section 81 D of chapter 41. No zoning ordinance or by-law shall be deemed inconsistent
168 with the plan if it furthers, or at least does not impede, the achievement of the plan's goals and policies,
169 and if it is not incompatible with the plan's proposed land uses and development patterns.
170

171 After the effective date of the plan, a zoning ordinance or by-law shall enjoy a rebuttable presumption in
172 any action, suit, or administrative proceeding that its provisions are not inconsistent with the plan. If the
173 presumption is rebutted, inconsistency may serve as the basis upon which a court or administrative
174 agency may declare any relevant zoning ordinance or by-law provision to be invalid as applied to the
175 property which is the subject of the action, suit, or administrative proceeding. For any amendment to a
176 plan adopted after January 1, 2014, no such declaration of invalidity may be made in any action, suit, or
177 administrative proceeding for a period of 12 months after the effective date of such plan amendment.
178

179 SECTION 10. Said chapter 40A, as so appearing, is hereby amended by striking out section 6 and
180 inserting in place thereof the following sections:-

181 **Section 6A. Nonconforming Lots, Structures and Uses**

182

183 (A) Nonconforming residential lots

184
185 (1) Increases in lot area, frontage, width, or depth of a zoning ordinance or by-law
186 shall not apply to a lot for single- or two-family residential use which on the date
187 of the first publication of notice of the public hearing on such ordinance or by-law
188 required by section 5 that renders the lot nonconforming:

189 (i) was shown or described as a separate lot on a recorded plan or deed; and

190
191 (ii) conformed to the lot area, frontage, lot width, and depth requirements in
192 effect on the date of said notice; and

193
194 (iii) had at least 5,000 square feet of area and 50 feet of frontage in the case of
195 a single-family residential use and at least 7,500 square feet of area and 75
196 feet of frontage in the case of two-family residential use; and

197
198 (iv) was not held in common ownership with any adjoining land.
199
200

201 (2) A lot described in 6A(A)(1) shall have vital access to and frontage on a way of sufficient
202 width, grade, and construction as set forth in regulations established by the planning
203 board.

204

205 (3) Whenever the lines of a lot described in 6A(A)(1) are changed in any way that renders
206 the lot more conforming, the resulting boundaries of the lot shall govern the application
207 of this section.

208

209 (4) Whenever any lot described in 6A(A)(1) comes into common ownership with adjacent
210 land, such lot and adjacent land shall be merged and combined for the purposes of this
211 section. Common ownership shall include lots held by separate legal entities, persons, or
212 trusts under common control or having common beneficial interests.

213

214 (B) Lawfully nonconforming structures and uses

215

216 (1) A lawfully nonconforming structure or use shall mean a structure or use lawfully in
217 existence on the date of the first publication of notice of the public hearing on such
218 ordinance or by-law required by section 5 rendering such structure or use nonconforming.
219 For the purposes of this section, a structure or use lawfully in existence shall not include
220 a structure or use in violation of the zoning ordinance or by-law, nor a structure built
221 without a legally required building permit.

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- (2) Adoption or amendment of a zoning ordinance or by-law shall not apply to any lawfully existing nonconformity of: i) a lawfully existing nonconforming structure or use; and ii) structures and uses lawfully begun prior to the first publication of notice of the public hearing on the adoption or amendment of the relevant zoning ordinance or by-law required by section five.

- (3) A zoning ordinance or by-law may regulate a nonconforming structure or use if abandoned or if discontinued for a period of 2 years or more. Abandonment shall consist of any overt act, or failure to act, that would indicate that the owner neither claims or retains any intent to continue the nonconforming structure or use, unless the owner can demonstrate an intent not to abandon it. An involuntary interruption of a nonconforming structure or use, such as by fire and natural catastrophe, does not establish the intent to abandon.

- (4) This subsection 6A(b) shall not apply to establishments which display live nudity for their patrons, as defined in section 9A, adult bookstores, adult motion picture theaters, adult paraphernalia shops, or adult video stores subject to the provisions of section 9A.

- (C) Alteration, reconstruction, extension, or structural change of lawfully nonconforming structures and uses
 - (1) A zoning ordinance or by-law shall not prohibit the alteration, reconstruction, extension, or structural change to a lawfully nonconforming single- or two-family residential structure, provided all such construction satisfies the applicable dimensional requirements of the current zoning ordinance or by-law.

 - (2) A zoning ordinance or by-law may permit, as of right or by special permit, lawfully nonconforming structures or uses to be altered, reconstructed, extended, or structurally changed, provided that such actions do not increase the specific nonconformity of the structure or use.

 - (3) A zoning ordinance or by-law may permit, by special permit, nonconforming structures or uses to be altered, changed, reconstructed, or extended in a manner that increases the specific nonconformity of the structure or use, provided that the special permit granting

257 authority finds that such actions are not substantially more detrimental to the
258 neighborhood than the existing lawfully nonconforming structure or use.

259

260 (4) A zoning ordinance or by-law may regulate nonconforming structures differently than
261 nonconforming uses.

262

263 (5) A zoning ordinance or by-law may vary by zoning district(s) the requirements for the
264 alteration, reconstruction, extension or structural change for all lawfully nonconforming
265 structures and uses.

266

267 **Section 6B. Vested Rights: Effective Date of Zoning Amendments**

268

269 (A) Building permits and special permits

270

271 (1) Adoption or amendment of a zoning ordinance or by-law shall not apply to a building
272 permit or special permit issued prior to the date of the first publication of notice of the
273 public hearing on the adoption or amendment required by section 5 provided that:

274

275 (i) construction under the building permit is commenced within 6 months after
276 issuance and is carried through to completion as continuously and expeditiously
277 as is reasonable; or

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279 (ii) the use or construction authorized under the special permit is commenced
280 within two years after issuance and is carried through to completion as
281 continuously and expeditiously as is reasonable.

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283

284 (B) Subdivision plans

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286 (1) Adoption or amendment of a zoning ordinance or by-law shall not apply to a definitive
287 subdivision plan or to modifications or amendments to such plan under section 81W of
288 chapter 41 for a period of three years after the original definitive subdivision plan
289 approval, provided such approval occurs prior to the date of the first publication of notice

290 of the public hearing on the adoption or amendment of the relevant zoning ordinance or
291 by-law required by section 5.

292
293 (C) General provisions

294
295 (1) The vesting provisions of this section 6B shall be extended for a period of time
296 equal to the duration of:

297
298 (i) any extensions granted by the applicable local board or authority;

299
300 (ii) the period between the filing of any appeal or commencement of any
301 litigation from the decision of any applicable local board or authority and
302 the final disposition thereof, provided final adjudication is in favor of the
303 owner of the lot; and

304
305 (iii) any moratorium upon permitting or construction imposed by any
306 government entity.
307

308 (2) The record owner of the land shall have the right, at any time, by an instrument duly
309 recorded in the registry of deeds for the district in which the land lies, a copy of which
310 shall be filed with the building inspector and town clerk, to waive the provisions of this
311 section 6B, in which case the zoning ordinance or by-law then or thereafter in effect shall
312 apply.

313

314 SECTION 11. Section 7 of said chapter 40A, as so appearing, is hereby amended by inserting after the
315 word "violation", in line 44, the following words:- , except that such structures shall not be deemed to be
316 a protected nonconforming structure under section 6A of this chapter unless such status is specifically
317 provided for in the zoning ordinance or by-law.

318

319 SECTION 12. Said chapter 40A, as so appearing, is hereby amended by inserting after section 7 the
320 following new section:-

321

322 **Section 7A. Site plan review**

323

324 (A) As used in this section, "site plan" shall mean the submission made to a municipality that
325 includes documents and drawings required by an ordinance or by-law to determine whether a
326 proposed use of land or structures is in compliance with applicable local ordinances or by-laws,

327 to evaluate the impacts of the proposed use of land or structures on the neighborhood and/or
328 community, and to evaluate and propose site design modifications that will lessen those impacts.

329

330 (B) In addition to the home rule authority of cities and towns to require site plan review, a city or
331 town may adopt a local ordinance or by-law under this section requiring the submission, review,
332 and approval of a site plan before authorization is granted for the use of land or structures
333 governed by a zoning ordinance or by-law.

334

335 (C) Such ordinance or by-law requiring site plan review shall:

336

337 (1) establish which uses of land or structures are subject to site plan review;

338

339 (2) specify the local boards or officials charged with reviewing and approving site plans,
340 which may differ for different types, scales, or categories of uses of land or structures;

341

342 (3) establish the submission and review process for a site plan submitted in connection with
343 an application for a variance, special permit, or other discretionary zoning approval. This
344 submission and review may be conducted as part of the review of the application for
345 discretionary approval or may be a separate review process under subsection (c)(4)
346 below;

347

348 (4) establish the submission, review, and approval process for applications not governed by
349 the procedures for review of discretionary zoning approval under subsection (c)(3) above,
350 which may include the requirement of a public hearing held pursuant to the provisions in
351 section eleven of this chapter. Approval of a site plan under this subsection (4) shall
352 require a simple majority vote of the full board and shall be made within the time limits
353 prescribed by ordinance or by-law, not to exceed the time limits for special permits
354 contained in section nine of this chapter. If no decision is issued within the time limit
355 prescribed, the site plan shall be deemed constructively approved as provided in section
356 9, paragraph 11 of this chapter;

357

358 (5) establish standards and criteria by which the use of land or structures and its impact on
359 the neighborhood shall be evaluated; and

360

361 (6) contain provisions that make the terms, conditions, and content of the approved site plan
362 enforceable by the municipality, which may include the requirement of performance
363 guarantees.

364

365 (D) The local board or official charged with review of site plans may adopt, and from time to time
366 amend, rules to implement the local site plan ordinance or by-law adopted under this section.

367 (E) A site plan submitted for the use of specific land or structures provided in subsection (c)(4) shall
368 be approved if the site plan:

369

370 (1) satisfies the procedural and submission requirements of the site plan review process
371 applicable to the specific land or structures;

372

373 (2) complies with the regulations applicable to such land or structures in the local zoning
374 ordinance or by-law; and

375

376 (3) meets such standards and criteria as the local zoning ordinance or by-law provides by
377 which the use of land or structures and its impact on the neighborhood shall be evaluated.

378

379 (F) A site plan approved hereunder may include reasonable conditions, safeguards, and limitations to
380 mitigate the impacts of a specific use of land or structures on the neighborhood.

381

382 (G) Decisions made under site plan review may be appealed as specified in the ordinance or by law,
383 which may include direct judicial review pursuant to section seventeen of this chapter.

384

385 (H) Zoning ordinances or by-laws shall provide that a site plan approval granted under this section
386 shall lapse within a specified period of time, not more than two years from the date of the filing
387 of such approval with the city or town clerk, if substantial use or construction has not yet begun,
388 except as extended for good cause by the approving authority designated under (c)(2) above.
389 Such extension shall not include time required to pursue or await the determination of an appeal
390 under subsection (g) above. The aforesaid maximum period of two years may, by ordinance or
391 by-law, be increased to a longer maximum period.

392

393 (I) The board designated by ordinance or by-law to review site plans under this section may, by rules
394 and regulations adopted by such board, provide for the imposition of reasonable fees for the
395 employment of outside consultants in the same manner as set forth in section 53G of chapter 44.

396

397 SECTION 13. Section 9 of said chapter 40A, as so appearing, is hereby amended by striking out the
398 fourth paragraph and inserting in place thereof the following paragraph:-

399

400 Zoning ordinances or by-laws may authorize the transfer of development rights of land within a city or
401 town, or within two or more cities and towns that have adopted complementary ordinances or by-laws.
402 Such authorization may be by special permit or by other methods, including, but not limited to, the
403 applicable provisions of sections 81K to 81GG, inclusive, of chapter 41, and in accordance with a
404 planning board's rules and regulations governing subdivision control.

405

406 SECTION 14. Said section 9 of said chapter 40A, as so appearing, is hereby amended by
407 striking out the first sentence in the seventh paragraph, and inserting in place thereof the
408 following sentence:- "Cluster development" means a residential development in which reduced
409 dimensional requirements allow the developed areas to be concentrated in order to create
410 permanently preserved open land elsewhere on the plot.

411

412 SECTION 15. Said section 9 of said chapter 40A, as so appearing, is hereby amended by
413 inserting after the word "plot", in line 59, the following words:- or to be conveyed or owned in a
414 manner specifically prescribed in the ordinance or by-law.

415

416 SECTION 16. Said section 9 of said chapter 40A, as so appearing, is hereby amended by striking out the
417 twelfth paragraph and inserting in place thereof the following paragraph:-

418

419 Each application for a special permit shall be filed by the petitioner with the city or town clerk and a copy
420 of said application, including the date and time of filing certified by the city or town clerk, shall be filed
421 forthwith by the petitioner with the special permit granting authority. The special permit granting
422 authority shall hold a public hearing, for which notice has been given as provided in section eleven, on
423 any application for a special permit within sixty-five days from the date of filing of such application;
424 provided, however, that a city council having more than five members designated to act upon such
425 application may appoint a committee of such council to hold the public hearing. The decision of the
426 special permit granting authority shall be made within ninety days following the date of the close of such
427 public hearing. The required time limits for a public hearing and said action may be extended by written
428 agreement between the petitioner and the special permit granting authority. A copy of such agreement
429 shall be filed in the office of the city or town clerk. Unless a lesser majority is specified in the zoning
430 ordinance or by-law, issuance of a special permit under this section shall require a vote of two-thirds of

431 the entire special permit granting authority in the case of an authority with more than five members, the
432 vote of at least four members of a five-member authority, or the vote of all members of an authority
433 comprised of fewer than five members.

434

435 SECTION 17. Said section 9 of said chapter 40A, as so appearing, is hereby amended by striking out the
436 fourteenth paragraph and inserting in place thereof the following paragraphs:-

437

438 A special permit granted under this section shall state that it will lapse within a period of time specified
439 by the special permit granting authority, not more than two years, if a substantial use thereof has not
440 sooner commenced except for good cause or, in the case of a permit for construction, if construction has
441 not begun by such date except for good cause. The aforesaid maximum period of two years may, by
442 ordinance or by-law, be increased to a longer maximum period. The period of time before which a
443 special permit shall lapse shall not include the time required to pursue or await the determination of an
444 appeal from the grant thereof referred to in section seventeen.

445

446 Upon written application by the grantee of a special permit, the special permit granting authority in its
447 discretion and without a public hearing may, by the same vote majority originally required to approve the
448 special permit, extend the time for the exercise of such special permit for a period of time not to
449 exceed the original duration of the special permit. Such application must be filed no later than sixty-five
450 days prior to the lapse of the special permit. If the permit granting authority does not grant the extension
451 within sixty-five days of the date of application therefor, upon the lapse of the special permit, the special
452 permit may be re-established only after notice and a new hearing pursuant to the provisions of this
453 section.

454

455 SECTION 18. Said chapter 40A, as so appearing, is hereby amended by inserting after section 9C the
456 following new section:-

457 Section 9D. Development impact fee

458 (A) Authority

459

460 (1) In addition to its home rule authority to impose a development impact fee, a city or town
461 may adopt a local ordinance or by-law under this section that requires the payment of a
462 development impact fee as a condition of any permit or approval otherwise required for
463 any proposed development within the scope of this section, and having development
464 impacts as defined in the ordinance or by-law. The development impact fee may be
465 imposed only on construction, enlargement, expansion, substantial rehabilitation, or
466 change of use of a development. The development impact fee shall be used solely for the

467 purposes of defraying the costs of capital facilities to be provided or paid for by the city
468 or town and which are caused by and necessary to support or compensate for the
469 proposed development. Such capital facilities may include the costs related to the
470 provision of equipment, infrastructure, facilities, or studies associated with the following:
471 schools; libraries; municipal offices; water supply; sewers; storm water management and
472 treatment; pollution abatement; solid waste processing and disposal; traffic mitigation;
473 public transportation; child care; parks, playgrounds, and other recreational facilities;
474 police, fire, ambulance, rescue and other public safety facilities; affordable housing; or
475 other capital improvements.

476

477 (2) Nothing in this section shall prohibit a city or town from imposing other fees
478 or requirements for mitigation of development impacts which it may otherwise impose
479 under state or local law and that are consistent with the constitution and laws of the
480 Commonwealth.

481

482 (B) Limitations

483

484 (1) No development impact fee under this section shall be imposed upon any dwelling unit,
485 regardless of how created or permitted, which is subject to a restriction on sale price or
486 rent under the provisions of chapter 184 of the general laws, as amended, ensuring that
487 the unit will remain affordable for a period of at least 30 years to households at or below
488 the area median income as most recently defined by the United States department of
489 housing and urban development or successor agency.

490

491 (2) The fee shall not be expended for personnel costs, normal operation and maintenance
492 costs, or to remedy deficiencies in existing facilities, except where such deficiencies are
493 exacerbated by the new development, in which case the fee may be assessed only in
494 proportion to the deficiency so exacerbated.

495

496 (C) Requirements

497

498 (1) Prior to the imposition of development impact fees under this section, a city or town shall
499 complete a study that: (i) analyzes existing capital improvement plans or the facilities
500 element of a plan adopted under section 81D of chapter 41; (ii) estimates future
501 development based on the then current zoning ordinance or by-law; (iii) assesses the
502 impacts related to such development; (iv) determines the need for capital facilities

503 required to address the impacts of the estimated development including excess facility
504 capacity, if any, currently planned to accommodate future development; (v) develops cost
505 projections for the needed capital facilities and documents costs of existing facilities with
506 planned excess capacity; and (vi) establishes the amount of any development impact fee
507 authorized under this section in accordance with a methodology determined pursuant to
508 the study. The study shall be updated periodically to reflect actual development activity,
509 actual costs of infrastructure improvements completed or underway, plan changes, or
510 amendments to the zoning ordinance or by-law.

511

512 (2) A development impact fee shall have a rational nexus to, and shall be roughly
513 proportionate to, the impacts created by the development as determined by the study
514 described in (c)(1) above evaluating said impacts.

515

516 (3) The purposes for which the fee is expended shall reasonably benefit the proposed
517 development.

518

519 (4) The fee may not be assessed more than once for the same impact, nor may the fee be
520 assessed for impacts, or portions thereof, offset by other dedicated means, including state
521 or federal grants or contributions made by the applicant undertaking the development.

522 (D) Administration

523

524 (1) The ordinance or by-law may provide for a waiver or reduction of the development
525 impact fee for any development that furthers an overriding public purpose as set forth in a
526 plan adopted by the city or town under section 81D of chapter 41.

527

528 (2) If the proposed development is located in more than one municipality, the impact fee
529 shall be apportioned among the municipalities in accordance with the land area or other
530 equitable measure of the impacts of the proposed development in each city or town.

531

532 (3) Any development impact fee assessed under this section shall be deposited to a separate,
533 interest bearing account in the city or town in which the proposed development is located.
534 Unless subject to section (d)(4) below, no development impact fee shall be paid to the
535 general treasury or used as general revenues of the city or town subject to the provisions
536 of section 53 of chapter 44 of the General Laws.

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- (4) Any funds not expended or encumbered by the end of the calendar quarter immediately following 10 years from the date the development impact fee was paid shall, upon request of the applicant or its assigns, be returned with interest provided that an application for a refund prescribed in the ordinance or by-law has been submitted within one 180 calendar days prior to the expiration of the 10 year period. If no application for refund is received by the city or town within said period, any funds not expended or encumbered by the end of the calendar quarter shall then revert to and become part of the general fund under section 53 of chapter 44. In the event of any disagreement relative to who shall receive the refund, the city or town may retain said development impact fee pending instructions given in writing by the parties involved or by a court of competent jurisdiction.

SECTION 19. Said chapter 40A, as so appearing, is hereby amended by inserting after section 9D the following new section:-

Section 9E. Land use dispute avoidance

- (A) As an optional means of avoiding or minimizing land use disputes, the owner of land or structures who has applied or intends to apply for a building permit, any permit or approval required under this chapter, an approval under sections 81K-GG of chapter 41, or a comprehensive permit under sections 20-23 of chapter 40B, may request of the public official or local board charged with acting on the application to undertake a land use dispute avoidance process as hereinafter provided. Such request shall be made in writing and duly noted in the notice of the public meeting of the local board that would respond to such request, and if made to a public official other than a local board, such official shall file a notice of such request with the city or town clerk at least 48 hours prior to responding to such request.
- (B) The dispute avoidance process may include an initial conflict assessment to determine if a further resolution effort is advisable in accordance with the procedures set out in this section, or as they may otherwise in writing jointly agree.
- (C) Both the conflict assessment and any later resolution effort shall be voluntary for those participating requiring the joint written agreement of both the applicant and public official or local board and which shall be filed with the city or town clerk.

572 (D) The conflict assessment and any later resolution effort may be conducted by a neutral facilitator
573 as defined in section 23C of chapter 233, selected from a list prepared by the Massachusetts
574 office of dispute resolution, or its successor agency or its designee, or as chosen jointly by the
575 applicant and the public official or local board.

576

577 (E) The facilitator and any associate shall comply with the standards of conduct of the association for
578 conflict resolution or as promulgated by the Massachusetts office of dispute resolution, or its
579 successor agency or its designee.

580

581 (F) Funding for any conflict assessment or resolution effort under this section may be as the
582 applicant and the public official or local board shall agree. In the absence of such
583 agreement, the public official or local board may impose reasonable fees for the
584 employment of outside consultants, including the facilitator, in the same manner as set
585 forth in section 53G of chapter 44.
586

587 (G) Public officials or local boards may, after a public hearing, adopt, and from time to time amend,
588 rules to implement the conflict assessment or resolution efforts undertaken pursuant to this
589 section. Notice of the hearing on the proposed rules, including the location, date, and time of the
590 hearing shall be filed with the city or town clerk and published once in a newspaper of general
591 circulation in the city or town at least fourteen days before the public hearing.

592

593 (H) As part of the conflict assessment, the facilitator may solicit information and opinions relating to
594 the application, and may identify and notify those members of the public likely to be interested in
595 or affected by the application. The facilitator may clarify the issues and investigate the
596 willingness of all interested parties to work together with the applicant to resolve those issues.
597 The facilitator may identify measures or community-enhancing features that would benefit the
598 neighborhood, the larger community, and the project itself. Based upon the assessment, the
599 facilitator may determine whether further resolution effort would be productive in reaching a
600 consensus of those participating, with the understanding that the outcome may be the withdrawal
601 or substantial modification of the application.

602 (I) The facilitator may convene meetings or conduct interviews that shall be confidential and
603 privileged from discovery under section 23C of chapter 233 and that shall not be subject to the
604 open meeting law under section 23B of chapter 39. The records of such meetings or interviews
605 shall be exempt from disclosure under the public records law under section 10 of chapter 66 and
606 clause 26 of section 7 of chapter 4.

607

608 (J) In preparing a report on conflict assessment or later resolution effort, the facilitator shall not
609 attribute statements, positions, ideas, or interests to specific individuals, organizations, or persons

610 interviewed, and shall distribute copies of the report to those participating without prior review or
611 approval of any participant. The conflict assessment report shall indicate whether and how a
612 subsequent resolution effort might be appropriate for the application involved, including
613 elaborating on how it might be undertaken and by whom.

614

615 (K) Whether or not a resolution results, the applicant may nevertheless proceed with the application
616 without prejudice for having participated in a conflict assessment or resolution effort, and the
617 application process shall proceed in due course as otherwise provided by statute, ordinance, or
618 by-law. The applicant and the public official or local board may, by agreement in writing filed
619 with the city or town clerk, stipulate and agree to extend any otherwise applicable time
620 requirements of state or local law.

621

622 (L) At the conclusion of any conflict assessment or resolution efforts, the application which initiated
623 the conflict assessment and resolution efforts may go forward in accordance with the applicable
624 statute, ordinance, or by-law, reflecting if possible the result of any resolution effort. If the
625 parties so agree, any resolution may be incorporated into the action taken by the local board or
626 official.

627

628 SECTION 20. Said chapter 40A, as so appearing, is hereby amended by inserting after section 9E the
629 following new section:-

630

631 **Section 9F. Rate of development**

632 Except for a defined period of time during which planning or zoning studies are underway, rate of
633 development measures shall be in accordance with this section.

634 A zoning ordinance, by-law, or regulation that regulates the rate of development shall not be inconsistent
635 with a plan adopted under c. 41, section 81D. The subject matter of such plan shall contain consistent
636 policies and strategies for the implementation of rate of development measures that shall include a study
637 of the need for such measures, a methodology by which to determine a reasonable rate of issuance of
638 either permits for new construction or approvals of new building lots, a time horizon within which such
639 measures shall remain in effect, and a periodic review schedule.

640

641 Rate of development measures shall not restrict the construction of, or creation of building lots for,
642 affordable housing units restricted to remain affordable for a period of at least 30 years to households
643 with income at or below 120 percent of the area median income as such income is most recently
644 determined by the federal department of housing and urban development or successor agency.

645

646 Rate of development measures shall not apply to structures accessory to residential uses nor to
647 construction work upon an existing dwelling unit.
648

649 SECTION 21. Said chapter 40A, as so appearing, is hereby amended by inserting after section 9F the
650 following section:-

651 **Section 9G. Affordable housing**

652

653 (A) In furtherance of the public purposes zoning objectives stated in section 2A, subsections
654 (B)(5 and 7) of this chapter and in the exercise of their home rule powers, a city or town,
655 by ordinance or by-law, may require or provide incentives for the applicant for a
656 residential development to provide affordable dwelling units within such development.

657

658 (B) In lieu of constructing the units required on-site, the ordinance or by-law may provide
659 for the construction of such units off-site, the dedication of land for such purpose, or the
660 payment of funds to a separate account created by the city or town sufficient for and
661 dedicated to the provision of affordable housing, provided the applicant demonstrates to
662 the satisfaction of the local approving authority that the units cannot be otherwise
663 provided on-site or that an alternative proposal better meets the needs of the city or town
664 with respect to the provision of affordable housing. Off-site units, land dedication, or
665 payment in-lieu of units shall, in the opinion of the local approving authority and in
666 consideration of local needs, provide affordable housing benefits roughly equivalent to
667 the provision of on-site units.

668

669 (C) Cities and towns are authorized to establish a separate dedicated account for the deposit
670 of funds received under this section, including municipal housing trust fund accounts
671 under section 55C of chapter 44 or other dedicated accounts of similar purpose. Said
672 funds shall be deposited with the treasurer and dispersed for affordable housing purposes
673 in accordance with the ordinances, by-laws, or regulations of the city or town. Where
674 the application of this section results in less than a full dwelling unit, the board may
675 accept a prorated payment of funds in lieu of unit creation.

676

677 (D) The affordable units shall be subject to a restriction on sale price or rent under the
678 provisions of chapter 184 of the general laws, as amended, and shall remain affordable,
679 in perpetuity or for a period not less than 30 years.

680

681 (E) The regulation may further require some or all of the affordable units to be low- or
682 moderate-income housing as defined in sections 20 through 23, inclusive of chapter 40B,
683 of the general laws, and be eligible for inclusion on the subsidized housing inventory
684 subject to and in accordance with applicable regulations and guidelines of the
685 department of housing and community development or successor agency. Nothing in
686 this section shall be construed to require the department of housing and community
687 development to include affordable units created hereunder on the subsidized housing
688 inventory.

689

690 (F) Nothing in this section shall limit the authority of a planning board under chapter 41, section 81Q
691 of the general laws, the subdivision control law.

692

693 SECTION 22. Said chapter 40A, as so appearing, is hereby amended by striking out section 10 and
694 inserting in place thereof the following section:-

695

696 **Section 10. Variances**

697

698 Where a literal enforcement of the provisions of the zoning ordinance or by-law would involve substantial
699 hardship to the applicant, upon appeal or upon petition with respect to particular land or structures, the
700 permit granting authority shall have the discretionary authority to grant a variance from the terms of the
701 applicable zoning ordinance or by-law following a public hearing for which notice has been given by
702 publication and posting as provided in section eleven and by mailing to the planning board and all parties
703 in interest.

704

705 In making its determination, the permit granting authority shall take into consideration the benefit to the
706 applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of
707 the neighborhood or community by such grant. The permit granting authority may also take into
708 consideration the extent to which the claimed hardship is self-created. In order to grant a variance the
709 permit granting authority shall make all of the following findings: (1) the benefit sought by the applicant
710 can not be achieved by some method, feasible for the applicant to pursue, other than a variance; (2) the
711 variance will not have a substantial undesirable effect on nearby properties, or the character of the
712 neighborhood, or on the environment; (3) the variance will not nullify or substantially derogate from the
713 intent or purpose of such ordinance or by-law or the master plan upon which the ordinance or by-law is
714 based; and (4) the claimed hardship relating to the property in question is unique, and does not apply to a
715 substantial portion of the district or neighborhood. In the granting of variances, the permit granting
716 authority shall grant the minimum variance that it shall deem necessary to relieve the hardship.

717

718 Use variances are not included within the scope of this section unless expressly so authorized by
719 ordinances or by-laws. If so authorized, use variances shall be subject to all the provisions of this section
720 and to any additional more stringent criteria contained in the ordinance or by-law.

721

722 The permit granting authority may impose conditions, safeguards and limitations both of time and of use,
723 including the continued existence of any particular structures. Variances shall run with the land, except
724 that a use variance may run with land only if so determined by the permit granting authority acting
725 pursuant to an ordinance or by-law enabling such a determination.

726

727 If the rights authorized by a variance are not exercised within two years of the date of the grant
728 of the variance such variance shall lapse; provided, however, that upon written application by the
729 grantee of such variance, the permit granting authority in its discretion may extend the time for
730 exercise of such rights for a period not to exceed one year. Such application must be filed no
731 later than sixty-five days prior to the lapse of the variance. If the permit granting authority does
732 not grant the extension within sixty-five days of the date of application therefor, upon the lapse
733 of the variance, the variance may be re-established only after notice and a new hearing pursuant
734 to the provisions of this section.

735

736 SECTION 23. Section 17 of said chapter 40A, as so appearing, is hereby amended by inserting
737 after the seventh paragraph the following paragraph:-
738

739 Mediation of land use appeals: After the filing of an appeal hereunder, the parties may agree to mediate
740 the decision appealed. In all cases, the parties shall file with the court a statement advising the court that
741 the dispute has been submitted for mediation. If the parties agree to mediation, the mediation shall begin
742 within 60 days of the date such statement was filed, or such other period as the parties may agree or the
743 court may allow upon application by any party. The mediation shall conclude not later than 180 days of
744 filing, provided that such period may be extended for an additional 180 days by joint written agreement of
745 the parties, or for such other additional period as the court may allow upon application by any party. The
746 parties may select the mediator from a list provided by the court or otherwise as the parties may
747 determine. The mediator shall be compensated by the parties as they may agree, or in the absence of
748 agreement, as the court may determine. During the mediation any appeal otherwise pending shall be
749 stayed. A party may withdraw from mediation at any time after written notification to the other parties
750 and to the court, but shall remain responsible for that party's share of the costs of mediation until the time
751 of withdrawal. The mediator shall have the protections provided under section 23C of chapter 233, and to
752 the extent that public agencies are participants in the mediation, their deliberations shall not be subject to
753 the provisions of section 23B of chapter 39. At the conclusion of the mediation, the mediator shall file
754 with the court a statement describing whether the parties have come to agreement. If unresolved, the
755 appeal will then go forward; if the matter has been resolved, the appeal will be dismissed with prejudice.
756 The cost of mediation shall be distributed among the parties as a cost of the appeal as the parties may
757 agree, or in the absence of agreement, as the court may determine. Mediation hereunder shall not be the
758 only method of resolving a zoning appeal.

759

760 SECTION 24. Chapter 41 of the General Laws, as appearing in the 2006 official edition, is hereby
761 amended by striking out section 81D and inserting in place thereof the following section:-

762

763 **Section 81D. Land use and zoning plan**

764

765 A planning board established in any city or town under section 81A shall make a land use and zoning plan
766 of such city or town and from time to time, not to exceed ten years, shall update or remake such plan.
767 After adoption as provided in this section such plan shall become the official land use and zoning plan of
768 the city or town, replacing any previously-adopted master plans.

769

770 Such plan shall be a statement, through text, maps, illustrations or other forms of communication that is
771 designed to provide a basis for decision making regarding the long-term physical development of the
772 municipality. Other completed and current plans, reports, and studies may be incorporated by reference to
773 fulfill or partially fulfill the requirements of each element listed below. The land use and zoning plan
774 shall be internally consistent in its policies, forecasts and standards, shall underlie a city or town's zoning
775 bylaws and subdivision regulations, and shall include the following required elements:

776

777 (1) A goals and policies statement that identifies the goals and policies of the municipality for its future
778 sustainable growth, development, redevelopment, conservation, and preservation. Each community shall
779 conduct an interactive public process to determine community values, and goals and to identify patterns
780 of development, redevelopment, conservation, and preservation that will be consistent with these goals.

781

782 (2) A housing element that shall consist of identification and analysis of existing and forecast housing
783 needs; an inventory of local housing; local housing goals, objectives and policies; and implementing
784 measures. Where applicable, existing local housing plans may be included by reference.

785

786 As a percentage of the total housing stock, the local housing inventory shall include an estimate of: i)
787 housing units by physical type (e.g. single-family, two-family, multi-family, etc.); ii) affordable housing
788 and subsidized housing, including subsidized housing that qualifies as such under chapter 40B; iii)
789 housing available for rental; iv) residential community programs; and v) senior, assisted living, and
790 special needs housing. The inventory shall analyze existing local policies, programs, laws or regulations
791 that encourage the preservation, improvement, and development of such housing and shall assess whether
792 they are adequate to achieve their stated objectives.

793

794 The element shall enumerate local goals, objectives, and policies so as to provide a diversity of housing
795 stock meeting the housing needs of residents from a broad range of income levels and age groups,
796 including those with disabilities and special needs. The element shall identify and evaluate specific
797 measures for inclusion in the implementation element of the master plan necessary to accomplish this
798 purpose, including strategies, programs, and assistance for: the preservation of existing housing stock; the
799 financing of additional housing; the construction or rehabilitation of housing; and for the adoption or
800 amendment of local laws and regulations permitting, encouraging, or requiring diversity in housing
801 locations, types, designs, and area densities that offer complements or alternatives to larger single-family
802 detached housing that are compatible with a community's character and vision.

803

804 (3) A natural resources and energy element that provides an inventory of the significant natural and
805 energy resources of the municipality. Such element shall outline zoning or other policies and strategies:
806 for the protection, restoration, and sustainable management of such resources, including wetlands and
807 water resources, environmentally sensitive lands, critical wildlife habitat and biodiversity, agricultural
808 lands and forests; and to promote development that respects and enhances the state's natural resources.

809

810 The energy component of this element shall explore locally-feasible land use strategies to: maximize
811 energy efficiency and renewable energy opportunities; support land, energy, water, and materials
812 conservation strategies, local clean power generation, distributed generation technologies, and innovative
813 industries; and reduces greenhouse gas emissions and consumption of fossil fuels.

814

815 (4) A land use element that identifies present land use and designates the proposed distribution, location
816 and inter-relationship of public and private land uses in a general manner sufficient to guide the
817 development of zoning ordinances, bylaws, and maps. This element shall examine the current land use
818 permitting process in a community and, if necessary, make recommendations for the development of
819 clear, predictable, coordinated, and timely procedures thereunder. A land use plan map illustrating the
820 general land use policies of the municipality shall be included.

821

822 To the extent practicable in a community or areas of a community, this element shall support the
823 revitalization of city and town centers and neighborhoods by promoting development that is compact,
824 conserves land, protects historic resources, integrates uses, and coordinates the provision of housing with
825 the location of jobs, transit and services. In these areas the plan shall encourage the creation or extension
826 of pedestrian-friendly districts and neighborhoods that mix commercial, civic, cultural, educational, and
827 recreational activities with open space and homes.

828

829 This element shall relate the proposed standards of population density and building intensity to the
830 capacity of land available or planned facilities and services and may identify consistent policies and

831 strategies for the use of rate of development measures which shall include a study of the need for such
832 measures, including providing an appropriate share of the housing growth in the region, a methodology
833 by which to determine a reasonable rate of issuance of permits for new construction or approvals of new
834 building lots, a time horizon within which such measures shall remain in effect, and a periodic review
835 schedule.

836

837 (5) An implementation program element that defines and schedules the specific municipal actions
838 necessary to achieve the objectives of each element of the land use and zoning plan. This element shall
839 specify the course of action by which the municipality's regulatory structures, including zoning and
840 subdivision control regulations, shall, if necessary, be amended so as not to be inconsistent with the land
841 use and zoning plan.

842 The following elements are optional:

843

844 (6) An economic development element that, as appropriate: identifies land use policies and available
845 locations that supports the growth of new and existing local businesses, including home-based businesses;
846 attract businesses to locations near housing, infrastructure, water, and transportation options; strengthens
847 sustainable natural resource-based businesses, including agriculture, forestry, outdoor recreation, clean
848 energy technology, and fisheries; encourages the reuse and rehabilitation of existing infrastructure,
849 including brownfields, rather than the construction of new infrastructure in undeveloped areas; facilitates
850 larger-scale economic redevelopment or development in industry clusters consistent with regional and
851 local character; and maintains reliable and affordable energy sources that reduce dependence on imported
852 fossil fuels.

853

854 (7) A cultural resources element that provides an inventory of the significant cultural, scenic, and historic
855 buildings, sites, and landscapes of the municipality, and policies and strategies for their protection and
856 management.

857

858 (8) An open space and recreation element that provides an inventory of recreational and resources and
859 open space areas of the municipality, and policies and strategies for the management, protection, and
860 enhancement of such resources and areas. An open space and recreational plan approved by the division
861 of conservation services shall constitute an open space and recreational element hereunder.

862

863 (9) A services and capital facilities element that identifies and analyzes existing and forecasted needs for
864 facilities and services used by the public. Scheduled expansion or replacement of public facilities or
865 circulation system components and the anticipated costs and revenues associated with accomplishment of
866 such activities shall be detailed in this element. This element is required if development impact fees are
867 to be assessed under section 9 of chapter 40A.

868

869 (10) A transportation element that: provides an inventory of existing and proposed circulation and
870 transportation systems; increases access to available or feasible transportation options including land- and
871 water-based public transit, bicycling, and walking; explores strategic investment options for
872 transportation infrastructure to encourage smart growth, maximize mobility, conserve fuel, and improve
873 air quality; and facilitates the location of new development where a variety of transportation modes can be
874 made available.

875

876 Any required or selected optional element above shall include a self-assessment against a regional plan
877 adopted by the regional planning agency under section 5 of chapter 40B and in effect, if any.

878

879 Such plan shall be made, and may be added to or changed from time to time, by a simple majority vote of
880 the planning board after a public hearing, notice of which shall be posted and published in the manner
881 prescribed for zoning by-law amendments under section 5 of chapter 40A, followed by adoption by the
882 legislative body of the city or town by a simple majority vote except where a greater majority vote has
883 been prescribed in an ordinance or by-law adopted by a two-thirds vote of the local legislative body.
884 However, no vote of the legislative body to alter the plan or amendment as adopted by the planning board
885 shall be other than by a two-thirds vote of the legislative body. The planning board shall, upon
886 completion of any plan or report, or any change or amendment to a plan or report produced under this
887 section, furnish a copy of such plan or report or amendment thereto, to the department of housing and
888 community development.

889

890 Prior to local legislative adoption of a land use and zoning plan under this section, the plan may, at the
891 election of the planning board, be referred to the applicable regional planning agency for review and
892 certification. The regional planning agency may, at its election, review the plan for certification, but must
893 provide written notice to the city or town within 15 days from receipt of the plan if it intends not to
894 review the plan. If the regional planning agency has elected to review the plan it shall act within 90 days
895 of submission of the plan. Failure to act within 90 days shall be deemed a plan certification by the
896 regional planning agency. The 90 day review period shall be extended by no longer than 90 days by the
897 regional planning agency upon written request by the planning board of the city or town.

898

899 Such review and certification shall be limited to an assessment of plan compliance with the requirements
900 of this section as such requirements are applicable to the city or town within its region. The review
901 process may be interactive and iterative between the regional planning agency and the planning board,
902 and mutually agreed upon changes to the plan may be made by simple majority vote of the planning board
903 during the review period or extensions thereof. Once the review is completed by the regional planning
904 agency, with or without certification, comments, or outstanding issues, it may be brought to the local
905 legislative body for adoption if the planning board so votes by a simple majority. A plan that has been

906 certified by the regional planning agency and adopted by the city or town shall be presumed to be in
907 compliance with this section. A plan that has not been so certified, for whatever reason including non-
908 referral to the regional planning agency, shall not, for that reason, be presumed to be out of compliance
909 with this section.

910

911 SECTION 25. Section 81L of said chapter 41, as so appearing, is hereby amended by striking out, in
912 lines 52-78 inclusive, the definition of “Subdivision” and inserting in place thereof the following
913 definition:-

914

915 “Subdivision” shall mean the division of a lot, tract, or parcel of land into two or more lots, tracts, or
916 parcels of land and shall include re-subdivision. When appropriate to the context, subdivision shall
917 include the process of subdivision or the land or territory subdivided. A change in the line of any lot,
918 tract, or parcel created by recorded deed or shown on a recorded plan may be defined as a minor
919 subdivision and, in such case, be governed by the provisions of section 81P.

920

921 SECTION 26. Section 81M of said chapter 41, as so appearing, is hereby amended by inserting, after the
922 word “systems”, in line 23, the words:- , and for those aspects of a plan adopted by the city or town under
923 section 81D of this chapter which are particular to the subdivision of land.

924

925 SECTION 27. Section 81O of said chapter 41, as so appearing, is hereby amended by striking out the
926 second sentence in the first paragraph and inserting in place thereof the following sentences:- After the
927 approval of a plan, the location and width of ways, and the number, shape, and size of the lots shown
928 thereon, may not be changed unless the plan is amended as provided in section 81W. In the alternative, a
929 planning board may adopt rules and regulations under sections 81P and 81Q of this chapter defining and
930 regulating such changes as minor subdivisions.

931

932 SECTION 28. Said section 81O of said chapter 41, as so appearing, is hereby amended by striking out
933 the second paragraph and inserting in place thereof the following paragraph:-

934

935 A plan shall be deemed submitted under this section as of the date of the next regularly scheduled meeting
936 of the planning board, provided that during posted business hours the plan is both delivered to the
937 planning board and filed with the town clerk no later than 7 calendar days prior to said meeting date, or
938 35 calendar days after such delivery to the planning board and filing with the town clerk, whichever shall
939 first occur. An incomplete submission or one not in accordance with submittal requirements may be the
940 basis upon which the planning board may deny approval of the plan. Notwithstanding the foregoing, a
941 planning board or its designee may give notice to the applicant of how the application is incomplete or not

942 in accordance with said submittal requirements and may grant to the applicant additional time to effect
943 corrective measures.

944

945 SECTION 29. Said chapter 41, as so appearing, is hereby amended by striking out section 81P and
946 inserting in place thereof the following section:-

947

948 **Section 81P. Alternative approvals for minor subdivisions**

949

950 A planning board may adopt alternative rules and regulations under section 81Q defining and regulating
951 minor subdivisions in a more expeditious manner than would apply to other subdivisions. Such rules and
952 regulations may reduce or eliminate any local rule or regulation made under section 81Q that would
953 otherwise apply to a subdivision and any requirement of sections 81L relative to the definition of
954 preliminary plan, 81S, 81T, or 81U of this chapter. Minor subdivisions under this section shall not create
955 more than 3 additional lots.

956

957 SECTION 30. Section 81Q of said chapter 41, as so appearing, is hereby amended by striking out, in line
958 59, the words “or use”.

959

960 SECTION 31. Said section 81Q of said chapter 41, as so appearing, is hereby amended by striking out, in
961 lines 62-69 inclusive, the words “No rule or regulation shall require, and no planning board shall impose,
962 as a condition of approval of a subdivision, that any of the land within said subdivision be dedicated to
963 the public use, or conveyed or released to the commonwealth or to the county, city or town in which the
964 subdivision is located, for use as a public way, public park or playground, or for any other public purpose,
965 without just compensation to the owner thereof.” and inserting in place thereof the following words:- The
966 rules and regulations may require the plan to show a park or parks suitably located for playground or
967 recreation purposes or for providing light and air, except that such requirement shall not exceed 10
968 percent of the land being subdivided.

969

970 SECTION 32. Said section 81Q of said chapter 41, as so appearing, is hereby amended by inserting after
971 the first paragraph the following paragraphs:-

972

973 Notwithstanding any general or special law to the contrary, a planning board may, by regulation, require
974 an applicant for a residential subdivision to provide affordable dwelling units and to show on the
975 subdivision plan a lot or lots reserved for such units. The required affordable units shall be in addition to,
976 but shall not exceed 25 percent of the number of, market-rate units approved by the board in accordance

977 with any otherwise applicable ordinance, by-law, or regulation. In order to include the additional
978 affordable units, the regulation shall provide for an increase in the permitted density or intensity of
979 residential uses within a subdivision as authorized by a complementary zoning ordinance or by-law
980 relating to the subdivision of land. In lieu of constructing the units required on-site, the regulation may
981 provide for the construction of such units off-site, the dedication of land for such purpose, or the payment
982 of funds to a separate account created by the city or town sufficient for and dedicated to the provision of
983 affordable housing, provided the applicant demonstrates to the satisfaction of the board that the units
984 cannot be otherwise provided on-site or that an alternative proposal better meets the needs of the city or
985 town with respect to the provision of affordable housing. Off-site units, land dedication, or payment in-
986 lieu of units shall, in the opinion of the board and in consideration of local needs, provide affordable
987 housing benefits roughly equivalent to the provision of on-site units. Cities and towns are authorized to
988 establish a separate dedicated account for the deposit of funds received under this section, including
989 municipal housing trust fund accounts under section 55C of chapter 44 or other dedicated accounts of
990 similar purpose. Said funds shall be deposited with the treasurer and dispersed in accordance with the
991 ordinances, by-laws, or regulations of the city or town. Where the application of this section results in less
992 than a full dwelling unit, the board may accept a prorated payment of funds in lieu of unit creation.

993

994 The affordable units shall be subject to a restriction on sale price or rent under the provisions of chapter
995 184 of the general laws, as amended, and shall remain affordable, in perpetuity or for a period not less
996 than 30 years, to households with income at or below the area median income as such income is most
997 recently determined by the United States department of housing and urban development or successor
998 agency. However, the regulation may allow some of the units to be restricted for sale or rent to
999 households with income up to 120 percent of the area median income, provided the average allowable
1000 sale price or rent of all affordable housing units within the subdivision shall be affordable to households
1001 with income at or below the area median income, as set forth in the restriction. The regulation may further
1002 require some or all of the affordable units to be low- or moderate-income housing as defined in sections
1003 20 through 23, inclusive, of chapter 40B of the general laws, and be eligible for inclusion on the
1004 subsidized housing inventory in accordance with applicable regulations and guidelines of the department
1005 of housing and community development or successor agency.

1006

1007 Nothing in this section shall prohibit a city or town from adopting an inclusionary zoning by-law,
1008 ordinance or regulation with affordable housing requirements that differ from the provisions stated herein.

1009

1010 After January 1, 2014, no rules and regulations adopted under this chapter may be inconsistent with a plan
1011 adopted by the city or town under section 81D of chapter 41. No rule or regulation shall be deemed
1012 inconsistent with the plan if it furthers, or at least does not impede, the achievement of the plan's goals
1013 and policies, and if it is not incompatible with the plan's proposed land uses, design guidelines, and
1014 development patterns.

1015

1016 After the effective date of the plan, rules and regulations shall enjoy a rebuttable presumption in any
1017 action, suit, or administrative proceeding that its provisions are not inconsistent with the plan. If the
1018 presumption is rebutted, inconsistency may serve as the basis upon which a court or administrative
1019 agency may declare any relevant rule or regulation provision to be invalid as applied to the property
1020 which is the subject of the action, suit, or administrative proceeding. For an amendment to the plan
1021 adopted after January 1, 2014, no declaration of invalidity may be made in any action, suit, or
1022 administrative proceeding for a period of 12 months after the effective date of the plan amendment.

1023

1024 SECTION 33. Section 81T of said chapter 41, as so appearing, is hereby amended by striking out, in
1025 lines 2-3 inclusive, the following words “or for a determination that approval is not required”.

1026

1027 SECTION 34. Section 81U of said chapter 41, as so appearing, is hereby amended by striking out lines
1028 74 through 79, inclusive, and inserting in place thereof the words “Before endorsement of its approval of
1029 a plan, a planning board shall require a performance guarantee such that the construction of ways and the
1030 installation of municipal services will be secured by one, or in part by one and in part by another, of the
1031 methods described in the following clauses (1), (2), (3), and (4). The method or combination of methods
1032 shall be selected by the planning board, provided, however, that the applicant shall have the right and
1033 option to substitute a covenant referred to in clause (3).”

1034

1035 SECTION 35. Said section 81U of said chapter 41, as so appearing, is hereby amended by striking out, in
1036 lines 173-174 inclusive, the words “for a period of not more than three years”.

1037

1038 SECTION 36. Section 81X of said chapter 41, as so appearing, is hereby amended by striking out, in
1039 lines 12-13 inclusive, the following words “such plan bears the endorsement of the planning board that
1040 approval of such plan is not required, as provided in section eighty-one P, or (3)”.

1041

1042 SECTION 37. Said section 81X of said chapter 41, as so appearing, is hereby amended by striking out, in
1043 lines 17-20 inclusive, the following words “or that it is a plan submitted pursuant to section eighty-one P
1044 and that it has been determined by failure of the planning board to act thereon within the prescribed time
1045 that approval is not required,”.

1046

1047 SECTION 38. Said section 81X of said chapter 41, as so appearing, is hereby amended by striking out the
1048 fourth paragraph and inserting in place thereof the following paragraph:-

1049

1050 Notwithstanding the foregoing provisions of this section, the register of deeds shall accept for recording,
1051 and the land court shall accept with a petition for registration or confirmation of title, any plan bearing a
1052 professional opinion by a registered professional land surveyor that the property lines shown are the lines
1053 dividing existing ownerships, and the lines of streets and ways shown are those of public or private streets
1054 or ways already established, and that no new lines for division of existing ownership or for new ways are
1055 shown. Similarly, the register of deeds and the land court shall accept for recording or registration any
1056 plan showing a change in the line of any lot, tract, or parcel bearing a professional opinion by a registered
1057 professional land surveyor and a certificate by the person or board charged with the enforcement of the
1058 zoning ordinance or by-law of the city or town that the property lines shown: do not create an additional
1059 building lot; do not create, add to, or alter the lines of a street or way; do not render an existing legal lot or
1060 structure illegal; do not render an existing nonconforming lot or structure more nonconforming; and are
1061 not subject to alternative local rules and regulations for minor subdivisions under section 81P of this
1062 chapter. The recording of such plan shall not relieve any owner from compliance with the provisions of
1063 the subdivision control law or of any other applicable provision of law.

1064

1065 SECTION 39. Section 53G of chapter 44 of the General Laws, as appearing in the 2006 official
1066 edition, is hereby amended by inserting after the word “section”, in line 2, the following figure:-
1067 7A,
1068

1069 SECTION 40. Said section 53G of said chapter 44, as so appearing, is hereby amended by
1070 inserting after the word “nine”, in line 2, the following figure:- , 9E,
1071

1072 SECTION 41. The provisions of bill sections 1-42 herein, except as otherwise expressly provided, shall
1073 not be construed to affect any general or special law other than chapters 40A, 41, and 44, as revised.

1074