

HOUSE No. 2420

The Commonwealth of Massachusetts

PRESENTED BY:

Stephen Kulik and Sarah K. Peake

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

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

An Act building for the future of the Commonwealth.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Stephen Kulik</i>	<i>1st Franklin</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Paul A. Schmid, III</i>	<i>8th Bristol</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Brendan P. Crighton</i>	<i>11th Essex</i>
<i>Jay R. Kaufman</i>	<i>15th Middlesex</i>
<i>Jose F. Tosado</i>	<i>9th Hampden</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>
<i>Robert M. Koczera</i>	<i>11th Bristol</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>

<i>John W. Scibak</i>	<i>2nd Hampshire</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>
<i>Thomas J. Calter</i>	<i>12th Plymouth</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>
<i>Aaron Vega</i>	<i>5th Hampden</i>
<i>Natalie Higgins</i>	<i>4th Worcester</i>
<i>James R. Miceli</i>	<i>19th Middlesex</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>
<i>Jack Lewis</i>	<i>7th Middlesex</i>
<i>Bud Williams</i>	<i>11th Hampden</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>
<i>Kate Hogan</i>	<i>3rd Middlesex</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>
<i>Joan Meschino</i>	<i>3rd Plymouth</i>
<i>Juana Matias</i>	<i>16th Essex</i>
<i>Stephan Hay</i>	<i>3rd Worcester</i>
<i>Adrian Madaro</i>	<i>1st Suffolk</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>
<i>John J. Mahoney</i>	<i>13th Worcester</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>
<i>Daniel Cullinane</i>	<i>12th Suffolk</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>Gailanne M. Cariddi</i>	<i>1st Berkshire</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>Harold P. Naughton, Jr.</i>	<i>12th Worcester</i>
<i>Rady Mom</i>	<i>18th Middlesex</i>
<i>Jeffrey N. Roy</i>	<i>10th Norfolk</i>
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>

<i>Peter V. Kocot</i>	<i>1st Hampshire</i>
<i>Todd M. Smola</i>	<i>1st Hampden</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>
<i>Dylan Fernandes</i>	<i>Barnstable, Dukes and Nantucket</i>
<i>William C. Galvin</i>	<i>6th Norfolk</i>

HOUSE No. 2420

By Representatives Kulik of Worthington and Peake of Provincetown, a petition (accompanied by bill, House, No. 2420) of Stephen Kulik and others for legislation to establish an annual program of education, self-evaluation and training for members of local planning boards and zoning boards of appeals and to promote affordable community housing . Municipalities and Regional Government.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act building for the future of 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 3 of chapter 23B of the General Laws, as appearing in the
2 2014 Official Edition, is hereby amended by inserting after clause (v) the following subsection:-

3 (w) establish, conduct and maintain an annual program of education, self-
4 evaluation and training for members of local planning boards and zoning boards of appeals;
5 provided, however that the department shall consult with the Massachusetts Association of
6 Planning Directors, Massachusetts Association of Regional Planning Agencies and American
7 Planning Association, Massachusetts Chapter, regarding development of the program; provided
8 further, that the department may contract with the Massachusetts Citizen Planner Training
9 Collaborative to provide such education, self-evaluation and training. To the extent practicable,
10 the education, self-evaluation and training programs shall be offered online and in various
11 locations throughout the commonwealth.

12 SECTION 2. Section 1A of Chapter 40A of the General Laws, as appearing in
13 the 2014 Official Edition, is hereby amended by striking out the definition of “Permit granting
14 authority” and inserting in place thereof the following 12 definitions:-

15 “Affordable housing”, a dwelling unit restricted for purchase or rent by a
16 household with an income at or below 80 per cent of the area median income for the applicable
17 metropolitan or non-metropolitan area, as determined by the United States Department of
18 Housing and Urban Development; provided, however, that affordable housing shall be subject to
19 an affordable housing restriction in accordance with sections 31 to 33, inclusive, of chapter 184
20 or, if ineligible under said sections 31 to 33, inclusive, of said chapter 184, restricted by other
21 means as required in an ordinance or by-law.

22 “Artist,” a person regularly engaged in and who derives a substantial portion of his/her
23 annual income from art or creative work.

24 “Art use,” the production of art or other creative work, including painting or other like
25 picture, traditional and fine crafts, sculpture, writing, creating film, creating animation, the
26 composition of music, choreography and the performing arts. Art use may include the display or
27 sale of an artist’s work, and may include classes taught by an artist, at the site of production. Art
28 use does not include mass production or distribution, or performance for audiences.

29 “By-right” or “as of right”, development that may proceed under a zoning ordinance or
30 by-law without the need for a special permit, variance, zoning amendment, waiver or other
31 discretionary zoning approval; provided, however, that “by-right” or “as of right” development
32 may be subject to site plan review under section 9D.

33 “Cluster development or open space residential development”, a class of residential
34 development in which reduced dimensional requirements allow the developed areas to be
35 concentrated in order to permanently preserve open land for natural, agricultural or cultural
36 resources elsewhere on the plot.

37 “Development impact fee”, an assessment imposed by a zoning ordinance or by-law to
38 offset the impacts of a development, in an amount roughly proportionate to the impact of the
39 development, and in accordance with section 9E.

40 “Form-based zoning”, means text and graphics in a zoning ordinance or by-law that
41 specify the built form of the community, general intensity of use, and the relationship between
42 buildings and the outdoor public spaces they shape.

43 “Inclusionary housing”, an affordable housing unit or a housing unit restricted
44 for purchase or rent by a household with an income at or below 120 per cent of the median
45 family income determined by the United States Department of Housing and Urban Development
46 for the applicable metropolitan or nonmetropolitan area; provided, however, that a municipality
47 may set the income thresholds for inclusionary housing at a level at or below 120 per cent of
48 median income.

49 “Inclusionary zoning”, zoning ordinances or by-laws that require the creation of
50 affordable housing or inclusionary housing, in accordance with section 9F.

51 “Municipal affordable housing concessions”, measures adopted by a
52 municipality to contribute to the economic feasibility of an inclusionary-zoned residential or
53 mixed use development including, but not limited to, increases in the otherwise maximum

54 allowable density, floor-area ratio or height or reductions in otherwise applicable parking
55 requirements, permitting fees and timeframes.

56 “Natural resource protection zoning”, zoning ordinances or by-laws enacted
57 principally to protect natural resources by establishing higher underlying density divisors relative
58 to other areas, a formulaic method to calculate development rights and compact patterns of
59 development so that a significant majority of the land remains permanently undeveloped and
60 available for agriculture, forestry, recreation, watershed management, carbon sequestration,
61 wildlife habitat or other natural resource values.

62 “Permit granting authority”, the board of appeals, zoning administrator or
63 planning board as designated by zoning ordinance or by-law for the issuance of permits or as
64 otherwise provided by charter.

65 SECTION 3. Said section 1A of said chapter 40A, as so appearing, is hereby
66 further amended by inserting after the definition of “Special permit granting authority” the
67 following definition:-

68 “Transfer of development rights”, the regulatory procedure whereby the owner
69 of a parcel may convey development rights to the owner of another parcel and where the
70 development rights so conveyed are extinguished on the first parcel and may be exercised on the
71 second parcel in addition to the development rights already existing regarding that parcel.

72 SECTION 4. Said chapter 40A is hereby further amended by inserting after
73 section 1A the following section:-

74 Section 1B. (a) This chapter shall be construed to give full effect to the home
75 rule authority of cities and towns. Nothing in this chapter shall be construed as limiting the
76 constitutional authority of cities and towns unless expressly stated by this chapter. Wherever the
77 language of this chapter purports to authorize or enable, it shall be so construed only where such
78 authority is not otherwise available to cities and towns under the constitution or laws of the
79 commonwealth, and in all other cases such language shall be considered illustrative only.

80 (b) Nothing in this chapter shall limit the authority of the regional planning
81 agencies under chapter 716 of the acts of 1989, chapter 561 of the acts of 1973 and chapter 831
82 of the acts of 1977 or of any municipality within Barnstable or Nantucket County or the county
83 of Dukes County acting under said chapter 716, said chapter 561 and said chapter 831 including,
84 but not limited to, the designation of districts of critical planning concern, the adoption of
85 regulations for such districts, the review of developments of regional impact and the imposition
86 development impact fees. If this chapter or a regulation issued pursuant to this chapter conflicts
87 with these special acts and any regulations, ordinances, regional policy plans or decisions issued
88 or adopted under these special acts, the latter shall control.

89 SECTION 5. Section 3 of said chapter 40A, as appearing in the 2014 Official
90 Edition, is hereby amended by adding the following paragraph:-

91 No zoning ordinance or by-law shall prohibit or require a special permit for the
92 use of land or structures for an accessory dwelling unit located internally within a single-family
93 dwelling or the rental thereof on a lot not less than 5,000 square feet or on a lot of sufficient area
94 to meet the requirements of title 5 of the state environmental code established by section 13 of
95 chapter 21A, if applicable; provided, however, that such land or structures may be subject to

96 reasonable regulations concerning dimensional setbacks, screening and the bulk and height of
97 structures. The zoning ordinance or by-law may require that the principal dwelling or the
98 accessory dwelling unit be continuously owner-occupied and may limit the total number of
99 accessory dwelling units in the municipality to not less than 5 per cent of the total non-seasonal
100 single-family housing units in the municipality. Not more than 1 additional parking space shall
101 be required for an accessory dwelling unit; provided, however, that, if parking is required for the
102 principal dwelling, that parking shall be retained or replaced. As used in this paragraph,
103 “accessory dwelling unit” shall mean a self-contained housing unit, inclusive of sleeping,
104 cooking and sanitary facilities, incorporated within the same structure as the principal dwelling
105 that: (i) maintains a separate entrance, either directly from the outside or through an entry hall or
106 corridor shared with the principal dwelling sufficient to meet the requirements of the state
107 building code for safe egress; (ii) shall not be sold separately from the principal dwelling; and
108 (iii) is not larger in floor area than 1/2 the floor area of the principal dwelling or 900 square feet,
109 whichever is smaller. Exterior alterations of the principal dwelling to allow separate primary or
110 emergency access to the accessory dwelling unit shall be allowed without a special permit if such
111 alterations are within applicable dimensional setback requirements. Nothing in this paragraph
112 shall authorize an accessory dwelling unit to violate or avoid compliance with the building, fire,
113 health or sanitary codes, historic or wetlands laws, ordinances or by-laws or title 5 of the state
114 environmental code established by said section 13 of said chapter 21A, if applicable. The
115 department of housing and community development may by regulation exempt a municipality
116 from this paragraph if the department determines that: (1) the municipality has a number of
117 multifamily units greater than required under section 3A by a number of housing units not less

118 than 5 per cent of the total non-seasonal housing units in the municipality; or (2) housing sale
119 prices in the municipality have declined over the previous 3-year period.

120 SECTION 6. Said chapter 40A is hereby further amended by inserting after
121 section 3 the following section:-

122 Section 3A. (1) (a) For the purposes of this section, the following words shall have the
123 following meanings unless the context clearly requires otherwise:

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

125 “Eligible locations”, as defined in section 2 of chapter 40R for multi-family
126 housing.

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

129 “Rural town”, a municipality with a population density of less than 500 people
130 per square mile as determined by the most recent decennial federal census.

131 (b) Zoning ordinances and by-laws shall provide reasonable and realistic
132 opportunities for the development of multi-family housing (i) in eligible locations and (ii) that
133 meets a reasonable share of the regional need for multi-family housing, including the need for
134 multi-family housing without age restrictions and which is suitable for families with children.

135

136

137 The department may waive or modify the requirements of this subsection for
138 rural towns. In making such determinations, which may apply to individual rural towns or to a
139 category or categories of rural towns, the department may consider (i) the regional need for
140 multi-family housing and (ii) the existing or planned water, sewer and transportation
141 infrastructure in the town.

142 (c) The department shall promulgate regulations which shall be used to
143 determine if a city or town has satisfied the requirements established in this subsection.

144 (2) For any zoning district that requires a minimum lot area of 40,000 square feet
145 or greater for a single-family residential dwelling, the zoning ordinance or by-laws must provide
146 that development of five or more new single-family dwellings on a parcel as a subdivision under
147 chapter 41 are allowed as of right to utilize the type of open space residential development set
148 forth in this section, except upon a specific finding by the planning board that such development
149 is not feasible or the land and natural resource conservation objectives of such development are
150 achieved on the site through alternate means already adopted by the municipality, such as the
151 transfer of development rights or natural resource protection zoning.

152 Such ordinance or by-law shall allow open space residential development as of right if
153 the proposed development identifies the significant natural and cultural features of the land;
154 concentrates development by use of reduced dimensional requirements to preserve those
155 features; and permanently preserves a certain percentage of land, in accordance with this section,
156 in a natural, scenic or open condition, or in agricultural, forestry, or passive outdoor recreational
157 use. For the purposes of calculating the percentage of land to be preserved, the land's
158 developable area shall be determined pursuant to applicable state and local land use and

159 environmental laws and regulations, and the zoning ordinance or by-law, without regard in either
160 case to the suitability of soils or groundwater for on-site wastewater disposal as such is
161 separately regulated by local boards of health.

162 At least 40 percent of the land's developable area shall be preserved and this open space
163 shall be substantially contiguous. In districts where Title 5 of the Environmental Code is in
164 effect, and which are in nitrogen-sensitive areas where the number of bedrooms is calculated at
165 one bedroom per 10,000 square feet of land area, the provisions of this section shall not apply if
166 the required lot area is 40,000 square feet or less, unless the local board of health approves an
167 aggregate calculation of land area that includes the preserved land, and if the required lot area is
168 more than 40,000 square feet, the minimum preservation requirement set forth in this section
169 shall be modified to equal the percentage resulting from: the subtraction of 40,000 square feet
170 from the lot size requirement: that difference divided by the lot size requirement: and multiplied
171 by 100, except to the extent inconsistent with requirements adopted by a regional planning
172 agency under chapter 716 of the Acts of 1989 or chapter 831 of the Acts of 1977, as those acts
173 may be amended.

174 Such ordinance or by-laws shall provide that developments proposed under this section
175 shall be permitted upon review and approval by a planning board pursuant to section 81K to
176 81GG, inclusive, of chapter 41 and in accordance with a planning board's rules and regulations
177 governing subdivision control.

178 Such ordinance or by-laws shall permit the development of new dwellings at least equal
179 to the number allowed under a conventional subdivision plan. In order to confirm the accuracy of
180 such number a municipality may require either a conventional subdivision plan or a calculation

181 that deducts for roadways, wetlands and other site or legal constraints and divides by an
182 underlying lot area requirement in order to determine the allowed housing units in the
183 development. Allowance of open space residential development by right in accordance with this
184 section shall not preclude increases in the permissible number of dwelling units within an open
185 space residential development by special permit or otherwise.

186 The open land shall either be conveyed to: the city or town and accepted by it for park or
187 open space use and conferred the protections afforded under Article 97 of the amendments of the
188 Massachusetts Constitution; a nonprofit organization the principal purpose of which is the
189 conservation of open space; a corporation or trust owned or to be owned by the owners of lots or
190 residential units within the development; or an individual under a conservation restriction. If the
191 corporation or trust is utilized, ownership thereof shall pass with conveyances of the lots or
192 residential units. Where the land is not conveyed to the city or town or other governmental
193 agency as dedicated open space, a restriction under sections 31 to 33, inclusive, of chapter 184
194 shall be recorded.

195 (3) If a zoning ordinance or by-law fails to comply with this section, the superior court or
196 the land court may award appropriate declaratory and injunctive relief in a civil action brought
197 by the attorney general on behalf of the department or by an aggrieved applicant for a local
198 permit.

199 SECTION 7. Section 5 of said chapter 40A, as appearing in the 2014 Official Edition,
200 is hereby amended striking out, in line 78, the word “No” and inserting in place thereof the
201 following words:- Unless otherwise prescribed in a zoning ordinance or by-law, no.

202 SECTION 8. Said section 5 of said chapter 40A, as so appearing, is hereby
203 further amended by inserting after the word “meeting” in line 82, the following words:- “;
204 provided, however, that if a city or town has failed to meet the minimum requirements of
205 paragraph (1) or (2) section 3A, a zoning ordinance or by-law that is consistent with these
206 requirements shall be adopted by a vote of a simple majority of all members of the town council
207 or of the city council where there is a commission form of government or a single branch or of
208 each branch where there are 2 branches or by a vote of a simple majority of town meeting”.

209 SECTION 9. The fourth paragraph of said section 5 of said chapter 40A, as so
210 appearing, is hereby amended by inserting after the first sentence the following sentence:- The
211 report shall evaluate the consistency of the proposed ordinance or by-law or amendment thereto
212 with a master plan under section 81D of chapter 41, if any, in effect.

213 SECTION 10. The fifth paragraph of said section 5 of said chapter 40A, as so
214 appearing, is hereby amended by adding the following sentence:-

215 Any change in the voting majority required to adopt a zoning ordinance, by-law or
216 amendment shall be made by the voting majority then in effect and shall not become effective
217 until 6 months have elapsed after the vote; provided, however, that a voting change shall be
218 limited to a range between a simple majority and a 2/3 majority vote. A majority vote of less
219 than 2/3 shall not be allowed for a specific zoning amendment if the amendment is the subject of
220 a landowner protest.

221 SECTION 11. Section 6 of said chapter 40A, as so appearing, is hereby
222 amended by striking out, in lines 3 to 5, inclusive, the words “or to a building or special permit

223 issued before the first publication of notice of the public hearing on such ordinance or by-law
224 required by section five,”.

225 SECTION 12. Said section 6 of said chapter 40A, as so appearing, is hereby
226 further amended by striking out, in lines 6 and 7, the words “to a building or special permit
227 issued after the first notice of said public hearing,”.

228 SECTION 13. Said section 6 of said chapter 40A, as so appearing, is hereby
229 further amended by striking out the second paragraph and inserting in place thereof the following
230 paragraph:-

231 If a complete application for a building permit or special permit is duly submitted and
232 received, including receipt of payment for any applicable fees, and written notice of the
233 submission has been given to the city or town clerk before the first publication of notice of the
234 public hearing on the ordinance or by-law as required by section 5, the permit shall be governed
235 by the applicable provisions of the zoning ordinance or by-law, if any, in effect at the time of the
236 first submission and receipt while any permit is being processed and, if the permit or an
237 amendment of the permit is finally approved, for 2 years in the case of a building permit and 3
238 years in the case of a special permit from the date of the granting of approval. The period of 2 or
239 3 years shall be extended by a period equal to the time a city or town imposes or has imposed
240 upon it by a state, a federal agency or a court, a moratorium on construction, the issuance of
241 permits or utility connections.

242 SECTION 14. The fourth paragraph of said section 6 of said chapter 40A, as so
243 appearing, is hereby amended by striking out the second sentence.

244 SECTION 15. Said section 6 of said chapter 40A, as so appearing, is hereby
245 amended by striking out the fifth paragraph and inserting in place thereof the following
246 paragraph:-

247 If a complete application for a definitive plan is duly submitted to a planning
248 board for approval under the subdivision control law and written notice of the submission has
249 been given to the city or town clerk before the first publication of notice of the public hearing on
250 the ordinance or by-law required by section 5, the plan shall be governed by the applicable
251 provisions of the zoning ordinance or by-law, if any, in effect at the time of the first submission
252 while any plan is being processed under the subdivision control law and, if the definitive plan or
253 an amendment to the definitive plan is finally approved, for 8 years from the date of the
254 endorsement of the approval; provided, however, that in the case of a minor subdivision in a city
255 or town that has accepted section 81HH of chapter 41, the applicable provisions of the zoning
256 ordinance or by-law shall govern for 4 years from the date of the endorsement of approval. The
257 period of 8 or 4 years shall be extended by a period equal to the time which a city or town
258 imposes or has imposed upon it by a state, a federal agency or a court, a moratorium on
259 construction, the issuance of permits or utility connections.

260 SECTION 16. Said section 6 of said chapter 40A, as so appearing, is hereby
261 amended by striking out the sixth paragraph.

262 SECTION 17. Said section 6 of said chapter 40A, as so appearing, is hereby
263 amended by striking out, in the second sentence of the seventh paragraph, the words “land shown
264 on”.

265 SECTION 18. Said section 6 of said Chapter 40A, as so appearing, is hereby
266 amended by adding a new last paragraph:

267 Notwithstanding any provision of any general or special law, form-based zoning may
268 regulate building type, exterior building materials, minimum and maximum building heights,
269 frontage type, build-to lines, street type, street and streetscape design, public open spaces, and
270 any other parameter of the built or natural environment which gives form to the exterior of
271 buildings and the spaces between them. Form-based zoning may combine in a single document
272 standards for new subdivision streets, existing and new public streets and sidewalks, and use and
273 dimensional standards. Such combined standards may be in the form of a “regulating plan” that
274 integrates building, dimensional, use, street, sidewalk, and parking requirements. Form-based
275 zoning may also specify lot-by-lot in a detailed regulating plan, building forms and allowed use
276 mixes, even if such specification is not uniform throughout a zoning district, provided that it is
277 based upon a plan for the area subject to the code. Form-based zoning may specify prescribed
278 future lot division lines which will be allowed as of right in any future division of land.

279 SECTION 19. Section 9 of said chapter 40A, as so appearing, is hereby
280 amended by striking out the third to ninth paragraphs, inclusive.

281 SECTION 20. Said section 9 of said chapter 40A, as so appearing, is hereby
282 further amended by striking out the last sentence in the twelfth paragraph and inserting in place
283 thereof the following sentence:-

284 Unless a greater majority is specified in the zoning ordinance or by-law, issuance of a
285 special permit under this section shall require an affirmative vote of a simple majority of the
286 special permit granting authority. A greater majority vote requirement shall not exceed a vote of

287 two-thirds of the special permit granting authority in the case of a board with more than five
288 members, a vote of at least four members of a five member board, or a unanimous vote of a three
289 member board.

290 SECTION 21. Said section 9 of said chapter 40A, as so appearing, is hereby
291 further amended by inserting after the word “zoned”, in line 201, the following word:-
292 principally.

293 SECTION 22. Said section 9 of said chapter 40A, as so appearing, is hereby
294 further amended by inserting after the word “zoned”, in line 216, the following word:-
295 principally.

296 SECTION 23. Said chapter 40A is hereby further amended by inserting after
297 section 9C the following 4 sections:-

298 Section 9D. (a) As used in this section, “site plan” shall mean the submission
299 made to a municipality that includes documents and drawings required by an ordinance or by-
300 law showing the proposed on-site arrangement of buildings, structures, parking, pedestrian and
301 vehicle circulation, utilities, grading and other site features and improvements existing or to be
302 placed on a parcel of land in connection with the proposed use of land or structures.

303 (b) A zoning ordinance or by-law that requires site plan review for uses allowed
304 by-right shall: (i) establish the different types, scales or categories of uses of land, structures or
305 development subject to site plan review; (ii) specify the local boards or officials charged with
306 reviewing and approving site plans which may differ for different types, scales or categories of
307 uses of land or structures; (iii) set forth what shall be considered a complete application; (iv)
308 establish the process for submission, review and approval for a site plan; (v) establish standards

309 and criteria by which the project and its direct adverse impacts on that portion of properties and
310 public infrastructure located within 300 feet of the parcel boundary shall be evaluated; and (vi)
311 include provisions making the terms, conditions and content of the approved site plan
312 enforceable by the municipality which may include the requirement of performance guarantees.

313 (c) Approval of a site plan under this section, if reviewed by a board, shall
314 require not more than a simple majority vote of the full board and shall be made within the time
315 limits prescribed by ordinance or by-law not to exceed 120 days from the filing of a complete
316 application. Procedures for the administrative review and approval of a site plan by staff or other
317 municipal officials shall be as specified in the ordinance or by-law but the 120-day time limit for
318 a decision shall not be increased unless granted in writing by the person seeking the site plan
319 approval. If no decision is issued within the time limit prescribed and no written extension of the
320 time limit has been granted by the person seeking the site plan review, the site plan shall be
321 deemed constructively approved as provided in section 9; provided, however, that the petitioner
322 shall comply with the constructive approval procedures under said section 9. Copies of the
323 approved site plan submission shall be kept on file by the town or city clerk, the permit granting
324 authority and the municipal building department.

325 (d) A site plan submitted for the use of specific land or structures allowed by-
326 right shall not be denied unless: (i) the proposed site plan cannot be conditioned to meet the
327 requirements set forth in the zoning ordinance or by-law; (ii) the applicant fails to submit the
328 information and fees required by the zoning ordinance or by-law necessary for an adequate and
329 timely review of the design of the proposed land or structures; or (iii) there is no feasible site
330 design change or condition that would adequately mitigate any direct adverse impacts of the

331 proposed improvements on that portion of properties and public infrastructure located within 300
332 feet of the parcel boundary.

333 (e) A site plan approved under this section may include reasonable conditions,
334 safeguards and limitations to mitigate the direct adverse impacts of the project on that portion of
335 properties and public infrastructure located within 300 feet of the parcel boundary. Conditions
336 may be approved that are directly related to standards and criteria described in the site plan
337 review ordinance or by-law; provided, however, that such conditions shall not conflict with or
338 waive any other applicable requirement of the zoning ordinance or by-law. The record of the
339 decision shall state the reasons for any conditions imposed. If conditions are adopted pursuant to
340 this subsection, the site plan shall be revised to include those conditions before the development
341 permit is issued.

342 (f) Site plan review may not require payment for or performance of any off-site
343 mitigation except when the site plan approval is subject to development impact fees imposed in
344 accordance with section 9E or when a site plan is required in connection with the issuance of a
345 special permit, variance or any other discretionary zoning approval.

346 (g) Except where site plan review is required in connection with the issuance of
347 a special permit, variance or other discretionary zoning approval, decisions made under this
348 section may be appealed pursuant to section 4 of chapter 249. Such civil action may be brought
349 in the superior court or in the land court and shall be commenced within 20 days after the filing
350 of the decision of the site plan review approving authority with the city or town clerk. Notice of
351 such appeal must be given to the city or town clerk so as to be received within 20 days. A
352 complaint by a plaintiff challenging a site plan approval under this section shall allege the

353 specific reasons why the project failed to satisfy the requirements of this section, the zoning
354 ordinance or by-law or other applicable law and shall allege specific facts establishing how the
355 plaintiff is aggrieved by such decision. A complaint by an applicant for site plan review
356 challenging the denial or conditioned approval of a site plan shall similarly allege the specific
357 reasons why the project properly satisfied the requirements of this section, the zoning ordinance
358 or by-law or other applicable law.

359 (h) A site plan, or any extension, modification or renewal thereof, shall not take
360 effect until a notice of site plan approval, identifying the permit granting authority and the date
361 upon which approval was granted, is recorded in the registry of deeds for the county or district in
362 which the land is located and indexed in the grantor index under the name of the owner of record
363 or is recorded and noted on the owner's certificate of title.

364 (i) Zoning ordinances or by-laws shall provide that a site plan approval for a use
365 allowed by-right shall lapse within a specified period of time, not less than 2 years from the date
366 of the filing of the approval with the city or town clerk, if a building permit has not been
367 obtained or substantial use or construction has not yet begun except where extended for good
368 cause by the permit-granting authority either with or without a public hearing, as provided in the
369 zoning ordinance or by-law. Such period of time shall not include the time required to pursue or
370 await the determination of an appeal and shall be measured from the date of the dismissal of the
371 appeal or the entry of final judgment in favor of the applicant.

372 (j) Where an ordinance or by-law provides that a variance, special permit or
373 other discretionary zoning approval shall also require site plan review, the review of the site plan
374 shall be integrated into the processing of the variance, special permit or other discretionary

375 zoning approval and shall not be made the subject of a separate proceeding, hearing or decision.
376 In such a case, the content requirements and approval criteria for a site plan as specified in the
377 zoning ordinance or by-law shall be followed but this section shall not otherwise apply.

378 Section 9E. (a) A local ordinance or by-law that requires the payment of a
379 development impact fee for a permit or approval shall comply with this section. A development
380 impact fee shall have a rational nexus to, and shall be roughly proportionate to, the impacts
381 created by the development. A development impact fee shall reasonably benefit the proposed
382 development and shall be used solely for the purposes of defraying the costs of off-site public
383 capital facilities that support or compensate for the proposed development. Development impact
384 fees shall be applied in a consistent manner pursuant to a proportionate share development
385 impact fee study conducted in accordance with subsection (f).

386 (b) Development impact fees shall be limited to mitigating the impact of the
387 development on the following capital facilities: (i) water supply, treatment and distribution, both
388 potable and for suppression of fires; (ii) wastewater treatment and sanitary sewerage; (iii)
389 drainage, storm water management and treatment; (iv) solid waste; (v) roads, intersections,
390 traffic improvements, public transportation, pedestrian ways and bicycle paths; (vi) parks and
391 recreational facilities; and (vii) publicly owned or publicly financed electric power generation or
392 transmission. Impact fees may be expended on such facilities for the payment of debt service or
393 for studies with a rational nexus to the development, including master plans made in accordance
394 with section 81D of chapter 41 and proportionate share impact fee studies under section 9F. A
395 development impact fee shall not be assessed or expended for personnel costs, normal operation
396 and maintenance costs or to remedy deficiencies in existing facilities; provided, however, that an

397 impact fee may be assessed for mitigation on a facility with a preexisting deficiency to the extent
398 that the preexisting deficiency is exacerbated and not solely to remedy the preexisting deficiency.

399 (c) No development impact fee shall be imposed on a farming or agricultural
400 use recognized in section 1A of chapter 128 or on a dwelling unit with an affordable housing
401 restriction, as defined by section 31 of chapter 184, of not less than 30 years. To the extent that a
402 development contains a nonexclusively farming or agricultural use or nonexclusively affordable
403 housing restricted unit, and the per cent of farming or agricultural use or affordable housing
404 restricted units is not trivial, the by-law or ordinance shall prorate or eliminate the development
405 impact fee.

406 Development impact fees shall be proportionately reduced to the extent that a
407 municipality imposes other fees or requirements, otherwise imposed by law, for mitigation of
408 development including, but not limited to, fees imposed under chapter 40C and section 40 of
409 chapter 131. No fee shall be assessed more than once for the same impact. If, and to the extent
410 that, a municipality receives state or federal funds for mitigation of the development impacts or
411 other grants or contributions for mitigation of development impacts, those funds shall be
412 accounted for in the development impact fee or applied to the development impact fee
413 proportional share development impact study.

414 (d) A development impact fee assessed under this section shall be due and
415 payable not earlier than the issuance of the building permit upon commencement of construction,
416 which may include site preparation work. The fee shall be deposited in a separate, segregated,
417 interest-bearing account in the city or town in which the proposed development is located and no

418 development impact fee shall be paid to the general treasury or used as general expenses of the
419 city or town.

420 Any funds not expended or encumbered by the end of the calendar quarter
421 immediately following 6 years from the date the development impact fee was paid shall be
422 returned with interest. If disagreement exists relative to who shall receive the unexpended or
423 unencumbered fees, the city or town may retain the development impact fee pending instructions
424 given in writing by the parties involved or by a court of competent jurisdiction.

425 (e) A zoning ordinance or by-law may provide that the applicant or developer
426 may construct the public capital facility or a portion thereof for which the development impact
427 fee was assessed or may enter into any other mutual agreement in lieu of paying the development
428 impact fee; provided, however, that the applicant or developer shall not be required to construct
429 the public capital facility or a portion thereof or enter into an alternative agreement if instead the
430 applicant or developer chooses to pay the assessed development impact fee.

431 (f) No development impact fee shall be assessed unless it is assessed pursuant to
432 a valid proportionate-share development impact fee study. A proportionate-share development
433 impact fee study shall establish the proportionate share development impact fee for capital
434 facilities and detail the methodology used to set the fee. The scope of the study may be
435 jurisdiction-wide or limited to a geographic area or category of public capital facilities that
436 development impact fees may be intended to address. A municipality may rely upon credible
437 and professionally recognized methodologies for the study. The study shall be updated not less
438 than every 10 years to reflect actual development activity, actual costs of infrastructure
439 improvements completed or underway, plan changes or amendments to the zoning ordinance or

440 by-law. The study shall identify any preexisting deficiencies in the public capital facilities and
441 shall set forth a feasible implementation plan for how those deficiencies shall be remedied. A
442 proportionate share development impact fee study shall not be valid and no development impact
443 fees shall be assessed if 10 years have passed since the study's creation or its most recent update.

444 An ordinance or by-law may waive or reduce the development impact fee for
445 development that furthers a public purpose as determined in a master plan adopted by the city or
446 town under section 81D of chapter 41 or other formally approved plan designed to set goals for
447 the development of land within the city or town.

448 Notwithstanding this section, a city or town authorized to impose development
449 impact fees pursuant to a special act shall comply with the standards set forth in the special act.

450 Section 9F. (a) A zoning ordinance or by-law may require the applicant for a
451 residential or mixed use development to provide inclusionary housing units. In establishing any
452 such ordinance or by-law, the city or town shall consider the likely impacts of development on
453 the affordable housing assets of the municipality, the ability of the community to meet local and
454 regional housing needs and the economic feasibility of development.

455 (b) An inclusionary housing ordinance or by-law may provide municipal
456 affordable housing concessions which shall be applied among affected developments in a
457 reasonable and consistent manner.

458 (c) In lieu of constructing the required inclusionary housing units onsite, the
459 ordinance or by-law may provide for the construction of such units off-site, the dedication of
460 land for that purpose or the payment of funds to a separate account created by the city or town
461 sufficient for and dedicated to inclusionary housing if the applicant demonstrates to the

462 satisfaction of the local approving authority that the units cannot be otherwise provided onsite or
463 that an alternative proposal better meets the needs of the city or town with respect to the
464 provision of inclusionary housing. Off-site units, land dedication or payment in lieu of units, in
465 the opinion of the board or official designated by ordinance or by-law to administer this section
466 and in consideration of local needs, shall provide inclusionary housing benefits substantially
467 equivalent to the provision of onsite units.

468 (d) A city or town may establish a separate dedicated account for the deposit of
469 funds received under this section, including a Municipal Affordable Housing Trust Fund account
470 under section 55C of chapter 44 or other dedicated accounts of similar purpose. These funds
471 shall be deposited with the treasurer and disbursed for inclusionary housing in accordance with
472 the ordinances, by-laws or regulations of the city or town. If the application of this section results
473 in less than a full dwelling unit, the board may accept a prorated payment of funds in lieu of unit
474 creation.

475 (e) The inclusionary housing units shall be subject to an affordable housing
476 restriction for not less than 30 years, in accordance with sections 31 to 33, inclusive, of chapter
477 184 or, if ineligible under said sections 31 to 33, inclusive, of said chapter 184, restricted by
478 other means as required in an ordinance or by-law.

479 (f) The ordinance or by-law may require some or all of the inclusionary housing
480 units to be low-income or moderate-income housing as defined in sections 20 to 23, inclusive, of
481 chapter 40B, and shall be eligible for inclusion on the local subsidized housing inventory subject
482 to and in accordance with applicable regulations and guidelines of the department of housing and

483 community development. Nothing in this section shall require the department to include
484 affordable units created under this section on the subsidized housing inventory.

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

491 If the applicant and the public official or local board agree to a land use dispute
492 avoidance process, the mediator or facilitator for the dispute avoidance process may convene
493 meetings or conduct interviews that shall be confidential and privileged from discovery in
494 accordance with section 23C of chapter 233. The mediator or facilitator shall have the
495 protections provided under said section 23C of said chapter 233. To the extent that public bodies
496 are participants, their deliberations may be held in executive session to the extent permitted by
497 clause 9 of subsection (a) of section 21 of chapter 30A.

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

504 Section 9H. The use of all or a portion of a building for both art use and the habitation of
505 artists engaged in art use within the building shall be allowed, either by right or with a special
506 permit.

507 SECTION 24. Said chapter 40A is hereby further amended by striking out section 10, as
508 appearing in the 2014 Official Edition, and inserting in place thereof the following section:-

509 Section 10. Where literal enforcement of the zoning ordinance or by-law would
510 result in substantial hardship, financial or otherwise, to the petitioner, upon appeal or upon
511 petition with respect to particular land or structures, the permit-granting authority may grant a
512 variance from the terms of the applicable zoning ordinance or by-law following a public hearing
513 for which notice has been given by publication and posting as provided in section 11 and by
514 mailing notice to all interested parties. The substantial hardship necessitating the variance shall
515 relate to the physical characteristics including, but not limited to, soil conditions, shape or
516 topography or location of the site or of the structures thereon.

517 In making its determination, the permit-granting authority shall take into
518 consideration the benefit to the applicant if the variance is granted as well as the detriments to
519 the health, safety and welfare of the neighborhood or community if the variance is granted. In
520 order to grant a variance, the permit-granting authority shall make all the following findings: (i)
521 the benefit sought by the applicant can be achieved by another method feasible for the applicant
522 to pursue, other than a variance; (ii) the variance will have a disproportionately adverse effect on
523 nearby properties, the character of the neighborhood or the environment; (iii) the variance will
524 nullify or substantially derogate from the intent or purpose of the ordinance or by-law or a master
525 plan under section 81D of chapter 41 if a master plan is in effect; and (iv) the claimed hardship

526 relating to the property in question is unique and does not also apply to a substantial portion of
527 the district or neighborhood. The permit-granting authority may also take into consideration the
528 extent to which the claimed hardship is self-created and may base a denial solely upon a finding
529 that the claimed hardship is self-created. In the granting of variances, the permit-granting
530 authority shall grant the minimum variance that it deems necessary to relieve the hardship

531 A local ordinance or by-law may allow petitioners to apply for a special permit seeking to
532 waive or modify a dimensional requirement, rather than use the variance process set forth in this
533 section. Such special permit process may be applied to all circumstances in which a petitioner
534 seeks to waive or modify dimensional requirements, or may be applied only to certain
535 dimensional requirements identified in the ordinance or by-law..

536 Except where local ordinances or by-laws expressly permit variances for use, no
537 variance may authorize a use or activity not otherwise permitted in the district in which the land
538 or structure is located. Variances for use shall be subject to all of this section and any more
539 stringent criteria contained in an ordinance or by-law. Variances for use properly granted prior
540 to January 1, 1976 but limited in time, may be extended on the same terms and conditions that
541 were in effect for that variance upon the effective date.

542 The permit-granting authority may impose conditions, safeguards and limitations
543 on the time and use of a variance, including on the continued existence of particular structures;
544 provided, however, that the permit-granting authority shall not impose conditions, safeguards or
545 limitations based on the continued ownership of the land or structures to which the variance
546 pertains by the applicant, petitioner or an owner.

547 If the rights authorized by a variance are not exercised within 2 years after the
548 date of the grant of the variance, the variance shall lapse; provided, however, that upon written
549 application by the grantee of the variance, the permit-granting authority may extend, without a
550 public hearing unless so required by a zoning ordinance or by-law, the time to exercise such
551 rights for up to 1 year. The application shall be filed not later than 65 days before the lapse of
552 the variance. If the permit-granting authority does not grant the extension before the lapse of the
553 variance then, upon the lapse of the variance the variance may be reestablished only after notice
554 and a new hearing pursuant to this section.

555 SECTION 25. Section 11 of said chapter 40A, as so appearing, is hereby
556 amended by inserting after the word “town” , in line 15, the following words:- , the board of
557 health of the city or town.

558 SECTION 26. Section 17 of said chapter 40A, as so appearing, is hereby
559 amended by inserting after the sixth paragraph the following paragraph:-

560 The court, in its discretion, may require non-municipal plaintiffs in an action
561 under this section to post a surety or cash bond in an amount not to exceed \$15,000 to secure the
562 payment of costs in appeals of decisions approving special permits, variances and site plans
563 where the court finds that the harm to the defendants or to the public interest resulting from the
564 delays of appeal outweighs the burden of the surety or cash bond on the plaintiffs. When making
565 a decision regarding surety or cash bond requirements, the court may consider the relative merits
566 of the appeal and the relative financial means of the appellant and the defendants.

567 SECTION 27. Section 3 of said chapter 40R, as so appearing, is hereby amended by
568 inserting after the figure “40A,” in line 9, the following:

569 : provided, however, that a smart growth zoning district or starter home zoning district
570 ordinance or by-law shall be adopted, amended or repealed by a simple majority vote of all the
571 members of the town council, or of the city council where there is a commission form of
572 government or a single branch, or of each branch where there are 2 branches, or by a simple
573 majority of a town meeting.

574 SECTION 28. Chapter 41, as so appearing, is hereby amended by striking out
575 section 81D and inserting in place thereof the following section:-

576 Section 81D. (a) A planning board established in a city or town shall make a
577 master plan for the city or town in accordance with this section. The plan shall take effect upon
578 adoption by the legislative body as provided herein. The planning board shall, from time to time,
579 not to exceed 10 years from the date of adoption, conduct a comprehensive review of the plan
580 and may extend, revise or remake the plan subject to approval as provided in this section. The
581 plan, once adopted, shall be the official master plan of the city or town and shall replace any
582 previously adopted master plan.

583 (b) The plan shall be a comprehensive framework, through text, maps and
584 illustrations that provides a basis for decision-making about land use and the long-term physical
585 development of the municipality. The plan shall be internally consistent in its policies, forecasts
586 and standards and may support and provide a rationale for the municipality's zoning ordinance or
587 by-laws, subdivision regulations and other land use laws, regulations, policies and capital
588 expenditures.

589 (c) The plan shall include the elements required by this section and may include
590 any optional subjects at the discretion of the municipality. The plan shall address the following
591 elements:

592 (i) goals and objectives statement of the municipality for its future
593 growth, development, redevelopment, conservation and preservation; provided, however, that
594 each community shall conduct a public participation process to determine community values,
595 establish goals and identify patterns of development, redevelopment, conservation and
596 preservation consistent with these goals; and provided further, that at a minimum, the goals and
597 objectives statement shall address the elements required to be included in the plan;

598 (ii) a housing element that shall include: (A) an inventory of local
599 demographic characteristics, an assessment and forecast of housing needs and a statement of
600 local housing policies; (B) an analysis of housing units by type of structure, affordable housing
601 and subsidized housing, housing available for rental, special needs housing and housing for the
602 elderly; (C) an assessment of existing local policies, programs, laws or regulations that
603 encourage the preservation, improvement and development of housing; and (D) an evaluation of
604 zoning and other land use policies designed to meet local housing needs including, but not
605 limited to, the affordable housing needs of low, moderate and median income households and the
606 accessible housing needs of people with disabilities and special needs; provided, however, that a
607 current housing production plan consistent with sections 20 to 23, inclusive, of chapter 40B or
608 any regulations thereto may fulfill the evaluation requirement of this clause;

609 (iii) a natural resources and energy management element that shall
610 include: (A) identification of the significant natural and energy resources of the municipality; (B)

611 identification of protected and unprotected wetlands and water resources, lands critical to
612 sustaining surface and groundwater quality and quantity, environmentally sensitive lands, critical
613 wildlife habitat and biodiversity, agricultural lands and forests, protection of wildlife habitat,
614 water resources, vistas and key landscapes, outdoor recreation facilities and farm and forestry
615 land; provided, however, that in cities and towns with agricultural commissions created by the
616 legislative or executive body of the city or town, those elements of the plan dealing with
617 agricultural topics shall be prepared jointly by the agricultural commission and the planning
618 board; (C) an examination of local laws, regulations, policies and strategies to address needs for
619 the protection, restoration and sustainable management of natural resources; and (D) an
620 evaluation of locally feasible land use and development strategies to maximize energy efficiency
621 and renewable energy, support land, energy, water and materials conservation strategies, local
622 clean power generation, distributed generation technologies and innovative industries and reduce
623 greenhouse gas emissions and the consumption of fossil fuels;

624 (iv) a land use and zoning element that includes: (A) an identification
625 of historic settlement patterns and present land uses and designation of the proposed distribution,
626 location and interrelationship of public and private land uses; (B) land use policies and related
627 maps which shall be based upon a land use suitability analysis identifying areas most suitable for
628 development and related transportation infrastructure and facilities; (C) growth and development
629 areas that support the revitalization of city and town centers and neighborhoods by promoting
630 development that is compact and walkable, cyclable, conducive to the use of public
631 transportation, conserves land, protects historic resources, integrates uses and coordinates the
632 provision of housing with the location of jobs, transit and services and new infrastructure; (D) an
633 identification of areas for economic development and job creation, related public and private

634 transportation and pedestrian connections and the creation or extension of pedestrian-accessible
635 districts and neighborhoods that mix commercial, civic, cultural, educational and recreational
636 activities with open space and housing; (E) consideration of the relationship between proposed
637 development intensity and the capacity of land and existing and planned public facilities and
638 infrastructure; and (F) a land use map illustrating the land use policies and desired future
639 development patterns of the municipality and a proposed zoning map; and

640 (v) an implementation program element that defines and prioritizes the
641 actions necessary to achieve the goals and objectives of the master plan; provided, however, that
642 the implementation program shall specify the recommended course of action by which the
643 municipality's regulatory structures, including zoning and subdivision control regulations, may
644 need to be amended in order to be consistent with the master plan.

645 (d) In addition to elements required by this section, the master plan may include,
646 depending on community characteristics, any of the following elements:

647 (i) an economic development element that includes: (A) an inventory
648 and analysis of the local economic base; (B) an assessment of opportunities and barriers to
649 economic development; (C) an assessment of opportunities and barriers to agriculture, including
650 all branches of farming and forestry; and (D) an assessment of opportunities and barriers to self-
651 employment and home-based occupations;

652 (ii) a cultural resources element that identifies the significant cultural,
653 scenic and historic structures, sites and landscapes of the municipality, including archaeological
654 resources and policies and strategies to protect and manage the community's cultural resources;

655 (iii) an open space protection and recreation element that inventories
656 recreational facilities and open space areas of the municipality and policies and strategies for the
657 management, protection and enhancement of those facilities and areas as essential public health
658 infrastructure; provided, however, that an open space and recreational plan approved by the
659 division of conservation services shall constitute the open space protection and recreation
660 element under this subsection;

661 (iv) an infrastructure and capital facilities element to identify and
662 analyze existing and forecasted needs for infrastructure and facilities used by the public;
663 provided, however, that the element shall detail scheduled expansion or replacement of public
664 facilities, infrastructure components or circulation system components and the anticipated costs
665 and revenues associated with those activities;

666 (v) a transportation element including: (A) an inventory of existing and
667 proposed circulation, parking and transportation systems; (B) an assessment of opportunities and
668 barriers to increasing access to transportation options, including land and water-based public
669 transit, bicycling, walking, and transportation services for populations with disabilities; and (C)
670 identification of strategic investment options for transportation infrastructure to encourage smart
671 growth, maximize mobility, conserve fuel, reduce greenhouse gas emissions and improve air
672 quality and to facilitate the location of new development where a variety of transportation modes
673 can be made available;

674 (vi) a water management element that includes: (A) an inventory of
675 current and potential municipal sources of water supply, including capacity and safe yield and an
676 assessment of water demand including types of water users, changes in water consumption over

677 time and water billing rate structure; (B) an assessment of the adequacy of existing and proposed
678 water supplies to meet projected demands, water quality and treatment issues, existing measures
679 for water supply protection, water conservation drought management and emergency
680 interconnections; (C) an assessment of the ability of stormwater regulations and practices to limit
681 off-site stormwater runoff to levels substantially similar to natural hydrology through
682 decentralized management practices and the protection of onsite natural features; (D) an analysis
683 of municipal need and capacity for wastewater disposal, including the suitability of sites and
684 water bodies for the discharge of treated wastewater; and (E) recommended strategies for water
685 supply provision and protection, water conservation, wastewater disposal, stormwater
686 management, drought management and emergency interconnections and needed improvements
687 to meet future water resource needs; and

688 (vii) a public health element that includes: (A) an inventory of
689 conditions and assets in the natural and built environment which contribute to or constitute a
690 barrier to health, including a description of conditions with a disproportionate impact on
691 residents based on geography, ethnicity, race, age, socioeconomic status, disability status,
692 immigration status or other characteristics; (B) an assessment of opportunities and barriers to
693 increasing access to conditions and assets in the natural or built environment that contribute to
694 health; and (C) recommendations of available implementation policies and strategies, including
695 zoning and other local laws and regulations, affecting health needs related to the natural or built
696 environment.

697 Any elements included in a master plan shall include a self-assessment against
698 similar subject matter in a regional plan adopted by the regional planning agency under section 5
699 of chapter 40B in effect, if any, or under any special act.

700 (e) A master plan shall only be made, extended, revised or remade by a simple
701 majority vote of the planning board after a public hearing, notice of which shall be posted and
702 published in the manner prescribed for zoning amendments under section 5 of chapter 40A.
703 Following any vote of the planning board, the planning board shall transmit the plan to the chief
704 executive officer of the city or town and the plan shall be an agenda item or warrant article on a
705 subsequent legislative session of the city or town. Adoption of the plan or the extension, revision
706 or remake of the plan, including any vote of the legislative body to alter the plan or amendment
707 as proposed by the planning board, shall be by a simple majority vote of the legislative body of
708 the city or town. The planning board, upon adoption by the legislative body of a plan or report or
709 any change or amendment to a plan or report produced under this section, shall furnish a copy of
710 the plan or report or any change or amendment to the department of housing and community
711 development.

712 (f) A municipality in Barnstable County or the county of Dukes County may
713 adopt a local comprehensive plan pursuant to chapter 716 of the acts of 1989 or chapter 831 of
714 the acts of 1977 and the regulations and regional policy plans adopted thereunder. The regional
715 planning agency shall review the local comprehensive plan solely for consistency with the
716 governing special act and any applicable regulations and regional policy plans; provided,
717 however, that the time requirements of this section shall not apply to the review of local
718 comprehensive plans. An adopted local comprehensive plan certified by the regional planning
719 agency as consistent with this section shall be deemed a master plan in compliance with this
720 section and shall entitle the municipality to any statutory benefits of having an adopted master
721 plan.

722 SECTION 29. Section 81L of said chapter 41, as so appearing, is hereby
723 amended by inserting after the word “thereon”, in line 72, the following words:- ; provided,
724 however, that the division may be deemed a minor subdivision if rules and regulations under
725 Section 81HH of this chapter are in effect.

726 SECTION 30. Said section 81L of said chapter 41, as so appearing, is hereby
727 further amended by striking out the definition of the word “Lot” and inserting in place thereof
728 the following 2 definitions:-

729 “Lot”, an area of land in 1-ownership, with defined boundaries, used or available
730 for use as the site of 1 or more buildings.

731 “Minor subdivision”, in accordance with section 81HH, the division of a lot,
732 tract or parcel of land into 2 or more lots, tracts or parcels where, at the time when it is made,
733 every lot within the lot, tract or parcel so divided has frontage on: (i) a public way or a way
734 which the clerk of the city or town certifies is maintained and used as a public way; (ii) a way
735 shown on a plan approved and endorsed in accordance with the subdivision control law; (iii) a
736 way in existence when the subdivision control law became effective in the city or town in which
737 the land lies having, in the opinion of the planning board, sufficient width, suitable grades and
738 adequate construction to provide for the needs of vehicular traffic in relation to the proposed use
739 of the land abutting thereon or served thereby and for the installation of municipal services to
740 serve the land and the buildings erected or to be erected thereon; provided, however, that the
741 frontage shall be of at least the distance as is then required by the zoning ordinance or by-law, if
742 any, of the city or town for erection of a building on the lot and, if no distance is so required, the
743 frontage shall be of at least 20 feet, or (iv) a new way to be created by the subdivider.

744 SECTION 31. Section 81O of said chapter 41, as so appearing, is hereby
745 amended by inserting after the word “effect”, in line 2, the following words:- and minor
746 subdivision rules and regulations under Section 81HH are in effect.

747 SECTION 32. Said section 81O of said chapter 41, as so appearing, is hereby
748 further amended by inserting after the word “feet”, in line 17, the following words:- , unless the
749 planning board of a city or town has adopted minor subdivision rules and regulations under
750 section 81HH of this chapter, in which case it shall be approved accordingly.

751

752 SECTION 33. Section 81U of said chapter 41, as so appearing, is hereby
753 amended by striking out, in line 187, the words “for a period of not more than three years”.

754 SECTION 34. Section 81X of said chapter 41, as so appearing, is hereby
755 amended by striking out the fourth paragraph and inserting in place thereof the following 2
756 paragraphs:-

757 Notwithstanding any other provision of this section, the register of deeds shall
758 accept for recording and the land court shall accept with a petition for registration or
759 confirmation of title, any plan bearing a professional opinion by a registered professional land
760 surveyor that the property lines shown are the lines dividing existing ownerships and the lines of
761 streets and ways shown are those of public or private streets or ways already established and that
762 no new lines for division of existing ownership or for new ways are shown.

763 The register of deeds and the land court shall accept for recording and the land
764 court shall accept with a petition for registration any plan showing a change in the line of any lot,

765 tract or parcel bearing a professional opinion by a registered professional land surveyor and a
766 certificate by the person or board charged with the enforcement of the zoning ordinance or by-
767 law of the city or town that the property lines shown: (i) do not create an additional building lot;
768 (ii) do not create, add to or alter the lines of a street or way; (iii) do not render an existing legal
769 lot or structure illegal; (iv) do not render an existing nonconforming lot or structure more
770 nonconforming; and (v) are not subject to alternative local rules and regulations for minor
771 subdivisions under section 81HH. A request for such a certificate shall be acted upon within 21
772 days and shall not be withheld unless a finding is made that the plan violates any of the aforesaid
773 criteria and the finding is stated in writing to the person making the request. Failure to so act
774 within 21 days shall be deemed an approval of the lot line change. All plans, if approved and as
775 recorded, shall be filed with the planning board and the board of assessors of the city or town.
776 The recording of such a plan shall not relieve any owner from compliance with the subdivision
777 control law or any other applicable law.

778 SECTION 35. Paragraph 1 of section 81BB of said chapter 41, as so appearing,
779 is hereby amended by striking out the second and third sentences and inserting in place thereof
780 the following 4 sentences:- Such civil action shall be in the nature of certiorari pursuant to
781 section 4 of chapter 249. A complaint by a plaintiff challenging a subdivision or minor
782 subdivision approval under this section shall allege the specific reasons why the subdivision or
783 minor subdivision fails to satisfy the requirements of the board's rules and regulations or other
784 applicable law and allege specific facts establishing how the plaintiff is aggrieved by the
785 decision. A complaint by an applicant challenging a subdivision or minor subdivision denial or
786 conditioned approval under this section shall similarly allege the specific reasons why the
787 subdivision or minor subdivision properly satisfies the requirements of the board's rules and

788 regulations or other applicable law. The fourth to seventh paragraphs, inclusive, of section 17 of
789 chapter 40A shall govern the allowance of costs and the requirement of a surety or cash bond for
790 actions under this section.

791 SECTION 36. Said chapter 41 is hereby further amended by inserting after
792 section 81GG the following section:-

793 Section 81HH. (a) Notwithstanding any general or special law to the contrary, a
794 city or town may utilize the provisions of this section if it first, by simple majority vote, adopts a
795 resolution indicating the city's or town's intent to regulate a minor subdivision consistent with
796 this section and authorizes the planning board to adopt rules and regulations therefor.

797 (b) A minor subdivision shall, except as provided for in this section, be
798 controlled by the subdivision control law. An applicant for a minor subdivision may create up to
799 6 lots; provided, however, that a local legislative body by a simple majority vote may increase
800 the maximum number of additional lots created in an application for a minor subdivision to a
801 number greater than 6.

802 (c) The rules and regulations for minor subdivisions may require that applications for
803 minor subdivisions from the same lot, tract or parcel from which the first minor subdivision was
804 created not result in more than the maximum of six or more allowed lots, as the case may be, in a
805 set period of years; lessen or eliminate any requirement of section 81U of this chapter otherwise
806 applicable to subdivisions; lessen or eliminate any local rule or regulation adopted under section
807 81Q of this chapter otherwise applicable to subdivisions; and describe a means by which the
808 planning board may, by agreement with the applicant, accept payments from the applicant in lieu

809 of otherwise required improvements to an existing way, provided those improvements are
810 completed by the city or town in a reasonable period of time.

811 (d) No application for a minor subdivision shall be subject to: (i) a public
812 hearing if every lot within the lot has frontage on an existing way described in the definition of
813 minor subdivision; (ii) the requirements of section 81S; (iii) subject to requirements for the
814 relocation of an existing way outside of its existing right of way; (iv) a requirement for total
815 travelled lanes' widths of greater than 22 feet in a residential minor subdivision unless such
816 width already exceeds 22 feet; (v) requirements for the paving of an existing unpaved way; (vi)
817 requirements for travelled lane slopes of less than 10 percent on an existing way; (vii) or any
818 procedural or substantive requirements more stringent than those specified in this chapter or
819 contained in a city or town's local rules and regulations otherwise applicable to subdivisions.

820 (e) For a minor subdivision on an existing way, the planning board shall take
821 final action and file with the city or town clerk a certificate of such action within 65 days.
822 Failure to take final action and file with the city or town clerk a certificate of such action within
823 65 days shall be deemed an approval of a minor subdivision on an existing way.

824 (f) For a minor subdivision on a new way, the planning board shall take final
825 action and file with the city or town clerk a certificate of such final action within 95 days.
826 Failure to take final action and file such certificate within 95 days shall be deemed an approval
827 of a minor subdivision on a new way.

828 (g) Notwithstanding the adoption of local rules and regulations for minor
829 subdivisions, the provisions of section 81P of this chapter shall continue to apply to: 1) a division
830 of land where the entire lineal frontage required by local zoning is on a state-numbered route; or

831 2) a division of a parcel of land in any one year to create no more than two building lots subject
832 to the frontage requirements set forth in subsections i-iii of the definition of minor subdivision in
833 this chapter, meeting the lineal distance requirements of local zoning, and not exceeding 1.5
834 times the area required by local zoning, if at the time of application the parcel of land to be
835 subdivided is forestland or farmland that has for 5 continuous years immediately previous been
836 classified under chapters 61 or 61A, respectively or land that is under the same ownership and
837 within the same parcel, or under the same ownership and immediately adjacent, and not
838 classified under chapters 61 or 61A.

839 SECTION 37. Section 4 of chapter 151B of the General Laws, as appearing in the 2014
840 Official Edition, is hereby amended by adding the following paragraph:-

841 20. For a local or state administrative, legislative or regulatory body or
842 instrumentality to engage in a discriminatory land use practice. For the purposes of this
843 paragraph, a “discriminatory land use practice” shall mean: (i) enacting or enforcing any land use
844 regulation, policy or ordinance; (ii) making a permitting or funding decision with respect to
845 housing or proposed housing; or (iii) taking any other action the purpose or effect of which
846 would limit or exclude: (a) housing accommodations for families or individuals with incomes at
847 or below 80 per cent of the area median income as defined by the United States Department of
848 Housing and Urban Development; (b) housing accommodations with sufficient bedrooms for
849 families with children; or (c) families or individuals based on race, color, religious creed,
850 national origin, sex, gender identity, sexual orientation, which shall not include persons whose
851 sexual orientation involves minor children as the sex object, age, genetic information, ancestry,
852 marital status, veteran status or membership in the armed forces, familial status, disability

853 condition, blindness, hearing impairment or because a person possesses a trained dog guide as a
854 consequence of blindness, hearing impairment or other handicap.

855 It shall not be a violation of this chapter if a local government entity whose
856 action or inaction has an unintended discriminatory effect proves that the action or inaction was
857 motivated and justified by a substantial, legitimate, nondiscriminatory, bona fide governmental
858 interest and the complaining party is unable to prove that those interests can be served by any
859 other practice that has a less discriminatory effect.

860 SECTION 38. Section 3A of chapter 185 of the General Laws, as so appearing,
861 is hereby amended by striking out the third and fourth paragraphs and inserting in place thereof
862 the following 2 paragraphs:-

863 The permit session shall have original jurisdiction, concurrently with the
864 superior court department, over civil actions in whole or part: (1) based on or arising out of the
865 appeal of any municipal, regional, or state permit, order, certificate or approval, or the denial
866 thereof, concerning the use or development of real property for residential, commercial, or
867 industrial purposes (or any combination thereof), including without limitation appeals of such
868 permits, orders, certificates or approvals, or denials thereof, arising under or based on or relating
869 to chapter 21, sections 61 to 62H, inclusive, of chapter 30, chapters 30A, 40A to 40C, inclusive,
870 40R, 41, 43D, 91, 131, 131A, or sections 4 and 5 of chapter 249, or chapter 665 of the acts of
871 1956; or any local by-law or ordinance; (2) seeking equitable or declaratory relief designed to
872 secure or protect the issuance of any municipal, regional, or state permit or approval concerning
873 the use or development of real property, or challenging the interpretation or application of any
874 municipal, regional, or state rule, regulation, statute, law, by-law, or ordinance concerning any

875 permit or approval; (3) claims under section 6F of chapter 231, or for malicious prosecution,
876 abuse of process, intentional or negligent interference with advantageous relations, or intentional
877 or negligent interference with contractual relations arising out of, based upon, or relating to the
878 appeal of any municipal, regional, state permit or approval concerning the use or development of
879 real property; and (4) any other claims between persons holding any right, title, or interest in land
880 and any municipal, regional or state board, authority, commission, or public official based on or
881 arising out of any action taken with respect to any permit or approval concerning the use or
882 development of real property but in all such cases of claims (1) to (4), inclusive, only if (a) the
883 action does not contain any claim of right to a jury trial, and (b) the underlying project or
884 development, in the case of a development that is residential or a mix of residential and
885 commercial components, involves either 25 or more dwelling units or the construction or
886 alteration of 25,000 square feet or more of gross floor area or both or, in the case of a
887 commercial or industrial development, involves the construction or alteration of 25,000 square
888 feet or more of gross floor area.

889 Notwithstanding any other general or special law to the contrary, any action not
890 commenced in the permit session, but within the jurisdiction of the permit session as provided in
891 this section, shall be transferred to the permit session upon the filing by any party of a notice
892 demonstrating compliance with the jurisdictional requirements of this section filed with the court
893 where the action was originally commenced with a copy to the chief justice of the land court.
894 Unless the court where the action was originally commenced receives notice within 10 days from
895 the land court that the case to be transferred does not meet the jurisdictional requirements of this
896 section, the original court shall transfer the case file to the land court permit session within 20
897 days after its receipt of the notice of transfer from the party. In the event the court receives

898 notice of noncompliance with jurisdictional requirements, the court where the action was
899 originally commenced shall decide the matter on motion filed by the party claiming
900 noncompliance. If a party to an action commenced in or transferred to the permit session claims
901 a valid right to a jury trial, then the action shall be transferred to the superior court for a jury trial.

902 SECTION 39 Section 4 of chapter 249 of the General Laws, as so appearing, is
903 hereby amended by striking out the second sentence and inserting in its place thereof the
904 following sentence:- Except as otherwise provided by law, such action shall be commenced
905 within 60 days after the proceeding complained of.

906 SECTION 40. A city or town that had adopted a zoning ordinance or by-law
907 under chapter 40A requiring a form of inclusionary zoning before the effective date of this act
908 shall, within 3 years after that effective date, revise the ordinance or by-law to conform to section
909 9F of chapter 40A of the General Laws. Following 3 years after the effective date of this act, any
910 provision of such a preexisting inclusionary zoning ordinance or by-law that does not conform to
911 said section 9F of said chapter 40A shall only apply to the extent and in a manner consistent with
912 said section 9F of said chapter 40A.

913 SECTION 41. A master plan adopted pursuant to section 81D of chapter 41 of
914 the General Laws and in effect on or before the effective date of this act may continue in full
915 force and effect, including minor amendments to update or perfect the plan; provided, however,
916 that the plan shall be revised to conform to said section 81D of said chapter 41 within 10 years
917 after the effective date of this act.

918 SECTION 42. Any city or town that had adopted a zoning ordinance or by-law
919 under chapter 40A requiring site plan review before the effective date of this act shall, within 3

920 years after that date, revise the ordinance or by-law to conform to section 9D of chapter 40A of
921 the General Laws. Following 3 years after the effective date of this act, any provision of a
922 preexisting site plan review ordinance or by-law that does not conform to said section 9D of said
923 chapter 40A shall only apply to the extent and manner consistent with said section 9D of said
924 chapter 40A.

925 SECTION 43. Any city or town that adopted a zoning ordinance or by-law
926 relating to zoning variances prior to the effective date of this act shall, within 3 years of the
927 effective date of this act, revise the ordinance or by-law to conform to section 10 of chapter 40A
928 of the General Laws, as amended by section 22. Three years after the effective date of this act,
929 any provision of a preexisting variance zoning ordinance or by-law that does not conform to said
930 section 10 of said chapter 40A shall only apply to the extent and manner that it is consistent with
931 said section 10 of said chapter 40A.

932 SECTION 44. Any variance granted prior to the effective date of this act shall be
933 governed by the terms of the variance and shall run with the land unless a condition, safeguard or
934 limitation contained therein prescribes otherwise.

935 SECTION 45. Section 5 shall apply to local approvals submitted on or after one
936 year from passage of this legislation.

937 SECTION 46. Section 9E of chapter 40A, as inserted by section 23, shall take
938 effect 18 months from passage of this legislation.

939 SECTION 47. Sections 6 and 8 shall take effect 3 years from passage of this
940 legislation; provided, however, that subsection (c) of paragraph (1) of section 3A of chapter 40A

941 of the General Laws, as appearing in said section 6, shall take effect on the effective date of this
942 act.