The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court (2015-2016)

An Act relative to housing preservation and production in the Commonwealth .

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

- 1 SECTION 1. Chapter 6 of the General Laws is hereby amended by adding the following 2 section:-
- 3 Section 219.
- 4 There shall be a housing and economic growth cabinet including, without limitation, the
- 5 secretaries of housing and economic development, transportation, education, and energy and
- 6 environmental affairs or their designees, to promote a coordinated approach to data collection,
- 7 analysis, and policy relating to the orderly growth and development of the commonwealth. This
- 8 coordinated approach shall include, but is not limited to, analysis and policy relative to
- 9 population, employment and business growth trends, projected transportation demand and
- 10 transportation capacity, projected housing demand and housing production, state and local fiscal
- 11 impacts of development, impacts of local zoning and land use regulation, school capacity and
- 12 projected enrollment, open space consumption and preservation, and natural resource protection.
- 13 The growth planning cabinet shall be supported, to the greatest extent practicable, by existing

- 14 technical experts within the executive offices, quasi-public agencies, and regional planning
- 15 agencies of the commonwealth.
- SECTION 2. Subsection (a) of section 63 of chapter 23A of the General Laws, as
- 17 appearing in the 2014 Official Edition, is hereby amended by inserting after the word
- 18 "affordable," in line 23, the following words:-
- to individuals and families whose annual income is no more than 80 per cent of the area
- 20 median income, as determined by United States Department of Housing and Urban
- 21 Development.
- SECTION 3. Subsection (c) of said section 63 of said chapter 23A, as so appearing, is
- 23 hereby amended by inserting after the second sentence the following sentence:- The criteria shall
- 24 provide that first priority be given to applications that support new multifamily housing built in
- 25 multi-family zoning districts, created pursuant to section 15 of chapter 40R.
- SECTION 4. Said chapter 23A is hereby amended by adding the following section:-
- Section 67. There shall be in the executive office of housing and economic development
- 28 a community-scale housing development demonstration program to issue grants and loans for the
- 29 development of community scale residential homeownership or rental housing.
- 30 (a) For the purposes of this section, unless the context clearly requires otherwise, the
- 31 following words shall have the following meanings:
- 32 "Community-scale development", a development with fewer than 20 units that was not
- authorized, awarded, issued or in any other way made use of low-income housing tax credits

- pursuant to section 6I of chapter 62, section 31H of chapter 63, or section 42 of the Code, and was not built pursuant to chapter 58 of the acts of 2012.
- 36 (b) In a community-scale development with more than 3 homeownership or rental
 37 residential units, no less than 20 per cent of the total residential units must be affordable to and
 38 occupied by households whose annual income is no more than 80 per cent of the area median
 39 income, as determined by the United States Department of Housing and Urban Development,
 40 and no less than 50 per cent of the total residential units shall be affordable to and occupied by
 41 households whose annual income is no more than 110 per cent of the area median income, as
 42 determined by the United States Department of Housing and Urban Development.
- 43 (c) The secretary of housing and economic development shall promulgate regulations to 44 implement and administer this program.
- 45 (d) The secretary of housing and economic development shall report annually to the clerks of the house of representatives and the senate, who shall forward the report to the house of 46 representatives and the senate, the chairs of the joint committee on housing, and the chairs of the 47 senate and house committees on ways and means, on the activities and status of the program, 48 including progress made towards creating not less than 1,000 units by the year 2020. The report 49 shall include a list and description of all projects that received grant funds through the program, 50 the grant amount awarded to each project, other sources of public funds that support each 51 project, and the private investment in each project. 52
- SECTION 5. Section 4A of chapter 40 of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by adding the following 2 paragraphs:-

55 By a two-thirds vote of its legislative body, and in conformance with its charter, a town may enter into an agreement with a contiguous town or towns to establish an inter-municipal 56 planning board, zoning board of appeals, conservation commission or board of health or, in the 57 case of towns within the same regional planning district, to delegate the functions of such a 58 regional board or boards. Such regional boards shall have the same statutory authority as if they 59 60 existed within a single city or town. Agreements establishing inter-municipal planning boards or 61 inter-municipal zoning boards of appeal shall be subject to approval by the department of housing and community development. Agreements establishing inter-municipal conservation 62 63 commissions shall be subject to approval by the department of environmental protection. Agreements establishing inter-municipal boards of health shall be subject to approval by the 64 department of public health. 65

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

- SECTION 6. Said chapter 40 is hereby amended by inserting after section 60A the following section:-
- Section 60B. (a) A city or town, by vote of its town meeting, town council or city council, with the approval of the mayor where required by law, on its own behalf or in conjunction with 1 or more cities or towns, may adopt and implement a workforce housing

- special tax assessment plan, referred to as a WH-STA plan, intended to encourage and facilitate the increased development of middle income housing, and do any and all things necessary thereto; provided, however, that any such WH-STA plan shall:
- (1) designate 1 or more areas of such city or town as a workforce housing special tax
 assessment zone, referred to as a WH-STA zone, subject to regulations or by-laws adopted by
 the city or town, pursuant to subsection (c) of this section, as presenting exceptional
 opportunities for increased development of middle income housing. Any WH-STA plan adopted
 by more than 1 city or town shall designate WH-STA zones consisting of contiguous areas of
 such cities or towns;
- (2) describe in detail all construction and construction-related activity contemplated for such WH-STA zone as of the date of adoption of the WH-STA plan; provided that, the WH-STA plan shall include the types of residential developments which are anticipated to occur within such WH-STA zone, with documentary evidence of the level of commitment therefor, including, but not limited to architectural plans and specifications as required by regulations promulgated pursuant to subsection (c);
- (3) authorize special tax assessment exemptions from property taxes, pursuant to clause fifty-eighth of section 5 of chapter 59, for a specified term not to exceed 5 years, for any parcel of real property which is located in a WH-STA zone and for which an agreement has been executed with the owner of the real property pursuant to paragraph (4). The WH-STA plan may exempt owners of parcels of real estate from up to 100 per cent of property taxes during 2 years of construction and set forth in an agreement executed pursuant to paragraph (4). After the construction of the development, the WH-STA plan may also exempt such owners from property

per cent of property taxes during the first year of stabilization, no more than 50 per cent of property taxes during the second year of stabilization, and up to 25 per cent of property taxes during the third year of stabilization;

- 103 (4) include executed agreements between such city or town and each owner of a parcel of real property which is located in such WH-STA zone, provided that the agreements shall include, 104 105 but not be limited to, the following: (i) all material representations of the parties which served as 106 the basis for the descriptions contained in the WH-STA plan, pursuant to paragraph (2), and which served as a basis for the grant of a WH-STA exemption; (ii) any terms relative to 107 108 compliance with the WH-STA agreement including, but not limited to, what shall constitute a 109 default by the property owner and what remedies shall be allowed between the parties for any 110 default, including an early termination of the agreement; (iii) provisions governing maximum 111 rental prices that shall be charged by the developer to create middle-income workforce housing, as set forth in the regulations or by-laws adopted by the city or town pursuant to subsection (c); 112 (iv) a detailed recitation of all other benefits and responsibilities assumed by the parties to the 113 agreement; and (v) a provision that the agreement shall be binding upon subsequent owners of 114 such parcel of real property; and
- 116 (5) delegate the authority to execute agreements in accordance with paragraph (4) to the 117 board of assessors of the city or town, and to the board, agency or officer of the city or town 118 responsible for housing.
- (b) A city or town may at any time revoke its designation of a WH-STA zone and, as aconsequence of such revocation, shall immediately cease the execution of any additional

agreements pursuant to paragraph (4) of subsection (a). A revocation shall not affect agreements 122 relative to property tax exemptions pursuant to said paragraph (4) said of subsection (a) which were executed before the revocation. The board of assessors of the city or town and the board, 123 agency or officer of the city or town responsible for housing, authorized pursuant to paragraph 124 125 (5) of subsection (a) to execute agreements, shall retain a copy of each such agreement, together 126 with a list of the parcels included therein.

127 (c) Upon the adoption of a WH-STA plan, a city or town shall promulgate regulations or by-laws governing the implementation of such plans in the city or town. Such regulations or bylaws shall establish eligibility requirements for developers to enter into a WH-STA agreement 129 130 pursuant to paragraph (4) of subsection (a). Such regulations shall, at a minimum, establish: (1) a procedure for developers to apply to the city or town for a WH-STA agreement; (2) a minimum 132 number of new residential units to be constructed in order for an owner of a parcel of real estate 133 to be eligible to enter into a WH-STA agreement; (3) the maximum rental prices that may be charged by the developer for the constructed residential units throughout the duration of a WH-134 STA agreement; and (4) other eligibility criteria that will facilitate and encourage the 135 136 construction of workforce housing in a manner appropriate to the particular city or town.

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(d) The owner of property subject to a WH-STA agreement shall certify to the city or town the rental prices of the residential units designated in the WH-STA agreement. The certification shall be provided to the city or town on the date of initial occupancy and on an annual basis thereafter throughout the duration of the executed WH-STA agreement. If the owner fails to provide such certification, or otherwise fails to comply with the WH-STA agreement, or if the city or town determines that the owner is unlikely to come into compliance with the affordability requirements set forth in the agreement, the city or town may record a lien against

- the property in the amount of the real estate tax exemptions granted pursuant to the WH-STA agreement for any year in which the owner is not in compliance with this subsection; the lien shall be recorded in the registry of deeds or the registry district of the land court wherein the land lies;
- (e) a WH-STA plan adopted pursuant to subsection (a) shall expire 3 years after its adoption unless the plan is renewed by the city or town by vote of its town meeting, town council or city council, with the approval of the mayor where required by law.
- SECTION 7. Section 2 of chapter 40R of the General Laws, as appearing in the 2014

 Official Edition, is hereby amended by inserting after the word "meanings:," in line 2, the following definitions:-
- "Accessory dwelling unit", a self-contained housing unit incorporated within a singlefamily dwelling or detached accessory structure that is clearly subordinate to the single-family dwelling and complies with the use, dimensional, and design requirements of the local zoning ordinance or by-law.
- "Accessory dwelling zoning district", a zoning district adopted by a city or town pursuant to this chapter that is superimposed over 1 or more zoning districts, in which a developer may elect to (i) develop a project in accordance with requirements of the accessory dwelling zoning district ordinance or bylaw, or (ii) develop a project in accordance with requirements of the underlying zoning district.
- SECTION 8. Said section 2 of said chapter 40R, as so appearing, is hereby further amended by inserting after the definition of "Approving authority" the following definition:-

- "As of right", development that may proceed pursuant to a zoning ordinance or by-law without a special permit, variance, zoning amendment, waiver, or other discretionary zoning approval.
- SECTION 9. Said section 2 of said chapter 40R, as so appearing, is further amended by inserting after the definition of "Letter of eligibility" the following definition:-
- "Lot", an area of land with definite boundaries, used, or available for use, as the site of 1 or more buildings.
- SECTION 10. Said section 2 of said chapter 40R, as so appearing, is further amended by striking out the definition of "Multi-family housing" and inserting in place thereof the following definition:-
- "Multi-family housing", (i) a building with more than 3 dwelling units; or (ii) 2 or more buildings on the same lot with more than 1 dwelling unit in each building.
- SECTION 11. Said section 2 of said chapter 40R, as so appearing, is further amended by inserting after the definition of "Multi-family housing" the following definition:-
- "Multi-family zoning district", a zoning district adopted by a city or town that is superimposed over 1 or more zoning districts, within which a developer may elect to (i) develop a project in accordance with requirements of the multi-family zoning district ordinance or bylaw, or (ii) develop a project in accordance with requirements of the underlying zoning district.
- SECTION 12. Section 3 of said chapter 40R, as so appearing, is amended by inserting after the figure "40A," in line 9, the following:-; provided, however, that a smart growth zoning district ordinance or by-law shall be adopted, amended or repealed by a simple majority vote of

all the members of the town council, or of the city council where there is a commission form of government or a single branch, or of each branch where there are 2 branches, or by a simple majority vote of a town meeting.

SECTION 13. Said chapter 40R is hereby further amended by adding the following 2 sections:-

Section 15. A city or town may adopt a multi-family zoning district in its zoning ordinance or by-law. A proposed multi-family zoning district shall, at a minimum: (i) permit the use of multi-family housing as of right; (ii) include multi-family housing without age restriction; and (iii) provide for housing density of at least 8 units per acre for multi-family housing on the developable land area.

A multi-family zoning district ordinance or by-law, or any amendment to or repeal of such ordinance or by-law, shall be adopted in accordance with section 5 of chapter 40A; provided however, that a multi-family zoning district ordinance or bylaw shall be adopted, amended or repealed by a simple majority vote of all the members of the town council, or of the city council where there is a commission form of government or a single branch, or of each branch where there are 2 branches, or by a simple majority vote of a town meeting.

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A city or town with an approved multi-family zoning district shall not be eligible for a zoning incentive payment or a density bonus payment pursuant to section 9 unless the district meets the requirements of an approved smart growth zoning district pursuant to section 6.

Section 16. In its zoning ordinance or by-law, a city or town may adopt an accessory dwelling zoning district. A proposed accessory dwelling zoning district shall permit the use of accessory dwelling units as of right.

No zoning ordinance or by-law shall unreasonably regulate the location, dimensions, or design of an accessory dwelling unit on a lot; provided however, a zoning ordinance or by-law may set a maximum gross floor area for accessory dwelling units that is not less than 900 square feet.

An accessory dwelling zoning district ordinance or by-law, or any amendment to or repeal of such ordinance or by-law, shall be adopted in accordance with section 5 of chapter 40A; provided however, that an accessory dwelling zoning district ordinance or bylaw shall be adopted, amended or repealed by a simple majority vote of all the members of the town council, or of the city council where there is a commission form of government or a single branch, or of each branch where there are 2 branches, or by a simple majority vote of a town meeting.

A city or town with an approved accessory dwelling zoning district shall not be eligible
for a zoning incentive payment or a density bonus payment pursuant to section 9, unless the
district meets the requirements of an approved smart growth zoning district pursuant to section 6
of this chapter.

SECTION 14. Section 1 of chapter 40S of the General Laws, as appearing in the 2014
Official Edition, is hereby amended by inserting after the definition of "Local smart growth
revenues for education" the following definition:-

"Multi-family zoning district", a zoning district adopted by a community pursuant to section 15 of chapter 40R.

SECTION 15. Said section 1 of said chapter 40S, as so appearing, is further amended by inserting after the word "district," in line 54, the following words:-

- ; or any new residential development subject to the payment of local property taxes that:
- 230 (a) occurs in a multi-family zoning district after the adoption of such zoning by the community,
- and (b) where no less than 20 per cent of the total residential units are affordable to and occupied
- by individuals and families whose annual income is no more than 80 per cent of the area median
- income as determined by the United States Department of Housing and Urban Development.
- SECTION 16. Section 2 of said chapter 40S, as so appearing, is hereby amended by
- 235 inserting after the first sentence the following sentence:-
- For each fiscal year commencing with fiscal year 2020, any city or town that has
- 237 established 1 or more smart growth zoning districts or 1 or more multi-family zoning districts
- 238 shall receive smart growth school cost reimbursement from the commonwealth.
- SECTION 17. Section 3 of said chapter 40S, as so appearing, is hereby amended by
- 240 inserting after the word "district", in line 2, the following words:- or a multifamily zoning
- 241 district.
- SECTION 18. Subsection (b) of said section 3 of said chapter 40S, as so appearing, is
- 243 hereby amended by inserting after the word "district," in line 10, the following words:- or a
- 244 multi-family zoning district.
- SECTION 19. Subsection (c) of said section 3 of said chapter 40S, as so appearing, is
- 246 hereby amended by striking out, in line 26, the words:- within a smart growth zoning district.
- SECTION 20. Subsection (d) of said section 3 of said chapter 40S, as so appearing, is
- 248 hereby amended by striking out, in line 35, the words:- in the smart growth zoning district.

SECTION 21. Section 4 of said chapter 40S, as so appearing, is hereby amended by inserting, in line 7, after the word "commonwealth" the following words:-, the number of multi-family zoning districts in the commonwealth.

SECTION 22. Section 1 of chapter 40V of the General Laws, as so appearing, is hereby amended by striking out the definition of "Certified housing development project" and inserting in place thereof the following definition:-

"Certified housing development project", the new construction or substantial rehabilitation of a housing development project approved by the department for participation in the housing development incentive program.

SECTION 23. Said section 1 of said chapter 40V, as so appearing, is hereby further amended by striking out the definition of "Qualified project expenditure" and inserting in place thereof the following definition:-

"Qualified project expenditure", an expenditure directly related to the construction or substantial rehabilitation of a certified housing development project, including the cost of site assessment and remediation of hazardous materials, except the purchase of the property, provided that: (i) the department has certified that the proposed project meets the definition of certified housing development project; (ii) prior to construction, the department has certified that all or a portion of the project costs are for construction or substantial rehabilitation; and (iii) after the construction of the project has been completed and occupied, the department has certified that the project has been completed in compliance with this chapter and the requirements and conditions of any prior certifications.

- SECTION 24. Said section 1 of said chapter 40V, as so appearing, is hereby further amended by inserting after the word "property," in line 34, the following words:-, including site assessment and remediation of hazardous material.
- SECTION 25. Section 4 of said chapter 40V, as so appearing, is hereby amended by inserting after the word "rehabilitation," in line 9, the words:- or construction.
- SECTION 26. Said section 4 of said chapter 40V, as so appearing, is hereby further amended by inserting after the word "is," in line 12, the following words:- new construction or.
- SECTION 27. Said section 4 of said chapter 40V, as so appearing, is hereby further amended by inserting after the word "certified," in lines 44, 56, 57, and 83, in each instance, the following words:- housing development.
- SECTION 28. Section 5 of said chapter 40V, as so appearing, is hereby amended by striking out the word "project," in lines 9, 13 and 15, in each instance, inserting in place thereof the following words:- certified housing development project.
- SECTION 29. Section 5 of chapter 59 of the General Laws, as so appearing, is hereby amended by adding the following paragraph:-
- Fifty-eighth, Taxes on the value of a parcel of real property which is included within an executed agreement pursuant to section 60B of chapter 40 shall be assessed only on that portion of the value of the property that is not exempt under that section. This exemption shall be for a term not longer than the period specified in the executed agreement entered into pursuant to said section 60B of said chapter 40. The amount of the exemption for a parcel of real property shall

- be equal to the exemption percentage adopted pursuant to said section 60B of said chapter 40, multiplied by the actual assessed valuation of the parcel.
- SECTION 30. Section 6 of chapter 62 of the General Laws, as so appearing, is hereby amended by striking out, in line 894, the words "substantial rehabilitation" and inserting in place thereof the following word:- project.
- SECTION 31. Said section 6 of said chapter 62, as so appearing, is hereby further amended by striking out, in lines 905 and 939 and 940, the word "rehabilitation" and inserting in place thereof, in each instance, the following word:- project.
- SECTION 32. Said section 6 of said chapter 62, as so appearing, is hereby further amended by striking out, line 953, the word "not".
- SECTION 33. Paragraph (1) of subsection (b) of section 6I of chapter 62 of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by striking out, in line 57, the figure "20,000,000" and inserting thereof the following figure:- 25,000,000.
- SECTION 34. Said subsection (b) of said section 6I of said chapter 62, as so appearing, is hereby further amended by adding the following paragraph:-
- (4) For use in preserving projects for which the affordability restriction of a mortgage financed pursuant to section 13A of chapter 708 of the acts of 1966, as amended by section 10 of chapter 855 of the acts of 1970, is terminating, whether through expiration or prepayment, the department shall annually reserve the total sum of: (i) \$5,000,000 of the cumulative amount that may be authorized by the department annually in paragraph (1) of this subsection; (ii) unused credits that were reserved pursuant to this paragraph, if any, for the preceding calendar years;

- and (iii) any Massachusetts low-income housing tax credits authorized pursuant to this paragraph and returned to the department by a qualified Massachusetts project.
- SECTION 35. Paragraph (1) of subsection (b) of section 31H of chapter 63 of the General Laws, as so appearing, is hereby amended by striking out, in line 58, the figure "20,000,000" and inserting thereof the following figure:- 25,000,000.
- 316 SECTION 36. Subsection (b) of section 31H of chapter 63, as so appearing, is hereby 317 amended by adding the following paragraph:-
- (4) For use in preserving projects for which the affordability restriction of a mortgage financed pursuant to section 13A of chapter 708 of the acts of 1966, as amended by section 10 of chapter 855 of the acts of 1970, is terminating, whether through expiration or prepayment, the department shall annually reserve the total sum of: (i) \$5,000,000 of the cumulative amount that may be authorized by the department annually in paragraph (1) of this subsection; (ii) unused credits that were reserved pursuant to this paragraph, if any, for the preceding calendar years; and (iii) any Massachusetts low-income housing tax credits authorized pursuant to this paragraph and returned to the department by a qualified Massachusetts project.
- SECTION 37. Section 38BB of chapter 63, as so appearing, is hereby amended by striking out, in line 6, the words "substantial rehabilitation" and inserting in place thereof the following word:- project.
- SECTION 38. Said section 38BB of said chapter 63, as so appearing, is hereby amended further by striking out, in lines 17 and 38 and 39, the word "rehabilitation" and inserting in place thereof, in each instance, the following word:- project.

332 SECTION 39. Said section 38BB of said chapter 63, as so appearing, is hereby amended by striking out, in line 52, the word following word:- not.

334 SECTION 40. The secretary of housing and economic development, secretary of energy
335 and environmental affairs, the secretary of transportation, and the executive director of the
336 Massachusetts Development Finance Agency shall jointly submit a report to the joint committee
337 on housing identifying greyfields sites across the commonwealth, options for redevelopment or
338 reuse that may include housing, public use or facilities, mixed use development, or natural
339 restoration and open space, and identify programs within the appropriate state and quasi-public
340 agencies that can be used to support communities in repurposing underutilized land.

For the purposes of this act, the term greyfields may include, but is not limited to, land with development that is outdated, underutilized, failing, or vacant. This term may also include land that is owned by the commonwealth, its agencies, or its political subdivisions.

SECTION 41. The total cumulative amount of credits authorized annually between

January 1, 2016 and January 1, 2020 pursuant to paragraph (4) of subsection (b) of section 6I of
chapter 62 and paragraph (4) of subsection (b) of section 31H of chapter 63 shall not exceed
\$15,000,000. The department of housing and community development shall provide the
commissioner of revenue with any documentation that the commissioner deems necessary to
confirm compliance with the cumulative limit and the commissioner shall provide a report
confirming compliance with the limit to the secretary of administration and finance and the
secretary of housing and economic development.

352 SECTION 43. Section 4 shall take effect on July 1, 2016.

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353 SECTION 44. Section 4 shall expire on June 30, 2020.

- 354 SECTION 45. Sections 33-36 shall take effect for the tax year beginning January 1, 2016.
- 355 SECTION 46. Sections 33-36 shall expire on December 31, 2019.