HOUSE . . . . No. 4397

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, April 11, 2018.

The committee on Municipalities and Regional Government to whom were referred the petition (accompanied by bill, Senate, No. 81) of Harriette L. Chandler, Michael J. Barrett, Jose F. Tosado, Chris Walsh and other members of the General Court for legislation to promote housing and sustainable development and the petition (accompanied by bill, House, No. 2420) of Stephen Kulik, Sarah K. Peake 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, reports recommending that the accompanying bill (House, No. 4397) ought to pass.

For the committee,

JAMES J. O'DAY

FILED ON: 3/6/2018

HOUSE . . . . No. 4397

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 2016
2 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-evaluation and
4 training for members of local planning boards and zoning boards of appeals, at no cost to
5 municipalities; provided, however that the department shall consult with the Massachusetts
6 Association of Planning Directors, Massachusetts Association of Regional Planning Agencies
7 and American Planning Association, Massachusetts Chapter, regarding development of the
8 program; provided further, that the department may contract with the Massachusetts Citizen
9 Planner Training Collaborative to provide such education, self-evaluation and training. To the
10 extent practicable, the education, self-evaluation and training programs shall be offered online
11 and in various locations throughout the commonwealth.

12 SECTION 2. Section 1A of Chapter 40A of the General Laws, as appearing in the 2016
13 Official Edition, is hereby amended by striking out the definition of "Permit granting authority"
14 and inserting in place thereof the following 12 definitions:-

15 "Affordable housing", a dwelling unit restricted for purchase or rent by a household with
16 an income at or below 80 per cent of the area median income for the applicable metropolitan or
17 non-metropolitan area, as determined by the United States Department of Housing and Urban
18 Development; provided, however, that affordable housing shall be subject to an affordable
19 housing restriction in accordance with sections 31 to 33, inclusive, of chapter 184 or, if ineligible
20 under said sections 31 to 33, inclusive, of said chapter 184, restricted by other means as required
21 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 “Inclusionary housing”, an affordable housing unit or a housing unit restricted for
41 purchase or rent by a household with an income at or below 120 per cent of the median family
42 income determined by the United States Department of Housing and Urban Development for the
43 applicable metropolitan or nonmetropolitan area; provided, however, that a municipality may set
44 the income thresholds for inclusionary housing at a level at or below 120 per cent of median
45 income.

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

48 “Municipal affordable housing concessions”, measures adopted by a municipality to
49 contribute to the economic feasibility of an inclusionary-zoned residential or mixed use
50 development including, but not limited to, increases in the otherwise maximum allowable
51 density, floor-area ratio or height or reductions in otherwise applicable parking requirements,
52 permitting fees and timeframes.

53 “Natural resource protection zoning”, zoning ordinances or by-laws enacted principally
54 to protect natural resources by establishing higher underlying density divisors relative to other

55 areas, a formulaic method to calculate development rights and compact patterns of development
56 so that a significant majority of the land remains permanently undeveloped and available for
57 agriculture, forestry, recreation, watershed management, carbon sequestration, wildlife habitat or
58 other natural resource values.

59 "Permit granting authority", the board of appeals, zoning administrator or planning board
60 as designated by zoning ordinance or by-law for the issuance of permits or as otherwise provided
61 by charter.

62 SECTION 3. Said section 1A of said chapter 40A, as so appearing, is hereby further
63 amended by inserting after the definition of "Special permit granting authority" the following
64 definition:-

65 "Transfer of development rights", the regulatory procedure whereby the owner of a
66 parcel may convey development rights to the owner of another parcel and where the
67 development rights so conveyed are extinguished on the first parcel and may be exercised on the
68 second parcel in addition to the development rights already existing regarding that parcel.

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

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

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

86 SECTION 5. Section 3 of said chapter 40A, as appearing in the 2016 Official Edition, is
87 hereby amended by adding the following paragraph:-

88 No zoning ordinance or by-law shall prohibit or require a special permit for the use of
89 land or structures for an accessory dwelling unit located internally within a single-family
90 dwelling or the rental thereof on a lot not less than 5,000 square feet or on a lot of sufficient area
91 to meet the requirements of title 5 of the state environmental code established by section 13 of
92 chapter 21A, if applicable, that is occupied by the owner, so long as that unit or the principal
93 dwelling is occupied by at least one person with disabilities or who is elderly; provided,
94 however, that such land or structures may be subject to reasonable regulations concerning
95 dimensional setbacks, screening and the bulk and height of structures. The zoning ordinance or
96 by-law may require that the principal dwelling or the accessory dwelling unit be owner-occupied
97 and may limit the total number of accessory dwelling units in the municipality to a percentage
98 not less than 5 per cent of the total non-seasonal single-family housing units in the municipality.
99 Not more than 1 additional parking space shall be required for an accessory dwelling unit;

100 provided, however, that, if parking is required for the principal dwelling, that parking shall be
101 retained or replaced. As used in this paragraph, “accessory dwelling unit” shall mean a self-
102 contained housing unit, inclusive of sleeping, cooking and sanitary facilities, incorporated within
103 the same structure as the principal dwelling or in a detached accessory structure and that: (i) is
104 located on the same lot as the principal dwelling; (ii) maintains a separate entrance, either
105 directly from the outside or through an entry hall or corridor shared with the principal dwelling,
106 sufficient to meet the requirements of the state building code for safe egress; (iii) shall not be
107 sold separately from the principal dwelling; (iv) is not smaller in floor area than 450 square feet;
108 (v) may include up to two bedrooms; and (vi) is not larger in floor area than ½ the floor area of
109 the principal dwelling or 900 square feet, whichever is smaller. An accessory dwelling unit
110 allowed under this paragraph shall be considered owner-occupied upon transfer of title of the
111 principal dwelling in whole or in part to a trust in which at least one beneficiary is a person with
112 disabilities or an elderly person, so long as some part of the dwelling is occupied by a person
113 with disabilities or an elderly person. Nothing in this paragraph shall authorize an accessory
114 dwelling unit to violate the building, fire, health or sanitary codes or wetlands laws, ordinances
115 or by-laws. Exterior alterations of the principal dwelling to allow separate primary or emergency
116 access to the accessory dwelling unit shall be allowed without a special permit if such alterations
117 are within applicable dimensional setback requirements.

118 When used in this section, the term “person with disabilities” means a person who has
119 been determined to be disabled (i) in accordance with criteria established by local bylaw or
120 ordinance, if any, or (ii) by the Social Security Administration or MassHealth, notwithstanding
121 any local bylaw or ordinance; and “elderly” means sixty-five years of age or older.

122 SECTION 6. Said chapter 40A is hereby further amended by inserting after section 3 the

123 following section:-

124 Section 3A.

125 (1) A zoning ordinance or bylaw that permits open space residential development by right

126 or by special permit shall:

127 (a) permit the development of new dwellings at least equal to the number allowed under

128 a conventional subdivision plan. In order to confirm the accuracy of such number a municipality

129 may require either a sketch plan showing the layout under a conventional subdivision scheme or

130 a calculation that deducts for roadways, wetlands and other site or legal constraints and divides

131 by an underlying lot area requirement in order to determine the allowed housing units in the

132 development, but may not require a preliminary design or engineering tests to prove the yield

133 from a conventional subdivision on the property.

134 (b) require the proposed development to identify the significant natural and cultural

135 features of the land and concentrate development by use of reduced dimensional requirements to

136 preserve those features.

137 (c) require the development to permanently preserve a certain percentage of substantially

138 contiguous developable land, ranging from 30 to 60 percent, in a natural, scenic or open

139 condition, or in agricultural, forestry, or passive outdoor recreational use. For the purposes of

140 calculating the percentage of land to be preserved, the land's developable area shall be

141 determined pursuant to applicable state and local land use and environmental laws and

142 regulations, and the zoning ordinance or by-law, without regard in either case to the suitability of

143 soils or groundwater for on-site wastewater disposal as such is separately regulated by local

144 boards of health. The open land may either be conveyed to: the city or town and accepted by it
145 for park or open space use and conferred the protections afforded under Article 97 of the
146 amendments of the Massachusetts Constitution; a nonprofit organization the principal purpose of
147 which is the conservation of open space; a corporation or trust owned or to be owned by the
148 owners of lots or residential units within the development; or an individual under a conservation
149 restriction. If the corporation or trust is utilized, ownership thereof shall pass with conveyances
150 of the lots or residential units. Where the land is not conveyed to the city or town or other
151 governmental agency as dedicated open space, a restriction under sections 31 to 33, inclusive, of
152 chapter 184 shall be recorded.

153 (2) If a zoning ordinance or bylaw contains no provisions permitting open space
154 residential development, then a proposed open space residential development of five or more
155 new single family residential dwellings on a parcel as a subdivision under Chapter 41 in a zoning
156 district that requires a minimum lot area of 30,000 square feet or greater for a single-family
157 residential dwelling shall be allowed as of right if it meets the requirements of this sub-section,
158 except upon a specific finding by the planning board that such development is not feasible or the
159 land and natural resource conservation objectives of such development are achieved on the site
160 through alternate means already adopted by the municipality, such as the transfer of development
161 rights or natural resource protection zoning. Such developments shall meet the requirements of
162 paragraphs (a) and (b) of sub-section (1) and shall further permanently preserve at least 40
163 percent of the parcel’s substantially contiguous developable area. In districts where Title 5 of the
164 Environmental Code is in effect, and which are in nitrogen-sensitive areas where the number of
165 bedrooms is calculated at one bedroom per 10,000 square feet of land area, the provisions of this
166 section shall not apply if the required lot area is 30,000 square feet or less, unless the local board

167 of health approves an aggregate calculation of land area that includes the preserved land, and if
168 the required lot area is more than 30,000 square feet, the minimum preservation requirement set
169 forth in this section shall be modified to equal the percentage resulting from: the subtraction of
170 30,000 square feet from the lot size requirement: that difference divided by the lot size
171 requirement: and multiplied by 100, except to the extent inconsistent with requirements adopted
172 by a regional planning agency under chapter 716 of the Acts of 1989 or chapter 831 of the Acts
173 of 1977, as those acts may be amended. A proposed development meeting the requirements of
174 this sub-section shall be permitted upon review and approval by a planning board pursuant to
175 section 81K to 81GG, inclusive, of chapter 41 and in accordance with a planning board's rules
176 and regulations governing subdivision control.

177 Allowance of open space residential development by right in accordance with this sub-
178 section shall not preclude increases in the permissible number of dwelling units within an open
179 space residential development by special permit or otherwise.

180 SECTION 7. Section 5 of said chapter 40A, as appearing in the 2016 Official Edition, is
181 hereby amended striking out, in line 78, the word "No" and inserting in place thereof the
182 following words:- Unless otherwise prescribed in a zoning ordinance or by-law, no.

183 SECTION 8. Said section 5 of said chapter 40A, as so appearing, is hereby further
184 amended by inserting after the word "meeting" in line 82, the following words:- "; provided,
185 however, that if a city or town has failed to meet the minimum requirements of paragraph (1) or
186 (2) section 3A, a zoning ordinance or by-law that is consistent with these requirements shall be
187 adopted by a vote of a simple majority of all members of the town council or of the city council

188 where there is a commission form of government or a single branch or of each branch where
189 there are 2 branches or by a vote of a simple majority of town meeting”.

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

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

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

202 SECTION 11. Section 6 of said chapter 40A, as so appearing, is hereby amended by
203 striking out, in lines 3 to 5, inclusive, the words “or to a building or special permit issued before
204 the first publication of notice of the public hearing on such ordinance or by-law required by
205 section five,”.

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

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

212 If a complete application for a building permit or special permit is duly submitted and
213 received, including receipt of payment for any applicable fees, and written notice of the
214 submission has been given to the city or town clerk before the first publication of notice of the
215 public hearing on the ordinance or by-law as required by section 5, the permit shall be governed
216 by the applicable provisions of the zoning ordinance or by-law, if any, in effect at the time of the
217 first submission and receipt while any permit is being processed and, if the permit or an
218 amendment of the permit is finally approved, for 2 years in the case of a building permit and 3
219 years in the case of a special permit from the date of the granting of approval. The period of 2 or
220 3 years shall be extended by a period equal to the time a city or town imposes or has imposed
221 upon it by a state, a federal agency or a court, a moratorium on construction, the issuance of
222 permits or utility connections.

223 SECTION 14. Said section 6 of said chapter 40A, as so appearing, is hereby amended by
224 striking out the fifth paragraph and inserting in place thereof the following paragraph:-

225 If a complete application for a definitive plan is duly submitted to a planning board for
226 approval under the subdivision control law and written notice of the submission has been given
227 to the city or town clerk before the first publication of notice of the public hearing on the
228 ordinance or by-law required by section 5, the plan shall be governed by the applicable
229 provisions of the zoning ordinance or by-law, if any, in effect at the time of the first submission
230 while any plan is being processed under the subdivision control law and, if the definitive plan or

231 an amendment to the definitive plan is finally approved, for 8 years from the date of the
232 endorsement of the approval; provided, however, that in the case of a minor subdivision in a city
233 or town that has accepted section 81HH of chapter 41, the applicable provisions of the zoning
234 ordinance or by-law shall govern for 4 years from the date of the endorsement of approval. The
235 period of 8 or 4 years shall be extended by a period equal to the time which a city or town
236 imposes or has imposed upon it by a state, a federal agency or a court, a moratorium on
237 construction, the issuance of permits or utility connections.

238 SECTION 15. Said section 6 of said chapter 40A, as so appearing, is hereby amended by
239 striking out the sixth paragraph.

240 SECTION 16. Said section 6 of said chapter 40A, as so appearing, is hereby amended by
241 striking out, in the second sentence of the seventh paragraph, the words “land shown on”.

242 SECTION 17. Section 9 of said chapter 40A, as so appearing, is hereby amended by
243 striking out the third to ninth paragraphs, inclusive.

244 SECTION 18. Said section 9 of said chapter 40A, as so appearing, is hereby further
245 amended by striking out the last sentence in the twelfth paragraph and inserting in place thereof
246 the following sentence:-

247 Unless a greater majority is specified in the zoning ordinance or by-law, issuance of a
248 special permit under this section shall require an affirmative vote of a simple majority of the
249 special permit granting authority. A greater majority vote requirement shall not exceed a vote of
250 two-thirds of the special permit granting authority in the case of a board with more than five
251 members, a vote of at least four members of a five member board, or a unanimous vote of a three
252 member board.

253 SECTION 19. Said chapter 40A is hereby further amended by inserting after section 9C
254 the following 4 sections:-

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

260 (b) A zoning ordinance or by-law that requires site plan review for uses allowed
261 by-right shall: (i) establish the different types, scales or categories of uses of land, structures or
262 development subject to site plan review; (ii) specify the local boards or officials charged with
263 reviewing and approving site plans which may differ for different types, scales or categories of
264 uses of land or structures; (iii) set forth what shall be considered a complete application; (iv)
265 establish the process for submission, review and approval for a site plan; (v) establish standards
266 and criteria by which the project and its direct adverse impacts on that portion of properties and
267 public infrastructure located within 300 feet of the parcel boundary shall be evaluated; and (vi)
268 include provisions making the terms, conditions and content of the approved site plan
269 enforceable by the municipality which may include the requirement of performance guarantees.

270 (c) Approval of a site plan under this section, if reviewed by a board, shall
271 require not more than a simple majority vote of the full board and shall be made within the time
272 limits prescribed by ordinance or by-law not to exceed 120 days from the filing of a complete
273 application. Procedures for the administrative review and approval of a site plan by staff or other
274 municipal officials shall be as specified in the ordinance or by-law but the 120-day time limit for

275 a decision shall not be increased unless granted in writing by the person seeking the site plan
276 approval. If no decision is issued within the time limit prescribed and no written extension of the
277 time limit has been granted by the person seeking the site plan review, the site plan shall be
278 deemed constructively approved as provided in section 9; provided, however, that the petitioner
279 shall comply with the constructive approval procedures under said section 9. Copies of the
280 approved site plan submission shall be kept on file by the town or city clerk, the permit granting
281 authority and the municipal building department.

282 (d) A site plan submitted for the use of specific land or structures allowed by-
283 right shall not be denied unless: (i) the proposed site plan cannot be conditioned to meet the
284 requirements set forth in the zoning ordinance or by-law; (ii) the applicant fails to submit the
285 information and fees required by the zoning ordinance or by-law necessary for an adequate and
286 timely review of the design of the proposed land or structures; or (iii) there is no feasible site
287 design change or condition that would adequately mitigate any direct adverse impacts of the
288 proposed improvements on that portion of properties and public infrastructure located within 300
289 feet of the parcel boundary.

290 (e) A site plan approved under this section may include reasonable conditions,
291 safeguards and limitations to mitigate the direct adverse impacts of the project on that portion of
292 properties and public infrastructure located within 300 feet of the parcel boundary. Conditions
293 may be approved that are directly related to standards and criteria described in the site plan
294 review ordinance or by-law; provided, however, that such conditions shall not conflict with or
295 waive any other applicable requirement of the zoning ordinance or by-law. The record of the
296 decision shall state the reasons for any conditions imposed. If conditions are adopted pursuant to

297 this subsection, the site plan shall be revised to include those conditions before the development
298 permit is issued.

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

303 (g) Except where site plan review is required in connection with the issuance of
304 a special permit, variance or other discretionary zoning approval, decisions made under this
305 section may be appealed pursuant to section 4 of chapter 249. Such civil action may be brought
306 in the superior court or in the land court and shall be commenced within 20 days after the filing
307 of the decision of the site plan review approving authority with the city or town clerk. Notice of
308 such appeal must be given to the city or town clerk so as to be received within 20 days. A
309 complaint by a plaintiff challenging a site plan approval under this section shall allege the
310 specific reasons why the project failed to satisfy the requirements of this section, the zoning
311 ordinance or by-law or other applicable law and shall allege specific facts establishing how the
312 plaintiff is aggrieved by such decision. A complaint by an applicant for site plan review
313 challenging the denial or conditioned approval of a site plan shall similarly allege the specific
314 reasons why the project properly satisfied the requirements of this section, the zoning ordinance
315 or by-law or other applicable law.

316 (h) A site plan, or any extension, modification or renewal thereof, shall not take
317 effect until a notice of site plan approval, identifying the permit granting authority and the date
318 upon which approval was granted, is recorded in the registry of deeds for the county or district in

319 which the land is located and indexed in the grantor index under the name of the owner of record
320 or is recorded and noted on the owner's certificate of title.

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

329 (j) Where an ordinance or by-law provides that a variance, special permit or
330 other discretionary zoning approval shall also require site plan review, the review of the site plan
331 shall be integrated into the processing of the variance, special permit or other discretionary
332 zoning approval and shall not be made the subject of a separate proceeding, hearing or decision.
333 In such a case, the content requirements and approval criteria for a site plan as specified in the
334 zoning ordinance or by-law shall be followed but this section shall not otherwise apply.

335 Section 9E. (a) A local ordinance or by-law that requires the payment of a
336 development impact fee for a permit or approval shall comply with this section. A development
337 impact fee shall have a rational nexus to, and shall be roughly proportionate to, the impacts
338 created by the development. A development impact fee shall reasonably benefit the proposed
339 development and shall be used solely for the purposes of defraying the costs of off-site public
340 capital facilities that support or compensate for the proposed development. Development impact

341 fees shall be applied in a consistent manner pursuant to a proportionate share development
342 impact fee study conducted in accordance with subsection (f).

343 (b) Development impact fees shall be limited to mitigating the impact of the
344 development on the following capital facilities: (i) water supply, treatment and distribution, both
345 potable and for suppression of fires; (ii) wastewater treatment and sanitary sewerage; (iii)
346 drainage, storm water management and treatment; (iv) solid waste; (v) roads, intersections,
347 traffic improvements, public transportation, pedestrian ways and bicycle paths; (vi) parks and
348 recreational facilities; and (vii) publicly owned or publicly financed electric power generation or
349 transmission. Impact fees may be expended on such facilities for the payment of debt service or
350 for studies with a rational nexus to the development, including master plans made in accordance
351 with section 81D of chapter 41 and proportionate share impact fee studies under section 9F. A
352 development impact fee shall not be assessed or expended for personnel costs, normal operation
353 and maintenance costs or to remedy deficiencies in existing facilities; provided, however, that an
354 impact fee may be assessed for mitigation on a facility with a preexisting deficiency to the extent
355 that the preexisting deficiency is exacerbated and not solely to remedy the preexisting deficiency.

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

363 Development impact fees shall be proportionately reduced to the extent that a
364 municipality imposes other fees or requirements, otherwise imposed by law, for mitigation of
365 development including, but not limited to, fees imposed under chapter 40C and section 40 of
366 chapter 131. No fee shall be assessed more than once for the same impact. If, and to the extent
367 that, a municipality receives state or federal funds for mitigation of the development impacts or
368 other grants or contributions for mitigation of development impacts, those funds shall be
369 accounted for in the development impact fee or applied to the development impact fee
370 proportional share development impact study.

371 (d) A development impact fee assessed under this section shall be due and
372 payable not earlier than the issuance of the building permit upon commencement of construction,
373 which may include site preparation work. The fee shall be deposited in a separate, segregated,
374 interest-bearing account in the city or town in which the proposed development is located and no
375 development impact fee shall be paid to the general treasury or used as general expenses of the
376 city or town.

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

382 (e) A zoning ordinance or by-law may provide that the applicant or developer
383 may construct the public capital facility or a portion thereof for which the development impact
384 fee was assessed or may enter into any other mutual agreement in lieu of paying the development

385 impact fee; provided, however, that the applicant or developer shall not be required to construct
386 the public capital facility or a portion thereof or enter into an alternative agreement if instead the
387 applicant or developer chooses to pay the assessed development impact fee.

388 (f) No development impact fee shall be assessed unless it is assessed pursuant to
389 a valid proportionate-share development impact fee study. A proportionate-share development
390 impact fee study shall establish the proportionate share development impact fee for capital
391 facilities and detail the methodology used to set the fee. The scope of the study may be
392 jurisdiction-wide or limited to a geographic area or category of public capital facilities that
393 development impact fees may be intended to address. A municipality may rely upon credible
394 and professionally recognized methodologies for the study. The study shall be updated not less
395 than every 10 years to reflect actual development activity, actual costs of infrastructure
396 improvements completed or underway, plan changes or amendments to the zoning ordinance or
397 by-law. The study shall identify any preexisting deficiencies in the public capital facilities and
398 shall set forth a feasible implementation plan for how those deficiencies shall be remedied. A
399 proportionate share development impact fee study shall not be valid and no development impact
400 fees shall be assessed if 10 years have passed since the study's creation or its most recent update.

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

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

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

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

415 (c) The inclusionary housing units shall be subject to an affordable housing
416 restriction for not less than 30 years, in accordance with sections 31 to 33, inclusive, of chapter
417 184 or, if ineligible under said sections 31 to 33, inclusive, of said chapter 184, restricted by
418 other means as required in an ordinance or by-law.

419 (d) The ordinance or by-law may require some or all of the inclusionary housing
420 units to be low-income or moderate-income housing as defined in sections 20 to 23, inclusive, of
421 chapter 40B, and shall be eligible for inclusion on the local subsidized housing inventory subject
422 to and in accordance with applicable regulations and guidelines of the department of housing and
423 community development. Nothing in this section shall require the department to include
424 affordable units created under this section on the subsidized housing inventory.

425 Section 9G. No ordinance or by-law shall prohibit an owner of land or
426 structures who has applied or intends to apply for a building permit, any permit or approval
427 required under this chapter, an approval under sections 81K to 81GG, inclusive, of chapter 41 or
428 a comprehensive permit under sections 20 to 23, inclusive, of chapter 40B from requesting of the

429 public official or local board charged with acting on the application to undertake a land use
430 dispute avoidance process.

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

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

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

447 SECTION 20. Said chapter 40A is hereby further amended by striking out section 10, as
448 appearing in the 2016 Official Edition, and inserting in place thereof the following section:-

449 Section 10. Where literal enforcement of the zoning ordinance or by-law would result in
450 substantial hardship, financial or otherwise, to the petitioner, upon appeal or upon petition with

451 respect to particular land or structures, the permit-granting authority may grant a variance from
452 the terms of the applicable zoning ordinance or by-law following a public hearing for which
453 notice has been given by publication and posting as provided in section 11 and by mailing notice
454 to all interested parties. The substantial hardship necessitating the variance shall relate to the
455 physical characteristics including, but not limited to, soil conditions, shape or topography or
456 location of the site or of the structures thereon.

457 In making its determination, the permit-granting authority shall take into consideration
458 the benefit to the applicant if the variance is granted as well as the detriments to the health, safety
459 and welfare of the neighborhood or community if the variance is granted. In order to grant a
460 variance, the permit-granting authority shall make all the following findings: (i) the benefit
461 sought by the applicant can be achieved by another method feasible for the applicant to pursue,
462 other than a variance; (ii) the variance will have a disproportionately adverse effect on nearby
463 properties, the character of the neighborhood or the environment; (iii) the variance will nullify or
464 substantially derogate from the intent or purpose of the ordinance or by-law or a master plan
465 under section 81D of chapter 41 if a master plan is in effect; and (iv) the claimed hardship
466 relating to the property in question is unique and does not also apply to a substantial portion of
467 the district or neighborhood. The permit-granting authority may also take into consideration the
468 extent to which the claimed hardship is self-created and may base a denial solely upon a finding
469 that the claimed hardship is self-created. In the granting of variances, the permit-granting
470 authority shall grant the minimum variance that it deems necessary to relieve the hardship

471 A local ordinance or by-law may allow petitioners to apply for a special permit seeking to
472 waive or modify a dimensional requirement, rather than use the variance process set forth in this
473 section. Such special permit process may be applied to all circumstances in which a petitioner

474 seeks to waive or modify dimensional requirements, or may be applied only to certain
475 dimensional requirements identified in the ordinance or by-law..

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

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

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

495 SECTION 21. Section 11 of said chapter 40A, as so appearing, is hereby amended by
496 inserting after the word “town” , in line 15, the following words:- , the board of health of the city
497 or town.

498 SECTION 22. Section 3 of said chapter 40R, as so appearing, is hereby amended by
499 inserting after the figure “40A,” in line 10, the following:

500 ; provided, however, that a smart growth zoning district or starter home zoning district
501 ordinance or by-law shall be adopted, amended or repealed by a simple majority vote of all the
502 members of the town council, or of the city council where there is a commission form of
503 government or a single branch, or of each branch where there are 2 branches, or by a simple
504 majority of a town meeting.

505 SECTION 23. Section 81L of said chapter 41, as so appearing, is hereby amended by
506 inserting after the word “thereon”, in line 72, the following words:- ; provided, however, that the
507 division may be deemed a minor subdivision if rules and regulations under Section 81HH of this
508 chapter are in effect.

509 SECTION 24. Said section 81L of said chapter 41, as so appearing, is hereby further
510 amended by striking out the definition of the word “Lot” and inserting in place thereof the
511 following 2 definitions:-

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

514 “Minor subdivision”, in accordance with section 81HH, the division of a lot,
515 tract or parcel of land into 2 or more lots, tracts or parcels where, at the time when it is made,

516 every lot within the lot, tract or parcel so divided has frontage on: (i) a public way or a way
517 which the clerk of the city or town certifies is maintained and used as a public way; (ii) a way
518 shown on a plan approved and endorsed in accordance with the subdivision control law; (iii) a
519 way in existence when the subdivision control law became effective in the city or town in which
520 the land lies having, in the opinion of the planning board, sufficient width, suitable grades and
521 adequate construction to provide for the needs of vehicular traffic in relation to the proposed use
522 of the land abutting thereon or served thereby and for the installation of municipal services to
523 serve the land and the buildings erected or to be erected thereon; provided, however, that the
524 frontage shall be of at least the distance as is then required by the zoning ordinance or by-law, if
525 any, of the city or town for erection of a building on the lot and, if no distance is so required, the
526 frontage shall be of at least 20 feet, or (iv) a new way to be created by the subdivider.

527 SECTION 25. Section 81O of said chapter 41, as so appearing, is hereby amended by
528 inserting after the word "effect", in line 2, the following words:- and minor subdivision rules
529 and regulations under Section 81HH are in effect.

530 SECTION 26. Said section 81O of said chapter 41, as so appearing, is hereby further
531 amended by inserting after the word "feet", in line 17, the following words:- , unless the
532 planning board of a city or town has adopted minor subdivision rules and regulations under
533 section 81HH of this chapter, in which case it shall be approved accordingly.

534 SECTION 27. Section 81U of said chapter 41, as so appearing, is hereby amended by
535 striking out, in line 187, the words "for a period of not more than three years".

536 SECTION 28. Section 81X of said chapter 41, as so appearing, is hereby amended by
537 striking out the fourth paragraph and inserting in place thereof the following 2 paragraphs:-

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

544 The register of deeds and the land court shall accept for recording and the land
545 court shall accept with a petition for registration any plan showing a change in the line of any lot,
546 tract or parcel bearing a professional opinion by a registered professional land surveyor and a
547 certificate by the person or board charged with the enforcement of the zoning ordinance or by-
548 law of the city or town that the property lines shown: (i) do not create an additional building lot;
549 (ii) do not create, add to or alter the lines of a street or way; (iii) do not render an existing legal
550 lot or structure illegal; (iv) do not render an existing nonconforming lot or structure more
551 nonconforming; and (v) are not subject to alternative local rules and regulations for minor
552 subdivisions under section 81HH. A request for such a certificate shall be acted upon within 21
553 days and shall not be withheld unless a finding is made that the plan violates any of the aforesaid
554 criteria and the finding is stated in writing to the person making the request. Failure to so act
555 within 21 days shall be deemed an approval of the lot line change. All plans, if approved and as
556 recorded, shall be filed with the planning board and the board of assessors of the city or town.
557 The recording of such a plan shall not relieve any owner from compliance with the subdivision
558 control law or any other applicable law.

559 SECTION 29. Said chapter 41 is hereby further amended by inserting after section
560 81GG the following section:-

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

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

570 (c) The rules and regulations for minor subdivisions may require that applications for
571 minor subdivisions from the same lot, tract or parcel from which the first minor subdivision was
572 created not result in more than the maximum of six or more allowed lots, as the case may be, in a
573 set period of years; lessen or eliminate any requirement of section 81U of this chapter otherwise
574 applicable to subdivisions; lessen or eliminate any local rule or regulation adopted under section
575 81Q of this chapter otherwise applicable to subdivisions; and describe a means by which the
576 planning board may, by agreement with the applicant, accept payments from the applicant in lieu
577 of otherwise required improvements to an existing way, provided those improvements are
578 completed by the city or town in a reasonable period of time.

579 (d) No application for a minor subdivision shall be subject to: (i) a public hearing if every
580 lot within the lot has frontage on an existing way described in the definition of minor
581 subdivision; (ii) the requirements of section 81S; (iii) subject to requirements for the relocation
582 of an existing way outside of its existing right of way; (iv) a requirement for total travelled

583 lanes' widths of greater than 22 feet in a residential minor subdivision unless such width already
584 exceeds 22 feet; (v) requirements for the paving of an existing unpaved way; (vi) requirements
585 for travelled lane slopes of less than 10 percent on an existing way; (vii) or any procedural or
586 substantive requirements more stringent than those specified in this chapter or contained in a city
587 or town's local rules and regulations otherwise applicable to subdivisions.

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

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

596 (g) Notwithstanding the adoption of local rules and regulations for minor subdivisions,
597 the provisions of section 81P of this chapter shall continue to apply to: 1) a division of land
598 where the entire lineal frontage required by local zoning is on a state-numbered route; or 2) a
599 division of a parcel of land in any one year to create no more than two building lots subject to the
600 frontage requirements set forth in subsections i-iii of the definition of minor subdivision in this
601 chapter, meeting the lineal distance requirements of local zoning, and not exceeding 1.5 times
602 the area required by local zoning, if at the time of application the parcel of land to be subdivided
603 is forestland or farmland that has for 5 continuous years immediately previous been classified
604 under chapters 61 or 61A, respectively or land that is under the same ownership and within the

605 same parcel, or under the same ownership and immediately adjacent, and not classified under
606 chapters 61 or 61A.

607 SECTION 30. Section 14 of chapter 61A of the General Laws, as appearing in the 2016
608 Official Edition, is hereby amended in lines 67, 87, 131, and 148, in each instance, by striking
609 out the figure "120" and inserting in place thereof the following:- 180

610 Section 9 of chapter 61B of the General Laws, as so appearing, hereby amended in lines
611 67, 87, 131, and 148, in each instance, by striking out the figure "120" and inserting in place
612 thereof the following:- 180

613 SECTION 31. Section 4 of chapter 151B of the General Laws, as appearing in the 2016
614 Official Edition, is hereby amended by adding the following paragraph:-

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

627 hearing impairment or because a person possesses a trained dog guide as a consequence of
628 blindness, hearing impairment or other handicap.

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

634 SECTION 32. Notwithstanding any general or special law to the contrary, there shall be a
635 special commission to study the use and effectiveness of the zoning approval process of
636 educational uses under the so-called Dover amendment, section 3 of chapter 40A of the General
637 Laws.

638 The commission shall consist of the secretary of housing and economic development or a
639 designee; the secretary of the executive office of education or a designee; 2 members appointed
640 by the president of the senate, including the senate chair of the joint committee on municipalities
641 and regional government, the senate chair of the joint committee on housing; 1 member
642 appointed by the senate minority leader; 2 members appointed by the speaker of the house of
643 representatives, including the house chair of the joint committee on municipalities and regional
644 government, the house chair of the joint committee on housing; and 1 member appointed by the
645 house minority leader, and 3 members to be appointed by the governor, 1 of whom shall be a
646 local official with expertise in zoning, 1 of whom shall be a member of a non-profit social
647 services agency and 1 of whom shall be a member of a non-profit school or higher education
648 institution.

649 The commission shall study the impact of the education exemption provided by the dover
650 amendment on municipalities and nonprofit education institutions, which shall include a review
651 of the types of building projects sited under the protection of the dover amendment and the case
652 law decided on the educational exemption. The commission shall solicit public testimony, either
653 by holding public hearings or through surveys.

654 The commission shall file the results of its study together with recommendations for
655 legislation, which shall include a proposed definition of “educational purposes”, with the clerks
656 of the house of representatives and senate, on or before December 31, 2018.

657 SECTION 33. A city or town that had adopted a zoning ordinance or by-law under
658 chapter 40A requiring a form of inclusionary zoning before the effective date of this act shall,
659 within 3 years after that effective date, revise the ordinance or by-law to conform to section 9F of
660 chapter 40A of the General Laws. Following 3 years after the effective date of this act, any
661 provision of such a preexisting inclusionary zoning ordinance or by-law that does not conform to
662 said section 9F of said chapter 40A shall only apply to the extent and in a manner consistent with
663 said section 9F of said chapter 40A.

664 SECTION 34. Any city or town that had adopted a zoning ordinance or by-law under
665 chapter 40A requiring site plan review before the effective date of this act shall, within 3 years
666 after that date, revise the ordinance or by-law to conform to section 9D of chapter 40A of the
667 General Laws. Following 3 years after the effective date of this act, any provision of a
668 preexisting site plan review ordinance or by-law that does not conform to said section 9D of said
669 chapter 40A shall only apply to the extent and manner consistent with said section 9D of said
670 chapter 40A.

671 SECTION 35. Any city or town that adopted a zoning ordinance or by-law relating to
672 zoning variances prior to the effective date of this act shall, within 3 years of the effective date of
673 this act, revise the ordinance or by-law to conform to section 10 of chapter 40A of the General
674 Laws, as amended by section 20. Three years after the effective date of this act, any provision of
675 a preexisting variance zoning ordinance or by-law that does not conform to said section 10 of
676 said chapter 40A shall only apply to the extent and manner that it is consistent with said section
677 10 of said chapter 40A.

678 SECTION 36. Any variance granted prior to the effective date of this act shall be
679 governed by the terms of the variance and shall run with the land unless a condition, safeguard or
680 limitation contained therein prescribes otherwise.

681 SECTION 37. Section 5 shall apply to local approvals submitted on or after one year
682 from passage of this legislation.

683 SECTION 38. Section 9E of chapter 40A, as inserted by section 23, shall take effect 18
684 months from passage of this legislation.

685 SECTION 39. Sections 6 and 8 shall take effect 3 years from passage of this legislation;
686 provided, however, that subsection (c) of paragraph (1) of section 3A of chapter 40A of the
687 General Laws, as appearing in said section 6, shall take effect on the effective date of this act.