

**SENATE . . . . . No. 01019**

The Commonwealth of Massachusetts

PRESENTED BY:

*James B. Eldridge*

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

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

An Act relative to comprehensive land use reform and partnership.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Stephen Kulik</i>	<i>1st Franklin</i>
<i>Paul J. Donato</i>	<i>35th Middlesex</i>
<i>Marc R. Pacheco</i>	<i>First Plymouth and Bristol</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Benjamin B. Downing</i>	<i>Berkshire, Hampshire, and Franklin</i>
<i>Daniel A. Wolf</i>	<i>Cape and Islands</i>
<i>Kenneth J. Donnelly</i>	<i>Fourth Middlesex</i>
<i>Denise Andrews</i>	<i>2nd Franklin</i>
<i>William N. Brownsberger</i>	<i>24th Middlesex</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>Jay Kaufman</i>	<i>15th Middlesex</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>
<i>Viriato Manuel deMacedo</i>	<i>1st Plymouth</i>
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>

<i>Cory Atkins</i>	<i>14th Middlesex</i>
<i>James Arciero</i>	<i>2nd Middlesex</i>
<i>James M. Cantwell</i>	<i>4th Plymouth</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>

# SENATE . . . . . No. 01019

By Mr. Eldridge, petition (accompanied by bill, Senate, No. 1019) of Wolf, Walsh, Story and other members of the General Court for legislation to comprehensive land use reform and partnership [Joint Committee on Municipalities and Regional Government].

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE  
□ SENATE  
□ , NO. 2482 OF 2009-2010.]

## The Commonwealth of Massachusetts

\_\_\_\_\_  
**In the Year Two Thousand Eleven**  
\_\_\_\_\_

An Act relative to comprehensive land use reform and partnership.

*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 40A of the General Laws, as appearing in the 2008 Official  
2 Edition, is hereby amended by striking out the chapter in its entirety and inserting in place  
3 thereof the following Chapter 40A:-

4                           CHAPTER 40A

5                           ZONING

- 6           1. Title, Authority, and Purposes
- 7           2. Definitions

- 8           3. Consistency with Master Plan
- 9           4. Powers of Cities and Towns
- 10          5. Exemptions from Zoning, Limitations on Local Authority
- 11          6. Nonconformities and Vested Rights
- 12          7. Adoption and Amendment of Zoning Ordinances and By-laws
- 13          8. Boards of Appeal, Zoning Administrators
- 14          9. Permits and Approvals, Procedures, and Zoning Tools
- 15          10. Enforcement
- 16          11. Judicial Review Procedures and Standards
- 17          12. Transition Provisions

18                   40A:1. Title, Authority, and Purposes

19           A. Title of Chapter

20           This chapter shall be known and may be cited as “The Zoning Act”.

21           B. Authority

22           The authority of cities and towns to act with respect to land use planning, zoning, and  
23 regulation is contained in Article 89 of the Articles of Amendment to the Constitution of the  
24 Commonwealth, also known as the “Home Rule Amendment.” This chapter shall be construed  
25 to give full effect to the home rule authority of cities and towns. Nothing in this chapter shall be

26 construed as limiting the constitutional authority of cities and towns unless the language in this  
27 chapter expressly so states. Wherever the language of this chapter purports to authorize or  
28 enable, it shall be so construed only where such authority is not otherwise available to cities and  
29 towns under the constitution or laws of the commonwealth, and in all other cases such language  
30 shall be deemed illustrative only.

31 C. Purposes of the Zoning Act

32 The purposes of this Zoning Act are:

33 1. To reaffirm that all local powers established under Article 89 of the Articles of  
34 Amendment to the Constitution of the Commonwealth fully exist, except as expressly limited by  
35 this statute or other laws, and that all powers purportedly enabled in prior zoning statutes are  
36 continued without the necessity of specifically enumerating them.

37 2. To impose certain limits on the exercise of home rule authority in order to promote  
38 overriding state interests.

39 3. To confer explicit authority on cities and towns in furtherance of the purposes of  
40 this act where such powers are not explicitly or implicitly conferred by said Article 89 or by any  
41 general or special law.

42 4. To establish uniform procedures and standards for the issuance of certain types of  
43 approvals that apply throughout the commonwealth.

44 5. To protect legitimate property rights and investment-backed expectations created  
45 prior to the enactment of new land use laws and regulations.

46           6. To ensure that constitutional principles of due process and equal protection are not  
47 violated by local land use laws and regulations.

48           D. Purposes of Zoning Ordinances and By-laws

49           The authority of cities and towns to adopt zoning ordinances and by-laws for the  
50 protection of the public health, safety, and general welfare includes, without limitation, all of the  
51 purposes listed below as well as any other purposes not limited by section 7 or reserved to the  
52 commonwealth by section 8 of said Article 89, subject to any limitations contained in this  
53 Zoning Act or in any other law.

54           1. The Implementation of a plan adopted by the city or town under section 81D of  
55 chapter 41 or other plan designed to set goals for the development of land within the city or  
56 town.

57           2. The orderly and sustainable growth, development, redevelopment, conservation,  
58 and preservation of a city or town that promotes the types, patterns, and intensities of land use  
59 contained in a plan adopted by the city or town under section 81D of chapter 41 or other plan  
60 designed to set goals for the development of land within the city or town.

61           3. The efficient, fair, and timely review of development proposals, including  
62 standardized procedures for administration of zoning ordinances or by-laws.

63           4. The efficient resolution of planning and regulatory conflicts involving public and  
64 private interests.

65           5. The use of planning and zoning laws, regulations, and practices such as  
66 development agreements, development impact fees, design review, intra- and inter-municipal

67 transfers of development rights, form-based zoning, rate-of-development measures, agricultural  
68 zoning, natural resource protection zoning, cluster zoning, planned-unit-development zoning,  
69 special district overlays, village districts, urban growth boundaries, dispute resolution,  
70 mediation, and inclusionary zoning provisions which require, or provide incentives for, the  
71 creation of inclusionary housing units.

72           6. The delineation, differentiation, and balancing of urban and rural development.

73           7. The achievement of a balance of housing choices, types, and opportunities for all  
74 income levels and groups, including the creation of affordable housing, the preservation of  
75 existing housing stock, and the preservation of affordability in housing.

76           8. The provision of an energy-efficient, convenient, and safe transportation  
77 infrastructure with as wide a choice of modes as practical, including, wherever possible, maximal  
78 access to public transit systems and non-motorized modes.

79           9. The integration of residential, commercial, civic, cultural, governmental,  
80 recreational, and other compatible land uses at locations that maximize efficiencies in  
81 transportation energy use and minimize environmental impact.

82           10. The adequate provision and distribution of educational, health, social service,  
83 cultural, and recreational facilities.

84           11. The preservation or enhancement of community amenities or features of  
85 significant architectural, historical, cultural, visual, aesthetic, scenic, or archaeological interest.

86           12. The protection of the environment and the conservation of natural resources,  
87 including those qualities of the environment and natural resources set forth in Article 97 of the  
88 Constitution of the Commonwealth.

89           13. The retention of open land for agricultural production, forest products,  
90 horticulture, aquaculture, tourism, outdoor recreation, and freshwater and marine fisheries.

91           14. The protection of public investment in infrastructure systems.

92           15. The efficient use of energy and the reduction of pollution from energy generation,  
93 including the promotion of renewable energy sources and associated technologies, protection of  
94 solar access, and reduced dependence on fossil fuel energy generation.

95           16. The adequate provision of employment opportunities within the city or town and  
96 the region, including redevelopment of pre-existing sites, home-based occupations, sustainable  
97 natural-resource-based occupations, and housing to support the employment opportunities within  
98 the city or town and the region.

99           17. The conservation of the value of land and buildings, including the elimination of  
100 blight and the rehabilitation of blighted areas.

101           18. The accommodation of regional growth in a fair, equitable, and sustainable  
102 manner among municipalities, including coordination of land uses with contiguous  
103 municipalities, other municipalities, the state, and other agencies, as appropriate, especially with  
104 regard to resources and facilities that extend beyond municipal boundaries or have a direct  
105 impact on other municipalities.

106           19. The implementation of a plan adopted by a regional planning agency under section  
107 5 of chapter 40B.

108                           40A:2. Definitions

109           As used in this chapter the following words shall have the following meanings:

110           “Affordable housing”, A dwelling unit restricted for purchase or rent by a household  
111 with an income at or below 80 percent of the median family income for the applicable  
112 metropolitan or non-metropolitan area, as determined by the U.S. Department of Housing and  
113 Urban Development (HUD). Affordable housing shall be subject to an affordable housing  
114 restriction in accordance with sections 31 and 32 of chapter 184, or, if ineligible under said  
115 sections, restricted by other means as required in an ordinance or by-law.

116           “By-right”, refers to an approval not requiring a variance, special permit, zoning  
117 amendment, waiver, or other discretionary zoning approval. Examples of by-right approvals are  
118 building permits and site plan reviews.

119           “Chief administrative officer”, when used in connection with the operation of  
120 municipal governments, shall include the mayor of a city and the board of selectmen in a town  
121 unless some other local office is designated to be the chief administrative officer under the  
122 provisions of a local charter.

123           “Chief executive officer”, when used in connection with the operation of municipal  
124 governments shall include the mayor in a city and the board of selectmen in a town unless some  
125 other municipal office is designated to be the chief executive officer under the provisions of a  
126 local charter.

127           “Cluster development” means a class of residential development in which reduced  
128 dimensional requirements allow the developed areas to be concentrated in order to permanently  
129 preserve natural or cultural resources elsewhere on the plot. This general class of development  
130 may also be referred to in local zoning by other names such as open space design, open space  
131 residential design, natural resource protection zoning, conservation design/development, or  
132 flexible development.

133           “Development agreement”, a contract entered into between a municipality or  
134 municipalities and a holder of property development rights, the principal purpose of which is to  
135 establish the development regulations that will apply to the subject property during the term of  
136 the agreement and to establish the conditions to which the development will be subject including,  
137 without limitation, a schedule of development impact fees.

138           “Form-based zoning”, text and graphics in a zoning ordinance or by-law that specify  
139 the built form of the community, general intensity of use, and the relationship between buildings  
140 and the outdoor public spaces they shape. Notwithstanding any provision of any general or  
141 special law, form-based codes may regulate building type, exterior building materials, minimum  
142 and maximum building heights, frontage type, build-to lines, street type, street and streetscape  
143 design, public open spaces, and any other parameter of the built or natural environment which  
144 gives form to the exterior of buildings and the spaces between them. Form-based codes may  
145 combine in a single document standards for new subdivision streets, existing and new public  
146 streets and sidewalks, and use and dimensional standards. Such combined standards may be in  
147 the form of a “regulating plan” that integrates building, dimensional, use, street, sidewalk, and  
148 parking requirements. Form-based codes may also specify lot-by-lot in a detailed regulating plan,  
149 building forms and allowed use mixes, even if such specification is not uniform throughout a

150 zoning district, provided that it is based upon a plan for the area subject to the code. Form-based  
151 codes may specify prescribed future lot division lines which will be allowed as a matter of right  
152 in any future division of land.

153           “Inclusionary housing units”, affordable housing units or housing units restricted for  
154 purchase or rent by a household with an income at or below 120 percent of the median family  
155 income for the applicable metropolitan or non-metropolitan area, as determined by the U.S.  
156 Department of Housing and Urban Development.

157           “Inclusionary zoning”, zoning ordinances or by-laws that require, or provide  
158 incentives for, the creation of affordable housing units or housing units restricted for purchase or  
159 rent by a household with an income at or below 120 percent of the median family income for the  
160 applicable metropolitan or non-metropolitan area, as determined by the U.S. Department of  
161 Housing and Urban Development, or the payment of funds dedicated to the provision of such  
162 housing as a condition of approval of a development and in accordance with the provisions of  
163 section 9E of this chapter.

164           “Legislative body”, when used in connection with the operation of municipal  
165 governments shall include that agency of the municipal government which is empowered to  
166 enact ordinances or by-laws, adopt an annual budget and other spending authorizations, loan  
167 orders, bond authorizations, and other financial matters, whether styled a city council, board of  
168 aldermen, town council, town meeting or by any other title.

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

172 “Site plan”, the submission made to a municipality that includes documents and  
173 drawings required by an ordinance or by-law to determine whether a proposed use of land or  
174 structures or development is in compliance with applicable local ordinances or by-laws, to  
175 evaluate the impacts of the proposed use of land or structures on the neighborhood and/or  
176 community, and to evaluate and propose site or structural design modifications or required  
177 conditions that will lessen those impacts. Such site plan may be required independently of or as  
178 a required component of a special permit, variance, or other discretionary zoning approval.

179 “Site plan review,” the review and approval of a site plan by a designated municipal  
180 board pursuant to section 9B of this chapter. Site plan review may be required independently for  
181 specified uses permitted by-right, or as a required component of a special permit, variance, or  
182 other discretionary zoning approval.

183 “Solar access,” the access of a solar energy system to direct sunlight.

184 “Solar energy system,” a device or structural design feature, a substantial purpose of  
185 which is to provide daylight for interior lighting or provide for the collection, storage and  
186 distribution of solar energy for space heating or cooling, electricity generating, or water heating.

187 “Special permit”, a discretionary approval for a use that satisfies conditions prescribed  
188 in a zoning ordinance or by-law in accordance with section 9A of this chapter.

189 “Special permit granting authority”, Chief executive officer, board of appeals,  
190 planning board, or zoning administrator as designated by zoning ordinance or by-law for the  
191 issuance of special permits, or as otherwise provided by charter, ordinance, or by-law.



213           A. Requirement: After January 1, 2017, no zoning ordinance or by-law may be  
214 inconsistent with a plan adopted in compliance with section 81D of chapter 41. No zoning  
215 ordinance or by-law shall be deemed inconsistent with the plan if it furthers, or at least does not  
216 impede, the achievement of the plan's goals and policies, and if it is not incompatible with the  
217 plan's proposed land uses and development patterns.

218           B. Rebuttable Presumption: After the effective date of the plan, a zoning ordinance or  
219 by-law shall enjoy a rebuttable presumption in any action, suit, or administrative proceeding that  
220 its provisions are not inconsistent with the plan. If the presumption is rebutted, inconsistency  
221 may serve as the basis upon which a court or administrative agency may declare any relevant  
222 zoning ordinance or by-law provision to be invalid as applied to the property which is the subject  
223 of the action, suit, or administrative proceeding. For any amendment to a plan adopted after  
224 January 1, 2017, no such declaration of invalidity may be made in any action, suit, or  
225 administrative proceeding for a period of 12 months after the effective date of such plan  
226 amendment.

227           C. Alternate Plan: For the purposes of this section only, a city or town without a  
228 current local plan under section 81D of chapter 41 may adopt an existing regional plan under  
229 section 5 of chapter 40B. Such adoption shall be by the same process specified in section 81D of  
230 chapter 41.

231                           40A:4. Powers of Cities and Towns

232           A. Powers Enumerated: To resolve uncertainty regarding the authority of cities and  
233 towns to assert powers conferred by Article 89 of the Articles of Amendment to the Constitution

234 of the Commonwealth and by general or special laws, this chapter confers or confirms the  
235 following zoning powers:

236           1. to impose development impact fees, as defined herein, subject to the requirements  
237 set forth in Section 9F;

238           2. to use inclusionary zoning techniques, subject to the requirements set forth in  
239 Section 9E;

240           3. to enact unified development ordinances or by-laws and form-based zoning, as  
241 defined herein, which are based upon multiple sources of statutory authority to regulate land use;  
242 and

243           4. to provide for the transfer of development rights, including the inter-municipal  
244 transfer of development rights between or among municipalities with complementary ordinances  
245 or by-laws. Such authorization may be by special permit or by other methods, including, but not  
246 limited to, the applicable provisions of sections 81K to 81GG, inclusive, of chapter 41, and in  
247 accordance with a planning board's rules and regulations governing subdivision control. Any  
248 inter-municipal transfer of development rights plan must be reviewed by the Department of  
249 Housing and Community Development prior to adoption to ensure that it is consistent with  
250 federal and state fair housing laws, provided that a plan shall be deemed consistent unless the  
251 Department makes a written finding of inconsistency within 30 days of submission.

252           5. to provide for cluster development, which may proceed by right or by other  
253 methods, including, but not limited to, the applicable provisions of sections 81K to 81GG,  
254 inclusive, of chapter 41, and in accordance with a planning board's rules and regulations  
255 governing subdivision control.

256           B. Rule of Construction: To the extent that the powers enumerated in this section are  
257 construed to be inherent in the constitutional and existing statutory authority of cities and towns  
258 and not pre-empted by other state laws, such enumeration is hereby deemed to be merely  
259 confirmatory or illustrative.

260                           40A:5. Exemptions from Zoning, Limitations on Local Authority

261           A. Building Code: No zoning ordinance or by-law shall regulate or restrict the use of  
262 materials, or methods of construction of structures regulated by the state building code. This  
263 shall not prevent the regulation of exterior materials on existing or new buildings under form-  
264 based codes or in zones specifically identified by statute, ordinance, or by-law as having historic  
265 or architectural significance.

266           B. Flood Plain, Wetlands: No zoning ordinance or by-law shall exempt land or  
267 structures from flood plain or wetlands regulations established pursuant to general law.

268           C. Agriculture:

269           1. No zoning or general ordinance or by-law regulating the use of agricultural lands,  
270 shall prohibit, unreasonably regulate, or require a special permit for the use of land for the  
271 primary purpose of commercial agriculture, nor prohibit, unreasonably regulate or require a  
272 special permit for the use, expansion, reconstruction, or construction of structures thereon for the  
273 primary purpose of commercial agriculture; provided, however, that all such activities may be  
274 limited to parcels of 5 acres or more in area not zoned for commercial agriculture and to parcels  
275 of any size in areas zoned for commercial agriculture. For such purposes, land divided by a  
276 public or private way or a waterway shall be construed as one parcel.

277           2. No zoning or general ordinance or by-law shall prohibit, unreasonably regulate, or  
278 require a special permit for those facilities used for the sale of agricultural products, provided  
279 that one of the following two sales-ratio tests is met:

280           a. Seasonally at least 25 percent of such products for sale, based on either gross sales  
281 dollars or volume, have been produced by the owner or lessee of the land on which the facility is  
282 located; or

283           b. Annually at least 25 percent of such products have been produced by the owner or  
284 lessee of the land on which the facility is located, and at least an additional 50 per cent of such  
285 products shall have been produced in Massachusetts on land, other than that on which the facility  
286 is located, used for the primary purpose of commercial agriculture, whether by the owner or  
287 lessee of the land on which the facility is located or by another.

288           3. For the purposes of this subsection 5.C the following definitions shall apply:

289           “commercial agriculture” shall be as defined in section 1A of chapter 128, and shall  
290 include aquaculture, silviculture, horticulture, floriculture and viticulture; it shall further include  
291 those facilities for the primary purpose of processing agricultural products produced by the farm  
292 operation and those alternative energy generating facilities for the primary purpose of producing  
293 energy to be used by or transmitted for use by farms for agricultural purposes;

294           “seasonally” shall mean either the months of June, July, August, and September of  
295 every year or the harvest season of the primary crop raised on land of the owner or lessee;

296           “horticulture” shall include the growing and keeping of nursery stock and the sale  
297 thereof; and

298 “nursery stock produced by the owner or lessee of the land” shall mean said nursery  
299 stock that is nourished, maintained, and managed while on the premises.

300 D. Interior Area: No zoning ordinance or by-law shall require a minimum interior area  
301 of a single family residential building, but may restrict the maximum interior area of a single  
302 family residential building.

303 E. Religious, Educational Purposes: No zoning ordinance or by-law shall prohibit,  
304 regulate or restrict the use of land or structures for religious purposes or for educational purposes  
305 on land owned or leased by the commonwealth or any of its agencies, subdivisions, or bodies  
306 politic, or by a religious sect or denomination, or by a nonprofit educational corporation.  
307 However, such land or structures may be subject to reasonable regulations concerning the bulk  
308 and height of structures and determining yard sizes, lot area, setbacks, open space, parking, and  
309 building coverage requirements.

310 F. Public Service Corporation: Lands or structures used, or to be used by a public  
311 service corporation, may be exempted in particular respects from the operation of a zoning  
312 ordinance or by-law if, upon petition of the corporation, the Department of Public Utilities shall,  
313 after notice given pursuant to section 9D. and public hearing in the town or city, determine the  
314 exemptions required and find that the present or proposed use of the land or structure is  
315 reasonably necessary for the convenience or welfare of the public; provided, however, that if  
316 lands or structures used or to be used by a public service corporation are located in more than  
317 one municipality such lands or structures may be exempted in particular respects from the  
318 operation of any zoning ordinance or by-law if, upon petition of the corporation, the Department  
319 of Public Utilities shall after notice to all affected communities and public hearing in one of said

320 municipalities, determine the exemptions required and find that the present or proposed use of  
321 the land or structure is reasonably necessary for the convenience or welfare of the public.

322 G. Child Care Facility:

323 1. As used in this paragraph, the term "child care facility" shall mean a child care  
324 center or a school-aged child care program, as defined in section 1A of chapter 15D.

325 2. No zoning ordinance or by-law in any city or town shall prohibit, or require a  
326 special permit for, the use of land or structures or the expansion of existing structures for the  
327 primary, accessory, or incidental purpose of operating a child care facility. Such land or  
328 structures may be subject to reasonable regulations concerning the bulk and height of structures  
329 and determining yard sizes, lot area, setbacks, open space, parking, and building coverage  
330 requirements.

331 3. When any zoning ordinance or by-law in any city or town limits the floor area of  
332 any structure, such floor area shall be measured exclusive of any portion of such structure in  
333 which a child care facility is to be operated as an accessory or incidental use, and the otherwise  
334 allowable floor area of such structure shall be increased by an amount equal to the floor area of  
335 such child care facility up to a maximum increase of 10 percent. In any case where the otherwise  
336 allowable floor area of a structure has been increased pursuant to the provisions of this section,  
337 the portion of such structure in which a child care facility is to be operated as an accessory or  
338 incidental use shall not be used for any other purpose unless, following the completion of such  
339 structure, the board authorized to grant variances under such zoning ordinance or by-law shall  
340 have determined, with the written concurrence of the office for children, that the public interest

341 and convenience do not require the operation of such facility. The procedures governing the  
342 granting of variances, including all rights of appeal, shall apply to any such determination.

343 H. Child Care Homes: Family child care home and large family child care home, as  
344 defined in section 1A of chapter 15D, shall be an allowable use unless a city or town prohibits or  
345 specifically regulates such use in its zoning ordinances or by-laws.

346 I. Disabled Persons, Congregate Living Arrangements: Notwithstanding any general  
347 or special law to the contrary, local land use and health and safety laws, regulations, practices,  
348 ordinances, by-laws, and decisions of a city or town shall not discriminate against a disabled  
349 person. Imposition of health and safety laws or land-use requirements on congregate living  
350 arrangements among unrelated persons with disabilities that are not imposed on families and  
351 groups of similar size of other unrelated persons shall constitute discrimination. The provisions  
352 of this paragraph shall apply to every city or town, including, but not limited to the City of  
353 Boston and the City of Cambridge.

354 J. Manufactured Homes: No zoning ordinance or by-law shall prohibit the owner and  
355 occupier of a residence which has been destroyed by fire or other natural holocaust from placing  
356 a manufactured home on the site of such residence and residing in such home for a period not to  
357 exceed 18 months immediately after such event. Any such manufactured home shall be subject  
358 to the provisions of the state sanitary code.

359 K. Handicapped Access Ramps: No dimensional lot requirement of a zoning  
360 ordinance or by-law, including, but not limited to, set back, front yard, side yard, rear yard, and  
361 open space shall apply to access ramps on private property used solely for the purpose of

362 facilitating ingress or egress of a physically handicapped person, as defined in section 13A of  
363 chapter 22.

364           L. Solar Energy Systems: No zoning ordinance or by-law shall prohibit or  
365 unreasonably regulate the installation of solar energy systems or the building of structures that  
366 facilitate the collection of solar energy, except where necessary to protect the public health,  
367 safety, or welfare.

368           M. Amateur Radio Antennas: No zoning ordinance or by-law shall prohibit the  
369 construction or use of an antenna structure by a federally licensed amateur radio operator.  
370 Zoning ordinances and by-laws may reasonably regulate the location and height of such antenna  
371 structures for the purposes of health, safety, or aesthetics; provided, however, that such  
372 ordinances and by-laws reasonably allow for sufficient height of such antenna structures so as to  
373 effectively accommodate amateur radio communications by federally licensed amateur radio  
374 operators and constitute the minimum practicable regulation necessary to accomplish the  
375 legitimate purposes of the city or town enacting such ordinance or by-law.

376           N. Renewable Energy, Agricultural Land: No zoning or general ordinance or by-law  
377 shall prohibit or unreasonably regulate the installation or operation of renewable energy  
378 generating structures and equipment, as defined in 220 CMR 18.00, on land primarily in  
379 agricultural use, except where necessary to protect the public health, safety or welfare; provided,  
380 however, that:

381           1. not less than 75 percent of the energy generated thereby shall be used or transmitted  
382 for use in agricultural operations on land and in structures in agricultural use or to serve the  
383 energy needs of educational facilities of the commonwealth or any of its agencies, subdivisions

384 or bodies politic, or of a religious sect or denomination, or of a nonprofit educational  
385 corporation, or of municipally owned or controlled facilities, whether directly or under a net-  
386 metering arrangement approved by the Commissioner of the Department of Agricultural  
387 Resources;

388           2. the location and design of all renewable energy generating structures and equipment  
389 have been approved by the Commissioner of the Department of Agricultural Resources to assure  
390 the least possible impact on agricultural resources;

391           3. the renewable energy capacity on any single parcel of land in agricultural use is  
392 limited to 2 megawatts (2,000 kilowatts) , unless waived by the Commissioner of Agricultural  
393 Resources; and

394           4. the land on which the renewable energy generating structure and equipment is  
395 located remains primarily in agricultural use.

396           The Department of Agricultural Resources shall promulgate regulations governing the  
397 siting, construction, and operation of such facilities, which may include prescription or approval  
398 of the commercial relationships created to own and operate such facilities.

399           O. Hazardous Waste Facilities: A hazardous waste facility as defined in section 2 of  
400 chapter 21D shall be permitted to be constructed as of right on any locus presently zoned for  
401 industrial use pursuant to the ordinances and by-laws of any city or town provided that all  
402 permits and licenses required by law have been issued to the developer and a siting agreement  
403 has been established pursuant to sections 12 and 13 of chapter 21D. Following the submission of  
404 a notice of intent, pursuant to section 7 of chapter 21D, a city or town may not adopt any zoning  
405 change which would exclude the facility from the locus specified in said notice of intent. This

406 section shall not prevent any city or town from adopting a zoning change relative to the proposed  
407 locus for the facility following the final disapproval and exhaustion of appeals for permits and  
408 licenses required by law and by chapter 21D.

409           P. Solid Waste Disposal Facilities: A facility, as defined in section 150A of chapter  
410 111, which has received a site assignment pursuant to said section 150A, shall be permitted to be  
411 constructed or expanded on any locus zoned for industrial use unless specifically prohibited by  
412 the ordinances and by-laws of the city or town in which such facility is proposed to be  
413 constructed or expanded, in effect as of July 1, 1987; provided, however, that all permits and  
414 licenses required by law have been issued to the proposed operator. A city or town shall not  
415 adopt an ordinance or by-law prohibiting the siting of such a facility or the expansion of an  
416 existing facility on any locus zoned for industrial use, or require a license or permit granted by  
417 said city or town, except a special permit imposing reasonable conditions on the construction or  
418 operation of the facility, unless such prohibition, license or permit was in effect on or before July  
419 1, 1987. A city or town may adopt and enforce a zoning or non-zoning ordinance or by-law of  
420 general application that has the effect of prohibiting the siting or expansion of a facility in the  
421 following areas: recharge areas of surface drinking water supplies as shall be reasonably defined  
422 by rules and regulations of the Department of Environmental Protection, areas subject to section  
423 40 of chapter 131, and the regulations promulgated thereunder; and areas within the zone of  
424 contribution of existing or potential public supply wells as defined by said department. No  
425 special permit authorized by this section may be denied for any such facility by any city or town;  
426 provided, however, that a special permit granting authority may impose reasonable conditions on  
427 the construction or operation of the facility, which shall be enforceable pursuant to the provisions  
428 of section 10.

429 Q. Exclusionary Zoning: All cities and towns shall, in their zoning ordinances and by-  
430 laws, provide opportunities for the creation of at least their municipality's fair share of housing  
431 for households of median income, with due regard for regional housing needs as established by  
432 the regional planning agency and/or the Department of Housing and Community Development.  
433 This shall not preclude the establishment of zoning districts where only low-density development  
434 is permitted in order to protect natural and cultural resources, provided that the city or town has  
435 made adequate accommodation for a range of housing types and income levels in other zoning  
436 districts.

437 40A:6. Nonconformities and Vested Rights

438 A. Nonconforming Lots, Structures and Uses

439 1. Nonconforming Residential Lots:

440 a. Any increases in lot area, frontage, width, depth, yard, or setbacks of a zoning  
441 ordinance or by-law shall not apply to a lot for single- or two-family residential use which on the  
442 date of the first publication of notice of the public hearing on such ordinance or by-law required  
443 by section 7 that renders the lot nonconforming:

444 (i) is shown or described as a separate lot on a recorded plan or deed;

445 (ii) has at least 5,000 square feet of area and 50 feet of frontage in the case of a single-  
446 family residential use and at least 7,500 square feet of area and 75 feet of frontage in the case of  
447 two-family residential use; and

448 (iii) at the time of recording or endorsement, whichever occurred sooner, conformed  
449 to the lot requirements then in effect, and was not then or thereafter held in common ownership  
450 with any adjoining land.

451 b. A lot described in 1.a above shall have vital access to and frontage on a way.  
452 Access to the lot shall be over such frontage unless the ordinance or by-law provides otherwise.

453 c. Whenever the lines of a lot described in 1.a above are changed in any way that  
454 renders the lot more conforming, the resulting boundaries of the lot shall be governed by this  
455 section.

456 d. Whenever any lot described in 1.a above comes into common ownership with  
457 adjacent land, such lot and adjacent land shall be merged and combined for the purposes of this  
458 section. Common ownership shall include lots held by separate legal entities, persons, or trusts  
459 under common control or having common beneficial interests.

460 2. Nonconforming Structures and Uses:

461 a. A nonconforming structure or use shall mean a structure or use lawfully in existence  
462 on the date of the first publication of notice of the public hearing on such ordinance or by-law  
463 required by section 7 rendering such structure or use nonconforming. For the purposes of this  
464 section, a nonconforming structure or use lawfully in existence shall not include a structure or  
465 use in violation of the zoning ordinance or by-law, nor a structure built without a legally required  
466 building permit.

467 b. Adoption or amendment of a zoning ordinance or by-law shall not apply to any  
468 existing nonconformity of:

469 i) an existing nonconforming structure or use; and

470 ii) structures and uses lawfully begun prior to the first publication of notice of the  
471 public hearing on the adoption or amendment of the relevant zoning ordinance or by-law  
472 required by section 7.

473 c. A zoning ordinance or by-law may regulate a nonconforming structure or use if  
474 abandoned or discontinued for a period of 2 years or more. Abandonment shall consist of any  
475 overt act, or failure to act, that would indicate that the owner neither claims nor retains any intent  
476 to continue the nonconforming structure or use, unless the owner can demonstrate the intent not  
477 to abandon it. An involuntary interruption of a nonconforming structure or use, such as by fire  
478 and natural catastrophe, does not establish the intent to abandon such structure or use.

479 d. This subsection A.2 shall not apply to establishments which display live nudity for  
480 their patrons, as defined in section 9A, adult bookstores, adult motion picture theaters, adult  
481 paraphernalia shops, or adult video stores subject to the provisions of section 9A.

482 3. Alteration, Reconstruction, Extension, or Structural Change of Nonconforming  
483 Structures and Uses:

484 a. A zoning ordinance or by-law shall not prohibit the alteration, reconstruction,  
485 extension, or structural change of a nonconforming single- or two-family residential structure,  
486 provided all such construction satisfies the applicable dimensional requirements of the current  
487 zoning ordinance or by-law other than lot area or frontage.

488 b. A zoning ordinance or by-law may permit, by right or by special permit,  
489 nonconforming structures to be altered, reconstructed, extended, or structurally changed, and

490 nonconforming uses to be extended or changed, provided, in either case, that such actions do not  
491 increase the specific nonconformity of the structure or use.

492           c. A zoning ordinance or by-law may permit, by special permit, nonconforming  
493 structures to be altered, reconstructed, extended, or structurally changed, or nonconforming uses  
494 to be extended or changed, in a manner that increases the specific nonconformity of the structure  
495 or use, provided, in either case, that the special permit granting authority finds that such actions  
496 are not substantially more detrimental to the neighborhood than the existing nonconforming  
497 structure or use.

498           d. A zoning ordinance or by-law may regulate nonconforming structures differently  
499 than nonconforming uses.

500           e. A zoning ordinance or by-law may vary by zoning district(s) the requirements for  
501 the alteration, reconstruction, extension or structural change of nonconforming structures, and for  
502 the extension or change of nonconforming uses.

## 503           B. Vested Rights: Effective Date of Zoning Amendments

### 504           1. Building Permits, Special Permits, and Subdivision Plans:

505           a. Adoption or amendment of a zoning ordinance or by-law shall not apply to the  
506 development proposed in a building permit, special permit, or definitive subdivision plan duly  
507 applied for prior to the adoption or amendment required by section 7, provided that:

508           (i) the building permit, special permit, or definitive subdivision plan is ultimately  
509 approved; and

510 (ii) the period of time during which the ordinance or by-law does not apply shall  
511 extend after such approval for 2 years in the case of a building permit, 3 years in the case of a  
512 special permit, and 8 years in the case of a definitive subdivision plan.

513 2. General Provisions:

514 a. The provisions of B.1 above shall apply to approved modifications or amendments  
515 of a building permit, special permit, or definitive subdivision plan made under section 81W of  
516 chapter 41, or other applicable state or local provisions provided there is no required application  
517 for a new building permit, special permit, or definitive subdivision plan. Modification or  
518 amendment shall not itself serve to lengthen the period of time when the ordinance or by-law  
519 shall not apply.

520 b. The vested rights provisions of this section 6B shall be extended for a period of  
521 time equal to the duration of:

522 (i) extensions granted by the applicable local board or authority;

523 (ii) the period between the filing of an appeal or commencement of litigation from the  
524 decision of an applicable local board or authority and the final disposition thereof, provided final  
525 adjudication is in favor of the owner of the lot; and

526 (iii) a moratorium upon permitting or construction imposed by any government entity.

527 c. The minimum periods of time when the ordinance or by-law shall not apply in  
528 1.a(ii) above may be lengthened by ordinance or by-law.

529 d. The record owner of the land shall have the right, at any time, by an instrument duly  
530 recorded in the registry of deeds for the district in which the land lies, a copy of which shall be

531 filed with the building inspector and city or town clerk, to waive all of the provisions of this  
532 section 6B, in which case the zoning ordinance or by-law then or thereafter in effect shall apply.

533 e. For the purposes of this section the term definitive subdivision plan shall include a  
534 minor subdivision under section 81L and 81P of chapter 41, provided the planning board has  
535 adopted rules and regulations for minor subdivisions under section 81Q of said chapter. In such  
536 cases, the period of time during which the ordinance or by-law does not apply shall extend after  
537 approval of the minor subdivision for 3 years.

538 40A:7. Adoption and Amendment of Zoning Ordinances and By-laws

539 Zoning ordinances or by-laws shall be adopted and from time to time changed by  
540 amendment, addition or repeal only in the manner hereinafter provided.

541 A. Initiation: Adoption or change of zoning ordinances or by-laws may be initiated by  
542 the chief administrative officer of the city or town, or by submission to the chief administrative  
543 officer of a proposed zoning ordinance or by-law by the chief executive officer, if different, by  
544 the board of appeals, by an individual owning land to be affected by change or adoption, by  
545 request of registered voters of a town pursuant to section 10 of chapter 39, by 10 registered  
546 voters in a city, by a planning board, by a regional planning agency, or by other methods  
547 provided by municipal charter, ordinance, or by-law. The chief administrative officer shall  
548 within 14 days of receipt of such zoning ordinance or by-law submit it to the planning board for  
549 review, unless the proposal had been initiated by the planning board itself.

550 B. Hearings Required: No zoning ordinance or by-law or amendment thereto shall be  
551 adopted until after the planning board in a city or town, and the legislative body of a city or a  
552 committee designated or appointed for the purpose by said legislative body, has each held a

553 public hearing thereon, together or separately, at which interested persons shall be given an  
554 opportunity to be heard. Said public hearing shall be held within 65 days after the proposed  
555 zoning ordinance or by-law is submitted to the planning board by the legislative body or if there  
556 is no planning board, within 65 days after the proposed zoning ordinance or by-law is submitted  
557 to the chief administrative officer.

558           C. Notice: Notice of the time and place of such public hearing, of the subject matter,  
559 sufficient for identification, and of the place where texts and maps thereof may be inspected shall  
560 be published in a newspaper of general circulation in the city or town once in each of 2  
561 successive weeks, the first publication to be not less than 14 days before the day of said hearing,  
562 and by posting such notice in a conspicuous place in the city or town hall for a period of not less  
563 than 14 days before the day of said hearing. Notice of said hearing shall also be sent by mail,  
564 postage prepaid to the regional planning agency, if any, and to the planning board of each  
565 abutting city and town. The regional planning agency, the planning boards of all abutting cities  
566 and towns, and nonresident property owners who may not have received notice by mail as  
567 specified in this section, may grant a waiver of notice or submit an affidavit of actual notice to  
568 the city or town clerk prior to action by the legislative body on a proposed zoning ordinance, by-  
569 law or change thereto. Zoning ordinances or by-laws may provide that a separate, conspicuous  
570 statement shall be included with property tax bills sent to nonresident property owners, stating  
571 that notice of such hearings under this chapter shall be sent by mail, postage prepaid, to any such  
572 owner who files an annual request for such notice with the city or town clerk no later than  
573 January first, and pays a reasonable fee established by such ordinance or by-law. In cases  
574 involving boundary, density or use changes within a district, notice shall be sent to any such  
575 nonresident property owner who has filed such a request with the city or town clerk and whose

576 property lies in the district where the change is sought. No defect in the form of any notice  
577 under this chapter shall invalidate any zoning ordinances or by-laws unless such defect is found  
578 to be misleading.

579           D. Notice to Farmland Advisory Board: Prior to the adoption of any zoning or general  
580 ordinance or by-law or amendment thereto which seeks to further regulate matters established by  
581 section 40 of chapter 131 or regulations authorized thereunder relative to agricultural and  
582 aquacultural practices, the city or town clerk shall, not later than 7 days prior to the legislative  
583 body's public hearing relative to the adoption of said new or amended zoning ordinances or by-  
584 laws, give notice of the said proposed zoning or general ordinances or by-laws to the Farmland  
585 Advisory Board established pursuant to section 40 of chapter 131 and to the Commissioner of  
586 the Department of Agricultural Resources.

587           E. Planning Board Report: No vote to adopt any such proposed ordinance or by-law or  
588 amendment thereto shall be taken until a report with recommendations by a planning board has  
589 been submitted to the legislative body, or 21 days after said hearing has elapsed without  
590 submission of such report. After such notice, hearing and report, or after 21 days shall have  
591 elapsed after such hearing without submission of such report, the legislative body may adopt,  
592 reject, or amend and adopt any such proposed ordinance or by-law.

593           F. Failure to Vote: If legislative body of a city fails to vote to adopt any proposed  
594 ordinance within 90 days after the legislative body's hearing, or if the legislative body of a town  
595 fails to vote to adopt any proposed by-law within 6 months after the planning board hearing, no  
596 action shall be taken thereon until after a subsequent public hearing is held with notice and report  
597 as provided.

598           G. Vote Required for Adoption: No zoning ordinance or by-law or amendment thereto  
599 shall be adopted or changed except by a two-thirds vote of the legislative body of the city or  
600 town. A lesser majority vote may be prescribed in a zoning ordinance or by-law adopted by a  
601 two-thirds vote of the local legislative body, except that such lesser majority shall not become  
602 effective until 6 months have elapsed after the vote.

603           H. Unfavorable Action, Repetitive Petitions: No proposed zoning ordinance or by-law  
604 which has been unfavorably acted upon by the legislative body of a city or town shall be  
605 considered by the legislative body within 2 years after the date of such unfavorable action unless  
606 the adoption of such proposed ordinance or by-law is recommended in the final report of the  
607 planning board.

608           I. Review by the Attorney General: When zoning by-laws or amendments thereto are  
609 submitted to the attorney general for approval as required by section 32 of chapter 40, the  
610 attorney general shall also be furnished with a statement which may be prepared by the planning  
611 board explaining the by-laws or amendments proposed, which statement may be accompanied by  
612 explanatory maps or plans.

613           J. Effective Date: The effective date of the adoption or amendment of any zoning  
614 ordinance or by-law shall be the date on which such adoption or amendment was voted upon by  
615 the legislative body, provided, however, that in towns the posting and publication requirements  
616 of section 32 of chapter 40 have been satisfied. If, in a town, said by-law is subsequently  
617 disapproved, in whole or in part, by the attorney general, the previous zoning by-law, to the  
618 extent that such previous zoning by-law was changed by the disapproved by-law or portion  
619 thereof, shall be deemed to have been in effect from the date of such vote. In a municipality

620 which is not required to submit zoning ordinances to the attorney general for approval pursuant  
621 to section 32 of chapter 40, the effective date of such ordinance or amendment shall be the date  
622 established by charter or ordinance.

623           K. Official Copy: A true copy of the zoning ordinance or by-law with any  
624 amendments thereto shall be kept on file available for inspection in the office of the clerk of such  
625 city or town.

626           L. Claim of Invalidity: No claim of invalidity of any zoning ordinance or by-law  
627 arising out of any possible defect in the procedure of adoption or amendment shall be made in  
628 any legal proceedings and no state, regional, county, or municipal officer shall refuse, deny, or  
629 revoke any permit, approval, or certificate because of any such claim of invalidity, unless legal  
630 action is commenced within the time period specified in sections 32 and 32A of chapter 40 and  
631 notice specifying the court, parties, invalidity claimed, and date of filing, is filed together with a  
632 copy of the petition with the town or city clerk within 7 days after commencement of the action.

633           M. Zoning Districts: Zoning districts shall be shown on a zoning map in a manner  
634 sufficient for identification. Such maps shall be part of zoning ordinances or by-laws. Assessors'  
635 or property plans may be used as the basis for zoning maps. If more than four sheets or plates are  
636 used for a zoning map, an index map showing districts in outline shall be part of the zoning map  
637 and of the zoning ordinance or by-law.

638           N. Zoning District Boundary Lines: No provision of a zoning ordinance or by-law  
639 shall be valid which sets apart districts by any boundary line which may be changed without  
640 adoption of an amendment to the zoning ordinance or by-law.

641 O. Uniformity: No zoning ordinance or by-law shall regulate uses or structures in a  
642 manner that is not uniformly applicable within a zoning district except where such regulations  
643 are supported by a valid planning or zoning basis rationally related to the distinguishing  
644 characteristics of such structures or uses.

645 40A:8. Boards of Appeal, Zoning Administrators

646 A. Zoning Board of Appeals: Zoning ordinances or by-laws shall provide for a zoning  
647 board of appeals, according to the provisions of this section, unless otherwise provided by  
648 charter.

649 B. Membership: The board shall consist of 3 or 5 members who shall be appointed by  
650 the chief executive officer of a town, and by the chief executive officer of a city subject to  
651 confirmation by the legislative body, unless otherwise provided by charter, and who shall serve  
652 for terms of such length and so arranged that the term of one member shall expire each year.

653 C. Chairman, Clerk: The board shall annually elect a chairman from its own number  
654 and a clerk, and may, subject to appropriation, employ experts and clerical and other assistants.

655 D. Removal of Member: Any member may be removed for cause by the appointing  
656 authority upon written charges and after a public hearing.

657 E. Vacancies: Vacancies shall be filled for unexpired terms in the same manner as in  
658 the case of original appointments.

659 F. Associate Members: Zoning ordinances or by-laws may provide for the  
660 appointments in like manner of associate members of the board of appeals; and, if provision for  
661 associate members has been made, the chairman of the board may designate any such associate

662 member to sit on the board in case of absence, inability to act or conflict of interest on the part of  
663 any member thereof, or in the event of a vacancy on the board until said vacancy is filled in the  
664 manner provided in this section.

665 G. Powers: A board of appeals shall have the following powers:

666 1. To hear and decide appeals in accordance with this section.

667 2. To hear and decide applications for special permits upon which the board is  
668 empowered to act under said ordinance or by-laws.

669 3. To hear and decide petitions for variances as set forth in section 9C.

670 4. To hear and decide appeals from decisions of a zoning administrator, if any, in  
671 accordance with this section.

672 In exercising the powers granted by this section, a board of appeals may, in  
673 conformity with the provisions of this chapter, make orders or decisions, reverse or affirm in  
674 whole or in part, or modify any order or decision, and to that end shall have all the powers of the  
675 officer from whom the appeal is taken and may issue or direct the issuance of a permit.

676 H. Procedures:

677 1. Meetings: Meetings of the board shall be held at the call of the chairman or when  
678 called in such other manner as the board shall determine in its rules. The board of appeals shall  
679 hold a hearing on any appeal, application, or petition within 65 days from the receipt of notice by  
680 the board of such appeal, application or petition. The board shall cause notice of such hearing to  
681 be published and sent to parties in interest as provided in section 9D. The chairman, or in his

682 absence the acting chairman, may administer oaths, summon witnesses, and call for the  
683 production of papers.

684           2. Votes: The concurring vote of all members of the board of appeals consisting of 3  
685 members, and a concurring vote of 4 members of a board consisting of 5 members, shall be  
686 necessary to reverse an order or decision of an administrative official under this chapter or to  
687 effect a variance in the application of an ordinance or by-law.

688           3. Hearings, Decisions, and Appeals: All hearings of the board of appeals shall be  
689 open to the public and held in accordance with section 9D. The decision of the board shall be  
690 made and recorded with the municipal clerk within 114 days after the date of the filing of an  
691 appeal, application or petition, except in regard to special permits, as provided for in section 9A.  
692 The required time limits for a public hearing and said action may be extended by written  
693 agreement between the applicant and the board of appeals. A copy of such agreement shall be  
694 filed in the office of the city or town clerk. Failure by the board to take final action within said  
695 114 days or extended time, if applicable, shall be deemed to be the grant of the appeal,  
696 application, or petition. The petitioner who seeks such approval by reason of the failure of the  
697 board to take final action within the time prescribed shall notify the city or town clerk, in writing,  
698 within 14 days from the expiration of said 114 days or extended time, if applicable, of such  
699 approval and that notice has been sent by the petitioner to parties in interest. The petitioner shall  
700 send such notice to parties in interest, by mail and each notice shall specify that appeals, if any,  
701 shall be made pursuant to section 11 and shall be filed within 20 days after the date the city or  
702 town clerk received such written notice from the petitioner that the board failed to take final  
703 action within the time prescribed. After the expiration of 20 days without notice of appeal  
704 pursuant to section 11, or, if appeal has been taken, after receipt of certified records of the court

705 in which such appeal is adjudicated, indicating that such approval has become final, the city or  
706 town clerk shall issue a certificate stating the date of approval, the fact that the board failed to  
707 take final action and that the approval resulting from such failure has become final, and such  
708 certificate shall be forwarded to the petitioner. The board shall, within the 114 day time limit,  
709 cause to be made a detailed record of its proceedings, indicating the vote of each member upon  
710 each question, or if absent or failing to vote, indicating such fact, and setting forth clearly the  
711 reason for its decision and of its official actions, copies of all of which shall be filed in the office  
712 of the city or town clerk and shall be a public record. Notice of the decision shall be mailed  
713 forthwith to the petitioner, applicant or appellant, to the parties in interest designated in section  
714 9D, and to every person present at the hearing who requested that notice be sent to him and  
715 stated the address to which such notice was to be sent. Each notice shall specify that appeals, if  
716 any, shall be made pursuant to section 11 and shall be filed within 20 days after the date of filing  
717 of such notice in the office of the city or town clerk.

718 I. Appeals to the Zoning Board of Appeals: An appeal to the zoning board of appeals  
719 may be taken by any person aggrieved by reason of the appellant's inability to obtain a permit or  
720 an enforcement action from any administrative officer under the provisions of this chapter, by  
721 the regional planning agency in whose area the city or town is situated, or by any person  
722 including an officer or board of the city or town, or of an abutting city or town aggrieved by an  
723 order or decision of the inspector of buildings, or other administrative official, in violation of any  
724 provision of this chapter or any ordinance or by-law adopted thereunder.

725 1. Any appeal shall be taken within 30 days from the date of the order or decision  
726 which is being appealed. The petitioner shall file a notice of appeal specifying the grounds  
727 thereof, with the city or town clerk, and a copy of said notice, including the date and time of

728 filing certified by the town clerk, shall be filed forthwith by the petitioner with the officer or  
729 board whose order or decision is being appealed, and to the permit granting authority, specifying  
730 in the notice grounds for such appeal. Such officer or board shall forthwith transmit to the board  
731 of appeals all documents and papers constituting the record of the case in which the appeal is  
732 taken.

733           2. Any appeal to a board of appeals from the order or decision of a zoning  
734 administrator, if any, appointed in accordance with this section shall be taken within 30 days of  
735 the date of such order or decision or within 30 days from the date on which the appeal,  
736 application or petition in question shall have been deemed denied in accordance with said section  
737 8J, as the case may be, by having the petitioner file a notice of appeal, specifying the grounds  
738 thereof with the city or town clerk and a copy of said notice including the date and time of filing  
739 certified by the city or town clerk shall be filed forthwith in the office of the zoning administrator  
740 and in the case of an appeal under this subsection 8I with the officer whose decision was the  
741 subject of the initial appeal to said zoning administrator. The zoning administrator shall forthwith  
742 transmit to the board of appeals all documents and papers constituting the record of the case in  
743 which the appeal is taken.

744           J. Zoning Administrator: A zoning ordinance or by-law may authorize the  
745 appointment of a zoning administrator, who, unless otherwise provided by charter, shall be  
746 appointed by the board of appeals, subject to confirmation by the city council or board of  
747 selectmen, to serve at the pleasure of the board of appeals pursuant to such qualifications as may  
748 be established by the city council or board of selectmen. The board of appeals may delegate to  
749 said zoning administrator some of its powers and duties by a concurring vote of all members of  
750 the board of appeals consisting of 3 members, and a concurring vote of all except one member of

751 a board consisting of 5 members. Any person aggrieved by a decision or order of the zoning  
752 administrator, whether or not previously a party to the proceeding, or any municipal office or  
753 board, may appeal to the board of appeals, as provided in this section, within 30 days after the  
754 decision of the zoning administrator has been filed in the office of the city or town clerk. Any  
755 appeal, application or petition filed with said zoning administrator as to which no decision has  
756 issued within 35 days from the date of filing shall be deemed denied and shall be subject to  
757 appeal to the board of appeals as provided in this section 8.

758 K. Rules: The board of appeals shall adopt rules, not inconsistent with the provisions  
759 of the zoning ordinance or by-law for the conduct of its business and for purposes of this chapter  
760 and shall file a copy of said rules with the city or town clerk. If a board of appeals has appointed  
761 a zoning administrator in accordance with subsection 8J, said rules shall set forth the fact of such  
762 appointment, the identity of the persons from time to time appointed to such position, the powers  
763 and duties delegated to such individual and any limitations thereon.

764 40A:9. Permits and Approvals, Procedures, and Zoning Tools

765 A. Special Permits

766 1. Requirements:

767 a. General: Any zoning ordinance or by-law that provides for the issuance of special  
768 permits shall state the types of land uses and development for which special permits are required  
769 and the districts where such special permits are required. Special permits shall be issued only for  
770 uses which are in harmony with the general purpose and intent of the ordinance or by-law, and  
771 shall be subject to general or specific provisions set forth therein; and such permits may also  
772 impose conditions, safeguards, and limitations on time or use.

773           b. Special Permit Granting Authority: Zoning ordinances or by-laws may provide that  
774 certain classes of special permits shall be issued by one special permit granting authority and  
775 others by another special permit granting authority as provided in the ordinance or by-law. Such  
776 special permit granting authority shall adopt and from time to time amend rules relative to the  
777 issuance of such permits, and shall file a copy of said rules in the office of the city or town clerk.  
778 Such rules shall prescribe a size, form, contents, style and number of copies of plans and  
779 specifications, which may include the requirement of submission of a site plan, and the  
780 procedure for a submission, review, and approval of such permits.

781           c. Increases in Density or Intensity: Any zoning ordinance or by-law that provides for  
782 special permits authorizing increases in permissible density of population or intensity of a  
783 particular use shall provide that the petitioner or applicant shall, as a condition for the grant of  
784 the special permit, provide improvements or amenities in the public interest. Such zoning  
785 ordinances or by-laws shall state the specific types of improvements or amenities required, and  
786 the maximum increases in density of population or intensity of use which may be authorized by  
787 such special permits.

788           2. Procedures:

789           a. Application, Hearing, and Vote Majorities: Each application for a special permit  
790 shall be filed by the petitioner with the city or town clerk and a copy of said application,  
791 including the date and time of filing certified by the city or town clerk, shall be filed forthwith by  
792 the petitioner with the special permit granting authority. The special permit granting authority  
793 shall hold a public hearing, for which notice has been given as provided in subsection 9D, on any  
794 application for a special permit within 65 days from the date of filing of such application;

795 provided, however, that a city council having more than 5 members designated to act upon such  
796 applications may appoint a committee of such council to hold the public hearing. The decision of  
797 the special permit granting authority shall be made within 90 days following the date of the close  
798 of such public hearing. The required time limits for a public hearing and said action may be  
799 extended by written agreement between the petitioner and the special permit granting authority.  
800 A copy of such agreement shall be filed in the office of the city or town clerk. Unless a lesser  
801 majority is specified in the zoning ordinance or by-law, issuance of a special permit under this  
802 section shall require a vote of two-thirds of the entire special permit granting authority in the  
803 case of an authority with more than 5 members, the vote of at least 4 members of a 5-member  
804 authority, or the vote of all members of an authority comprised of fewer than 5 members.

805           b. Review of Special Permit by Other Boards and Agencies: Zoning ordinances or by-  
806 laws may provide that petitions for special permits shall be submitted to and reviewed by any  
807 other town agency or board and may further provide that such reviews may be held jointly. Any  
808 such board or agency to which petitions are referred for review shall make such  
809 recommendations as they deem appropriate and shall send copies thereof to the special permit  
810 granting authority and to the applicant; provided, however, that failure of any such board or  
811 agency to make recommendations within 35 days of receipt by such board or agency of the  
812 petition shall be deemed lack of opposition thereto.

813           c. Final Action, Failure to Take Final Action, Appeal: The special permit granting  
814 authority shall cause to be made a detailed record of its proceedings, indicating the vote of each  
815 member upon each question, or if absent or failing to vote, indicating such fact, and setting forth  
816 clearly the reason for its decision and of its official actions, copies of all of which shall be filed  
817 within 14 days in the office of the city or town clerk and shall be deemed a public record, and

818 notice of the decision shall be mailed forthwith to the petitioner, applicant or appellant, to the  
819 parties in interest designated in section 9D, and to every person present at the hearing who  
820 requested that notice be sent to him and stated the address to which such notice was to be sent.  
821 Each such notice shall specify that appeals, if any, shall be made pursuant to section 11 and shall  
822 be filed within 20 days after the date of filing of such notice in the office of the city or town  
823 clerk. Failure by the special permit granting authority to take final action within said 90 days or  
824 extended time, if applicable, shall be deemed to be a grant of the special permit. The petitioner  
825 who seeks such approval by reason of the failure of the special permit granting authority to act  
826 within such time prescribed, shall notify the city or town clerk, in writing within 14 days from  
827 the expiration of said 90 days or extended time, if applicable, of such approval and that notice  
828 has been sent by the petitioner to parties in interest. The petitioner shall send such notice to  
829 parties in interest by mail and each such notice shall specify that appeals, if any, shall be made  
830 pursuant to section 11 and shall be filed within 20 days after the date the city or town clerk  
831 received such written notice from the petitioner that the special permit granting authority failed  
832 to act within the time prescribed. After the expiration of 20 days without notice of appeal  
833 pursuant to section 11, or, if appeal has been taken, after receipt of certified records of the court  
834 in which such appeal is adjudicated, indicating that such approval has become final, the city or  
835 town clerk shall issue a certificate stating the date of approval, the fact that the special permit  
836 granting authority failed to take final action and that the approval resulting from such failure has  
837 become final, and such certificate shall be forwarded to the petitioner.

838           d. Recordation of Special Permit: A special permit, or any extension, modification or  
839 renewal thereof, shall not take effect until a copy of the decision bearing the certification of the  
840 city or town clerk that 20 days have elapsed after the decision has been filed in the office of the

841 city or town clerk is recorded in the registry of deeds for the county and district in which the land  
842 is located and indexed in the grantor index under the name of the owner of record or is recorded  
843 and noted on the owner's certificate of title.

844 The certification shall include either:

845 (i) a statement that no appeal has been filed or that if such appeal has been filed, that it  
846 has been dismissed or denied, or;

847 (ii) if it is a special permit which has been approved by reason of the failure of the  
848 special permit granting authority to act thereon within the time prescribed, a copy of the petition  
849 for the variance accompanied by the statement of the city or town clerk stating the fact that the  
850 special permit granting authority failed to act within the time prescribed, and no appeal has been  
851 filed, and that the grant of the petition resulting from such failure to act has become final or that  
852 if such appeal has been filed, that it has been dismissed or denied.

853 The fee for recording or registering shall be paid by the owner or applicant.

854 The person exercising rights under a duly appealed special permit does so at risk that a  
855 court will reverse the permit and that any construction performed under the permit may be  
856 ordered undone. This section shall in no event terminate or shorten the tolling, during the  
857 pendency of any appeals, of the time periods provided under section 6B.

858 e. Lapse, Extension: A special permit granted under this section shall state that it will  
859 lapse within a period of time specified by the special permit granting authority, not less than 3  
860 years, if a substantial use thereof has not sooner commenced except for good cause due to  
861 circumstances beyond the control of the petitioner or, in the case of a special permit for

862 construction, if construction has not begun by such date except for good cause due to  
863 circumstances beyond the control of the petitioner. The period of time before which a special  
864 permit shall lapse shall not include the time required to pursue or await the determination of an  
865 appeal from the grant thereof referred to in section 11. Upon written application by the grantee of  
866 a special permit, the special permit granting authority in its discretion and without a public  
867 hearing may, by the same vote majority originally required to approve the special permit, extend  
868 the time for the exercise of such special permit for a period of time not to exceed the original  
869 duration of the special permit. Such application must be filed no later than 65 days prior to the  
870 lapse of the special permit. If the permit granting authority does not grant the extension within  
871 65 days of the date of application therefor, upon the lapse of the special permit, the special  
872 permit may be re-established only after notice and a new hearing pursuant to the provisions of  
873 this section.

874           3. Special Permits for Specific Uses:

875           a. Shared Elderly Housing: Any zoning ordinance or by-law that provides for the use  
876 of structures as shared elderly housing upon the issuance of a special permit shall specify the  
877 maximum number of elderly occupants allowed, not to exceed a total number of 6, any age  
878 requirements, and any other conditions deemed necessary for the special permits to be granted

879           b. Adult Uses, Live Nudity: Any zoning ordinance or by-law that provides for special  
880 permits authorizing the establishment of adult bookstores, adult motion picture theaters, adult  
881 paraphernalia stores, adult video stores or establishments which display live nudity for their  
882 patrons as hereinafter defined may state the specific improvements, amenities or locations of  
883 proposed uses for which such permit may be granted and may provide that the proposed use be a

884 specific distance from any district designated by zoning ordinance or by-law for any residential  
885 use or from any other adult bookstore or adult motion picture theatre or from any establishment  
886 licensed under the provisions of section 12 of chapter 138. Such zoning ordinance or by-law  
887 shall prohibit the issuance of such special permits to any person convicted of violating the  
888 provisions of section 63 of chapter 119 or section 28 of chapter 272.

889           As used in this section, the following words shall have the following meanings:

890           “Adult bookstore”, an establishment having as a substantial or significant portion of  
891 its stock in trade, books, magazines, and other matter which are distinguished or characterized by  
892 their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as  
893 defined in section 31 of chapter 272.

894           “Adult motion picture theatre”, an enclosed building used for presenting material  
895 distinguished by an emphasis on matter depicting, describing, or relating to sexual conduct or  
896 sexual excitement as defined in section 31 of chapter 272.

897           “Adult paraphernalia store,” an establishment having as a substantial or significant  
898 portion of its stock devices, objects, tools, or toys which are distinguished or characterized by  
899 their association with sexual activity, including sexual conduct or sexual excitement as defined in  
900 section 31 of chapter 272.

901           “Adult video store,” an establishment having as a substantial or significant portion of  
902 its stock in trade, videos, movies, or other film material which are distinguished or characterized  
903 by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as  
904 defined in said section 31 of said chapter 272.

905           “Establishment which displays live nudity for its patrons”, any establishment which  
906 provides live entertainment for its patrons, which includes the display of nudity, as that term is  
907 defined in section 31 of chapter 272. Any existing adult bookstore, adult motion picture theater,  
908 adult paraphernalia store or establishment which displays live nudity for its patrons, or adult  
909 video store shall apply for such permit within 90 days following the adoption of said zoning  
910 ordinance or by-law by a municipality.

911 Nothing contained herein shall be construed as limiting the power and authority of cities and  
912 towns to regulate the use of land, structures or buildings through zoning ordinances or by-laws.

913           B. Site Plan Review

914           1. Requirements: Any ordinance or by-law that requires site plan review for uses  
915 allowed by-right shall:

916           a. establish which uses of land or structures or development are subject to site plan  
917 review;

918           b. specify the local boards or officials charged with reviewing and approving site  
919 plans, which may differ for different types, scales, or categories of uses of land or structures;

920           c. set forth what constitutes a complete application;

921           d. establish the submission, review, and approval process, which may or may not  
922 include a requirement for a public hearing under section 9D. Approval of a site plan under this  
923 section, if reviewed by a board, shall require no greater than a simple majority vote of the full  
924 board and shall be made within the time limits prescribed by ordinance or by-law, not to exceed  
925 95 days from the filing of a complete application. Approval of a site plan by staff or other

926 municipal official or officials shall be as specified in the ordinance or by-law. If no decision is  
927 issued within the time limit prescribed and no written extension of the time limit has been  
928 granted by the person seeking the site plan review, the site plan shall be deemed constructively  
929 approved as provided in section 9A.2.c of this chapter;

930 e. establish standards and criteria by which the use of land or structures and its impact  
931 on the neighborhood shall be evaluated; and

932 f. contain provisions that make the terms, conditions, and content of the approved site  
933 plan enforceable by the municipality, which may include the requirement of performance  
934 guarantees.

935 2. Approval Criteria for Uses Allowed By-right: This section does not allow a permit  
936 granting authority, in a decision on a site plan, to prohibit or deny a use that is permitted by-right  
937 in the applicable zoning district. A site plan submitted for the use of specific land or structures  
938 allowed by-right shall be approved if the site plan:

939 a. satisfies the procedural and submission requirements of the site plan review process  
940 applicable to the specific land or structures;

941 b. complies with the regulations applicable to such land or structures in the local  
942 zoning ordinance or by-law; and

943 c. meets such standards and criteria as the local zoning ordinance or by-law provides  
944 by which the use of land or structures and its impact on the neighborhood shall be evaluated, or  
945 may be conditioned to meet such standards and criteria.

946 3. Conditions, Safeguards, and Limitations:

947           a. A site plan approved hereunder may include reasonable conditions, safeguards, and  
948 limitations to mitigate the impacts of a specific use of land or structures on the neighborhood.  
949 The permit granting authority may adopt such conditions which, in its opinion, are directly  
950 related to standards and criteria described in the site plan review ordinance or by-law, provided  
951 such conditions do not conflict with or waive any other applicable requirement of the zoning  
952 ordinance or by-law. The permit granting authority shall base any conditions it adopts on  
953 competent, credible evidence it shall incorporate into the record of its decision. If the permit  
954 granting authority adopts conditions pursuant to this paragraph, the site plan shall be revised to  
955 include such conditions before the development permit is issued.

956           b. Site plan review may not require the payment or performance of any off-site  
957 mitigation, except to mitigate any extraordinary adverse impacts of the project on adjacent  
958 properties or public infrastructure, or when the site plan approval is subject to development  
959 impact fees imposed in accordance with the provisions of section 9F of this chapter, or when a  
960 site plan is required in connection with the issuance of a special permit or variance.

961           4. Appeals: Decisions on uses allowed by-right shall be appealable as specified in the  
962 ordinance or by law, which may include direct judicial review pursuant to section 11.

963           5. Duration, Lapse, Extensions: Zoning ordinances or by-laws shall provide that a site  
964 plan approval for a use allowed by-right shall lapse within a specified period of time, not less  
965 than 2 years from the date of the filing of such approval with the city or town clerk, if a building  
966 permit has not been obtained or substantial use or construction has not yet begun, except as  
967 extended for good cause by the permit granting authority. Such period of time shall not include  
968 time required to pursue or await the determination of an appeal under subsection 4, above.

969           6. Consultant Fees: The board designated by ordinance or by-law to review site plans  
970 under this section may, by rules and regulations adopted by such board, provide for the  
971 imposition of reasonable fees for the employment of outside consultants in the same manner as  
972 set forth in section 53G of chapter 44.

973           7. Discretionary Approvals: Where an ordinance or by-law provides that a variance,  
974 special permit, or other discretionary zoning approval shall also require site plan review, the  
975 review of the site plan shall be integrated into the processing of the variance, special permit, or  
976 other discretionary zoning approval and not made the subject of a separate proceeding, hearing,  
977 or decision. In such case, the content requirements and approval criteria for a site plan as  
978 specified in the zoning ordinance or by-law shall be followed, but this section 9B shall not  
979 otherwise apply.

980           8. Transition Provision: In cities or towns that adopted a zoning ordinance or by-law  
981 requiring some form of site plan review or site plan approval prior to the effective date of this  
982 act, the provisions of this Section 9B. shall not be effective with respect to such zoning ordinance  
983 or by-law until the date 2 years after the effective date of this act.

984           C. Variances

985           1. Authority: Where a literal enforcement of the provisions of the zoning ordinance or  
986 by-law would cause substantial hardship to the petitioner, upon appeal or upon petition with  
987 respect to particular land or structures, the permit granting authority shall have the discretionary  
988 authority to grant a variance from the terms of the applicable zoning ordinance or by-law  
989 following a public hearing for which notice has been given by publication and posting as  
990 provided in section 9D and by mailing to the planning board and all parties in interest.

991           2. Standards: In making its determination, the permit granting authority shall take into  
992 consideration the benefit to the applicant if the variance is granted, as weighed against the  
993 detriment to the health, safety and welfare of the neighborhood or community by such grant.  
994 The permit granting authority may also take into consideration the extent to which the claimed  
995 hardship is self-created. In order to grant a variance the permit granting authority shall make all  
996 of the following findings:

997       a. the benefit sought by the applicant cannot be achieved by some method, feasible for the  
998 applicant to pursue, other than a variance;

999           b. the variance will not have a substantial undesirable effect on nearby properties, or  
1000 the character of the neighborhood, or on the environment;

1001           c. the variance will not nullify or substantially derogate from the intent or purpose of  
1002 such ordinance or by-law or the master plan under section 81D of chapter 41 upon which the  
1003 ordinance or by-law is based; and

1004           d. the claimed hardship relating to the property in question is unique, and does not  
1005 apply to a substantial portion of the district or neighborhood.

1006           In the granting of variances, the permit granting authority shall grant the minimum  
1007 variance that it shall deem necessary to relieve the hardship.

1008           3. Use Variances: Use variances are not included within the scope of this section  
1009 unless expressly so authorized by an ordinance or by-law. If so authorized, use variances shall  
1010 be subject to all the provisions of this section and to any additional more stringent criteria  
1011 contained in the ordinance or by-law.

1012           4. Conditions, Safeguards, and Limitations: The permit granting authority may impose  
1013 conditions, safeguards and limitations both of time and of use, including the continued existence  
1014 of any particular structures.

1015           5. Duration: Variances shall run with the land, except that a use variance may run with  
1016 land only if so determined by the permit granting authority acting pursuant to an ordinance or by-  
1017 law enabling such a determination.

1018           6. Recordation of Variance: No variance, or any extension, modification or renewal  
1019 thereof, shall take effect until a copy of the decision bearing the certification of the city or town  
1020 clerk that 20 days have elapsed after the decision has been filed in the office of the city or town  
1021 clerk is recorded in the registry of deeds for the county and district in which the land is located  
1022 and indexed in the grantor index under the name of the owner of record or is recorded and noted  
1023 on the owner's certificate of title.

1024           The certification shall include either:

1025           a. a statement that no appeal has been filed or that if such appeal has been filed, that it  
1026 has been dismissed or denied, or;

1027           b. if it is a variance which has been approved by reason of the failure of the permit  
1028 granting authority to act thereon within the time prescribed, a copy of the petition for the  
1029 variance accompanied by the statement of the city or town clerk stating the fact that the permit  
1030 granting authority failed to act within the time prescribed, and no appeal has been filed, and that  
1031 the grant of the petition resulting from such failure to act has become final or that if such appeal  
1032 has been filed, that it has been dismissed or denied.

1033           The fee for recording or registering shall be paid by the owner or applicant.

1034           7. Lapse, Extension: If the rights authorized by a variance are not exercised within two  
1035 years of the date of the grant of the variance such variance shall lapse; provided, however, that  
1036 upon written application by the grantee of such variance, the permit granting authority in its  
1037 discretion may extend the time for exercise of such rights for a period not to exceed one year.  
1038 Such application must be filed no later than 65 days prior to the lapse of the variance. If the  
1039 permit granting authority does not grant the extension within 65 days of the date of application  
1040 therefor, upon the lapse of the variance, the variance may be re-established only after notice and  
1041 a new hearing pursuant to the provisions of this section.

1042           D. Procedures for Applications, Hearings, and Decisions

1043           Unless otherwise provided for in this chapter, applications, hearings, and decisions  
1044 shall be in accordance with this section 9D.

1045           1. Applications: An application for a special permit or site plan review, or petition for  
1046 a variance or appeal shall be filed by the applicant or petitioner with the city or town clerk, and a  
1047 copy of said appeal, application, or petition, including the date and time of filing, certified by the  
1048 city or town clerk, shall be transmitted forthwith by the applicant or petitioner to the permit  
1049 granting authority or special permit granting authority as the case may be.

1050           2. Public Hearings:

1051           Notice of Hearing: In all cases where notice of a public hearing is required notice shall  
1052 be given by publication in a newspaper of general circulation in the city or town once in each of  
1053 2 successive weeks, the first publication to be not less than 14 days before the day of the hearing

1054 and by posting such notice in a conspicuous place in the city or town hall for a period of not less  
1055 than 14 days before the day of such hearing. In all cases where notice to individuals or specific  
1056 boards or other agencies is required, notice shall be sent by mail, postage prepaid. "Parties in  
1057 interest" as used in this chapter shall mean the petitioner, abutters, owners of land directly  
1058 opposite on any public or private street or way, and abutters to the abutters within 300 feet of the  
1059 property line of the petitioner as they appear on the most recent applicable tax list,  
1060 notwithstanding that the land of any such owner is located in another city or town, the planning  
1061 board of the city or town, and the planning board of every abutting city or town. The assessors  
1062 maintaining any applicable tax list shall certify to the permit granting authority or special permit  
1063 granting authority the names and addresses of parties in interest and such certification shall be  
1064 conclusive for all purposes. The permit granting authority or special permit granting authority  
1065 may accept a waiver of notice from, or an affidavit of actual notice to any party in interest or, in  
1066 his stead, any successor owner of record who may not have received a notice by mail, and may  
1067 order special notice to any such person, giving not less than 5 nor more than 10 additional days  
1068 to reply.

1069           b. Content of Notice: Publications and notices required by this section shall contain  
1070 the name of the petitioner, a description of the area or premises, street address, if any, or other  
1071 adequate identification of the location, of the area or premises which is the subject of the  
1072 petition, the date, time and place of the public hearing, the subject matter of the hearing, and the  
1073 nature of action or relief requested if any. No such hearing shall be held on any day on which a  
1074 state or municipal election, caucus or primary is held in such city or town.

1075           c. Consolidated Public Hearing on Special Permit for Subdivision: When a planning  
1076 board or department is also the special permit granting authority for a special permit applicable

1077 to a subdivision plan, the planning board or department may hold the special permit public  
1078 hearing together with a public hearing required by sections 81K to 81GG inclusive of chapter 41  
1079 and allow for the publication of a single advertisement giving notice of the consolidated hearing.

1080           3. Decisions:

1081           a. Notice of Decision: Upon the granting of a variance, special permit, site plan  
1082 review, or any extension, modification or renewal thereof, the permit granting authority or  
1083 special permit granting authority shall issue to the owner and to the applicant if other than the  
1084 owner a copy of its decision, certified by the permit granting authority or special permit granting  
1085 authority, containing the name and address of the owner, identifying the land affected, setting  
1086 forth compliance with the statutory requirements for the issuance of such variance, special  
1087 permit, or site plan review and certifying that copies of the decision and all plans referred to in  
1088 the decision have been filed with the planning board and city or town clerk.

1089           b. Final Unfavorable Decisions, Reconsideration: No appeal, application or petition  
1090 which has been unfavorably and finally acted upon by the special permit granting or permit  
1091 granting authority shall be acted favorably upon within 2 years after the date of final unfavorable  
1092 action unless said special permit granting authority or permit granting authority finds, by a  
1093 unanimous vote of a board of 3 members or by a vote of 4 members of a board of 5 members or  
1094 two-thirds vote of a board of more than 5 members, specific and material changes in the  
1095 conditions upon which the previous unfavorable action was based, and describes such changes in  
1096 the record of its proceedings, and unless all but one of the members of the planning board  
1097 consents thereto and after notice is given to parties in interest of the time and place of the  
1098 proceedings when the question of such consent will be considered. The aforesaid restriction

1099 upon reconsideration shall not apply to applications for site plan review for uses allowed by-  
1100 right.

1101           c. Withdrawal of Petition or Application: Any petition for a variance or application for  
1102 a special permit or a site plan review which has been transmitted to the permit granting authority  
1103 or special permit granting authority may be withdrawn, without prejudice by the petitioner prior  
1104 to the publication of the notice of a public hearing thereon, but thereafter may be withdrawn  
1105 without prejudice only with the approval of the special permit granting authority or permit  
1106 granting authority.

1107           E. Inclusionary Zoning

1108           1. Authority: In furtherance of the purposes of zoning ordinances and by-laws stated  
1109 in section 1 of this chapter and in the exercise of their home rule powers, a city or town, by  
1110 ordinance or by-law, may require or provide incentives for the applicant for a residential  
1111 development to provide inclusionary housing units within such development.

1112           2. Off-Site Units, Land Dedications, Payment of Funds: In lieu of constructing the  
1113 required inclusionary housing units on-site, the ordinance or by-law may provide for the  
1114 construction of such units off-site, the dedication of land for such purpose, or the payment of  
1115 funds to a separate account created by the city or town sufficient for and dedicated to the  
1116 provision of inclusionary housing, provided the applicant demonstrates to the satisfaction of the  
1117 local approving authority that the units cannot be otherwise provided on-site or that an  
1118 alternative proposal better meets the needs of the city or town with respect to the provision of  
1119 inclusionary housing. Off-site units, land dedication, or payment in-lieu of units shall, in the  
1120 opinion of the board or official designated by ordinance or by-law to administer the provisions of

1121 this section 9E and in consideration of local needs, provide inclusionary housing benefits roughly  
1122 equivalent to the provision of on-site units.

1123           3. Dedicated Accounts: Cities and towns are authorized to establish a separate  
1124 dedicated account for the deposit of funds received under this section, including Municipal  
1125 Housing Trust Fund accounts under section 55C of chapter 44 or other dedicated accounts of  
1126 similar purpose. Said funds shall be deposited with the treasurer and disbursed for inclusionary  
1127 housing purposes in accordance with the ordinances, by-laws, or regulations of the city or town.  
1128 Where the application of this section results in less than a full dwelling unit, the board may  
1129 accept a prorated payment of funds, in lieu of unit creation.

1130           4. Price or Rent Restriction: The inclusionary housing units shall be subject to an  
1131 affordable housing restriction in accordance with sections 31 and 32 of chapter 184 or, if  
1132 ineligible under said sections, restricted by other means as required in an ordinance or by-law for  
1133 a period of not less than 30 years.

1134           5. Eligibility for Subsidized Housing Inventory: The ordinance or by-law may further  
1135 require some or all of the inclusionary housing units to be low- or moderate-income housing as  
1136 defined in section 20-23 of chapter 40B, and be eligible for inclusion on the local subsidized  
1137 housing inventory subject to and in accordance with applicable regulations and guidelines of the  
1138 Department of Housing and Community Development or successor agency. Nothing in this  
1139 section shall be construed to require the Department of Housing and Community Development to  
1140 include affordable units created hereunder on the subsidized housing inventory.

1141           6. Nothing in this section shall limit the authority of a planning board under section  
1142 81Q of chapter 41, the Subdivision Control Law.

1143 F. Development Impact Fees

1144 1. Authority:

1145 a. Any city or town that adopts a local ordinance or by-law requiring the payment of a  
1146 development impact fee as a requirement of any permit or approval otherwise required for any  
1147 proposed development having development impacts as defined in the ordinance or by-law, shall  
1148 do so only in accordance with this section or any authority conferred by a special act. The  
1149 development impact fee may be imposed only on construction, enlargement, expansion,  
1150 substantial rehabilitation, or change of use of a development. The development impact fee shall  
1151 be used solely for the purposes of defraying the costs of off-site public capital facilities to be  
1152 provided or paid for by the city or town and which are either caused by and necessary to support  
1153 or compensate for the proposed development, or, in the case of a city or town authorized to  
1154 impose such fees under the provisions of a special act, then such fees may be used for the  
1155 purposes set forth in the special act.

1156 b. Such off-site public capital facilities may include the provision of infrastructure,  
1157 facilities, land, or studies associated with the following:

1158 (i) water supply, treatment, and distribution, both potable and for suppression of fires;

1159 (ii) wastewater treatment and sanitary sewerage;

1160 (iii) stormwater management and treatment;

1161 (iv) solid waste;

1162 (v) roads, public transportation, pedestrian ways, and bicycle paths; and

1163 (vi) parks, open space, and recreational facilities.

1164 c. Nothing in this section shall prohibit a city or town from imposing other fees or  
1165 requirements for mitigation of development impacts which it may otherwise impose under state  
1166 or local law and that are consistent with the constitution and laws of the Commonwealth.

1167 2. Limitations:

1168 a. No development impact fee under this section shall be imposed upon any affordable  
1169 housing dwelling unit, regardless of how created or permitted, which is subject to a restriction on  
1170 sale price or rent under the provisions of sections 31 and 32 of chapter 184 as amended ensuring  
1171 that the unit will remain affordable for a period of at least 30 years. The foregoing limitation  
1172 shall not apply to cities and towns imposing development impact fees under a special act.

1173 b. The fee shall not be expended for personnel costs, normal operation and  
1174 maintenance costs, or to remedy deficiencies in existing facilities, except where such deficiencies  
1175 are exacerbated by the new development, in which case the fee may be assessed only in  
1176 proportion to the deficiency so exacerbated.

1177 3. Requirements:

1178 a. Prior to the imposition of development impact fees under this section, a city or town  
1179 shall complete a study that:

1180 (i) analyzes any existing capital improvement plans and the infrastructure and capital  
1181 facilities subject matter of a plan adopted under section 81D of chapter 41 or the capital facilities  
1182 planning element of a local comprehensive plan adopted pursuant to Chapter 716 of the Acts of  
1183 1989, as amended;

1184 (ii) estimates future development based on the then current zoning ordinance or by-  
1185 law;

1186 (iii) assesses the impacts related to such development;

1187 (iv) determines the need for capital facilities required to address the impacts of the  
1188 estimated development including excess facility capacity, if any, currently planned to  
1189 accommodate future development;

1190 (v) develops cost projections for the needed capital facilities and documents costs of  
1191 existing facilities with planned excess capacity; and

1192 (vi) establishes the amount of any development impact fee authorized under this  
1193 section in accordance with a methodology determined pursuant to the study.

1194 b. The scope of the study may be limited to a geographic area and/or the category or  
1195 categories of public capital facilities that development impact fees may be intended to address.  
1196 A municipality may rely upon a recognized methodology for the study as approved by the  
1197 Interagency Planning Board under chapter 40U.

1198 c.. The study shall be updated periodically, at intervals of not greater than 10 years, to  
1199 reflect actual development activity, actual costs of infrastructure improvements completed or  
1200 underway, plan changes, or amendments to the zoning ordinance or by-law.

1201 d. A development impact fee shall have a rational nexus to, and shall be roughly  
1202 proportionate to, the impacts created by the development as determined by said study evaluating  
1203 said impacts, and it shall be applied to affected development in a consistent manner.

1204 Notwithstanding the foregoing, a city or town authorized to impose development impact fees  
1205 pursuant to a special act shall comply with the standards set forth in such special act.

1206 e. The purposes for which the fee is expended shall reasonably benefit the proposed  
1207 development.

1208 f. The fee may not be assessed more than once for the same impact, nor may the fee be  
1209 assessed for impacts, or portions thereof, offset by other dedicated means, including state or  
1210 federal grants or contributions made by the applicant undertaking the development.

1211 4. Administration:

1212 a. The ordinance or by-law may provide for a waiver or reduction of the development  
1213 impact fee for any development that furthers an overriding public purpose as set forth in a plan  
1214 adopted by the city or town under section 81D of chapter 41 or other plan designed to set goals  
1215 for the development of land within the city or town.

1216 b. If the proposed development is located in more than one municipality, the impact  
1217 fee shall be apportioned among the municipalities in accordance with the land area or other  
1218 equitable measure of the impacts of the proposed development in each city or town.

1219 c. Any development impact fee assessed under this section shall be payable no sooner  
1220 than the issuance of a building permit, or in the case of a phased development, for a building  
1221 permit for any phase thereof. The fee shall be deposited to a separate, interest bearing account in  
1222 the city or town in which the proposed development is located. Unless subject to section 4.d  
1223 below, no development impact fee shall be paid to the general treasury or used as general  
1224 revenues of the city or town subject to the provisions of section 53 of chapter 44.

1225           d. Any funds not expended or encumbered by the end of the calendar quarter  
1226 immediately following 10 years from the date the development impact fee was paid shall, upon  
1227 request of the applicant or its assigns, be returned with interest provided that an application for a  
1228 refund prescribed in the ordinance or by-law has been submitted within one 180 calendar days  
1229 prior to the expiration of the 10 year period. If no application for refund is received by the city  
1230 or town within said period, any funds not expended or encumbered by the end of the calendar  
1231 quarter shall then revert to and become part of the general fund under section 53 of chapter 44.  
1232 In the event of any disagreement relative to who shall receive the refund, the city or town may  
1233 retain said development impact fee pending instructions given in writing by the parties involved  
1234 or by a court of competent jurisdiction. Notwithstanding the foregoing, a city or town authorized  
1235 to impose development impact fees pursuant to a special act shall comply with the requirements  
1236 set forth in such special act.

1237           e. The applicant and the municipality may agree that the applicant shall construct the  
1238 public capital facility or a portion thereof for which the development impact fee was assessed in  
1239 lieu of paying the development impact fee to the municipality, provided that the applicant shall  
1240 not be required to construct such improvement if it chooses to pay the assessed development  
1241 impact fee.

1242           G. Land Use Dispute Avoidance

1243           1. Applicability: As an optional means of avoiding or minimizing land use disputes,  
1244 the owner of land or structures who has applied or intends to apply for a building permit, any  
1245 permit or approval required under this chapter, an approval under sections 81K-GG of chapter  
1246 41, or a comprehensive permit under sections 20-23 of chapter 40B, may request of the public

1247 official or local board charged with acting on the application to undertake a land use dispute  
1248 avoidance process as hereinafter provided.

1249           2. Initial Conflict Evaluation: The dispute avoidance process may include an initial  
1250 conflict evaluation to determine if a further resolution effort is advisable, and if so, whether there  
1251 should be subsequent resolution efforts to avoid or minimize disputes relating to the application.

1252           3. Participation: Both the conflict evaluation and any later resolution effort shall be  
1253 voluntary for those participating requiring the joint written agreement of both the applicant and  
1254 public official or local board which shall be filed with the city or town clerk.

1255           4. Neutral Facilitator: The conflict evaluation and any later resolution effort may be  
1256 conducted by a neutral facilitator as defined in section 23C of chapter 233, selected from a list  
1257 prepared by the Massachusetts Office of Dispute Resolution or its successor agency or its  
1258 designee, or as chosen jointly by the applicant and the public official or local board. The  
1259 facilitator and any associate assisting the facilitator shall comply with the standards of conduct of  
1260 the Association for Conflict Resolution or as promulgated by the Massachusetts Office of  
1261 Dispute Resolution or its successor agency or its designee.

1262           5. Costs: Funding for any conflict evaluation or resolution effort under this section  
1263 may be as the applicant and the public official or local board may agree, or the public official or  
1264 local board may provide for the imposition of reasonable fees for the employment of outside  
1265 consultants, including the facilitator, in the same manner as set forth in section 53G of chapter  
1266 44.

1267           6. Rules: Public officials or local boards may adopt, and from time to time amend,  
1268 after a public hearing, rules to implement the conflict evaluation or resolution efforts undertaken

1269 pursuant to this section. Notice of the hearing on the proposed rules, including the location, date,  
1270 and time of the hearing shall be filed with the city or town clerk and published once in a  
1271 newspaper of general circulation in the city or town at least 14 days before the public hearing.

1272           7. Process of Conflict Evaluation: As part of the conflict evaluation, the facilitator  
1273 may solicit information and opinions relating to the application, and may identify and notify  
1274 those members of the public likely to be interested in or affected by the application. The  
1275 facilitator may clarify the issues and investigate the willingness of all interested parties to work  
1276 together with the applicant to resolve those issues. The facilitator may identify measures or  
1277 community-enhancing features that would benefit the neighborhood, the larger community, and  
1278 the project itself. Based upon the evaluation, the facilitator may determine whether further  
1279 resolution effort would be productive in reaching a consensus of those participating, with the  
1280 understanding that the outcome may be the withdrawal or substantial modification of the  
1281 application.

1282           8. Special Provisions, Meetings: The facilitator may convene meetings or conduct  
1283 interviews that shall be confidential and privileged from discovery under section 23C of chapter  
1284 233. The facilitator shall have the protections provided under section 23C of chapter 233. To  
1285 the extent that public agencies are participants, their deliberations shall be subject to the  
1286 provisions of section 21(b) (9) of chapter 30A.

1287           9. Report on Conflict Evaluation: In preparing a report on conflict evaluation, or on a  
1288 later resolution effort, the facilitator shall not attribute statements, positions, ideas, or interests to  
1289 specific individuals, organizations, or persons interviewed, and shall distribute copies of the  
1290 report to those participating without prior review or approval of any participant. The conflict

1291 evaluation report shall indicate whether and how a subsequent resolution effort might be  
1292 appropriate for the application involved, including elaborating on how it might be undertaken  
1293 and by whom.

1294           10. Conflict Resolution: Based upon the conflict evaluation, the applicant and the  
1295 public official or local board may determine if a further resolution effort regarding an application  
1296 is worth undertaking in accordance with the procedures set out in this section, or as they may  
1297 otherwise in writing jointly agree. The applicant and the public official or local board may, by  
1298 an agreement in writing filed with the city or town clerk, stipulate and agree to extend any  
1299 otherwise applicable time requirements of state or local law.

1300           11. Conclusion of Process: At the conclusion of any conflict evaluation or resolution  
1301 efforts, the application which initiated the conflict evaluation and resolution efforts may go  
1302 forward in the ordinary course in accordance with the applicable statute, ordinance, or by-law,  
1303 reflecting if possible the result of any resolution effort, including the opportunity for public  
1304 hearing and comment if so provided by the applicable statute, ordinance, or by-law. If the  
1305 parties so agree, any resolution may be incorporated into the action taken by the local board or  
1306 official. Whether or not a resolution results, the applicant may nevertheless proceed with the  
1307 application without prejudice for having participated in a conflict evaluation or resolution effort,  
1308 and the application process shall proceed in due course as otherwise provided by statute,  
1309 ordinance, or by-law.

1310                           40A:10. Enforcement

1311           A. Zoning Enforcement Officer: The zoning enforcement officer shall be charged with  
1312 the enforcement of the zoning ordinance or by-law.

1313           B. Compliance with Zoning: The zoning enforcement officer shall withhold a permit  
1314 for the construction, alteration, or moving of any building or structure if the building or structure  
1315 as constructed, altered or moved would be in violation of any zoning ordinance or by-law.

1316           C. Compliance with Zoning, New Uses: No permit or license shall be granted for a  
1317 new use of a building, structure, or land which use would be in violation of any zoning ordinance  
1318 or by-law.

1319           D. Enforcement Procedures: If the zoning enforcement officer is requested in writing  
1320 to enforce such ordinances or by-laws against any person allegedly in violation of the same, said  
1321 officer shall notify, in writing, the party requesting such enforcement of any action or refusal to  
1322 act, and the reasons therefor, within 14 days of receipt of such request.

1323           E. Penalties for Violations: Notwithstanding any other provision of general or special  
1324 law, zoning ordinances and by-laws may provide a penalty of up to 1,000 dollars per violation;  
1325 provided, however, that nothing herein shall be construed to prohibit such laws from providing  
1326 that each day such violation continues shall constitute a separate offense.

1327           F. Limits to Enforcement: No action, suit, or proceeding shall be maintained in any  
1328 court, nor any administrative or other action taken to recover a fine or damages or to compel the  
1329 removal, alteration, or relocation of any structure or part of a structure or alteration of a structure  
1330 by reason of any violation of any zoning by-law or ordinance except in accordance with the  
1331 provisions of this section, section 8, and section 11.

1332           G. Duration of Ability to Enforce, Building Permit: If real property has been improved  
1333 and used in accordance with the terms of the original building permit issued by a person duly  
1334 authorized to issue such permits, no action, criminal or civil, the effect or purpose of which is to

1335 compel the abandonment, limitation or modification of the use allowed by said permit or the  
1336 removal, alteration or relocation of any structure erected in reliance upon said permit by reason  
1337 of any alleged violation of the provisions of this chapter, or of any ordinance or by-law adopted  
1338 thereunder, shall be maintained, unless such action, suit or proceeding is commenced and notice  
1339 thereof recorded in the registry of deeds for each county or district in which the land lies within 6  
1340 years next after the commencement of the alleged violation of law. Such structures shall not be  
1341 deemed to be protected nonconforming structures under section 6A of this chapter unless such  
1342 status is specifically conferred in the zoning ordinance or by-law.

1343           H. Duration of Ability to Enforce, Variance or Special Permit: No action, criminal or  
1344 civil, the effect or purpose of which is to compel the removal, alteration, or relocation of any  
1345 structure by reason of any alleged violation of the provisions of this chapter, or any ordinance or  
1346 by-law adopted thereunder, or the conditions of any variance or special permit, shall be  
1347 maintained, unless such action, suit or proceeding is commenced and notice thereof recorded in  
1348 the registry of deeds for each county or district in which the land lies within 10 years next after  
1349 the commencement of the alleged violation. Such notice shall include names of one or more of  
1350 the owners of record, the name of the person initiating the action, and adequate identification of  
1351 the structure and the alleged violation. Such structures or uses shall not be deemed to be  
1352 protected nonconforming structures or uses under section 6A of this chapter unless such status is  
1353 specifically conferred in the zoning ordinance or by-law.

1354           I. Judicial Review: The superior court and the land court shall have the jurisdiction to  
1355 enforce the provisions of this chapter, and any ordinances or by-laws adopted thereunder, and  
1356 may restrain by injunction violations thereof.

1357

40A:11. Judicial Review Procedures and Standards

1358

A. Appeals: Any person aggrieved by a decision of the board of appeals or any permit

1359 granting authority or special permit granting authority or by the failure of the board of appeals to

1360 take final action concerning any appeal, application, or petition within the required time or by the

1361 failure of any permit granting authority or special permit granting authority to take final action

1362 concerning any application for a site plan review or special permit within the required time,

1363 whether or not previously a party to the proceeding, or any municipal officer or board may

1364 appeal to the land court department, the superior court department in which the land concerned is

1365 situated or, if the land is situated in Hampden county, either to said land court or, superior court

1366 department or to the division of the housing court department for said county, or if the land is

1367 situated in a county, region or area served by a division of the housing court department either to

1368 said land court or superior court department or to the division of said housing court department

1369 for said county, region or area, or to the division of the district court department within whose

1370 jurisdiction the land is situated except in Hampden county, by bringing an action within 20 days

1371 after the decision has been filed in the office of the city or town clerk. If said appeal is made to

1372 said division of the district court department, any party shall have the right to file a claim for trial

1373 of said appeal in the superior court department within 25 days after service on the appeal is

1374 completed, subject to such rules as the supreme judicial court may prescribe. Notice of the action

1375 with a copy of the complaint shall be given to such city or town clerk so as to be received within

1376 such 20 days. The complaint shall allege that the decision exceeds the authority of the board or

1377 authority, and any facts pertinent to the issue, and shall contain a prayer that the decision be

1378 annulled. There shall be attached to the complaint a copy of the decision appealed from, bearing

1379 the date of filing thereof, certified by the city or town clerk with whom the decision was filed. If

1380 the complaint is filed by someone other than the original applicant, appellant or petitioner, such  
1381 original applicant, appellant, or petitioner and all members of the board of appeals, permit  
1382 granting authority, or special permit granting authority shall be named as parties defendant with  
1383 their addresses.

1384           B. Notice of Filing of Complaint: To avoid delay in the proceedings, instead of the  
1385 usual service of process, the plaintiff shall within 14 days after the filing of the complaint, send  
1386 written notice thereof, with a copy of the complaint, by delivery or certified mail to all  
1387 defendants, including the members of the board of appeals, permit granting authority, or special  
1388 permit granting authority and shall within 21 days after the entry of the complaint file with the  
1389 clerk of the court an affidavit that such notice has been given. If no such affidavit is filed within  
1390 such time the complaint shall be dismissed.

1391           C. Filing of Answer to Complaint: No answer shall be required but an answer may be  
1392 filed and notice of such filing with a copy of the answer and an affidavit of such notice given to  
1393 all parties as provided above within 7 days after the filing of the answer.

1394           D. Intervening Parties: Other persons may be permitted to intervene, upon motion.

1395           E. Hearing: The clerk of the court shall give notice of the hearing as in other cases  
1396 without jury, to all parties whether or not they have appeared. The court shall hear all evidence  
1397 pertinent to the authority of the board, permit granting authority, or special permit granting  
1398 authority and determine the facts, and, upon the facts as so determined, annul such decision if  
1399 found to exceed the authority of such board, permit granting authority, or special permit granting  
1400 authority or make such other decree as justice and equity may require. The foregoing remedy  
1401 shall be exclusive, notwithstanding any defect of procedure or of notice other than notice by

1402 publication, mailing or posting as required by this chapter, and the validity of any action shall not  
1403 be questioned for matters relating to defects in procedure or of notice in any other proceedings  
1404 except with respect to such publication, mailing or posting and then only by a proceeding  
1405 commenced within 90 days after the decision has been filed in the office of the city or town  
1406 clerk, but the parties shall have all rights of appeal and exception as in other equity cases.

1407           F. Special Provisions for Appealing Site Plan Review Decisions: Notwithstanding the  
1408 foregoing, and except where a site plan is required in connection with the issuance of a special  
1409 permit or variance, decisions made under site plan review pursuant to section 9B of this chapter,  
1410 whether made pursuant to statutory or home rule authority, may be appealed by a civil action in  
1411 the nature of certiorari pursuant to section 4 of chapter 249, and not otherwise. All issues in any  
1412 proceeding under this subsection shall have precedence over all other civil actions and  
1413 proceedings. A complaint by a plaintiff challenging a site plan approval shall allege the specific  
1414 reasons why the project fails to satisfy the requirements of section 9B, the zoning ordinance or  
1415 by-law, or other applicable law and allege specific facts establishing how the plaintiff is  
1416 aggrieved by such decision. A complaint by an applicant for site plan review challenging the  
1417 denial or conditioned approval of a site plan shall similarly allege the specific reasons why the  
1418 project properly satisfies the requirements of section 9B, the zoning ordinance or by-law, or  
1419 other applicable law. The permit granting authority's decision in either case shall be affirmed  
1420 unless the court concludes the permit granting authority abused its discretion under Section 9B,  
1421 the zoning ordinance or by-law, or other applicable law in approving the project, approving with  
1422 conditions, or denying the project.

1423           G. Appeals by Cities or Towns: A city or town may provide any officer or board of  
1424 such city or town with independent legal counsel for appealing, as provided in this section, a

1425 decision of a board of appeal, permit granting authority, or special permit granting authority and  
1426 for taking such other subsequent action as parties are authorized to take.

1427           H. Costs: Costs shall not be allowed against the board, permit granting authority, or  
1428 special permit granting authority unless it shall appear to the court that the board, permit granting  
1429 authority, or special permit granting authority in making the decision appealed from acted with  
1430 gross negligence, in bad faith or with malice. Costs shall not be allowed against the party  
1431 appealing from the decision of the board, permit granting authority, or special permit granting  
1432 authority unless it shall appear to the court that said appellant or appellants acted in bad faith or  
1433 with malice in making the appeal to the court.

1434           I. Requirement to Post Bond: The court shall require nonmunicipal plaintiffs to post a  
1435 surety or cash bond in a sum of not less than 2,000 nor more than 15,000 dollars to secure the  
1436 payment of such costs in appeals of decisions approving subdivision plans.

1437           J. Precedence: All issues in any proceeding under this section shall have precedence  
1438 over all other civil actions and proceedings.

1439           K. Mediation of Land Use Appeals:

1440           1. Initiation, Time Periods: After the filing of an appeal hereunder, the parties may  
1441 agree to mediate the decision appealed. In all cases, the parties shall file with the court a  
1442 statement advising the court that the dispute has been submitted for mediation. If the parties  
1443 agree to mediation, the mediation shall begin within 60 days of the date such statement was filed,  
1444 or such other period as the parties may agree or the court may allow upon application by any  
1445 party. The mediation shall conclude not later than 180 days after filing, provided that such

1446 period may be extended for an additional 180 days by joint written agreement of the parties, or  
1447 for such other additional period as the court may allow upon application by any party.

1448           2. Selection of Mediator, Compensation, and Withdrawal from Mediation: The parties  
1449 may select the mediator from a list provided by the court or otherwise as the parties may  
1450 determine. The mediator shall be compensated by the parties as they may agree, or in the  
1451 absence of agreement, as the court may determine. A party may withdraw from mediation at any  
1452 time after written notification to the other parties and to the court, but shall remain responsible  
1453 for that party's share of the costs of mediation until the time of withdrawal.

1454           3. Special Provisions: During the mediation, any appeal otherwise pending shall be  
1455 stayed. The mediator shall have the protections provided under section 23C of chapter 233. To  
1456 the extent that public agencies are participants in the mediation, their deliberations shall be  
1457 subject to the provisions of section 21(b) (9) of chapter 30A.

1458           4. Conclusion of Mediation: At the conclusion of the mediation, the mediator shall file  
1459 with the court a statement describing whether the parties have come to agreement. If unresolved,  
1460 the appeal will then go forward; if the matter has been resolved, the appeal will be dismissed  
1461 with prejudice. The cost of mediation shall be distributed among the parties as a cost of the  
1462 appeal as the parties may agree, or in the absence of agreement, as the court may determine.  
1463 Mediation hereunder shall not be the only method of resolving a zoning appeal.

1464   40A:12. Transition Provisions

1465           Any rights under section 6 of chapter 40A and any zoning ordinance or by-law  
1466 relating thereto that were finally acquired prior to [ Date ] shall continue in full force and effect  
1467 for the periods of time specified in said statute and local zoning law.

1468 SECTION 2. Section 81D of chapter 41 of the General Laws, as appearing in the  
1469 2008 Official Edition, is hereby amended by striking out section 81D and inserting in place  
1470 thereof the following section 81D:-

1471 41:81D. Master Plan

1472 1. Requirement to Plan: A planning board established in any city or town shall make a  
1473 master plan for such city or town. The plan shall take effect upon adoption by the legislative  
1474 body as provided in subsection 6, below. For a plan to remain in effect, from time to time not to  
1475 exceed 10 years from the date of adoption, the planning board shall conduct a comprehensive  
1476 review of the plan and may extend, revise, or remake the plan, and the plan or amendment  
1477 thereto shall thereafter be re-adopted as provided in this section. The plan, once adopted, shall  
1478 be the official master plan of the city or town, replacing any previously adopted master plans.

1479 2. General Description of Plan:

1480 a. The plan shall be a comprehensive framework, through text, maps, and illustrations  
1481 that provides a basis for decision making about land use and the long term physical development  
1482 of the municipality. Other completed and current plans, reports, and studies may be incorporated  
1483 by reference to fulfill in whole or in part the requirements of each subject listed below, provided  
1484 that such material will then be considered part the plan, including its implementation. The  
1485 master plan shall be internally consistent in its policies, forecasts and standards, and shall support  
1486 and provide a coherent rationale for the municipality's zoning ordinance or bylaws, subdivision  
1487 regulations, and other laws, regulations, policies, and capital expenditures.

1488 b. The plan shall include the required subjects identified in subsection 3, any optional  
1489 subjects in subsection 4 at the discretion of the municipality, and the regional plan self

1490 assessment in subsection 5. The plan subjects may be written as separate elements or organized  
1491 and integrated as deemed appropriate by the planning board. Due to the wide range of  
1492 community types, characteristics, and planning needs in the commonwealth it is recognized that  
1493 the subjects addressed with a particular city or town in mind may be expanded upon or  
1494 contracted as appropriate, and may vary greatly among communities in the focus and depth of  
1495 their analysis.

1496           3. Required Subjects: The plan shall address the following 5 required subjects,  
1497 described below in a general manner:

1498           a. Goals and Policies: A goals and policies statement that identifies the goals and  
1499 policies of the municipality for its future growth, development, redevelopment, conservation, and  
1500 preservation. Each community shall conduct a citizen participation process to determine  
1501 community values, to establish goals, and to identify patterns of development, redevelopment,  
1502 conservation, and preservation consistent with these goals. The goals and policies statement  
1503 shall address the required and selected optional plan elements

1504           b. Housing:

1505           (i) An inventory of local housing and population characteristics, an assessment and  
1506 forecast of housing needs; a statement of local housing goals, objectives, policies; and  
1507 implementing measures. Where applicable, existing local housing plans and studies may be  
1508 included by reference.

1509           (ii) An analysis of housing units by type of structure (e.g. single family, two family,  
1510 multi-family); affordable housing and subsidized housing; housing available for rental; special  
1511 needs housing; and housing for the elderly, including assisted living residences.

1512 (iii) An analysis of existing local policies, programs, laws, or regulations that  
1513 encourage the preservation, improvement, and development of such housing, including an  
1514 assessment of their adequacy.

1515 (iv) An evaluation of zoning and other policies to provide a variety of housing that  
1516 meets a broad range of housing needs, including but not limited to the affordable housing needs  
1517 of low, moderate, and median income households and the accessible housing needs of people  
1518 with disabilities and special needs. The evaluation shall include specific measures for  
1519 implementing the master plan in order to address these needs, including strategies, programs, and  
1520 assistance for the preservation or rehabilitation of existing housing; the construction of new  
1521 housing; and the adoption or amendment of local ordinances or bylaws and regulations  
1522 permitting, encouraging, or requiring diversity in housing locations, types, designs, and area  
1523 densities that offer alternatives to single family detached housing. A current housing production  
1524 plan consistent with M.G.L. 760 CMR 56.03(4) shall constitute the subject matter relative to  
1525 housing under this subsection b.

1526 c. Natural Resources and Energy:

1527 (i) A general overview of the significant natural and energy resources of the  
1528 municipality.

1529 (ii) Identification of protected and unprotected wetlands and water resources, lands  
1530 critical to sustaining surface and groundwater quality and quantity, environmentally sensitive  
1531 lands, critical wildlife habitat and biodiversity, agricultural lands and forests. Priorities for  
1532 protection of wildlife habitat, water resources, vistas and key landscapes, outdoor recreation  
1533 facilities, and farm and forestry land shall be identified.

1534 (iii) An outline of local laws, regulations, policies, and strategies to address needs for  
1535 the protection, restoration, and sustainable management of these resources, including wetlands  
1536 and water resources, environmentally sensitive lands, critical wildlife habitat and biodiversity,  
1537 agricultural lands, and forests; and to promote development that respects and enhances the state's  
1538 natural resources.

1539 (iv) An energy component that explores locally feasible land use strategies to:  
1540 maximize energy efficiency and renewable energy opportunities; support land, energy, water,  
1541 and materials conservation strategies, local clean power generation, distributed generation  
1542 technologies, and innovative industries; and address climate change by reducing greenhouse gas  
1543 emissions and the consumption of fossil fuels.

1544 d. Land Use and Zoning:

1545 (i) An identification of historic settlement patterns and present land uses, and  
1546 designation of the proposed distribution, location, and inter-relationship of public and private  
1547 land uses in a general manner sufficient to guide the development of zoning ordinances or by-  
1548 laws, and maps.

1549 (ii) Land use policies and related maps, which shall be based upon a land use  
1550 suitability analysis identifying areas most suitable for development and related transportation  
1551 infrastructure and facilities. Preservation, growth and development areas shall support the  
1552 revitalization of city and town centers and neighborhoods by promoting preservation and  
1553 development that is compact, conserves land, protects historic resources, integrates uses, and  
1554 coordinates the provision of housing with the location of jobs, transit and services, and new  
1555 infrastructure. The plan shall also identify areas for economic development and job creation,

1556 related public and private transportation and pedestrian connections, and encourage the creation  
1557 or extension of pedestrian-friendly districts and neighborhoods that mix commercial, civic,  
1558 cultural, educational, and recreational activities with open space and housing.

1559 (iii) A consideration of the relationship between proposed development intensity and  
1560 the capacity of land and existing and planned public facilities and infrastructure.

1561 (iv) A mapped land use plan illustrating the general land use policies and desired  
1562 future development patterns of the municipality, and a proposed zoning map.

1563 e. Implementation: An implementation program that defines and schedules the specific  
1564 municipal actions necessary to achieve the objectives of the master plan. This program may be  
1565 separately written or integrated into the required and selected subject matter. This  
1566 implementation program shall specify the course of action by which the municipality's  
1567 regulatory structures, including zoning and subdivision control regulations, may need to be  
1568 amended in order not to be inconsistent with the master plan. This element shall examine the  
1569 current land use permitting process in a community and, if necessary, make recommendations for  
1570 the development of clear, predictable, coordinated, and timely procedures thereunder, including  
1571 an assessment of the adequacy and effectiveness of the existing structure of local government,  
1572 including the roles and responsibilities of elected and appointed boards, officers, and personnel,  
1573 to implement the master plan through land use ordinances, by-laws, and regulations.

1574 4. Optional Subjects: The following 6 subjects are optional, and described below in a  
1575 general manner:

1576 a. Economic Development:

1577 (i) An inventory and analysis of the local economic base, including: employment;  
1578 local industries and business clusters; labor force characteristics; land and buildings used for  
1579 nonresidential purposes, including vacant space; and office, retail, and industrial market  
1580 conditions.

1581 (ii) An assessment of opportunities and barriers to economic development, including  
1582 but not limited to identification of land use policies and available locations that: support the  
1583 growth of jobs, the retention of existing businesses, and the provision of space for new  
1584 businesses; encourage the reuse and rehabilitation of existing infrastructure, including  
1585 brownfields, rather than the construction of new infrastructure in undeveloped areas; and  
1586 facilitate larger-scale economic redevelopment or development in industry clusters consistent or  
1587 compatible with the regional and local economy.

1588 (iii) An assessment of opportunities and barriers to agriculture, including all branches  
1589 of farming and forestry, where applicable.

1590 (iv) An assessment of opportunities and barriers to self-employment and home  
1591 occupations, including but not limited to consideration of land use policies, infrastructure and  
1592 utilities, and technology.

1593 b. Cultural Resources:

1594 (i) An inventory of the significant cultural, scenic, and historic structures, sites, and  
1595 landscapes of the municipality, including archaeological resources.

1596 (ii) An assessment of policies and strategies to protect and manage the community's  
1597 cultural resources, including but not limited to a community-wide preservation plan, ordinances

1598 or bylaws and incentives for historic preservation, and land use policies to facilitate the reuse of  
1599 historic structures, where appropriate.

1600           c. Open Space and Recreation: An inventory of recreational facilities and open space  
1601 areas of the municipality, and policies and strategies for the management, protection, and  
1602 enhancement of such facilities and areas. A current Open Space and Recreational Plan approved  
1603 by the Division of Conservation Services shall constitute the subject matter relative to open  
1604 space and recreation hereunder.

1605           d. Infrastructure and Capital Facilities: An identification and analysis of existing and  
1606 forecasted needs for infrastructure and facilities used by the public. Scheduled expansion or  
1607 replacement of public facilities, infrastructure components such as water and sewer systems or  
1608 circulation system components and the anticipated costs and revenues associated with  
1609 accomplishment of such activities shall be detailed. This subject shall be required in a master  
1610 plan if development impact fees are to be assessed under section 9F of chapter 40A. The master  
1611 plan may be updated at any time to include this subject matter provided the requirements in  
1612 subsections 5 and 6 are met.

1613           e. Transportation:

1614           (i) An inventory of existing and proposed circulation and transportation systems.

1615           (ii) An assessment of opportunities and barriers to increasing access to available or  
1616 feasible transportation options, including land and water based public transit, bicycling, walking,  
1617 and transportation services for populations with disabilities.

1618 (iii) Identification of strategic investment options for transportation infrastructure to  
1619 encourage smart growth, maximize mobility, conserve fuel, and improve air quality; and to  
1620 facilitate the location of new development where a variety of transportation modes can be made  
1621 available.

1622 f. Partnership Planning: This subject shall be known as the “partnership plan,” and  
1623 shall be required in a master plan if a city or town wishes to accept the provisions of chapter  
1624 40U. The partnership plan shall be consistent with this section 81D and the requirements set  
1625 forth in chapter 40U relative thereto. A master plan may be updated at any time to include this  
1626 subject matter provided the requirements in subsections 5 and 6 are met.

1627 5. Regional Plan, Self Assessment: Any required or selected optional subjects above  
1628 shall include a self assessment against similar subject matter in a regional plan adopted by the  
1629 regional planning agency under section 5 of chapter 40B and in effect, if any.

1630 6. Adoption of Plan:

1631 a. Proposal of the Plan: The plan shall only be made, extended, revised, or remade  
1632 from time to time by a simple majority vote of the planning board after a public hearing, notice  
1633 of which shall be posted and published in the manner prescribed for zoning amendments under  
1634 section 7 of chapter 40A,

1635 b. Adoption of the Plan: Adoption of the plan, or the extension, revision, or remake of  
1636 the plan, shall be by a simple majority vote the legislative body of the city or town; however, no  
1637 vote of the legislative body to alter the plan or amendment as proposed by the planning board  
1638 shall be other than by a two-thirds vote.

1639 c. The planning board shall, upon completion of any plan or report, or any change or  
1640 amendment to a plan or report produced under this section, furnish a copy of such plan or report  
1641 or amendment thereto, to the Department of Housing and Community Development.

1642 7. Regional Planning Agency, Optional Review and Certification of Plans:

1643 a. Review of Master Plan: Prior to local legislative adoption of a master plan under  
1644 this section, the plan may, at the election of the planning board and chief executive officer, be  
1645 referred to the applicable regional planning agency for review and certification. The regional  
1646 planning agency may, at its election, review the plan for certification, but must provide written  
1647 notice to the city or town within 15 days from receipt of the plan if it intends not to review the  
1648 plan. If the regional planning agency has elected to review the plan it shall act within 90 days of  
1649 receipt of the plan. Failure to act within 90 days shall be deemed a plan certification by the  
1650 regional planning agency. The 90 day review period shall be extended by not longer than 90  
1651 days by the regional planning agency upon written request by the planning board of the city or  
1652 town.

1653 b. Scope of Review of Master Plan: Review and certification by the regional planning  
1654 agency shall be limited to an assessment of plan compliance with those requirements of this  
1655 section that are applicable to the city or town with due regard for the regional context of the city  
1656 or town. The review process may be interactive and iterative between the regional planning  
1657 agency and the planning board; changes to the plan mutually agreed upon may be made by  
1658 simple majority vote of the planning board during the review period or extensions thereof. Once  
1659 the review is completed by the regional planning agency, with or without certification,  
1660 comments, or outstanding issues, it may be brought to the local legislative body for adoption if

1661 the planning board so votes by a simple majority. A plan that has been certified by the regional  
1662 planning agency and adopted by the city or town shall be presumed to be in compliance with this  
1663 section. A plan that has not been so certified, for any reason including non-referral to the  
1664 regional planning agency, shall not for that reason alone be presumed to be out of compliance  
1665 with this section.

1666           c. Review of Partnership Plan: Review and certification by the regional planning  
1667 agency of a partnership plan pursuant to Chapter 40U shall be in accordance with subsection 7.a,  
1668 above, and shall consider whether a proposed partnership plan is: (i) complete ; and (ii)  
1669 consistent with the commonwealth's land use objectives as set forth in Chapter 40U. A  
1670 partnership plan shall be determined to be complete if, in addition to the requirements for  
1671 required subjects set forth in subsection 3 above of this section 81D it also contains all the  
1672 elements required in section 4 of chapter 40U. A partnership plan shall be determined to be  
1673 consistent with the commonwealth's land use objectives if it satisfies the minimum standards for  
1674 consistency in accordance with section 5 of chapter 40U. The review process may be interactive  
1675 and iterative between the regional planning agency and the planning board; changes to the  
1676 partnership plan mutually agreed upon may be made by simple majority vote of the planning  
1677 board during the review period or extensions thereof. Once the review is completed by the  
1678 regional planning agency and the partnership plan is certified as complete and consistent, it may  
1679 be brought to the local legislative body for adoption if the planning board so votes by a simple  
1680 majority. A partnership plan that has been certified by the regional planning agency and adopted  
1681 by the city or town shall be presumed to be in compliance with this section 81D and chapter  
1682 40U. A partnership plan that has not been so certified, for any reason including non-referral to  
1683 the regional planning agency, shall not be in compliance with this section 81D and chapter 40U.

1684 d. Consolidated Review of Master Plan and Partnership Plan: For the purposes of this  
1685 subsection 7, and to meet the planning requirements of a partnership community under chapter  
1686 40U, a master plan containing a partnership plan may be submitted to the regional planning  
1687 agency for review and certification in a consolidated manner,  
1688 provided the requirements of each plan are met.

1689 SECTION 3. Section 81L of chapter 41 of the General Laws, as appearing in the  
1690 2008 Official Edition, is hereby amended by striking out, in lines 52-78 inclusive, the definition  
1691 of “Subdivision” and inserting in place thereof the following definition:-

1692 “Subdivision” shall mean the division of a lot, tract, or parcel of land into 2 or more  
1693 lots, tracts, or parcels of land and shall include re-subdivision. When appropriate to the context,  
1694 subdivision shall include the process of subdivision or the land or territory subdivided. A change  
1695 in the line of any lot, tract, or parcel created by recorded deed or shown on a recorded plan may  
1696 be defined as a minor subdivision and, in such case, be governed by the provisions of section  
1697 81P.

1698 SECTION 4. Section 81L of said chapter 41, as so appearing, is hereby amended by  
1699 inserting the following definition:-

1700 “Minor Subdivision” shall mean a subdivision created in accordance with section 81P,  
1701 provided however that until rules and regulations are adopted by a planning board under 81P  
1702 therefor, “minor subdivision” shall solely mean the division of a lot, tract, or parcel of land into 2  
1703 or more lots, tracts, or parcels where, at the time when it is made, every lot within the lot, tract or  
1704 parcel so divided has frontage on: a) a public way or a way which the clerk of the city or town  
1705 certifies is maintained and used as a public way; b) a way shown on a plan theretofore approved

1706 and endorsed in accordance with the subdivision control law; or c) a way in existence when the  
1707 subdivision control law became effective in the city or town in which the land lies, having, in the  
1708 opinion of the planning board, sufficient width, suitable grades and adequate construction to  
1709 provide for the needs of vehicular traffic in relation to the proposed use of the land abutting  
1710 thereon or served thereby, and for the installation of municipal services to serve such land and  
1711 the buildings erected or to be erected thereon. Such frontage shall be of at least such distance as  
1712 is then required by the zoning ordinance or by-law, if any, of said city or town for erection of a  
1713 building on such lot, and if no distance is so required, such frontage shall be of at least 20 feet.

1714           SECTION 5. Section 81M of said chapter 41, as so appearing, is hereby amended by  
1715 inserting, after the word “systems”, in line 23, the words:- , and for those aspects of a plan  
1716 adopted by the city or town under section 81D of this chapter which are particular to the  
1717 subdivision of land.

1718           SECTION 6. Section 81O of said chapter 41, as so appearing, is hereby amended by  
1719 striking out the second sentence in the first paragraph and inserting in place thereof the following  
1720 sentences:- After the approval of a plan, the location and width of ways, and the number, shape,  
1721 and size of the lots shown thereon, may not be changed unless the plan is amended as provided  
1722 in section 81W. In the alternative, a planning board may adopt rules and regulations under  
1723 sections 81P and 81Q of this chapter defining and regulating such changes as minor  
1724 subdivisions.

1725           SECTION 7. Said section 81O of said chapter 41, as so appearing, is hereby amended  
1726 by striking out the second paragraph and inserting in place thereof the following paragraph:-

1727 For the purposes of the time within which a planning board must act, a plan shall be  
1728 deemed submitted under this section as of the date of the next regularly scheduled meeting of the  
1729 planning board, provided that during posted business hours the plan is both received by the  
1730 planning board and filed with the town clerk no later than 7 calendar days prior to said meeting  
1731 date, or 35 calendar days after such receipt by the planning board and filing with the town clerk,  
1732 whichever shall first occur. An incomplete submission or one not in accordance with submittal  
1733 requirements may be the basis upon which the planning board may deny approval of the plan.  
1734 Notwithstanding the foregoing, a planning board or its designee may give notice to the applicant  
1735 of how the application is incomplete or not in accordance with said submittal requirements and  
1736 may grant to the applicant additional time to effect corrective measures.

1737 SECTION 8. Said chapter 41, as so appearing, is hereby amended by striking out  
1738 section 81P and inserting in place thereof the following section 81P:-

1739 41:81P. Minor Subdivisions

1740 1) Applicability: Minor subdivisions, as defined in this chapter, and as may be further  
1741 defined in the local subdivision rules and regulations, shall be governed by this section. Section  
1742 81S and the public hearing requirements in section 81T of this chapter shall not apply to minor  
1743 subdivisions. Except as provided below, all other sections of the subdivision control law that  
1744 apply to subdivisions shall apply to minor subdivisions in so far as apt.

1745 2) Rules and Regulations, Transition Provision: A planning board may adopt  
1746 alternative rules and regulations under section 81Q of this chapter relative to minor subdivisions,  
1747 but in no case may such rules and regulations impose a procedural or substantive requirement  
1748 more stringent than those specified in this chapter, this section 81P, or contained in the local

1749 rules and regulations otherwise applicable to subdivisions. Until such rules and regulations are  
1750 adopted, the procedures under subsection 6 below shall apply to minor subdivisions.

1751           3) Rules and Regulations, Required Provisions: The rules and regulations for minor  
1752 subdivisions shall: a) specify that an application for a minor subdivision may create up to 6  
1753 additional residential lots within the meaning of the subdivision control law, either on ways  
1754 described in the definition of minor subdivision or on new ways; b) set forth the reasonable  
1755 requirements and standards of the board for those existing ways described in the definition of  
1756 minor subdivision, provided that no requirements shall be made for the location of such ways or  
1757 for a roadway width of greater than 22 feet; c) set forth the reasonable requirements and  
1758 standards of the board for the proposed ways shown on a plan, provided that no requirement may  
1759 be made for a roadway width of greater than 22 feet; and d) establish a time period for the  
1760 planning board to take final action and to file with the city or town clerk a certificate of such  
1761 action within 65 days or less in the case of an existing way, or 95 days or less in the case of a  
1762 new way.

1763           4) Rules and Regulations, Optional Provisions The rules and regulations for minor  
1764 subdivisions may: a) notwithstanding subsection 1), above require a public hearing under Section  
1765 81T of this chapter for minor subdivisions served by a new way; b) require that applications for  
1766 minor subdivisions from the same lot, tract, or parcel from which the first minor subdivision was  
1767 created not create more than the maximum number of additional lots in a set period of years; c)  
1768 lessen or eliminate any requirement of section 81U of this chapter otherwise applicable to  
1769 subdivisions; and d) lessen or eliminate any local rule or regulation adopted under section 81Q of  
1770 this chapter otherwise applicable to subdivisions.

1771           5) Rules and Regulations, Optional Provisions Requiring Ratification by Legislative  
1772 Body: Subject to ratification by the local legislative body by a simple-majority vote, the rules  
1773 and regulations for minor subdivisions may: a) increase the maximum number of additional lots  
1774 created in an application for a minor subdivision to a number greater than 6; and b) define  
1775 “minor subdivision” more broadly than in section 81L of this chapter.

1776           6) Alternate Procedures for Minor Subdivisions Until Rules and Regulations Adopted:  
1777 Until such rules and regulations are adopted, any person wishing to cause to be recorded a plan  
1778 of land situated in a city or town in which the subdivision control law is in effect, who believes  
1779 that his plan does not require approval under the subdivision control law, may submit his plan to  
1780 the planning board of such city or town in the manner prescribed in section 81T, and, if the board  
1781 finds that the plan does not require such approval, it shall forthwith, without a public hearing,  
1782 endorse thereon or cause to be endorsed thereon by a person authorized by it the words “approval  
1783 under the subdivision control law not required” or words of similar import with appropriate name  
1784 or names signed thereto, and such endorsement shall be conclusive on all persons. Such  
1785 endorsement shall not be withheld unless such plan shows a subdivision. If the board shall  
1786 determine that in its opinion the plan requires approval, it shall within 21 days of such submittal,  
1787 give written notice of its determination to the clerk of the city or town and the person submitting  
1788 the plan, and such person may submit his plan for approval as provided by law and the rules and  
1789 regulations of the board, or he may appeal from the determination of the board in the manner  
1790 provided in section 81BB. If the board fails to act upon a plan submitted under this section or  
1791 fails to notify the clerk of the city or town and the person submitting the plan of its action within  
1792 21 days after its submission, it shall be deemed to have determined that approval under the  
1793 subdivision control law is not required, and it shall forthwith make such endorsement on said

1794 plan, and on its failure to do so forthwith the city or town clerk shall issue a certificate to the  
1795 same effect. The plan bearing such endorsement or the plan and such certificate, as the case may  
1796 be, shall be delivered by the planning board, or in case of the certificate, by the city or town  
1797 clerk, to the person submitting such plan. The planning board of a city or town which has  
1798 authorized any person, other than a majority of the board, to endorse on a plan the approval of  
1799 the board or to make any other certificate under the subdivision control law, shall transmit a  
1800 written statement to the register of deeds and the recorder of the land court, signed by a majority  
1801 of the board, giving the name of the person so authorized.

1802           SECTION 9. Section 81Q of said chapter 41, as so appearing, is hereby amended by  
1803 inserting, after the second sentence, in line 22, the sentence:- Without limiting the foregoing,  
1804 there shall be a rebuttable presumption that requirements for a roadway width of greater than 24  
1805 feet are unlawfully excessive.

1806           SECTION 10. Said section 81Q of said chapter 41, as so appearing, is hereby  
1807 amended by inserting after the word “thereof,” in line 69, the following words:- “except that the  
1808 rules and regulations may require the plan to show a park or parks suitably located for  
1809 playground or recreation purposes benefiting the lots in the subdivision or for providing light and  
1810 air, and not exceeding 5 percent of the land being subdivided.”

1811           SECTION 11. Said section 81Q of said chapter 41, as so appearing, is hereby  
1812 amended by inserting after the first paragraph the following paragraphs:-

1813           After January 1, 2017, no subdivision rule or regulation may be inconsistent with a  
1814 plan adopted in compliance with section 81D of chapter 41. No subdivision rule or regulation  
1815 shall be deemed inconsistent with the plan if it furthers, or at least does not impede, the

1816 achievement of the plan's goals and policies, and if it is not incompatible with the plan's  
1817 proposed land uses and development patterns.

1818           After the effective date of the plan, a subdivision rule or regulation shall enjoy a  
1819 rebuttable presumption in any action, suit, or administrative proceeding that its provisions are not  
1820 inconsistent with the plan. If the presumption is rebutted, inconsistency may serve as the basis  
1821 upon which a court or administrative agency may declare any relevant zoning ordinance or by-  
1822 law provision to be invalid as applied to the property which is the subject of the action, suit, or  
1823 administrative proceeding. For any amendment to a plan adopted after January 1, 2017, no such  
1824 declaration of invalidity may be made in any action, suit, or administrative proceeding for a  
1825 period of 12 months after the effective date of such plan amendment.

1826           For the purposes of this section only, a city or town without a current local plan under  
1827 section 81D of chapter 41 may adopt an extant regional plan under section 5 of chapter 40B.  
1828 Such adoption shall be by the same process specified in section 81D of chapter 41.

1829           SECTION 12. Section 81T of said chapter 41, as so appearing, is hereby amended by  
1830 striking out, in lines 2-3 inclusive, the following words “or for a determination that approval is  
1831 not required”.

1832           SECTION 13. Said section 81U of said chapter 41, as so appearing, is hereby  
1833 amended by striking out, in lines 173-174 inclusive, the words “for a period of not more than  
1834 three years”.

1835           SECTION 14. Section 81X of said chapter 41, as so appearing, is hereby amended by  
1836 striking out, in lines 12-13 inclusive, the following words “such plan bears the endorsement of

1837 the planning board that approval of such plan is not required, as provided in section eighty-one P,  
1838 or (3)".

1839 SECTION 15. Said section 81X of said chapter 41, as so appearing, is hereby  
1840 amended by striking out, in lines 17-20 inclusive, the following words "or that it is a plan  
1841 submitted pursuant to section eighty-one P and that it has been determined by failure of the  
1842 planning board to act thereon within the prescribed time that approval is not required,".

1843 SECTION 16. Said section 81X of said chapter 41, as so appearing, is hereby  
1844 amended by striking out the fourth paragraph and inserting in place thereof the following  
1845 paragraphs:-

1846 Perimeter Plans: Notwithstanding the foregoing provisions of this section, the register  
1847 of deeds shall accept for recording, and the land court shall accept with a petition for registration  
1848 or confirmation of title, any plan bearing a professional opinion by a registered professional land  
1849 surveyor that the property lines shown are the lines dividing existing ownerships, and the lines of  
1850 streets and ways shown are those of public or private streets or ways already established, and that  
1851 no new lines for division of existing ownership or for new ways are shown.

1852 Lot Line Changes: The register of deeds and the land court shall accept for recording  
1853 or registration any plan showing a change in the line of any lot, tract, or parcel bearing a  
1854 professional opinion by a registered professional land surveyor and a certificate by the person or  
1855 board charged with the enforcement of the zoning ordinance or by-law of the city or town that  
1856 the property lines shown: do not create an additional building lot; do not create, add to, or alter  
1857 the lines of a street or way; do not render an existing legal lot or structure illegal; do not render  
1858 an existing nonconforming lot or structure more nonconforming; and are not subject to

1859 alternative local rules and regulations for minor subdivisions under section 81P of this chapter.  
1860 The recording of such plan shall not relieve any owner from compliance with the provisions of  
1861 the Subdivision Control Law or of any other applicable provision of law.

1862           SECTION 17. Said section 81BB of said chapter 41, as so appearing, is hereby  
1863 amended by striking out the first paragraph and inserting in place thereof the following  
1864 paragraph:-

1865           Section 81BB. Any person, whether or not previously a party to the proceedings, or  
1866 any municipal officer or board, aggrieved by a decision of a board of appeals under section 81Y,  
1867 or by any decision of a planning board concerning a plan of a subdivision or minor subdivision  
1868 of land, or by the failure of such a board to take final action concerning such a plan within the  
1869 required time, may appeal to the superior court for the county in which said land is situated or to  
1870 the land court; provided, that such appeal is entered within 20 days after such decision has been  
1871 recorded in the office of the city or town clerk or within 20 days after the expiration of the  
1872 required time as aforesaid, as the case may be, and notice of such appeal is given to such city or  
1873 town clerk so as to be received within such 20 days. A complaint by a plaintiff challenging a  
1874 subdivision or minor subdivision approval under this section shall allege the specific reasons  
1875 why the subdivision or minor subdivision fails to satisfy the requirements of the board's rules  
1876 and regulations or other applicable law and allege specific facts establishing how the plaintiff is  
1877 aggrieved by such decision. A complaint by an applicant challenging a subdivision or minor  
1878 subdivision denial or conditioned approval under this section shall allege the specific reasons  
1879 why the subdivision or minor subdivision properly satisfies the requirements of the board's rules  
1880 and regulations or other applicable law. The board's decision in either case shall be affirmed

1881 unless the court concludes the board abused its discretion in approving, approving with  
1882 conditions, or denying the subdivision or minor subdivision, as the case may be.

1883 SECTION 18. Section 53G of chapter 44 of the General Laws, as appearing in the  
1884 2008 Official Edition, is hereby amended by inserting after the number “9”, in line 2, the  
1885 following numbers and letters:- A, 9B, 9G,

1886 SECTION 19. The General Laws are hereby amended by inserting after Chapter 40T  
1887 the following chapter: -- CHAPTER 40U LAND USE PARTNERSHIP ACT

1888 CHAPTER 40U

1889 LAND USE PARTNERSHIP ACT

- 1890 1. Preamble; Statement of the Commonwealth’s Land Use Objectives
- 1891 2. Definitions
- 1892 3. Preparation, Adoption, and Certification of a Partnership Plan
- 1893 4. Elements of a Partnership Plan
- 1894 5. Minimum Standards for Consistency with Commonwealth’s Land Use Objectives
- 1895 6. Preparation, Adoption, Review, and Certification of Implementing Regulations
- 1896 7. Partnership Community Effective Date
- 1897 8. Effect of Partnership Plan Status on Zoning and Land Use Regulation
- 1898 9. Review of Certification by Regional Planning Agency

1899 10. Expiration; Renewal of Certified Partnership Community Status; Amendments

1900 11. Priority for Infrastructure Funding

1901 12. Consideration Under State Programs

1902 40U:1. Preamble; Statement of the Commonwealth's Land Use Objectives

1903 The sections herein this chapter shall be known and may be cited as the "Land Use  
1904 Partnership Act." The purposes of the act shall be to advance the commonwealth's land use  
1905 objectives, which are as follows:

1906 A) Support the revitalization of city and town centers and neighborhoods by  
1907 promoting development that is compact, conserves land and integrates uses;

1908 B) Support the construction and rehabilitation of homes near jobs, infrastructure and  
1909 transportation options to meet the needs of people of all abilities, income levels, and household  
1910 types;

1911 C) Attract businesses and jobs to locations near housing, infrastructure, and  
1912 transportation options;

1913 D) Protect environmentally sensitive lands, natural resources, agricultural lands,  
1914 critical habitats, wetlands and water resources, and cultural and historic structures and  
1915 landscapes;

1916 E) Construct and promote developments, buildings, and infrastructure that conserve  
1917 natural resources by reducing waste and pollution through efficient use of land, energy and  
1918 water;

1919 F) Support transportation options that maximize mobility, reduce congestion, conserve  
1920 fuel and improve air quality;

1921 G) Maximize energy efficiency and renewable energy opportunities to reduce  
1922 greenhouse gas emissions and consumption of fossil fuels;

1923 H) Promote equitable sharing of the benefits and burdens of development;

1924 I) Make regulatory and permitting processes for development clear, predictable,  
1925 coordinated, and timely in accordance with smart growth and environmental stewardship; and

1926 J) Support the development and implementation of local and regional plans that have  
1927 broad public support and are consistent with these purposes.

1928 40U:2. Definitions

1929 As used in this chapter, the following words shall, unless the context clearly requires  
1930 otherwise, have the following meanings:

1931 “Affordable housing” shall have the definition found in Chapter 40A.

1932 “By-right” shall have the definition found in Chapter 40A.

1933 “Chief executive officer” shall have the definition found in Chapter 40A.

1934 “Constructively approved” means deemed approved by the failure of the granting  
1935 authority to issue a decision or determination within the time prescribed, as it may be extended  
1936 by written agreement between the applicant and the granting authority; provided that an  
1937 applicant who seeks approval by reason of the failure of the granting authority to act within such

1938 time prescribed, shall so notify the city or town clerk, and parties in interest, in writing within 14  
1939 days from the expiration of the time prescribed or extended time, if applicable, of such approval.

1940 “Development agreement”, a contract entered into between a municipality or  
1941 municipalities and a holder of property development rights, the principal purpose of which is to  
1942 establish the development regulations that will apply to the subject property during the term of  
1943 the agreement and to establish the conditions to which the development will be subject including,  
1944 without limitation, a schedule of development impact fees.

1945 “Economic development district” shall mean a zoning district that: permits or allows  
1946 commercial and/or industrial use; or permits or allows mixed use including commercial and/or  
1947 industrial use; and is an eligible location.

1948 “Eligible location” shall mean an area that by virtue of its physical and regulatory  
1949 suitability for development, the adequacy of transportation and other infrastructure and the  
1950 compatibility of proximate land uses is, in the determination of the regional planning agency, a  
1951 suitable location for development of the type contemplated by a partnership plan. Any area that  
1952 would qualify as an “eligible location” under chapter 40R shall automatically qualify as an  
1953 “eligible location” for a residential development district.

1954 “Housing target number” shall mean a number equal to 5 percent of the total number  
1955 of year-round housing units enumerated for the municipality in the latest available United States  
1956 census as of the date on which the plan was submitted to the regional planning agency.

1957 “Implementing regulations” shall mean the local zoning ordinances or by-laws,  
1958 subdivision rules and regulations, and other local land use regulations, or amendments thereof,

1959 necessary to effectuate the minimum standards for consistency with the commonwealth's land  
1960 use objectives established or required by a partnership plan.

1961 "Interagency planning board" shall mean a board comprised of the secretary of  
1962 Housing and Economic Development, the secretary of Energy and Environmental Affairs, and  
1963 the state permit ombudsman, or their designees, together with a representative designated by the  
1964 Massachusetts Association of Regional Planning Agencies (the "regional representative"), a  
1965 representative designated by the Massachusetts Municipal Association (the "municipal  
1966 representative"), and a representative designated by the Massachusetts Association of Planning  
1967 Directors (the "planning representative"). The state permit ombudsman shall serve as the chair  
1968 of the board and shall vote only in the case of a tie.

1969 "Low impact development techniques" shall mean stormwater management  
1970 techniques appropriate to the size, scale, and location of the development proposal that limit off-  
1971 site stormwater runoff (both peak and non-peak flows) to levels substantially similar to natural  
1972 hydrology (or, in the case of a redevelopment site, that reduce such flows from pre-existing  
1973 conditions), by emphasizing decentralized management practices and the protection of on-site  
1974 natural features.

1975 "Minimum area density" shall mean the land area required for a given unit of  
1976 development, which shall not necessarily be expressed as a lot size requirement.

1977 "Natural resource protection zoning" shall mean the power to protect natural resources  
1978 by limiting development in areas designated by the state, a regional planning agency, or by a city  
1979 or town as having significant natural or cultural resource values by requiring minimum area  
1980 densities of one dwelling unit per ten or more acres.

1981           “Open space residential design” shall mean a process for the cluster development of  
1982 land that: requires identification of the significant natural features of the land and concentrates  
1983 development by use of reduced dimensional requirements in order to preserve those natural  
1984 features; preserves at least 50 percent of the land’s developable area in a natural, scenic or open  
1985 condition or in agricultural, farming or forestry use; and permits the development of a number of  
1986 new housing units at least equal to the quotient of the land’s developable area divided by the  
1987 minimum lot area per housing unit required by the zoning ordinance or by-law. For the purposes  
1988 of this definition, the land’s developable area shall be determined pursuant to applicable state  
1989 and local land use and environmental laws and regulations, and the zoning ordinance or by-law,  
1990 without regard in either case to the suitability of soils or groundwater for on-site wastewater  
1991 disposal.

1992           “Other local land use regulations” shall mean all local legislative, regulatory, or other  
1993 actions which are more restrictive than state requirements, if any, including subdivision and  
1994 board of health rules and regulations, local wetlands ordinances or by-laws, and other local  
1995 ordinances, by-laws, codes, and regulations.

1996           “Partnership community” shall mean a community for which a partnership plan and  
1997 implementing regulations have been certified by the applicable regional planning agency,  
1998 adopted by the municipality, and remain in effect.

1999           “Partnership plan” shall mean the subject matter contained in section 81D.4.f of  
2000 chapter 41 prepared by the planning board in accordance with sections 4 and 5 of this chapter  
2001 40U and which has been certified by the applicable regional planning agency.

2002               “Prompt and predictable permitting” shall mean that zoning and other local land use  
2003 regulations allow development to proceed by right by means of permitting processes that are  
2004 designed to result in final written decisions on all local permits and approvals in less than 180  
2005 days from the date of the filing of a complete application. For commercial and industrial  
2006 development, local permitting pursuant to chapter 43D shall also be deemed prompt and  
2007 predictable permitting.

2008               “Rate of development”, local legislative or regulatory measures adopted by cities and  
2009 towns under this chapter to regulate the number of permits for new construction or approvals of  
2010 new building lots issued in a defined period of time or otherwise in accordance with defined  
2011 standards and criteria.

2012               “Regional planning agency” shall mean the regional or district planning commission  
2013 established pursuant to chapter 40B for the region within which a municipality is located. The  
2014 term shall also mean the Martha’s Vineyard Commission, as described in Chapter 831 of the  
2015 Acts of 1977, the Nantucket Planning and Economic Development Commission, as described in  
2016 Chapter 561 of the Acts of 1973, the Cape Cod Commission, as described in Chapter 716 of the  
2017 Acts of 1989, the Franklin Regional Council of Governments, as described in Chapter 151 of the  
2018 Acts of 1996, and the Northern Middlesex Council of Governments, as described in Chapter 420  
2019 of the Acts of 1989.

2020               “Residential development district” shall mean a zoning district that: permits or allows  
2021 residential use at a density of not less than 4 units per acre of developable land for single-family  
2022 residential use, not less than 8 units per acre of developable land for two- and three-family and  
2023 attached townhouse residential use, and not less than 12 units per acre of developable land for



2045 B. The partnership plan shall be reviewed, certified, and adopted pursuant to the  
2046 requirements of subsections 4-7 of section 81D of chapter 41.

2047 40U:4. Elements of a Partnership Plan

2048 A partnership plan shall be consistent with section 81D of chapter 41 and in addition  
2049 shall address at least the following five areas: economic development, housing, open space  
2050 protection, water management, and energy management.

2051 The partnership plan shall contain:

2052 A. an overall statement of the land use goals and objectives of the municipality for its  
2053 future growth and development, including specific reference to each of the five areas;

2054 B. a description of the zoning and other land use regulation policies that will be used  
2055 to implement those goals and objectives, including with respect to each of the five areas;

2056 C. an assessment of the infrastructure improvements needed to support the  
2057 implementation policies and strategies identified in B, above;

2058 D. an overall assessment of the plan's consistency with the commonwealth's land use  
2059 objectives set forth in section 1 herein; and

2060 E. an assessment of the plan's specific compliance with the minimum standards for  
2061 consistency set forth in section 5, below.

2062 The partnership plan may include materials prepared within the last 5 years as part of  
2063 a local planning document, including a master plan prepared pursuant to section 81D of chapter  
2064 41.

2065           The partnership plan shall be established and implemented in ways that protect and  
2066 affirmatively promote equal opportunity and diversity, consistent with stated goals of the  
2067 commonwealth. Each municipality, in preparing and implementing its partnership plan, shall  
2068 consider the likely effects that the plan will have on achieving non-discrimination, diversity, and  
2069 equal opportunity.

2070                           40U:5. Minimum Standards for Consistency with Commonwealth's Land  
2071 Use Objectives

2072           The minimum standards for consistency with the commonwealth's land use objectives  
2073 may be set forth in regulations duly promulgated by the Interagency Planning Board.

2074           Notwithstanding the foregoing, for plans submitted for certification within the first 5  
2075 years of the effective date of passage of this act, a determination of consistency with the  
2076 commonwealth's land use objectives shall be mandatory if the following minimum standards  
2077 have been satisfied:

2078           A. The plan establishes prompt and predictable permitting of commercial and/or  
2079 industrial development within one or more economic development districts. This standard may  
2080 be waived or modified upon a determination by the regional planning agency that adequate  
2081 alternatives for economic development exist elsewhere in the region and are more appropriately  
2082 located there.

2083           B. The plan establishes prompt and predictable permitting of residential development  
2084 within one or more residential development districts that can collectively accommodate, in the  
2085 determination of the regional planning agency, a number of new housing units (excluding new  
2086 housing units, other than accessory apartments, which are restricted, through zoning or other

2087 legal means, as to the number of bedrooms or as to the age of their residents) equal to the  
2088 housing target number. For the initial certification of a plan, a municipality's housing target  
2089 number shall be reduced by the number of new housing units for which building permits were  
2090 issued within 2 years prior to the municipality's effective date, to the extent such building  
2091 permits were issued within residential development districts for which there was prompt and  
2092 predictable permitting at the time of building permit issuance.

2093           C. The plan requires that, for any zoning district that requires a minimum lot area of  
2094 40,000 square feet or more for single-family residential development, development of 5 or more  
2095 new housing units utilize open space residential design, except upon a determination by the  
2096 regional planning agency that open space residential design is not feasible. In districts requiring  
2097 minimum lot areas of between 40,000 and 80,000 square feet in nitrogen sensitive areas as  
2098 defined under Title 5 of the Environmental Code, the minimum preservation requirement of 50  
2099 percent set forth in section 2, Open Space Residential Design, shall be modified to equal the  
2100 percentage resulting from the subtraction of 40,000 square feet from the lot size requirement,  
2101 divided by the lot size requirement, and multiplied by 100.

2102           D. The plan requires, through zoning or general ordinances or by-laws, all  
2103 development that disturbs more than one acre of land, including development by-right, utilize  
2104 low impact development techniques.

2105           E. The plan establishes prompt and predictable permitting of renewable or alternative  
2106 energy generating facilities, renewable or alternative energy research and development facilities,  
2107 or renewable or alternative energy manufacturing facilities, within one or more zoning districts  
2108 that are eligible locations.

2109           The Interagency Planning board shall promulgate regulations to effect the purposes of  
2110 this act. To assist municipalities in this effort, the regulations to be promulgated by the  
2111 Interagency Planning Board hereunder shall include at least one model provision for  
2112 implementing regulations for open space residential design, low impact development, and clean  
2113 energy generation/cogeneration facilities that would satisfy the standards hereof.

2114                           40U:6. Preparation, Adoption, Review, and Certification of Implementing  
2115 Regulations

2116           Prior to or following municipal adoption of a partnership plan, the city or town may  
2117 prepare proposed implementing regulations for the partnership plan.

2118           B. Upon completion of the proposed implementing regulations, the planning board  
2119 and chief executive officer may submit the proposed implementing regulations to the regional  
2120 planning agency for certification.

2121           C. Within 90 days of receiving a submission, the regional planning agency shall  
2122 determine whether the proposed implementing regulations are consistent with the certified  
2123 partnership plan. The implementing regulations shall be deemed consistent with the certified  
2124 partnership plan if they effectuate the minimum standards for consistency with the  
2125 commonwealth's land use objectives established or required by the certified partnership plan. If  
2126 the regional planning agency determines that the implementing regulations are consistent with  
2127 the certified partnership plan, then the agency shall issue a written certification to that effect. If  
2128 the regional planning agency determines that the regulations do not effectuate the minimum  
2129 standards for consistency, then the agency shall provide the municipality with a written statement  
2130 of the reasons for its determination. A municipality may re-submit for certification at any time

2131 modified implementing regulations that address the issues set forth in the agency’s statement of  
2132 reasons. If the regional planning agency does not issue a certification or provide a statement of  
2133 reasons within 90 days after receiving implementing regulations (including re-submitted  
2134 implementing regulations), then the implementing regulations shall be deemed certified. The  
2135 municipality shall have the option of submitting its implementing regulations together with its  
2136 submission of its partnership plan pursuant to section 4 herein, in which case the regional  
2137 planning agency shall review both the partnership plan and the implementing regulations within  
2138 the same 90 day period.

2139           D. Following certification by the regional planning agency, the implementing  
2140 regulations may be adopted by the municipality according to the procedures and requirements for  
2141 each type of local law or regulation.

2142           E. The town clerk shall within 20 days of the final approval of all implementing  
2143 regulations file a true copy of the implementing regulations with the regional planning agency.

2144           F. Amendments to the Implementing Regulations by the legislative body or a board  
2145 made subsequent to certification may lead to withdrawal of certification by the regional planning  
2146 agency.

#### 2147                           40U:7. Partnership Community Effective Date

2148           Within 15 days of receipt by the regional planning agency of a true copy of certified  
2149 implementing regulations duly adopted by the city or town pursuant to a certified partnership  
2150 plan, the agency shall notify the municipality in writing that it is deemed a “partnership  
2151 community”. The date of that notification shall be deemed the “municipality’s effective date”.

2152 40U:8. Effect of Partnership Plan Status on Zoning and Land Use

2153 Regulation

2154 A. Following the municipality's effective date, local zoning ordinances or by-laws,  
2155 subdivision rules and regulations, and other local land use regulations (other than certified  
2156 implementing regulations) which are determined to be inconsistent with the certified partnership  
2157 plan or the certified implementing regulations shall be deemed invalid. Such a determination  
2158 may be sought and obtained through any means otherwise available by statute for the  
2159 determination of the validity of such land use regulations. Any material amendment to a  
2160 certified partnership plan or certified implementing regulations that has not been prepared,  
2161 certified, and adopted in accordance with the provisions of section 81D of chapter 41 and this  
2162 chapter shall be presumed to be inconsistent with the certified partnership plan.

2163 B. If a municipality has issued, at the time of the municipality's effective date, a  
2164 special permit that in itself allows new housing units equal to one-half or more of the  
2165 municipality's housing target number, and if such special permit remains in effect for at least 2  
2166 years after the municipality's effective date, then residential development under such special  
2167 permit which otherwise qualifies hereunder shall also be deemed by right.

2168 C. If at any time more than 2 years after the municipality's effective date the total  
2169 number of housing units for which building permits have been applied for within the residential  
2170 development districts since the municipality's effective date is greater than the housing target  
2171 number (adjusted pro rata for the number of years since the municipality's effective date divided  
2172 by the ten-year time frame of the plan), but the total number of housing units for which building  
2173 permits have been issued within the residential development districts is less than the pro rata

2174 housing target number, then the provisions of this subsection shall be in effect. During such time  
2175 period, any applications for building permits or other local land use permits for residential  
2176 development within such residential development districts shall deemed constructively approved  
2177 if not acted upon within 180 days after receipt of permit applications. In addition, an application  
2178 received under this section shall be subject only to those conditions that are necessary to ensure  
2179 substantial compliance of the proposed development project with applicable laws and  
2180 regulations; and it may be denied only on the grounds that the proposed development project  
2181 does not substantially comply with applicable laws and regulations or the applicant failed to  
2182 submit information and fees required by applicable laws and regulations and necessary for an  
2183 adequate and timely review of the development project. The foregoing provisions shall no  
2184 longer be in effect once the total number of housing units for which building permits have been  
2185 issued within such residential development districts equals or exceed the pro rata housing target  
2186 number.

2187           D. Following the municipality’s effective date, in addition to those powers conferred  
2188 upon cities and towns clarified and enumerated in chapter 40A, partnership communities shall  
2189 have the following additional powers:

2190           1. Rate of Development: The power to regulate rate of development, as defined herein.  
2191 A zoning ordinance or by-law that limits the rate of development of new housing units (a “rate of  
2192 development measure”) shall not be declared exclusionary, a denial of substantive due process,  
2193 or otherwise against public policy, provided that it complies with the following conditions.  
2194 Within residential development districts identified under section 5.B, above, the rate of  
2195 development measure may limit the number of building permits issued in any twelve-month  
2196 period to an amount equal to or greater than one-half of the housing target number. In the event

2197 the municipality meets its housing target number prior to the expiration of the 10-year term of  
2198 the plan, it may amend said ordinance or by-law to restrict the by-right development of new  
2199 housing units within residential development districts for the remainder of the term. For areas not  
2200 located within residential development districts identified under section 5.B, above, any rate of  
2201 development measure shall be consistent with the following additional element of the partnership  
2202 plan. The plan shall contain consistent policies and strategies for the implementation of rate of  
2203 development measures that include a study of the need for such measures, a methodology by  
2204 which to determine a reasonable rate of issuance of either permits for new construction or  
2205 approvals of new building lots, a time horizon within which such measures shall remain in effect,  
2206 and a periodic review schedule. A rate of development measure shall not restrict the construction  
2207 of, or creation of building lots for, affordable housing units as that term is defined under chapter  
2208 40A and it shall not apply to structures accessory to residential uses nor to construction work  
2209 upon an existing dwelling unit.

2210           2. Natural Resource Protection Zoning: A zoning ordinance or by-law that requires a  
2211 minimum area density of 10 acres or more per dwelling unit to protect farmland, forestry land, or  
2212 other land of high natural resource value shall not for that reason alone be declared exclusionary,  
2213 a denial of substantive due process, or otherwise against public policy. Such land types deemed  
2214 appropriate for these measures shall be identified in the partnership plan. The zoning ordinance  
2215 or by-law may require dwelling units and other development to be concentrated on a portion of  
2216 the parcel in a manner consistent with the natural resource protection goals of the ordinance or  
2217 by-law. Natural resource protection zoning measures that specifically require individual lot sizes  
2218 greater than 2 acres shall be subject to the requirements of section 5.C of this chapter 40U.

2219           3. Vested Rights: Notwithstanding section 6B of chapter 40A, the minimum vesting  
2220 period for a definitive subdivision plan in a partnership community shall not be 8 years, but shall  
2221 instead be 4 years. This provision shall not apply to the 3 year minimum vesting period for  
2222 minor subdivisions in said section 6B of chapter 40A.

2223           4. Development Agreements: The power to enter into development agreements as  
2224 defined herein. A development agreement is a contract between the applicant and a city or town  
2225 under which the applicant may agree to contribute public capital facilities to serve the proposed  
2226 development and the municipality or both, to build affordable housing either on site or off site, to  
2227 dedicate or reserve land for open space community facilities or recreational use or to contribute  
2228 funds for any of these purposes. The development agreement shall function as a bona fide local  
2229 land use regulation, establishing the permitted uses and densities within the development, and  
2230 any other terms or conditions mutually agreed upon between the applicant and the municipality.  
2231 A development agreement shall vest land use and development rights in the property, and such  
2232 rights would not be subject to subsequent changes in development laws or regulations for the  
2233 duration of the agreement. Any such development agreement shall be consistent with the  
2234 partnership plan and may be entered into by the chief executive officer following a majority vote  
2235 of the governing body.

2236           5. Development Impact Fees: Development impact fees imposed pursuant to section  
2237 9F of chapter 40A may, in addition to the off-site public capital facilities listed in subsection 1.b  
2238 of said section, be used to defray the costs of the following off-site public capital facilities:  
2239 public elementary and secondary schools, libraries, municipal offices, affordable housing, and  
2240 public safety facilities.

2241 40U:9. Review of Certification by Regional Planning Agency

2242 A. Any certification or determination of non-certification by a regional planning  
2243 agency with respect to a partnership plan or implementing regulations or a material amendment  
2244 of either is subject to review by the Interagency Planning Board. The Interagency Planning  
2245 Board may, upon the request of the subject municipality or upon its own motion, review any  
2246 such decision in an informal, non-adjudicatory proceeding, may request information from any  
2247 third party and may modify or reverse such decision if the same does not comply with the  
2248 provisions hereof.

2249 B. If a municipality provides written notice to the Interagency Planning Board of the  
2250 certification by a regional planning agency of a partnership plan or implementing regulations or a  
2251 material amendment of either, including a deemed certification resulting from a regional  
2252 planning agency's failure to act, then the board may only review such certification if it  
2253 commences such review with 60 days of such certification.

2254 C. The Interagency Planning Board may through regulation establish a procedure for  
2255 reviewing and approving guidelines prepared by regional planning agencies to be used in the  
2256 certification of plans, implementing regulations and material amendments. If a certification or  
2257 determination of non-certification under review by the Interagency Planning Board has been  
2258 issued by the regional planning agency based upon an approved guideline, then the board may  
2259 only modify or reverse such decision for inconsistency with the approved guideline.

2260 40U:10. Expiration; Renewal of Certified Partnership Community Status;  
2261 Amendments



2284 distribution of funds, whether appropriated or derived through bonding, for all programs listed in  
2285 the Commonwealth Capital program, so-called, as it is administered by the Executive Office of  
2286 Energy and Environmental Affairs; the programs of the Massachusetts School Building  
2287 Authority; the programs for roadway, bridge, transit, bicycle, and pedestrian improvements  
2288 overseen by the Executive Office of Transportation and Public Works; and such other programs  
2289 as the governor may indicate by regulation, provided however that no priority consideration  
2290 issued pursuant to this act will be allowed to deny funding to a municipality that might otherwise  
2291 qualify for grants or loans which may be needed to protect the immediate public safety, as  
2292 determined in a waiver from the provisions of this section issued by the secretary of the  
2293 responsible executive office. Said regulations will ensure that all decision-making bodies of the  
2294 commonwealth shall, in regard to the programs listed above, increase the score of the applicant  
2295 municipality by 20 percent for any partnership community, above the score it would otherwise  
2296 achieve. This 20 percent bonus shall be in addition to, rather than as a substitute for other  
2297 elements of the scoring process which might reasonably be related to criteria associated with the  
2298 Commonwealth's Sustainable Development Principles, so-called, as issued and approved from  
2299 time to time by the governor. Nothing herein shall be construed to reduce the scoring preference  
2300 already provided to municipalities participating in the Commonwealth Capital program.

2301                                   40U:12. Consideration Under State Programs

2302                   State agencies responsible for regulatory and/or capital spending programs that have a  
2303 material effect on land use and development within partnership communities shall take into  
2304 account the land use goals, objectives and policies of such communities, as set forth in their  
2305 partnership plans, in administering such programs.

2306

Capital Funding

2307

To provide for a capital outlay program to fund local and regional planning for the

2308

several purposes and subject to the conditions specified in this act, are hereby made available

2309

subject to the laws regulating the disbursement of public funds-

2310

7006-xxxx For a technical assistance program in the form of grants to municipalities

2311

or regional planning agencies for the preparation of plans under section 81D of chapter 41,

2312

sections 3-5 of chapter 40U, and regional plans in the manner described in section 5 of chapter

2313

40B created by any regional planning agency including those created under special law or act,

2314

provided that the grants are to be administered by the Interagency Planning Board; and provided

2315

further, priority for the municipal grants administered by the Interagency Planning Board shall be

2316

given to those municipalities identified by the applicable regional planning agencies as being

2317

most likely to prepare and adopt partnership plans and implementing regulations under chapter

2318

40U, if provided with financial assistance; provided further, that no expenditure shall be made

2319

from this item without the prior approval of the secretary for administration and

2320

finance.....\$11,000,000.