

**SENATE . . . . . No. 01847**

---

The Commonwealth of Massachusetts

\_\_\_\_\_

PRESENTED BY:

*Marc R. Pacheco*

\_\_\_\_\_

*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 to promote livable communities and zoning reform act.

.

\_\_\_\_\_

PETITION OF:

NAME:

*Marc R. Pacheco*

DISTRICT/ADDRESS:

*First Plymouth and Bristol*

# SENATE . . . . . No. 01847

By Mr. Pacheco, a petition (accompanied by bill, Senate, No. 1847) of Marc R. Pacheco for legislation to promote livable communities and zoning reform act. Community Development and Small Businesses.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE  
SENATE  
, NO. 97 OF 2009-2010.]

## The Commonwealth of Massachusetts

**In the Year Two Thousand Eleven**

An Act to promote livable communities and zoning reform act.

□.

*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. (a) the land and waters within the Commonwealth possess distinct natural,  
2 scientific, historical, scenic, cultural, architectural, archeological, recreational, economic,  
3 agricultural and other values

4 (b) there is a national, regional, state, and local, interest in preserving and enhancing  
5 these values; and these values are being threatened and may be irreparably damaged by  
6 uncoordinated or inappropriate uses of the Commonwealth’s land and resources.

7 (c) the obligation to protect the many valuable resources of the Commonwealth is shared  
8 by local, regional, state and national governments, civic organizations, businesses and the  
9 general public.

10 (d) these resources are being adversely affected by a lack of effective and coordinated  
11 planning among the various levels of government and a lack of adequate funding and technical  
12 assistance for municipalities.

13 (e) these resources can be protected if each level of government participates in  
14 sustainable planning for smart growth.

15 SECTION 2.(a) State principles and goals

16 (1) state policies and spending decisions should encourage growth in appropriate and  
17 identified places.

18 (2) state resources should be targeted to support development in areas where  
19 infrastructure is already in place.

20 (3) state policies and spending decisions should not encourage or subsidize sprawl.

21 (4) state policies and spending decisions should discourage growth in environmentally  
22 sensitive areas in order to protect the Commonwealth's most valuable remaining natural  
23 resources before they are lost.

24 (b) To that end it shall be the policy of the Commonwealth to :

25 (1) discourage wasteful use of land, water and energy resources;

26 (2) support revitalization and reinvestment in urban areas and older suburbs;

27 (3) encourage the reuse and rehabilitation of existing infrastructure rather than the  
28 construction of new infrastructure in undeveloped areas

29 (4) protect, to the maximum extent possible, environmentally sensitive lands,  
30 natural resources, wildlife habitats. and cultural, natural, and historic landscapes;

31 (5) support a range of convenient and affordable transportation choices;

32 (6) protect economically productive natural areas including farmland and forests;

33 (7) provide an adequate supply of affordable housing for all income levels  
34 throughout each community; particularly for households earning 50 per cent or less of the area  
35 median income, as defined by the federal Department of Housing and Urban Development.

36 (8) encourage a clear and transparent development approval process;

37 (9) encourage regional solutions and approaches to planning issues as appropriate,  
38 e.g., transportation, housing supply, and water supply;

39 (10) assist municipalities and regions in planning for growth;

40 (11) require coordination among state agencies so that sustainable development  
41 efforts by one agency are not undermined by other state decisions and policies;

42 (12) Encourage coordination and cooperation among levels of government; and

43 (13) Ensure that permitting, funding, and construction activities by state agencies  
44 do not enable, contribute to, or perpetuate development that is inconsistent with state, regional  
45 and local sustainable development plans.

46 Section 3. For purposes of this chapter, the following words shall have the following  
47 meanings:

48 “Agency” any agency, department, board, commission, authority, and instrumentality of  
49 the Commonwealth and any authority or any political subdivision which is responsible for siting,  
50 designing, funding, constructing or permitting of infrastructure projects, public facilities or  
51 private development or which is responsible for which is responsible for transportation, water  
52 supply, waste water treatment and disposal and solid waste management facilities or  
53 infrastructure.

54 “Secondary growth impacts”, growth that occurs as a result of making infrastructure  
55 available.

56 “Sustainable”, purposefully designed to bring about efficient, safe, healthy, prosperous  
57 communities that include a sufficient amount of affordable housing while simultaneously  
58 maintaining and enhancing the environment, the natural resource base and the ongoing  
59 functioning of natural ecosystems that are fundamental to sustaining life and prosperity for  
60 current as well as future generations.

61 Section 4. (a) There shall be a council for a sustainable commonwealth, known in this  
62 chapter as the council, to be chaired by the governor or his designee. The council shall consist of  
63 the following voting members: the director of housing and community development or her  
64 designee, the secretary of environmental affairs or his designee, the secretary of transportation  
65 and construction or his designee, the secretary of administration and finance or his designee and  
66 the director of economic development or his designee. The council shall also include the  
67 following non-voting members, who shall serve in an advisory capacity: the chairman of the

68 Massachusetts Water Resources Authority or his designee, the chairman of the Massachusetts  
69 Bay Transit Authority or his designee, the secretary of the commonwealth acting as chairman of  
70 the Massachusetts historical commission or his designee, two chairs of regional planning  
71 agencies nominated by the governor, a municipal planning representative appointed by the  
72 governor and a professional planner appointed by the governor.

73 (b) the council for a sustainable commonwealth shall have the following primary  
74 responsibilities, to:

75 (1) consider, coordinate and, where appropriate, recommend modifications to the  
76 capital planning done by each state agency;

77 (2) resolve inconsistencies among and between each of the capital and operating  
78 plans of the agencies and regional sustainable development plans, and any inconsistencies that  
79 cannot be resolved through discussion and mediation shall be resolved by a majority vote of the  
80 voting members of the council;

81 (3) encourage the state agencies to consider secondary growth impacts in their  
82 capital planning and to encourage agencies to site facilities in areas where infrastructure already  
83 exists or to create infrastructure in developed areas, rather than in undeveloped areas; and

84 (4) determine and direct the appropriate agency or agencies to provide technical  
85 assistance, on an as needed basis, to municipalities as they seek to implement their plans.

86 (5) develop guidelines for an urban initiative program that will be part of each  
87 regional sustainable development plan.

88 Section 5. (a) By March 15 of every odd year, each agency shall develop a five-year  
89 agency sustainable development plan, known in this chapter as an agency plan that is consistent  
90 with the state goals, principles and policies outlined in section 2 and that meets the following  
91 criteria:

92 (1) all agencies shall promote, assist and pursue the rehabilitation and revitalization of  
93 infrastructure, structures, sites, and areas previously developed and still suitable for economic  
94 reuse. Such rehabilitation and revitalization, where practicable, shall be deemed preferable over  
95 construction of new facilities or development of areas with significant value in terms of  
96 environmental quality and resources. However, all agencies shall recognize that a lack of low  
97 and moderate-income housing may necessitate new construction of affordable and mixed income  
98 housing in areas in which there is an imbalance between housing supply and demand.

99 (2) all agency plans, and all infrastructure spending under them, shall seek to minimize  
100 unnecessary loss or depletion of environmental quality and resources that might result from such  
101 activity.

102 (3) all agencies shall consider secondary growth impacts in the development of their  
103 agency plans.

104 (4) all agency plans and all infrastructure spending under them, shall consider any  
105 applicable regional sustainable development plans created under section 5 of chapter 40B as  
106 amended by this act, that are in effect on the date of publication of the agency plans, and  
107 conform to the regional plans, where feasible.

108 Section 6. (a) the executive office of environmental affairs, the department of economic  
109 development, the department of housing and community development, and the executive office

110 of transportation and construction, when awarding discretionary grants to municipalities,  
111 excluding any grants made under chapter 90, shall give priority to municipalities that have  
112 adopted certified local sustainable development plans pursuant to chapter 41, section 81D as  
113 amended by this Act.

114 (b) the executive office of environmental affairs, the department of economic  
115 development, the department of housing and community development, and the executive office  
116 of transportation and construction, when awarding grants that require a municipal match, shall  
117 reduce the match requirement by no less than 10% for municipalities that have adopted certified  
118 local sustainable development plans.

119 SECTION 2. Section 6 of chapter 132C of the General Laws shall be effective 3 years  
120 after the effective date of this act.

121 SECTION 3. Section 62A of chapter 30 of the General Laws, as appearing in the 2000  
122 Official Edition, is hereby amended by adding the following paragraph:

123 The secretary of environmental affairs shall consider in his review of any project under  
124 this section the consistency of that project with chapter 132C and its consistency with plans  
125 created under section 81D of chapter 41 as amended by this act.

126 SECTION 4. The secretary, chairman or director of every agency subject to chapter  
127 132C of the General Laws, within one year from the effective date of this act, and thereafter on  
128 an annual basis, shall report on the status and effectiveness of their compliance with said chapter  
129 132C. The reports shall be submitted to the governor, the clerks of the house of representatives  
130 and the senate and the chairs of the joint committee on natural resources and agriculture, and  
131 shall be made available by each agency for public review.



132 SECTION 5. The governor shall, within three months of the effective date of this Act,  
133 issue a guidance document for use by agencies in preparing their annual reports under Section 4  
134 of this act and shall, within six months following the submission of the agencies' reports and  
135 after consideration of any comments received on such reports, submit to the council for a  
136 sustainable commonwealth a summary report and recommendations for the continued  
137 implementation of chapter 132C of the General Laws.

138 SECTION 6 Chapter 40B of the General Laws, as so appearing, is hereby amended by  
139 striking out Section 5 and inserting in place thereof the following section:

140 Section 5. (a) For purposes of this section, the following words shall have the following  
141 meanings:

142 "Concentrated Development Center", an area composed of concentrated mixed use  
143 development established by a municipality or collection of municipalities in conjunction with the  
144 regional planning commission.

145 "Council", the council for a sustainable commonwealth created under chapter 132C.

146 "Regional planning commission", regional or district planning commissions established  
147 under this chapter.

148 "Regional sustainable development plan", a regional plan.

149 "Sustainable", purposefully designed to bring about efficient, safe, healthy, economically  
150 vital communities that include a sufficient amount of affordable housing while simultaneously  
151 maintaining or enhancing the environment, the natural resource base and the ongoing functioning

152 of natural ecosystems that are fundamental to sustaining life and prosperity for current as well as  
153 future generations.

154 “Targeted Investment Area”, an area of a municipality or collection of municipalities  
155 designated by a regional planning commission, based on municipal recommendations, which is  
156 consistent with resource-efficient development and which shall receive priority for public funds.

157 (b) (1) Each regional planning commission shall develop a regional sustainable  
158 development plan. This may include the revision or modification of a plan previously created  
159 under this chapter. Regional plans shall be revised or updated at least every 5 years. Regional  
160 plans shall contain the elements of a complete local sustainable development plan as provided in  
161 Chapter 41, Section 81D of the General Laws as amended by this Act. Each RPA shall adapt  
162 said elements to the regional plan. Regional plans also shall adhere to the policies of the  
163 commonwealth established by section 2 of chapter 132C.

164 (2) Regional plans shall consider all local sustainable development plans, created under  
165 section 81D of chapter 41 as amended by this Act, of municipalities within the planning region,  
166 which are in effect at the time the regional plan is being developed by the regional planning  
167 commission. If any local plans within a region’s planning district are inconsistent with one  
168 another, the regional planning commission shall encourage the conflicting municipalities to  
169 create consistent plans and make recommendations for bringing the plans into compliance with  
170 one another.

171 (c) (1) The regional planning commissions may collectively establish uniform procedures  
172 under this section.

173           (2) In developing regional plans, the regional planning commissions shall each employ an  
174 open, inclusive and broadly participatory process. The regional planning commissions shall  
175 undertake public notification and participation procedures that are designed to seek widespread  
176 public participation in the regional planning process, including, but not limited to input from the  
177 following: local planning boards and other officials and residents of each municipality within the  
178 planning district; business and industry representatives; environmental and public health groups;  
179 housing advocates and providers, advocates for the local watershed area or areas; representatives  
180 of conservation commissions; officials and/or residents of a neighboring planning region with an  
181 interest, and representatives of the commonwealth's agencies and departments who have  
182 infrastructure or investments in the planning district.

183           (3) The executive committee of each regional planning commission shall review its  
184 regional plan for compliance with this section and internal consistency before forwarding it to its  
185 commission members for approval. If a regional plan is approved by a simple majority vote of  
186 the regional planning commission's members, the plan shall be considered approved and there  
187 shall be a rebuttable presumption that the plan is fully compliant with this section and internally  
188 consistent. Once the regional plan is approved by a majority vote of the commission members,  
189 the regional planning commission shall forward it to the council for sustainable commonwealth,  
190 created under chapter 132C, to enable the commonwealth's agencies to develop capital spending  
191 plans that are consistent with the regional plans.

192           (d) The regional planning commissions shall review all local sustainable development  
193 plans in their jurisdictions under subsection (d) of section 81D of chapter 41 as amended by this  
194 Act.

195 (e) The council shall develop minimum guidelines for regional urban initiative programs.  
196 Each regional plan shall include an urban initiative planning component. Each regional planning  
197 agency shall have the opportunity to expand and shape the urban initiative program to meet the  
198 needs of its region.

199 (1) A fundamental element of the urban initiative program shall include  
200 identification and designation of Targeted Investment Areas, based on municipal  
201 recommendations. Examples include: infill development in areas with infrastructure capacity;  
202 re-development of brownfield sites; and adaptive reuse of structures.

203 (2) The urban initiative program shall also require regional planning commissions  
204 to work with their municipal jurisdictions to develop criteria for and identify and designate  
205 Concentrated Development Centers. Such areas may vary in size and complexity depending on  
206 the degree of urbanization in the region or the area proposing designation. Concentrated  
207 Development Centers may be designated in the urban economic core, in urban growth areas, in  
208 subregional areas, and in suburban and rural centers.

209 (f) The regional planning commissions shall develop initial regional sustainable  
210 development plans under section 5 of chapter 40B of the General Laws no later than 18 months  
211 after the effective date of this act. Under no circumstances shall the failure of a regional  
212 planning commission to initiate or complete a regional plan prevent a municipality from  
213 developing a local sustainable development plan under section 81D of chapter 41 of the General  
214 Laws as amended by this Act.

215 (g) Regional planning commissions shall be responsible for developing a process to  
216 review major developments affecting more than one community. Regional planning

217 commissions will establish a definition for major developments and procedures for comment and  
218 review. The Planning Board of any municipality within a region can request that the regional  
219 planning commission hold a public hearing on a major development. Any comments or  
220 recommendations that result from the review will be shared with the Massachusetts  
221 Environmental Policy Act (MEPA) office, if the project requires MEPA review, or with the  
222 appropriate decisionmaking and permitting authorities.

223 SECTION 7. Chapter 41 of the General Laws, as so appearing, is hereby amended by  
224 striking out section 81D and inserting in place thereof the following section:

225 Section 81D

226 (a) For purposes of this section, the following words shall have the following  
227 meanings:

228 “Council”, the council for a sustainable commonwealth created under chapter 132C.

229 “Land use regulations”, regulations, administered in whole or in part by a municipality,  
230 which materially affect the purposes of this section, including but not limited to: zoning,  
231 subdivisions, wetlands, public health and transportation.

232 “Local sustainable development plan”, a local plan.

233 “Regional planning commissions”, organizations established under chapter 40B.

234 “Regional sustainable development plans ” or “regional plans”, plans developed under  
235 section 5 of chapter 40B.

236 “Sustainable”, purposefully designed to bring about efficient, safe, healthy, economically  
237 vital communities that include a sufficient amount of affordable housing, while simultaneously  
238 maintaining and enhancing the environment, the natural resource base and the ongoing  
239 functioning of natural ecosystems that are fundamental to sustaining life and prosperity for  
240 current as well as future generations.

241 (b) (1) A planning board, established in a municipality under section 81A, shall develop,  
242 in consultation with other elected and appointed municipal boards, a local sustainable  
243 development plan of the municipality and, may, from time to time, extend or perfect such plan.  
244 The local plan may be the revision or modification of a plan previously created pursuant to  
245 section 81D. The local plan shall be revised or updated at least every 5 years.

246 (2) The local sustainable development plan shall be a plan that is designed to provide a  
247 basis for decision-making regarding the long-term sustainable development of the municipality.  
248 The local plans shall adhere to policies identified in section 2 of chapter 132C.

249 (3) The local plan may include text, maps, illustrations or other forms of communication.  
250 The local plan shall include the following elements:

251 (i) A goals and policies statement which identifies the goals and policies of the  
252 municipality to protect its natural resources and to provide for its sustainable growth and  
253 development. Each community shall conduct an interactive process as described in subsection  
254 (4) to determine municipal priorities and goals, to determine the best way to make development  
255 in the municipality sustainable and to identify patterns of development that will be consistent  
256 with these goals.

257 (ii) Land use plan element illustrating present land uses and designating the proposed  
258 distribution, location, and inter-relationship of public and private land uses. This element shall  
259 relate population density and building intensity to the capacity of land available and to planned  
260 facilities and services. A land use plan map illustrating the land use policies of the municipality  
261 shall be included.

262 (iii) Natural and cultural resources element which provides an inventory of the significant  
263 natural, cultural, and historic resource areas of the municipality and policies and strategies for the  
264 protection and management of such areas. This element shall also include any strategies for  
265 protecting community character.

266 (iv) Watershed protection element which identifies ground and surface water resources  
267 contained in whole or in part within a municipality, future needs, and threats, including the  
268 impact of development on water supply, water quality, river and stream flow and wildlife habitat.

269 (v) Housing element which identifies and analyzes existing and forecasted housing needs  
270 and objectives including programs for the preservation, improvement and development of  
271 housing, particularly housing that is affordable to residents of the municipality who are low and  
272 moderate income as defined by the federal Department of Housing and Urban Development.  
273 This element shall identify policies and strategies to provide a range of local affordable housing  
274 opportunities and strategies to rezone areas to allow the development of multi-family housing.

275 (vi) Economic development element which identifies policies and strategies for the  
276 expansion or stabilization of the local economic base and the promotion of employment  
277 opportunities.

278 (vii) Open space and recreation element which provides an inventory of recreational  
279 resources and open space areas of the municipality, and policies and strategies for the  
280 management and protection of such resources and areas.

281 (viii) Services and facilities element which identifies and analyzes existing and forecasted  
282 needs for facilities and services used by the public, including, but not limited to facilities for:  
283 education, public safety, water and sewer services, energy demands and energy conservation, and  
284 other utilities.

285 (ix) Transportation element which identifies existing and proposed intermodal  
286 transportation systems including roads, mass transit, pedestrian, bicycle, and waterways, as well  
287 as the impacts of such systems on land uses within the municipality.

288 (x) Implementation program element which defines and schedules the specific municipal  
289 actions, including the identification of the anticipated costs and revenues, associated with each  
290 element of the plan. Scheduled expansion or replacement of public facilities or circulation  
291 system components and the anticipated costs and revenues associated with accomplishments of  
292 such activities shall be detailed in this element. This element shall specify the process by which  
293 the municipality's regulatory structure shall be amended so as to be consistent with the plan.

294 (xi) Bylaw or ordinance element that shall outline appropriate land use regulations  
295 consistent with the Plan and reasonably necessary to implement the elements of the Plan.

296 (4) In developing local plans, the municipalities shall each employ an open, inclusive and  
297 broadly participatory process. The municipalities shall undertake public notification and  
298 participation procedures that are designed to seek widespread public participation in the local  
299 planning process, including but not limited to input from the following: local officials and



300 residents of the municipality, neighborhood representatives, business and industry  
301 representatives in the community, environmental and public health groups, housing advocates  
302 and providers, advocates for the local watershed area or areas; conservation commissions; the  
303 appropriate regional planning commission, representatives of neighboring municipalities and  
304 representatives of the commonwealth's agencies and departments that have infrastructure or  
305 investments in the municipality.

306 (5) To the extent that one or more of the elements of the plan is already addressed in  
307 another plan, such as an open space and recreation plan, such plan(s) may be included as a  
308 component of the local plan in order to satisfy that particular element of the Plan.

309 (6) A municipality which has an established local sustainable development plan and  
310 applies for a state grant from the commonwealth shall prepare and keep on file within the  
311 municipality an economic development supplement; but the municipality shall not be required to  
312 prepare the supplement if the municipality has a supplement on file . The supplement shall be at  
313 least one page in length and shall contain the goals of the municipality with respect to industrial  
314 or commercial development, affordable housing, and preservation of parks and open space.

315 (7) All local sustainable development plans shall be internally consistent in their policies,  
316 forecasts and standards, shall be consistent with the applicable regional sustainable development  
317 plan and shall consider the local sustainable development plans of neighboring municipalities.

318 (8) A local plan shall not be in effect until the plan has been reviewed by the applicable  
319 regional planning commission in accordance with subsection (c) and the plan has received local  
320 approval in accordance with subsection (d).

321 (c) A municipality shall present its completed plan to the applicable regional planning  
322 commission for review. The regional planning commission shall, within 60 days of receipt of the  
323 plan, prepare and submit to the municipality a written review of the plan that shall certify  
324 whether the plan satisfies all the goals and elements required by subsection (b), whether it is both  
325 internally consistent and consistent with the applicable regional sustainable development plan,  
326 and whether it has given consideration to the local sustainable development plans of neighboring  
327 municipalities. The review shall identify any deficiency or omission with respect to each  
328 required element and goal described in subsection (b). The review shall include, where  
329 appropriate, recommendations as to how any omissions or deficiencies may be rectified. Upon  
330 receipt of the regional planning commission's certification indicating satisfactory compliance  
331 with this section, the planning board shall file the local plan with the office of the clerk of the  
332 municipality.

333 (d) Upon receiving certification from the applicable regional planning commission, the  
334 planning board shall present the local plan to the municipality's legislative body for approval  
335 with an outline of changes needed in the municipalities zoning ordinances, land use regulations  
336 or other municipal law to make the plan effective. Any additions to, modifications of, or  
337 amendments to the local plan must be presented to and approved by the local legislative body in  
338 the same manner. The local plan or local plan modifications shall, upon approval so described,  
339 be made part of the public record and a copy of the plan or plan modifications shall be submitted  
340 to the department of housing and community development and the executive office of  
341 environmental affairs. The plan and any modifications to the plan shall be filed with the office  
342 of the clerk of the municipality and made available to the public.

343 (e) Municipalities shall have five years to make substantial progress towards  
344 implementation of their plans. If after five years from the date of certification, the applicable  
345 regional planning commission deems that little or no progress has been made towards  
346 implementation of the plan through changes in bylaws or ordinances, the plan will be decertified  
347 and the regional planning commission shall notify the council of the decertification.

348 SECTION 8 (a) There is hereby established and set up on the books of the  
349 commonwealth a Sustainable Development Grant Fund, into which shall be credited monies  
350 contributed by the commonwealth including any appropriations or other monies authorized by  
351 the general court and specifically designated to be credited to said fund. The fund shall be  
352 administered by the council. Amounts credited to said fund shall be provided as grants to  
353 municipalities and regional planning commissions for activities relating to the development and  
354 preparation of local and regional sustainable development plans under this Act.

355 (b) The council shall adopt regulations establishing the grant program created under this  
356 section of the act including, but not limited to: the factors to be used by the Council in  
357 determining the amount of the grant funds that will be awarded to each municipality; an  
358 application process for municipalities that choose to apply for grant funds; and provisions  
359 governing the funding of regional planning commissions in the conducting of their  
360 responsibilities under this Act.

361 (c) Factors to be used by the council in determining the amount of grant funds to be  
362 provided to each municipality shall include, but not be limited to: complexity of the planning  
363 issues confronting each municipality, the planning capacity of the municipality, and the capacity

364 of each municipality to fund the planning process. Regulations shall also create an incentive  
365 program for multi-municipal planning.

366 (d) Provided further that chapters 236 and 246 of the acts and resolves of 2002 be  
367 amended to authorize and direct the secretary of environmental affairs and the secretary of  
368 transportation to appropriate existing funds not to exceed \$35,000,000 for the purposes outlined  
369 in this act. Of this amount, \$5,500,000 will be for one time grants to be made to the regional  
370 planning commissions established under chapter 40B of the General Laws to facilitate  
371 compliance with section 5 of said chapter 40B as amended by this act, in accordance with the  
372 following formula: base funding of \$100,000 per year per regional planning commission, plus 70  
373 cents per capita based upon the most recent U.S. Census data on population.

374 SECTION 9. Chapter 40A of the General Laws is hereby amended by inserting after  
375 section 1 the following section:-

376 40A:2. General Purposes of Zoning Ordinances and Bylaws

377 (a) The purpose of the zoning ordinances and bylaws as amended by this act is to  
378 provide guidance to municipalities in their regulation of land use, growth, and development  
379 through the exercise of home rule powers conferred by article 89 of the Massachusetts  
380 constitution. Except as hereinafter provided, cities and towns may adopt zoning ordinances and  
381 by-laws in furtherance of the purposes contained in this section for the benefit of their present  
382 and future inhabitants to the full extent of the powers of such cities and towns, whether such  
383 power is independently authorized by the constitution of the Commonwealth or here by the  
384 general court incident to power granted to it by the constitution. The Commonwealth shall limit

385 these powers only where necessary to ensure consistency in zoning and promote regional and  
386 statewide interests as specifically provided herein.

387 (b) These zoning ordinances and bylaws are intended to advance the following public  
388 purposes of the Commonwealth, each with equal priority and numbered for reference purposes  
389 only. The general court recognizes that cities and towns may advance some or all of the  
390 purposes listed below or may advance other purposes not listed below as they deem appropriate.

391 (1) Implementation of a plan adopted by the city or town under section 81D of  
392 chapter 41 as amended by this Act.

393 (2) Achievement of a balance of housing choices, types and opportunities for  
394 all income levels and groups, to assure the health, safety and welfare of all citizens and their  
395 rights to affordable, accessible, safe, and sanitary housing.

396 (3) Orderly and sustainable growth and development which recognizes:

397 (i) the goals and patterns of land use contained in a plan adopted by  
398 the city or town under section 81D of chapter 41 as amended by this Act;

399 (ii) the natural characteristics of the land, including its suitability for  
400 use based on soil characteristics, topography, and susceptibility to surface or groundwater  
401 pollution;

402 (iii) the values and dynamic nature of watersheds, coastal and  
403 freshwater ponds, the shoreline, and freshwater and coastal wetlands;

404 (iv) the values of unique or valuable natural resources and features;

405 (v) the availability and capacity of existing and planned public and/or  
406 private services and facilities;

407 (vi) the need to balance the “built” environment with the “natural”  
408 environment; and

409 (vii) the use of innovative development regulations and techniques such  
410 as development agreements, impact fees, inter-municipal transfers of development rights,  
411 agricultural zoning, inclusionary zoning, mediation and dispute resolution, and urban growth  
412 boundaries.

413 (4) Control, protection or abatement of air, water, groundwater, noise and  
414 light pollution, and soil erosion and sedimentation.

415 (5) Protection of the natural, historic, cultural, aesthetic, and scenic character  
416 of the city or town or areas therein.

417 (6) Preservation and promotion of agricultural production, forestry,  
418 aquaculture, and open space.

419 (7) Protection of the environment and natural resources, including but not  
420 limited to farmland, forestland, water quality and quantity, shore lands, ridgelines, recreational  
421 resources, open spaces, special habitats and ecosystems and other qualities of the environment  
422 and natural resources set forth in article 97 of the Massachusetts constitution.

423 (8) Protection of public investment in transportation, water, storm water  
424 management systems, sewage treatment and disposal, solid waste treatment and disposal,  
425 schools, recreation, public facilities, open space, and other public requirements.

426 (9) Improvement and expansion of existing infrastructure and construction of  
427 new infrastructure in support of a plan adopted by the city or town under section 81D of chapter  
428 41 as amended by this Act and the purposes listed herein.

429 (10) An energy efficient, convenient and safe transportation infrastructure with  
430 as wide a choice of modes as practical, including, wherever possible, maximal access to public  
431 transit systems.

432 (11) Sustained or enhanced economic viability of the community and the  
433 region.

434 (12) Coordination of land uses with contiguous municipalities, other  
435 municipalities, the state, and other agencies, as appropriate, especially with regard to resources  
436 and facilities that extend beyond municipal boundaries or have a direct impact on that  
437 municipality.

438 (13) Accommodation of regional growth in a fair and equitable, but sustainable  
439 manner among municipalities.

440 (14) Efficient, fair and timely review of development proposals, to clarify and  
441 expedite the zoning approval process.

442 (15) Effective procedures for the administration of the zoning ordinance or  
443 bylaw, including, but not limited to, variances, special permits, other locally-adopted zoning  
444 permits, reviews or procedures, and, where adopted, procedures for modification.

445 (16) Protection of the public health, safety, and general welfare.

446 (17) A range of uses and intensities of use appropriate to the character of the  
447 city or town and reflecting current and expected sustainable future needs.

448 (18) Safety from fire, flood, and other natural or man-made disasters.

449 (19) High level of quality in the design and development of private and public  
450 facilities.

451 (20) Conservation of the value of land and buildings.

452 (21) Conservation and enhancement of community amenities.

453 (22) Efficiency in energy usage and the reduction of pollution from energy  
454 generation, including the promotion of renewable energy sources and associated technologies.

455 SECTION 10. Section 3 of chapter 40A of the General Laws, as appearing in the 2000  
456 Official Edition, is hereby amended by inserting, after the word “the”, in line 25, the following  
457 word:- minimum.

458 SECTION 11. Said section 3 of said chapter 40A, as so appearing, is hereby further  
459 amended by striking out, in lines 26-34 inclusive, the words "nor shall any such ordinance or by-  
460 law prohibit, regulate or restrict the use of land or structures for religious purposes or for  
461 educational purposes on land owned or leased by the commonwealth or any of its agencies,  
462 subdivisions or bodies politic, or by a religious sect or denomination, or by a nonprofit  
463 educational corporation; provided, however, that such land or structures may be subject to  
464 reasonable regulations concerning the bulk and height of structures and determining yard sizes,  
465 lot area, setbacks, open space, parking and building coverage requirements."



466 SECTION 12. Said section 3 of said chapter 40A, as so appearing, is hereby further  
467 amended by striking out the third paragraph and inserting in place thereof the following  
468 paragraph:-.

469 Zoning ordinances or bylaws shall not prohibit the use of land or structures thereon for:  
470 a) educational purposes on land owned or leased by the Commonwealth or any of its agencies,  
471 subdivisions or bodies politic or by a nonprofit educational corporation; b) religious purposes by  
472 a religious sect or denomination; c) the purposes of operating a child care facility or d) the  
473 purposes of operating a community residential program. As used in this section the following  
474 words shall have the following meanings: a) "educational purposes" means public and nonprofit  
475 private primary, secondary and higher educational purposes; b) "child care facility" means a day  
476 care center or school age child care program, as those terms are defined in section 9 of chapter  
477 28A; c) "community residential program" means a residential facility licensed by the  
478 Commonwealth to provide care or shelter or supervision or education to a maximum of eight (8)  
479 individuals with a mental or physical disability or to victims of crime, of physical or mental  
480 abuse, or of neglect in a small-scale residential setting with on-site or off-site supervision. The  
481 land or structures used for such purposes may, however, be subject to reasonable regulations  
482 regarding the bulk and height of structures, yard sizes, frontage, lot area, building coverage  
483 requirements, setbacks, floor area ratio, parking, access and egress, lighting, drainage,  
484 landscaping, buffering and open space, and similar matters. Compliance with such regulations  
485 may be determined as provided by ordinance or bylaw in each city or town, including through  
486 site plan review under which reasonable conditions, safeguards, and limitations to mitigate the  
487 impact of a specific use of land or structures on the neighborhood may be imposed pursuant to  
488 section 7A of this chapter. In addition, the application of such regulations to particular land or

489 structures used for such purposes may be waived in whole or in part by special permit, and  
490 reasonable conditions may be imposed as part of the special permit. The waiver may be granted  
491 if the special permit granting authority finds, based upon the evidence presented by the person  
492 seeking the waiver, that the waiver will not result in substantially more detriment to the  
493 neighborhood than the use of the particular land or structures for such purposes without the  
494 waiver.”

495 SECTION 13. Section 5 of said chapter 40A, as so appearing, is hereby amended by  
496 inserting, after the tenth paragraph, the following paragraphs:-

497 A zoning ordinance or bylaw adopted or amended under this chapter shall not be  
498 inconsistent with a plan prepared by the city or town under section 81D of chapter 41 as  
499 amended by this Act. Said ordinances or bylaws shall provide that in the instance of uncertainty  
500 in the construction or application of any section therein, the ordinance or by-law shall be  
501 construed in a manner that will further the implementation of, and not be contrary to, the goals,  
502 policies and applicable elements of said plan. This paragraph shall not become effective until  
503 five years after it is enacted in the General Laws.

504 SECTION 14. Chapter 40A of the General Laws is hereby amended by striking out  
505 section 6 and inserting in place thereof the following section:-

506 40A:6. Applicability of Zoning Ordinances and Bylaws

507 40A:6A. Nonconforming Lots, Structures and Uses

508 (a) Residential Lot Exemption

509           Increases in lot area, frontage, width or depth, or building setback requirements of a  
510 zoning ordinance or bylaw shall not apply to a lot for single- or two-family residential use which  
511 immediately prior to the effective date of the zoning amendment that rendered the lot  
512 nonconforming:

513           (1)       was shown or described as a separate lot on a recorded plan or deed or on  
514 an assessors map or plat and has access to and frontage on an existing public way, or if not, to a  
515 way of sufficient width, grade and construction to provide safe access to such lot as the planning  
516 board or its designee may determine; and

517           (2)       conformed to the then existing lot area, frontage and lot width or depth  
518 requirements; and

519           (3)       had at least five thousand square feet of area and fifty feet of frontage in  
520 the case of a single-family residential use and at least seventy-five thousand square feet of area  
521 and seventy-five feet of frontage in the case of two-family residential use; and

522           (4)       was not held in common ownership with any adjoining land. For the  
523 purposes of this section, common ownership shall include lots held by separate legal entities,  
524 persons or trusts under common control or with common beneficial interests.

525           (b)       Lawfully Nonconforming Structures and Uses

526           (1)       For the purposes of this section, a lawfully nonconforming structure or use  
527 shall be a structure or use lawfully in existence at the time of the effective date of the zoning  
528 amendment rendering such structure or use nonconforming.

529                   (2)     Adoption or amendment of a zoning ordinance or bylaw shall not apply to  
530 lawfully nonconforming structures or uses and shall not apply to structures and uses lawfully  
531 begun prior to the first publication of notice of the public hearing on the adoption or amendment  
532 of the relevant zoning ordinance or bylaw required by section five.

533                   (3)     A zoning ordinance or bylaw may provide that, if a nonconforming use or  
534 structure is abandoned for a period of two years or more, it may not be reestablished.  
535 Abandonment shall consist of some overt act, or failure to act, which would lead one to believe  
536 that the owner neither claims or retains any interest in continuing the nonconforming use or  
537 structure, unless the owner can demonstrate an intent not to abandon it. An involuntary  
538 interruption of a nonconforming structure or use, such as by fire and natural catastrophe, does  
539 not establish the intent to abandon. However, if a nonconforming structure or use is halted,  
540 unused or vacated for a period of two years, the owner shall be presumed to have abandoned it.

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

545                   (c)     Alteration, Reconstruction, Extension or Structural Change of Lawfully  
546 Nonconforming Structures and Uses

547                   (1)     A zoning ordinance or bylaw shall not prohibit the alteration,  
548 reconstruction, extension, or structural change to a lawfully nonconforming single- or two-family  
549 residential structure, provided there is no increase in the degree of nonconformity of the  
550 structure.

551                   (2)     A zoning ordinance or bylaw may permit, as of right or by special permit,  
552 lawfully nonconforming structures or uses to be altered, reconstructed, extended or structurally  
553 changed provided that such actions shall not increase the degree of nonconformity of the  
554 structure or use.

555                   (3)     A zoning ordinance or bylaw may permit, by special permit, lawfully  
556 nonconforming structures or uses to be altered, reconstructed, extended or structurally changed  
557 in a manner that increases the degree of nonconformity of the structure or use, provided that the  
558 permit granting authority finds that such actions shall not be substantially more detrimental to the  
559 neighborhood than the lawfully nonconforming structure or use.

560                   (4)     A zoning ordinance or bylaw may regulate nonconforming structures  
561 differently than nonconforming uses.

562                   (5)     A zoning ordinance or bylaw may vary by zoning district(s) the  
563 requirements for the alteration, reconstruction, extension or structural change for all lawfully  
564 nonconforming structures and uses, except single- and two-family residential structures.

565                   40A:6B. Vested Rights: Effective Date of Zoning Amendments

566                   (a)     Building Permits and Special Permits

567                   (1)     Adoption or amendment of a zoning ordinance or bylaw shall not apply to  
568 a building permit issued or special permit granted prior to the first publication of notice of the  
569 public hearing on the adoption or amendment of the relevant zoning ordinance or bylaw required  
570 by section five.

571                   (2)     The provisions of subsection 6B(a)(1) shall not apply to building permits  
572 unless construction under the permit is commenced within six months after issuance and is  
573 carried through to completion as continuously and expeditiously as is reasonable.

574                   (3)     The provisions of subsection 6B (a)(1) shall not apply to special permits  
575 unless the use or construction authorized under such permit is commenced within two years.

576           (b)     Subdivision Plans

577                   (1)     Adoption or amendment of a zoning ordinance or bylaw shall not apply to  
578 a definitive subdivision plan approved prior to the first publication of notice of the public hearing  
579 on the adoption or amendment of the relevant zoning ordinance or bylaw required by section  
580 five.

581                   (2)     The provisions of subsection 6B(b)(1) shall apply for a period of three  
582 years.

583           (c)     General Provisions

584                   (1)     The time requirements of this section 6B shall be extended for a period of  
585 time equal to the duration of:

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

587                           (ii)    the period of an appeal from the decision of any applicable local  
588 board or authority taken under applicable provisions of law on a building permit, special permit  
589 or definitive subdivision plan; and

590 (iii) any moratoria upon permitting or construction imposed by any  
591 government entity.

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

596 SECTION 15. Chapter 40A of the General Laws is hereby amended by inserting after  
597 section 7 the following section:-

598 40A:7. Site Plan Review

599 (a) As used in this section, a "site plan" is a submission made to a municipality that  
600 includes documents and drawings required by an ordinance or bylaw and used by the  
601 municipality to determine whether a proposed use of land or structures is in compliance with  
602 applicable local ordinances or bylaws, to evaluate the effects of the proposed use of land or  
603 structures on the neighborhood and/or community, and to evaluate and propose site design  
604 modifications that will lessen those impacts.

605 (b) A city or town may adopt a local ordinance or bylaw requiring the submission,  
606 review and approval of a site plan before authorization is granted for the use of land or structures  
607 governed by a zoning ordinance or bylaw.

608 (c) Such ordinance or bylaw for site plan review shall:

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

610                   (2)     specify the local board or official charged with reviewing and approving  
611 site plans, which may differ for different types, scales, or categories of uses of land or structures;

612                   (3)     establish the submission and review process for a site plan which is  
613 submitted in connection with an application for a variance, special permit, or other discretionary  
614 zoning approval. This submission and review may be conducted as part of the review of the  
615 application for discretionary approval or may be a separate review process under subsection  
616 (c)(4) below;

617                   (4)     establish the submission and review process for applications not  
618 governed by the procedures for review of discretionary zoning approval under subsection (c)(3)  
619 above, which may include the requirement of a public hearing held pursuant to the provisions in  
620 section 11 of this chapter. A decision under this subsection (4) shall require a vote by no more  
621 than a majority of the full board and shall be made within the time limits prescribed in the  
622 ordinance or bylaw, not to exceed the time limits for special permits contained in section 9 of  
623 this chapter. If no decision is issued within the prescribed time limit, the applicant shall be  
624 entitled to constructive approval of the site plan submitted as provided in section 9, paragraph  
625 (12) of this chapter;

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

628                   (6)     contain provisions that make the terms, conditions, and content of the site  
629 plan once approved enforceable by the municipality, which may include the requirement of  
630 performance guarantees.



631 (d) The local board or official charged with review of site plans may adopt, and from  
632 time to time amend, after a public hearing, rules to implement the local site plan ordinance or  
633 bylaw adopted under this section. Notice of the proposed rules and of the location, date and time  
634 of the public hearing shall be filed with the city or town clerk and published in a newspaper of  
635 general circulation in the city or town at least 14 days before the public hearing.

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

638 (1) meets the procedural and submission requirements of the site plan review  
639 process applicable to the specific land or structures;

640 (2) complies with the regulations applicable to such land or structures in the  
641 local zoning ordinance or bylaw; and

642 (3) meets such standards as the local zoning ordinance or bylaw provides by  
643 which the use of land or structures and its impact on the neighborhood shall be evaluated.

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

647 (g) Decisions made under site plan review may be appealed as specified in the  
648 ordinance or by law, which may include direct judicial review pursuant to section 17 of this  
649 chapter.

650 (h) Zoning ordinances or bylaws shall provide that a site plan approval granted under  
651 this section shall lapse within a specified period of time, not more than two years from the date

652 of the filing of such approval with the city or town clerk, so long as substantial use or  
653 construction has not yet begun, except as extended for good cause by the approving authority  
654 designated pursuant to (c)(2) above. Such time shall not include time required to pursue or await  
655 the determination of an appeal pursuant to subsection (g) above.

656 SECTION 16. Section 9 of chapter 40A of the General Laws is hereby amended by  
657 striking out the fourth paragraph, inserted by section 1 of chapter 197 of the acts of 2002, and  
658 inserting in place thereof the following paragraph:-

659 Zoning ordinances or bylaws may provide for the authorization of the transfer of  
660 development rights of land within or between districts. Such authorization may be by special  
661 permit or by other methods, including but not limited to the applicable provisions of sections  
662 81K to 81GG, inclusive, of chapter 41 and in accordance with a planning board's rules and  
663 regulations governing subdivision control.

664 SECTION 17. Section 1A of chapter 40A of the General Laws, as appearing in the 2000  
665 Official Edition, is hereby amended by inserting the following definition:-

666 "Development impact fees" a contribution paid to a city or town by the applicant  
667 undertaking a development for the purpose of offsetting the impacts related to the development.

668 SECTION 18. Chapter 40A of the General Laws is hereby amended by inserting after  
669 section 9C the following section:-

670 40A:9D. Development Impact Fees

671 (a) Authority

672 Cities and towns may adopt ordinances and bylaws establishing and governing the  
673 procedure by which they may calculate, assess and impose development impact fees on proposed  
674 developments, including procedures to allow waiver or reduction of development impact fees for  
675 affordable housing developments.

676 (b) Administration

677 (1) Any development impact fee assessed under this section shall be paid to and held  
678 in a separate account in the city or town in which the proposed development is located. In the  
679 event that the proposed development is located in more than one municipality, the impact fee  
680 shall be apportioned among the municipalities in accordance with the land area or other equitable  
681 unit measure of the impacts of the proposed development in each city or town having adopted an  
682 ordinance or bylaw under this section.

683 (2) Any development impact fee imposed or permitted under this section shall  
684 comply with the following:

685 (i) The fee shall be rationally related and reasonably proportional to an  
686 impact directly or indirectly created by the development.

687 (ii) The purposes for which the fee is expended shall reasonably benefit the  
688 proposed development.

689 (iii) The fee shall be expended for the creation or improvement of capital  
690 facilities in accordance with a municipal plan, including, but not limited to, the creation or  
691 improvement of streets, sewers, water supplies, pollution abatement, parks, schools and similar  
692 capital facilities.

693 (3) Nothing in this section shall prevent a municipality from imposing fees or  
694 conditions which it may otherwise impose under applicable laws and constitutional provisions.

695 SECTION 19. Section 17 of chapter 40A of the General Laws, as appearing in the 2000  
696 Official Edition, is hereby amended by inserting after the seventh paragraph the following  
697 paragraph:-

698 Mediation of land use appeals: After the filing of an appeal hereunder, the parties may  
699 agree to mediate the decision that was appealed. In all events, the parties shall file a statement  
700 advising the court in which such appeal was filed that the dispute has been considered for  
701 mediation, and if they agree to mediation, such mediation shall begin within within 60 days of  
702 the date such statement was filed, or such other period as the parties may agree or the court may  
703 allow upon application by any party. Such mediation shall conclude not more than 180 days of  
704 such filing, provided that such period may be extended for an additional 180 days upon mutual  
705 agreement of the parties, or for such additional period as the court may allow upon application  
706 by any party. Mediators may be chosen from a list to be provided by the court in which the  
707 appeal was filed or by a mediator selected by the parties and approved by the court upon  
708 application. The mediator shall be compensated by the parties as they may agree, or under terms  
709 approved by the court as a cost of such appeal as hereinafter provided. During such mediation,  
710 however, any appeal otherwise pending is stayed. A party may withdraw from mediation at any  
711 time after written notification to the other parties and to the court in which such appeal was filed,  
712 but shall remain responsible for that party's share of the costs of mediation until the time of  
713 withdrawal. The mediator shall have the protections provided under section 23C of Chapter 233,  
714 and to the extent that public agencies are participants in such mediations, their deliberations shall  
715 not be subject to the provisions of Chapter 39, Section 29B. At the conclusion of such mediation,

716 the mediator shall file with the court a statement describing whether the parties have come to  
717 agreement or not. If unresolved, the appeal will then go forward, and if the matter has been  
718 resolved, the appeal will be dismissed with prejudice. The cost of mediation will be distributed  
719 among the parties as costs of the appeal as the parties may agree and if not, as the court in which  
720 such appeal was filed may determine. Mediation hereunder shall not be the only method of  
721 resolving a zoning appeal.

722 SECTION 20. Section 81L of chapter 41 of the General Laws, as appearing in the 2000  
723 Official Edition, is hereby amended by striking out, in lines 52-78 inclusive, the definition of  
724 “Subdivision” and inserting in place thereof the following definition:-

725 “Subdivision” shall mean the division of a tract of land into one or more lots and shall include  
726 resubdivision. When appropriate to the context, subdivision shall include the process of  
727 subdivision or the land or territory subdivided. Except as provided in this chapter, any  
728 adjustments to existing lot lines of a recorded lot by any means shall be considered a subdivision.  
729 Lot area and frontage shall be of at least such dimension as is then required by zoning or other  
730 ordinance or bylaw, if any, of said city or town for erection of a building on such lot. If no such  
731 dimensions are so required, such area shall be at least five thousand square feet and such  
732 frontage shall be at least fifty feet.

733 SECTION 21. Section 81O of said chapter 41, as so appearing, is hereby amended by  
734 striking out the second sentence in the first paragraph and inserting in place thereof the following  
735 sentence:- After the approval of a plan the location and width of ways, or the number, shape, and  
736 size of the lots shown thereon shall not be changed unless the plan is amended accordingly under  
737 section eighty-one W, except that the planning board may adopt alternate rules and regulations

738 pursuant to sections eighty-one P and eighty-one Q of this chapter defining and regulating  
739 changes to the number, shape, and size of the lots shown thereon as minor subdivisions.

740 SECTION 22. Said chapter 41, as so appearing, is hereby amended by striking out  
741 section 81P and inserting in place thereof the following section:-

742 41:81P. Alternative Approvals for Minor Subdivisions

743 Under section eighty-one Q, a planning board may adopt rules and regulations defining  
744 and regulating minor subdivisions in a more expeditious manner than would apply to other  
745 subdivisions. Such rules and regulations may establish reduced procedural requirements, review  
746 periods, fee schedules, performance guarantees, and construction and design standards than  
747 would otherwise apply.

748 SECTION 23. Section 81T of said chapter 41, as so appearing, is hereby amended by  
749 striking out, in lines 2-3 inclusive, the following words:- “or for a determination that approval is  
750 not required”.

751 SECTION 24. Section 81X of said chapter 41, as so appearing, is hereby amended by  
752 striking out, in lines 12-13 inclusive, the following words:- “such plan bears the endorsement of  
753 the planning board that approval of such plan is not required, as provided in section eighty-one P,  
754 or (3)”.

755 SECTION 25. Section 81X of said chapter 41, as so appearing, is hereby further amended  
756 by striking out, in lines 17-20 inclusive, the following words:- “or that it is a plan submitted  
757 pursuant to section eighty-one P and that it has been determined by failure of the planning board  
758 to act thereon within the prescribed time that approval is not required,”.

759 SECTION 26. Section 81X of said chapter 41, as so appearing, is hereby further amended  
760 by striking out the fourth paragraph and inserting in place thereof the following paragraph:-

761 Notwithstanding the foregoing provisions of this section, the register of deeds shall  
762 accept for recording and the land court shall accept with a petition for registration or  
763 confirmation of title any plan bearing a certificate by a registered land surveyor that 1) the  
764 property lines shown are the lines dividing existing ownerships, and the lines of streets and ways  
765 shown are those of public or private streets or ways already established, and that no new lines for  
766 division of existing ownership or for new ways are shown, or 2) unless subject to section eighty-  
767 one 0 of this chapter or subject to alternate rules and regulations pursuant to section eighty-one P  
768 and eighty-one Q of this chapter, the property lines shown do not create a new lot or render an  
769 existing lot nonconforming or more nonconforming. The recording of such plan shall not relieve  
770 any owner from compliance with the provisions of the subdivision control law or of any other  
771 applicable provision of law.

772 SECTION 27. Section 81M of said chapter 41, as so appearing, is hereby amended by  
773 inserting, after the word “systems”, in the third sentence, the words:- , and for a plan adopted by  
774 the city or town under section 81-D of this chapter.

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

777 A plan shall be deemed submitted under this section at the next regularly-scheduled  
778 meeting of the planning board provided it is 1) sent by registered mail or delivered to the  
779 planning board and received by said board seven days prior to said meeting, and 2) determined to

780 be complete by the board or their designee at said meeting in accordance with the planning  
781 board's rules and regulations.

782 SECTION 29. Section 81Q of said chapter 41, as so appearing, is hereby amended by  
783 inserting after the first paragraph the following paragraphs:-

784 Notwithstanding anything to the contrary in this section, a planning board may adopt a  
785 rule or regulation that a plan for a residential subdivision show a lot or lots that shall be reserved  
786 for the required construction by the applicant of dwelling units affordable to persons whose  
787 household income does not exceed a percentage of the area median income, as such income is  
788 determined by the federal Department of Housing and Urban Development. Such requirements  
789 shall not exceed fifteen percent of the dwelling units within the subdivision. In lieu of the  
790 construction of the required affordable dwelling units within a subdivision, a planning board rule  
791 or regulation may allow for the construction of such units off-site, the dedication of land for such  
792 purpose, or the payment of sufficient funds to a separate account created by the city or town for  
793 such purpose. Cities and towns are hereby empowered to establish said separate accounts to be  
794 administered by the treasurer of the city or town.

795 Rules and regulations adopted or amended under this chapter shall not be inconsistent  
796 with a plan prepared under section 81D of chapter 41 as amended by this Act. Said rules and  
797 regulations shall provide that in the instance of uncertainty in the construction or application of  
798 any section therein, the rules and regulations shall be construed in a manner that will further the  
799 implementation of, and not be contrary to, the goals, policies and applicable elements of said  
800 plan. This paragraph shall not become effective until five years after it is enacted in the General  
801 Laws.



802 SECTION 30. Section 81Q of said chapter 41, as so appearing, is hereby amended by  
803 striking out, in lines 62-69 inclusive, the words “No rule or regulation shall require, and no  
804 planning board shall impose, as a condition of approval of a subdivision, that any of the land  
805 within said subdivision be dedicated to the public use, or conveyed or released to the  
806 commonwealth or to the county, city or town in which the subdivision is located, for use as a  
807 public way, public park or playground, or for any other public purpose, without just  
808 compensation to the owner thereof.” and inserting in place thereof the following words:- The  
809 rules and regulations may require the plan to show a park or parks suitably located for  
810 playground or recreation purposes or for providing light and air and not unreasonable in area in  
811 relation to the area of land being subdivided and the prospective uses of such land.

812 SECTION 31. Section 81U of said chapter 41, as so appearing, is hereby amended by  
813 striking out, in lines 174-175 inclusive, the words “for a period of not more than three years”.

814 SECTION 32. Section 81U of said chapter 41, as so appearing, is hereby amended by  
815 inserting, after the word “applicant”, in line 79, the words “, subject to the discretion and  
816 approval of the planning board”.