

# SENATE, NO. 2482

[Senate, June 17, 2010 - New draft of Senate, No. 765 and 783 and House, No. 3572 reported from the committee on Municipalities and Regional Government.]



## The Commonwealth of Massachusetts

\_\_\_\_\_  
IN THE YEAR OF TWO THOUSAND AND TEN  
\_\_\_\_\_

### AN ACT RELATIVE TO LAND USE.

*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:-

#### CHAPTER 40A

#### 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  
24 the Commonwealth, also known as the “Home Rule Amendment.” This chapter shall be  
25 construed to give full effect to the home rule authority of cities and towns. Nothing in

26 this chapter shall be construed as limiting the constitutional authority of cities and towns  
27 unless the language in this chapter expressly so states. Wherever the language of this  
28 chapter purports to authorize or enable, it shall be so construed only where such authority  
29 is not otherwise available to cities and towns under the constitution or laws of the  
30 commonwealth, and in all other cases such language 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  
35 limited by this statute or other laws, and that all powers purportedly enabled in prior  
36 zoning statutes are 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 this  
40 act where such powers are not explicitly or implicitly conferred by said Article 89 or by  
41 any 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 prior  
45 to the enactment of a 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,  
51 all of the purposes listed below as well as any other purposes not limited by section 7 or  
52 reserved to the commonwealth by section 8 of said Article 89, subject to any limitations  
53 contained in this Zoning Act or in any other law.

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

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

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

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

64 5. The use of planning and zoning laws, regulations, and practices such as development  
65 agreements, development impact fees, design review, intra- and inter-municipal transfers  
66 of development rights, form-based zoning, rate of development measures, agricultural

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

107 **40A:2. Definitions**

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

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

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

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

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

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

130 design, open space residential design, natural resource protection zoning, conservation  
131 design/development, or flexible development.

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

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



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

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

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

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

171 “Site plan”, the submission made to a municipality that includes documents and drawings  
172 required by an ordinance or by-law to determine whether a proposed use of land or structures  
173 or development is in compliance with applicable local ordinances or by-laws, to evaluate the

174 impacts of the proposed use of land or structures on the neighborhood and/or community,  
175 and to evaluate and propose site or structural design modifications or required conditions that  
176 will lessen those impacts. Such site plan may be required independently of or as a required  
177 component of a special permit, variance, or other discretionary zoning approval.

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

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

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

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

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

191 “Transfer of Development Rights”, the procedure whereby the owner of a parcel may convey  
192 development rights to the owner of another parcel, and where the development rights so  
193 conveyed are extinguished on the first parcel and may be exercised on the second parcel in  
194 addition to the development rights already existing regarding that parcel.

195 “Unified development ordinance or by-law”, An ordinance or bylaw that combines in a  
196 single document standards and procedures for land use approvals that derive from different  
197 chapters of the General Laws, including but not limited to chapters 40A, 40B, 40C, and 41,  
198 combining procedures for subdivision, comprehensive permits, historic districts, streets and  
199 sidewalks, as well as the use and dimensional standards typically found in zoning.

200 “Variance”, an exemption from a zoning ordinance or regulation in accordance with section  
201 9C of this chapter permitting an aspect of zoning that would not otherwise be allowed.

202 “Zoning”, ordinances and by-laws, adopted by cities and towns to regulate the use of land,  
203 buildings, and structures to the full extent of the independent constitutional powers of cities  
204 and towns to protect the health, safety, and general welfare of their present and future  
205 inhabitants.

206 “Zoning administrator”, a person designated by the board of appeals pursuant to section 8 of  
207 this chapter to assume certain duties of said board.

208 “Zoning enforcement officer”, the inspector of buildings, building commissioner, or local  
209 inspector, or if there are none, the chief executive officer, or as otherwise provided by  
210 charter, ordinance, or by-law.

### 211 **40A:3. Consistency with Master Plan**

212 A. Requirement: After January 1, 2017, no zoning ordinance or by-law may be inconsistent  
213 with a plan adopted in compliance with section 81D of chapter 41. No zoning ordinance or  
214 by-law shall be deemed inconsistent with the plan if it furthers, or at least does not impede,

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

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

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

#### 230 **40A:4. Powers of Cities and Towns**

231 A. Powers Enumerated: To resolve uncertainty regarding the authority of cities and towns to  
232 assert powers conferred by Article 89 of the Articles of Amendment to the Constitution of  
233 the Commonwealth and by general or special laws, this chapter confers or confirms the  
234 following zoning powers:

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

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

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

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

252 5. to provide for cluster development, which may proceed by right or by other methods,  
253 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

258 towns and not pre-empted by other state laws, such enumeration is hereby deemed to be  
259 merely confirmatory or illustrative.

260

261 **40A:5. Exemptions from Zoning, Limitations on Local Authority**

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

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

269 C. Agriculture:

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

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

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

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

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

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

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

301 “horticulture” shall include the growing and keeping of nursery stock and the sale  
302 thereof; and

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

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

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

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



323 operation of any zoning ordinance or by-law if, upon petition of the corporation, the  
324 Department of Public Utilities shall after notice to all affected communities and public  
325 hearing in one of said municipalities, determine the exemptions required and find that the  
326 present or proposed use of the land or structure is reasonably necessary for the convenience  
327 or welfare of the public.

328 **G. Child Care Facility:**

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

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

337 3. When any zoning ordinance or by-law in any city or town limits the floor area of any  
338 structure, such floor area shall be measured exclusive of any portion of such structure in  
339 which a child care facility is to be operated as an accessory or incidental use, and the  
340 otherwise allowable floor area of such structure shall be increased by an amount equal to  
341 the floor area of such child care facility up to a maximum increase of 10 percent. In any  
342 case where the otherwise allowable floor area of a structure has been increased pursuant  
343 to the provisions of this section, the portion of such structure in which a child care facility  
344 is to be operated as an accessory or incidental use shall not be used for any other purpose

345 unless, following the completion of such structure, the board authorized to grant  
346 variances under such zoning ordinance or by-law shall have determined, with the written  
347 concurrence of the office for children, that the public interest and convenience do not  
348 require the operation of such facility. The procedures governing the granting of variances,  
349 including all rights of appeal, shall apply to any such determination.

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

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

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

366 K. Handicapped Access Ramps: No dimensional lot requirement of a zoning ordinance or by-  
367 law, including, but not limited to, set back, front yard, side yard, rear yard, and open space  
368 shall apply to access ramps on private property used solely for the purpose of facilitating  
369 ingress or egress of a physically handicapped person, as defined in section 13A of chapter 22.

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

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

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

387 1. not less than 75 percent of the energy generated thereby shall be used or transmitted  
388 for use in agricultural operations on land and in structures in agricultural use or to serve  
389 the energy needs of educational facilities of the commonwealth or any of its agencies,  
390 subdivisions or bodies politic, or of a religious sect or denomination, or of a nonprofit  
391 educational corporation, or of municipally owned or controlled facilities, whether directly  
392 or under a net-metering arrangement approved by the Commissioner of the Department  
393 of Agricultural Resources;

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

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

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

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

405 O. Hazardous Waste Facilities: A hazardous waste facility as defined in section 2 of chapter  
406 21D shall be permitted to be constructed as of right on any locus presently zoned for  
407 industrial use pursuant to the ordinances and by-laws of any city or town provided that all  
408 permits and licenses required by law have been issued to the developer and a siting

409 agreement has been established pursuant to sections 12 and 13 of chapter 21D. Following the  
410 submission of a notice of intent, pursuant to section 7 of chapter 21D, a city or town may not  
411 adopt any zoning change which would exclude the facility from the locus specified in said  
412 notice of intent. This section shall not prevent any city or town from adopting a zoning  
413 change relative to the proposed locus for the facility following the final disapproval and  
414 exhaustion of appeals for permits and licenses required by law and by chapter 21D.

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

432 section may be denied for any such facility by any city or town; provided, however, that a  
433 special permit granting authority may impose reasonable conditions on the construction or  
434 operation of the facility, which shall be enforceable pursuant to the provisions of section 10.

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

443 **40A:6. Nonconformities and Vested Rights**

444 **A. Nonconforming Lots, Structures and Uses**

445 1. Nonconforming Residential Lots:

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

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

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

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

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

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

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

468 2. Nonconforming Structures and Uses:

469 a. A nonconforming structure or use shall mean a structure or use lawfully in  
470 existence on the date of the first publication of notice of the public hearing on such  
471 ordinance or by-law required by section 7 rendering such structure or use

472 nonconforming. For the purposes of this section, a nonconforming structure or use  
473 lawfully in existence shall not include a structure or use in violation of the zoning  
474 ordinance or by-law, nor a structure built without a legally required building permit.

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

477 i) an existing nonconforming structure or use; and

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

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

488 d. This subsection A.2 shall not apply to establishments which display live nudity for  
489 their patrons, as defined in section 9A, adult bookstores, adult motion picture theaters,  
490 adult paraphernalia shops, or adult video stores subject to the provisions of section  
491 9A.



492 3. Alteration, Reconstruction, Extension, or Structural Change of Nonconforming  
493 Structures and Uses:

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

499 b. A zoning ordinance or by-law may permit, by right or by special permit,  
500 nonconforming structures to be altered, reconstructed, extended, or structurally  
501 changed, and nonconforming uses to be extended or changed, provided, in either case,  
502 that such actions do not increase the specific nonconformity of the structure or use.

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

509  
510 d. A zoning ordinance or by-law may regulate nonconforming structures differently  
511 than nonconforming uses

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

515 **B. Vested Rights: Effective Date of Zoning Amendments**

516 1. Building Permits, Special Permits, and Subdivision Plans:

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

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

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

527 2. General Provisions:

528 a. The provisions of B.1 above shall apply to approved modifications or amendments  
529 of a building permit, special permit, or definitive subdivision plan made under section  
530 81W of chapter 41, or other applicable state or local provisions provided there is no  
531 required application for a new building permit, special permit, or definitive

532 subdivision plan. Modification or amendment shall not itself serve to lengthen the  
533 period of time when the ordinance or by-law shall not apply.

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

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

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

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

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

545 d. The record owner of the land shall have the right, at any time, by an instrument  
546 duly recorded in the registry of deeds for the district in which the land lies, a copy of  
547 which shall be filed with the building inspector and city or town clerk, to waive all of  
548 the provisions of this section 6B, in which case the zoning ordinance or by-law then  
549 or thereafter in effect shall apply.

550 e. For the purposes of this section the term definitive subdivision plan shall include a  
551 minor subdivision under section 81L and 81P of chapter 41, provided the planning  
552 board has adopted rules and regulations for minor subdivisions under section 81Q of

553                   said chapter. In such cases, the period of time during which the ordinance or by-law  
554                   does not apply shall extend after approval of the minor subdivision for 3 years.

555   **40A:7. Adoption and Amendment of Zoning Ordinances and By-laws**

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

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

567           B. Hearings Required: No zoning ordinance or by-law or amendment thereto shall be adopted  
568           until after the planning board in a city or town, and the legislative body of a city or a  
569           committee designated or appointed for the purpose by said legislative body, has each held a  
570           public hearing thereon, together or separately, at which interested persons shall be given an  
571           opportunity to be heard. Said public hearing shall be held within 65 days after the proposed  
572           zoning ordinance or by-law is submitted to the planning board by the legislative body or if  
573           there is no planning board, within 65 days after the proposed zoning ordinance or by-law is  
574           submitted to the chief administrative officer.

575 C. Notice: Notice of the time and place of such public hearing, of the subject matter,  
576 sufficient for identification, and of the place where texts and maps thereof may be inspected  
577 shall be published in a newspaper of general circulation in the city or town once in each of 2  
578 successive weeks, the first publication to be not less than 14 days before the day of said  
579 hearing, and by posting such notice in a conspicuous place in the city or town hall for a  
580 period of not less than 14 days before the day of said hearing. Notice of said hearing shall  
581 also be sent by mail, postage prepaid to the regional planning agency, if any, and to the  
582 planning board of each abutting city and town. The regional planning agency, the planning  
583 boards of all abutting cities and towns, and nonresident property owners who may not have  
584 received notice by mail as specified in this section, may grant a waiver of notice or submit an  
585 affidavit of actual notice to the city or town clerk prior to action by the legislative body on a  
586 proposed zoning ordinance, by-law or change thereto. Zoning ordinances or by-laws may  
587 provide that a separate, conspicuous statement shall be included with property tax bills sent  
588 to nonresident property owners, stating that notice of such hearings under this chapter shall  
589 be sent by mail, postage prepaid, to any such owner who files an annual request for such  
590 notice with the city or town clerk no later than January first, and pays a reasonable fee  
591 established by such ordinance or by-law. In cases involving boundary, density or use changes  
592 within a district, notice shall be sent to any such nonresident property owner who has filed  
593 such a request with the city or town clerk and whose property lies in the district where the  
594 change is sought. No defect in the form of any notice under this chapter shall invalidate any  
595 zoning ordinances or by-laws unless such defect is found to be misleading.

596 D. Notice to Farmland Advisory Board: Prior to the adoption of any zoning or general  
597 ordinance or by-law or amendment thereto which seeks to further regulate matters

598 established by section 40 of chapter 131 or regulations authorized thereunder relative to  
599 agricultural and aquacultural practices, the city or town clerk shall, not later than 7 days prior  
600 to the legislative body's public hearing relative to the adoption of said new or amended  
601 zoning ordinances or by-laws, give notice of the said proposed zoning or general ordinances  
602 or by-laws to the Farmland Advisory Board established pursuant to section 40 of chapter 131  
603 and to the Commissioner of the Department of Agricultural Resources.

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

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

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

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

625 M. Review by the Attorney General: When zoning by-laws or amendments thereto are  
626 submitted to the attorney general for approval as required by section 32 of chapter 40, the  
627 attorney general shall also be furnished with a statement which may be prepared by the  
628 planning board explaining the by-laws or amendments proposed, which statement may be  
629 accompanied by explanatory maps or plans.

630 N. Effective Date: The effective date of the adoption or amendment of any zoning ordinance  
631 or by-law shall be the date on which such adoption or amendment was voted upon by the  
632 legislative body, provided, however, that in towns the posting and publication requirements  
633 of section 32 of chapter 40 have been satisfied. If, in a town, said by-law is subsequently  
634 disapproved, in whole or in part, by the attorney general, the previous zoning by-law, to the  
635 extent that such previous zoning by-law was changed by the disapproved by-law or portion  
636 thereof, shall be deemed to have been in effect from the date of such vote. In a municipality  
637 which is not required to submit zoning ordinances to the attorney general for approval  
638 pursuant to section 32 of chapter 40, the effective date of such ordinance or amendment shall  
639 be the date established by charter or ordinance.

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

643  
644 P. Claim of Invalidity: No claim of invalidity of any zoning ordinance or by-law arising out  
645 of any possible defect in the procedure of adoption or amendment shall be made in any legal  
646 proceedings and no state, regional, county, or municipal officer shall refuse, deny, or revoke  
647 any permit, approval, or certificate because of any such claim of invalidity, unless legal  
648 action is commenced within the time period specified in sections 32 and 32A of chapter 40  
649 and notice specifying the court, parties, invalidity claimed, and date of filing, is filed together  
650 with a copy of the petition with the town or city clerk within 7 days after commencement of  
651 the action.

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

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

660 G. Uniformity: No zoning ordinance or by-law shall regulate uses or structures in a manner  
661 that is not uniformly applicable within a zoning district except where such regulations are



662 supported by a valid planning or zoning basis rationally related to the distinguishing  
663 characteristics of such structures or uses.

664 **40A:8. Boards of Appeal, Zoning Administrators**

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

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

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

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

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

678 F. Associate Members: Zoning ordinances or by-laws may provide for the appointments in  
679 like manner of associate members of the board of appeals; and if provision for associate  
680 members has been made the chairman of the board may designate any such associate member  
681 to sit on the board in case of absence, inability to act or conflict of interest on the part of any

682 member thereof, or in the event of a vacancy on the board until said vacancy is filled in the  
683 manner provided in this section.

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

- 685 1. To hear and decide appeals in accordance with this section.
- 686 2. To hear and decide applications for special permits upon which the board is  
687 empowered to act under said ordinance or by-laws.
- 688 3. To hear and decide petitions for variances as set forth in section 9C.
- 689 4. To hear and decide appeals from decisions of a zoning administrator, if any, in  
690 accordance with this section.

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

695 H. Procedures:

- 696 1. Meetings: Meetings of the board shall be held at the call of the chairman or when  
697 called in such other manner as the board shall determine in its rules. The board of appeals  
698 shall hold a hearing on any appeal, application or petition within 65 days from the receipt  
699 of notice by the board of such appeal, application or petition. The board shall cause  
700 notice of such hearing to be published and sent to parties in interest as provided in section  
701 9D. The chairman, or in his absence the acting chairman, may administer oaths, summon  
702 witnesses, and call for the production of papers.

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

707 3. Hearings, Decisions, and Appeals: All hearings of the board of appeals shall be open to  
708 the public and held in accordance with section 9D. The decision of the board shall be  
709 made and recorded with the municipal clerk within 114 days after the date of the filing of  
710 an appeal, application or petition, except in regard to special permits, as provided for in  
711 section 9A. The required time limits for a public hearing and said action may be extended  
712 by written agreement between the applicant and the board of appeals. A copy of such  
713 agreement shall be filed in the office of the city or town clerk. Failure by the board to  
714 take final action within said 114 days or extended time, if applicable, shall be deemed to  
715 be the grant of the appeal, application, or petition. The petitioner who seeks such  
716 approval by reason of the failure of the board to take final action within the time  
717 prescribed shall notify the city or town clerk, in writing, within 14 days from the  
718 expiration of said 114 days or extended time, if applicable, of such approval and that  
719 notice has been sent by the petitioner to parties in interest. The petitioner shall send such  
720 notice to parties in interest, by mail and each notice shall specify that appeals, if any,  
721 shall be made pursuant to section 11 and shall be filed within 20 days after the date the  
722 city or town clerk received such written notice from the petitioner that the board failed to  
723 take final action within the time prescribed. After the expiration of 20 days without  
724 notice of appeal pursuant to section 11, or, if appeal has been taken, after receipt of  
725 certified records of the court in which such appeal is adjudicated, indicating that such

726 approval has become final, the city or town clerk shall issue a certificate stating the date  
727 of approval, the fact that the board failed to take final action and that the approval  
728 resulting from such failure has become final, and such certificate shall be forwarded to  
729 the petitioner. The board shall, within the 114 day time limit, cause to be made a detailed  
730 record of its proceedings, indicating the vote of each member upon each question, or if  
731 absent or failing to vote, indicating such fact, and setting forth clearly the reason for its  
732 decision and of its official actions, copies of all of which shall be filed in the office of the  
733 city or town clerk and shall be a public record. Notice of the decision shall be mailed  
734 forthwith to the petitioner, applicant or appellant, to the parties in interest designated in  
735 section 9D, and to every person present at the hearing who requested that notice be sent  
736 to him and stated the address to which such notice was to be sent. Each notice shall  
737 specify that appeals, if any, shall be made pursuant to section 11 and shall be filed within  
738 20 days after the date of filing of such notice in the office of the city or town clerk.

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

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

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

754 2. Any appeal to a board of appeals from the order or decision of a zoning administrator,  
755 if any, appointed in accordance with this section shall be taken within 30 days of the date  
756 of such order or decision or within 30 days from the date on which the appeal, application  
757 or petition in question shall have been deemed denied in accordance with said section 8J,  
758 as the case may be, by having the petitioner file a notice of appeal, specifying the grounds  
759 thereof with the city or town clerk and a copy of said notice including the date and time  
760 of filing certified by the city or town clerk shall be filed forthwith in the office of the  
761 zoning administrator and in the case of an appeal under this subsection 8I with the officer  
762 whose decision was the subject of the initial appeal to said zoning administrator. The  
763 zoning administrator shall forthwith transmit to the board of appeals all documents and  
764 papers constituting the record of the case in which the appeal is taken.

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

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

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

## 785 **40A:9. Permits and Approvals, Procedures, and Zoning Tools**

### 786 **A. Special Permits**

#### 787 1. Requirements:

788 a. General: Any zoning ordinance or by-law that provides for the issuance of special  
789 permits shall state the types of land uses and development for which special permits  
790 are required and the districts where such special permits are required. Special permits  
791 shall be issued only for uses which are in harmony with the general purpose and  
792 intent of the ordinance or by-law, and shall be subject to general or specific

793 provisions set forth therein; and such permits may also impose conditions, safeguards,  
794 and limitations on time or use.

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

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

811 2. Procedures:

812 a. Application, Hearing, and Vote Majorities: Each application for a special permit  
813 shall be filed by the petitioner with the city or town clerk and a copy of said  
814 application, including the date and time of filing certified by the city or town clerk,

815 shall be filed forthwith by the petitioner with the special permit granting authority.  
816 The special permit granting authority shall hold a public hearing, for which notice has  
817 been given as provided in subsection 9D, on any application for a special permit  
818 within 65 days from the date of filing of such application; provided, however, that a  
819 city council having more than 5 members designated to act upon such applications  
820 may appoint a committee of such council to hold the public hearing. The decision of  
821 the special permit granting authority shall be made within 90 days following the date  
822 of the close of such public hearing. The required time limits for a public hearing and  
823 said action may be extended by written agreement between the petitioner and the  
824 special permit granting authority. A copy of such agreement shall be filed in the  
825 office of the city or town clerk. Unless a lesser majority is specified in the zoning  
826 ordinance or by-law, issuance of a special permit under this section shall require a  
827 vote of two-thirds of the entire special permit granting authority in the case of an  
828 authority with more than 5 members, the vote of at least 4 members of a 5-member  
829 authority, or the vote of all members of an authority comprised of fewer than 5  
830 members.

831 b. Review of Special Permit by Other Boards and Agencies: Zoning ordinances or by-  
832 laws may provide that petitions for special permits shall be submitted to and reviewed  
833 by any other town agency or board and may further provide that such reviews may be  
834 held jointly. Any such board or agency to which petitions are referred for review shall  
835 make such recommendations as they deem appropriate and shall send copies thereof  
836 to the special permit granting authority and to the applicant; provided, however, that  
837 failure of any such board or agency to make recommendations within 35 days of



838 receipt by such board or agency of the petition shall be deemed lack of opposition  
839 thereto.

840 c. Final Action, Failure to Take Final Action, Appeal: The special permit granting  
841 authority shall cause to be made a detailed record of its proceedings, indicating the  
842 vote of each member upon each question, or if absent or failing to vote, indicating  
843 such fact, and setting forth clearly the reason for its decision and of its official  
844 actions, copies of all of which shall be filed within 14 days in the office of the city or  
845 town clerk and shall be deemed a public record, and notice of the decision shall be  
846 mailed forthwith to the petitioner, applicant or appellant, to the parties in interest  
847 designated in section 9D, and to every person present at the hearing who requested  
848 that notice be sent to him and stated the address to which such notice was to be sent.  
849 Each such notice shall specify that appeals, if any, shall be made pursuant to section  
850 11 and shall be filed within 20 days after the date of filing of such notice in the office  
851 of the city or town clerk. Failure by the special permit granting authority to take final  
852 action within said 90 days or extended time, if applicable, shall be deemed to be a  
853 grant of the special permit. The petitioner who seeks such approval by reason of the  
854 failure of the special permit granting authority to act within such time prescribed,  
855 shall notify the city or town clerk, in writing within 14 days from the expiration of  
856 said 90 days or extended time, if applicable, of such approval and that notice has been  
857 sent by the petitioner to parties in interest. The petitioner shall send such notice to  
858 parties in interest by mail and each such notice shall specify that appeals, if any, shall  
859 be made pursuant to section 11 and shall be filed within 20 days after the date the city  
860 or town clerk received such written notice from the petitioner that the special permit

861 granting authority failed to act within the time prescribed. After the expiration of 20  
862 days without notice of appeal pursuant to section 11, or, if appeal has been taken,  
863 after receipt of certified records of the court in which such appeal is adjudicated,  
864 indicating that such approval has become final, the city or town clerk shall issue a  
865 certificate stating the date of approval, the fact that the special permit granting  
866 authority failed to take final action and that the approval resulting from such failure  
867 has become final, and such certificate shall be forwarded to the petitioner.

868 d. Recordation of Special Permit: A special permit, or any extension, modification or  
869 renewal thereof, shall not take effect until a copy of the decision bearing the  
870 certification of the city or town clerk that 20 days have elapsed after the decision has  
871 been filed in the office of the city or town clerk is recorded in the registry of deeds for  
872 the county and district in which the land is located and indexed in the grantor index  
873 under the name of the owner of record or is recorded and noted on the owner's  
874 certificate of title.

875 The certification shall include either:

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

878 (ii) if it is a special permit which has been approved by reason of the failure of the  
879 special permit granting authority to act thereon within the time prescribed, a copy  
880 of the petition for the variance accompanied by the statement of the city or town  
881 clerk stating the fact that the special permit granting authority failed to act within  
882 the time prescribed, and no appeal has been filed, and that the grant of the petition

883 resulting from such failure to act has become final or that if such appeal has been  
884 filed, that it has been dismissed or denied.

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

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

890 e. Lapse, Extension: A special permit granted under this section shall state that it will  
891 lapse within a period of time specified by the special permit granting authority, not  
892 less than 3 years, if a substantial use thereof has not sooner commenced except for  
893 good cause due to circumstances beyond the control of the petitioner or, in the case of  
894 a special permit for construction, if construction has not begun by such date except  
895 for good cause due to circumstances beyond the control of the petitioner. The period  
896 of time before which a special permit shall lapse shall not include the time required to  
897 pursue or await the determination of an appeal from the grant thereof referred to in  
898 section 11. Upon written application by the grantee of a special permit, the special  
899 permit granting authority in its discretion and without a public hearing may, by the  
900 same vote majority originally required to approve the special permit, extend the time  
901 for the exercise of such special permit for a period of time not to exceed the original  
902 duration of the special permit. Such application must be filed no later than 65 days  
903 prior to the lapse of the special permit. If the permit granting authority does not grant  
904 the extension within 65 days of the date of application therefor, upon the lapse of the

905 special permit, the special permit may be re-established only after notice and a new  
906 hearing pursuant to the provisions of this section.

907 3. Special Permits for Specific Uses:

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

913 b. Adult Uses, Live Nudity: Any zoning ordinance or by-law that provides for special  
914 permits authorizing the establishment of adult bookstores, adult motion picture  
915 theaters, adult paraphernalia stores, adult video stores or establishments which display  
916 live nudity for their patrons as hereinafter defined may state the specific  
917 improvements, amenities or locations of proposed uses for which such permit may be  
918 granted and may provide that the proposed use be a specific distance from any district  
919 designated by zoning ordinance or by-law for any residential use or from any other  
920 adult bookstore or adult motion picture theatre or from any establishment licensed  
921 under the provisions of section 12 of chapter 138. Such zoning ordinance or by-law  
922 shall prohibit the issuance of such special permits to any person convicted of  
923 violating the provisions of section 63 of chapter 119 or section 28 of chapter 272.

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

925 “Adult bookstore”, an establishment having as a substantial or significant portion of  
926 its stock in trade, books, magazines, and other matter which are distinguished or

927 characterized by their emphasis depicting, describing, or relating to sexual conduct or  
928 sexual excitement as defined in section 31 of chapter 272.

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

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

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

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

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

949 **B. Site Plan Review**

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

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

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

957 c. set forth what constitutes a complete application;

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

963 Approval of a site plan by staff or other municipal official or officials shall be as  
964 specified in the ordinance or by-law. If no decision is issued within the time limit  
965 prescribed and no written extension of the time limit has been granted by the person  
966 seeking the site plan review, the site plan shall be deemed constructively approved as  
967 provided in section 9A.2.c of this chapter;

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

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

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

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

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

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

984 3. Conditions, Safeguards, and Limitations:

985 a. A site plan approved hereunder may include reasonable conditions, safeguards, and  
986 limitations to mitigate the impacts of a specific use of land or structures on the  
987 neighborhood. The permit granting authority may adopt such conditions which, in its  
988 opinion, are directly related to standards and criteria described in the site plan review  
989 ordinance or by-law, provided such conditions do not conflict with or waive any other  
990 applicable requirement of the zoning ordinance or by-law. The permit granting

991 authority shall base any conditions it adopts on competent, credible evidence it shall  
992 incorporate into the record of its decision. If the permit granting authority adopts  
993 conditions pursuant to this paragraph, the site plan shall be revised to include such  
994 conditions before the development permit is issued.

995 b. Site plan review may not require the payment or performance of any off-site  
996 mitigation, except to mitigate any extraordinary adverse impacts of the project on  
997 adjacent properties or public infrastructure, or when the site plan approval is subject  
998 to development impact fees imposed in accordance with the provisions of section 9F  
999 of this chapter, or when a site plan is required in connection with the issuance of a  
1000 special permit or variance.

1001 4. Appeals: Decisions on uses allowed by-right shall be appealable as specified in the  
1002 ordinance or by law, which may include direct judicial review pursuant to section 11.

1003 5. Duration, Lapse, Extensions: Zoning ordinances or by-laws shall provide that a site  
1004 plan approval for a use allowed by-right shall lapse within a specified period of time, not  
1005 less than 2 years from the date of the filing of such approval with the city or town clerk, if  
1006 a building permit has not been obtained or substantial use or construction has not yet  
1007 begun, except as extended for good cause by the permit granting authority. Such period  
1008 of time shall not include time required to pursue or await the determination of an appeal  
1009 under subsection 4, above.

1010 6. Consultant Fees: The board designated by ordinance or by-law to review site plans  
1011 under this section may, by rules and regulations adopted by such board, provide for the



1012 imposition of reasonable fees for the employment of outside consultants in the same  
1013 manner as set forth in section 53G of chapter 44.

1014 7. Discretionary Approvals: Where an ordinance or by-law provides that a variance,  
1015 special permit, or other discretionary zoning approval shall also require site plan review,  
1016 the review of the site plan shall be integrated into the processing of the variance, special  
1017 permit, or other discretionary zoning approval and not made the subject of a separate  
1018 proceeding, hearing, or decision. In such case, the content requirements and approval  
1019 criteria for a site plan as specified in the zoning ordinance or by-law shall be followed,  
1020 but this section 9B shall not otherwise apply.

1021 8. Transition Provision: In cities or towns that adopted a zoning ordinance or by-law  
1022 requiring some form of site plan review or site plan approval prior to the effective date of  
1023 this act, the provisions of this Section 9B. shall not be effective with respect to such  
1024 zoning ordinance or by-law until the date 2 years after the effective date of this act.

## 1025 **C. Variances**

1026 1. Authority: Where a literal enforcement of the provisions of the zoning ordinance or by-  
1027 law would cause substantial hardship to the petitioner, upon appeal or upon petition with  
1028 respect to particular land or structures, the permit granting authority shall have the  
1029 discretionary authority to grant a variance from the terms of the applicable zoning  
1030 ordinance or by-law following a public hearing for which notice has been given by  
1031 publication and posting as provided in section 9D and by mailing to the planning board  
1032 and all parties in interest.

1033 2. Standards: In making its determination, the permit granting authority shall take into  
1034 consideration the benefit to the applicant if the variance is granted, as weighed against the  
1035 detriment to the health, safety and welfare of the neighborhood or community by such  
1036 grant. The permit granting authority may also take into consideration the extent to which  
1037 the claimed hardship is self-created. In order to grant a variance the permit granting  
1038 authority shall make all of the following findings:

1039 a. the benefit sought by the applicant cannot be achieved by some method, feasible  
1040 for the applicant to pursue, other than a variance;

1041 b. the variance will not have a substantial undesirable effect on nearby properties, or  
1042 the character of the neighborhood, or on the environment;

1043 c. the variance will not nullify or substantially derogate from the intent or purpose of  
1044 such ordinance or by-law or the master plan under section 81D of chapter 41 upon  
1045 which the ordinance or by-law is based; and

1046 d. the claimed hardship relating to the property in question is unique, and does not  
1047 apply to a substantial portion of the district or neighborhood.

1048 In the granting of variances, the permit granting authority shall grant the minimum  
1049 variance that it shall deem necessary to relieve the hardship.

1050 3. Use Variances: Use variances are not included within the scope of this section unless  
1051 expressly so authorized by an ordinance or by-law. If so authorized, use variances shall  
1052 be subject to all the provisions of this section and to any additional more stringent criteria  
1053 contained in the ordinance or by-law.

1054 4. Conditions, Safeguards, and Limitations: The permit granting authority may impose  
1055 conditions, safeguards and limitations both of time and of use, including the continued  
1056 existence of any particular structures.

1057 5. Duration: Variances shall run with the land, except that a use variance may run with  
1058 land only if so determined by the permit granting authority acting pursuant to an  
1059 ordinance or by-law enabling such a determination.

1060 6. Recordation of Variance: No variance, or any extension, modification or renewal  
1061 thereof, shall take effect until a copy of the decision bearing the certification of the city or  
1062 town clerk that 20 days have elapsed after the decision has been filed in the office of the  
1063 city or town clerk is recorded in the registry of deeds for the county and district in which  
1064 the land is located and indexed in the grantor index under the name of the owner of  
1065 record or is recorded and noted on the owner's certificate of title.

1066 The certification shall include either:

1067 a. a statement that no appeal has been filed or that if such appeal has been filed, that it  
1068 has been dismissed or denied, or;

1069 b. if it is a variance which has been approved by reason of the failure of the permit  
1070 granting authority to act thereon within the time prescribed, a copy of the petition for  
1071 the variance accompanied by the statement of the city or town clerk stating the fact  
1072 that the permit granting authority failed to act within the time prescribed, and no  
1073 appeal has been filed, and that the grant of the petition resulting from such failure to  
1074 act has become final or that if such appeal has been filed, that it has been dismissed or  
1075 denied.

1076 The fee for recording or registering shall be paid by the owner or applicant.

1077 7. Lapse, Extension: If the rights authorized by a variance are not exercised within two  
1078 years of the date of the grant of the variance such variance shall lapse; provided,  
1079 however, that upon written application by the grantee of such variance, the permit  
1080 granting authority in its discretion may extend the time for exercise of such rights for a  
1081 period not to exceed one year. Such application must be filed no later than 65 days prior  
1082 to the lapse of the variance. If the permit granting authority does not grant the extension  
1083 within 65 days of the date of application therefor, upon the lapse of the variance, the  
1084 variance may be re-established only after notice and a new hearing pursuant to the  
1085 provisions of this section.

1086 **D. Procedures for Applications, Hearings, and Decisions**

1087 Unless otherwise provided for in this chapter, applications, hearings, and decisions shall  
1088 be in accordance with this section 9D.

1089 1. Applications: An application for a special permit or site plan review, or petition for a  
1090 variance or appeal shall be filed by the applicant or petitioner with the city or town clerk,  
1091 and a copy of said appeal, application, or petition, including the date and time of filing,  
1092 certified by the city or town clerk, shall be transmitted forthwith by the applicant or  
1093 petitioner to the permit granting authority or special permit granting authority as the case  
1094 may be.

1095 2. Public Hearings:

1096 a. Notice of Hearing: In all cases where notice of a public hearing is required notice  
1097 shall be given by publication in a newspaper of general circulation in the city or  
1098 town once in each of 2 successive weeks, the first publication to be not less than  
1099 14 days before the day of the hearing and by posting such notice in a conspicuous  
1100 place in the city or town hall for a period of not less than 14 days before the day  
1101 of such hearing. In all cases where notice to individuals or specific boards or other  
1102 agencies is required, notice shall be sent by mail, postage prepaid. "Parties in  
1103 interest" as used in this chapter shall mean the petitioner, abutters, owners of land  
1104 directly opposite on any public or private street or way, and abutters to the  
1105 abutters within 300 feet of the property line of the petitioner as they appear on the  
1106 most recent applicable tax list, notwithstanding that the land of any such owner is  
1107 located in another city or town, the planning board of the city or town, and the  
1108 planning board of every abutting city or town. The assessors maintaining any  
1109 applicable tax list shall certify to the permit granting authority or special permit  
1110 granting authority the names and addresses of parties in interest and such  
1111 certification shall be conclusive for all purposes. The permit granting authority or  
1112 special permit granting authority may accept a waiver of notice from, or an  
1113 affidavit of actual notice to any party in interest or, in his stead, any successor  
1114 owner of record who may not have received a notice by mail, and may order  
1115 special notice to any such person, giving not less than 5 nor more than 10  
1116 additional days to reply.

1117 b. Content of Notice: Publications and notices required by this section shall contain  
1118 the name of the petitioner, a description of the area or premises, street address, if any,

1119 or other adequate identification of the location, of the area or premises which is the  
1120 subject of the petition, the date, time and place of the public hearing, the subject  
1121 matter of the hearing, and the nature of action or relief requested if any. No such  
1122 hearing shall be held on any day on which a state or municipal election, caucus or  
1123 primary is held in such city or town.

1124 c. Consolidated Public Hearing on Special Permit for Subdivision: When a planning  
1125 board or department is also the special permit granting authority for a special permit  
1126 applicable to a subdivision plan, the planning board or department may hold the  
1127 special permit public hearing together with a public hearing required by sections 81K  
1128 to 81GG inclusive of chapter 41 and allow for the publication of a single  
1129 advertisement giving notice of the consolidated hearing.

1130 3. Decisions:

1131 a. Notice of Decision: Upon the granting of a variance, special permit, site plan  
1132 review, or any extension, modification or renewal thereof, the permit granting  
1133 authority or special permit granting authority shall issue to the owner and to the  
1134 applicant if other than the owner a copy of its decision, certified by the permit  
1135 granting authority or special permit granting authority, containing the name and  
1136 address of the owner, identifying the land affected, setting forth compliance with the  
1137 statutory requirements for the issuance of such variance, special permit, or site plan  
1138 review and certifying that copies of the decision and all plans referred to in the  
1139 decision have been filed with the planning board and city or town clerk.

1140 b. Final Unfavorable Decisions, Reconsideration: No appeal, application or petition  
1141 which has been unfavorably and finally acted upon by the special permit granting or  
1142 permit granting authority shall be acted favorably upon within 2 years after the date  
1143 of final unfavorable action unless said special permit granting authority or permit  
1144 granting authority finds, by a unanimous vote of a board of 3 members or by a vote of  
1145 4 members of a board of 5 members or two-thirds vote of a board of more than 5  
1146 members, specific and material changes in the conditions upon which the previous  
1147 unfavorable action was based, and describes such changes in the record of its  
1148 proceedings, and unless all but one of the members of the planning board consents  
1149 thereto and after notice is given to parties in interest of the time and place of the  
1150 proceedings when the question of such consent will be considered. The aforesaid  
1151 restriction upon reconsideration shall not apply to applications for site plan review for  
1152 uses allowed by-right.

1153 c. Withdrawal of Petition or Application: Any petition for a variance or application  
1154 for a special permit or a site plan review which has been transmitted to the permit  
1155 granting authority or special permit granting authority may be withdrawn, without  
1156 prejudice by the petitioner prior to the publication of the notice of a public hearing  
1157 thereon, but thereafter may be withdrawn without prejudice only with the approval of  
1158 the special permit granting authority or permit granting authority.

## 1159 **E. Inclusionary Zoning**

1160 1. Authority: In furtherance of the purposes of zoning ordinances and by-laws stated in  
1161 section 1 of this chapter and in the exercise of their home rule powers, a city or town, by

1162 ordinance or by-law, may require or provide incentives for the applicant for a residential  
1163 development to provide inclusionary housing units within such development.

1164 2. Off-Site Units, Land Dedications, Payment of Funds: In lieu of constructing the  
1165 required inclusionary housing units on-site, the ordinance or by-law may provide for the  
1166 construction of such units off-site, the dedication of land for such purpose, or the  
1167 payment of funds to a separate account created by the city or town sufficient for and  
1168 dedicated to the provision of inclusionary housing, provided the applicant demonstrates  
1169 to the satisfaction of the local approving authority that the units cannot be otherwise  
1170 provided on-site or that an alternative proposal better meets the needs of the city or town  
1171 with respect to the provision of inclusionary housing. Off-site units, land dedication, or  
1172 payment in-lieu of units shall, in the opinion of the board or official designated by  
1173 ordinance or by-law to administer the provisions of this section 9E and in consideration  
1174 of local needs, provide inclusionary housing benefits roughly equivalent to the provision  
1175 of on-site units.

1176 3. Dedicated Accounts: Cities and towns are authorized to establish a separate dedicated  
1177 account for the deposit of funds received under this section, including Municipal Housing  
1178 Trust Fund accounts under section 55C of chapter 44 or other dedicated accounts of  
1179 similar purpose. Said funds shall be deposited with the treasurer and disbursed for  
1180 inclusionary housing purposes in accordance with the ordinances, by-laws, or regulations  
1181 of the city or town. Where the application of this section results in less than a full  
1182 dwelling unit, the board may accept a prorated payment of funds in lieu of unit creation.



1183 4. Price or Rent Restriction: The inclusionary housing units shall be subject to an  
1184 affordable housing restriction in accordance with sections 31 and 32 of chapter 184 or, if  
1185 ineligible under said sections, restricted by other means as required in an ordinance or by-  
1186 law for a period of not less than 30 years.

1187 5. Eligibility for Subsidized Housing Inventory: The ordinance or by-law may further  
1188 require some or all of the inclusionary housing units to be low- or moderate-income  
1189 housing as defined in section 20-23 of chapter 40B, and be eligible for inclusion on the  
1190 local subsidized housing inventory subject to and in accordance with applicable  
1191 regulations and guidelines of the Department of Housing and Community Development  
1192 or successor agency. Nothing in this section shall be construed to require the Department  
1193 of Housing and Community Development to include affordable units created hereunder  
1194 on the subsidized housing inventory.

1195 6. Nothing in this section shall limit the authority of a planning board under section 81Q  
1196 of chapter 41, the Subdivision Control Law.

1197 **F. Development Impact Fees**

1198 1. Authority:

1199 a. Any city or town that adopts a local ordinance or by-law requiring the payment of a  
1200 development impact fee as a requirement of any permit or approval otherwise  
1201 required for any proposed development having development impacts as defined in the  
1202 ordinance or by-law, shall do so only in accordance with this section or any authority  
1203 conferred by a special act. The development impact fee may be imposed only on  
1204 construction, enlargement, expansion, substantial rehabilitation, or change of use of a

1205 development. The development impact fee shall be used solely for the purposes of  
1206 defraying the costs of off-site public capital facilities to be provided or paid for by the  
1207 city or town and which are either caused by and necessary to support or compensate  
1208 for the proposed development, or, in the case of a city or town authorized to impose  
1209 such fees under the provisions of a special act, then such fees may be used for the  
1210 purposes set forth in the special act.

1211 b. Such off-site public capital facilities may include the provision of infrastructure,  
1212 facilities, land, or studies associated with the following:

1213 (i) water supply, treatment, and distribution, both potable and for suppression of  
1214 fires;

1215 (ii) wastewater treatment and sanitary sewerage;

1216 (iii) stormwater management and treatment;

1217 (iv) solid waste;

1218 (v) roads, public transportation, pedestrian ways, and bicycle paths; and

1219 (vi) parks, open space, and recreational facilities.

1220 c. Nothing in this section shall prohibit a city or town from imposing other fees  
1221 or requirements for mitigation of development impacts which it may otherwise  
1222 impose under state or local law and that are consistent with the constitution and laws  
1223 of the Commonwealth.

1224 2. Limitations:

1225 a. No development impact fee under this section shall be imposed upon any  
1226 affordable housing dwelling unit, regardless of how created or permitted, which is  
1227 subject to a restriction on sale price or rent under the provisions of sections 31 and 32  
1228 of chapter 184 as amended ensuring that the unit will remain affordable for a period  
1229 of at least 30 years. The foregoing limitation shall not apply to cities and towns  
1230 imposing development impact fees under a special act.

1231 b. The fee shall not be expended for personnel costs, normal operation and  
1232 maintenance costs, or to remedy deficiencies in existing facilities, except where such  
1233 deficiencies are exacerbated by the new development, in which case the fee may be  
1234 assessed only in proportion to the deficiency so exacerbated.

1235 3. Requirements:

1236 a. Prior to the imposition of development impact fees under this section, a city or  
1237 town shall complete a study that:

1238 (i) analyzes any existing capital improvement plans and the infrastructure and  
1239 capital facilities subject matter of a plan adopted under section 81D of chapter 41  
1240 or the capital facilities planning element of a local comprehensive plan adopted  
1241 pursuant to Chapter 716 of the Acts of 1989, as amended;

1242 (ii) estimates future development based on the then current zoning ordinance or  
1243 by-law;

1244 (iii) assesses the impacts related to such development;

1245 (iv) determines the need for capital facilities required to address the impacts of  
1246 the estimated development including excess facility capacity, if any, currently  
1247 planned to accommodate future development;

1248 (v) develops cost projections for the needed capital facilities and documents costs  
1249 of existing facilities with planned excess capacity; and

1250 (vi) establishes the amount of any development impact fee authorized under this  
1251 section in accordance with a methodology determined pursuant to the study.

1252 b. The scope of the study may be limited to a geographic area and/or the category or  
1253 categories of public capital facilities that development impact fees may be intended to  
1254 address. A municipality may rely upon a recognized methodology for the study as  
1255 approved by the Interagency Planning Board under chapter 40U.

1256 c.. The study shall be updated periodically, at intervals of not greater than 10 years, to  
1257 reflect actual development activity, actual costs of infrastructure improvements  
1258 completed or underway, plan changes, or amendments to the zoning ordinance or by-  
1259 law.

1260 d. A development impact fee shall have a rational nexus to, and shall be roughly  
1261 proportionate to, the impacts created by the development as determined by said study  
1262 evaluating said impacts, and it shall be applied to affected development in a  
1263 consistent manner. Notwithstanding the foregoing, a city or town authorized to  
1264 impose development impact fees pursuant to a special act shall comply with the  
1265 standards set forth in such special act.

1266 e. The purposes for which the fee is expended shall reasonably benefit the proposed  
1267 development.

1268 f. The fee may not be assessed more than once for the same impact, nor may the fee  
1269 be assessed for impacts, or portions thereof, offset by other dedicated means,  
1270 including state or federal grants or contributions made by the applicant undertaking  
1271 the development.

1272 4. Administration:

1273 a. The ordinance or by-law may provide for a waiver or reduction of the development  
1274 impact fee for any development that furthers an overriding public purpose as set forth  
1275 in a plan adopted by the city or town under section 81D of chapter 41 or other plan  
1276 designed to set goals for the development of land within the city or town.

1277 b. If the proposed development is located in more than one municipality, the impact  
1278 fee shall be apportioned among the municipalities in accordance with the land area or  
1279 other equitable measure of the impacts of the proposed development in each city or  
1280 town.

1281 c. Any development impact fee assessed under this section shall be payable no sooner  
1282 than the issuance of a building permit, or in the case of a phased development, for a  
1283 building permit for any phase thereof. The fee shall be deposited to a separate,  
1284 interest bearing account in the city or town in which the proposed development is  
1285 located. Unless subject to section 4.d below, no development impact fee shall be paid  
1286 to the general treasury or used as general revenues of the city or town subject to the  
1287 provisions of section 53 of chapter 44.

1288 d. Any funds not expended or encumbered by the end of the calendar quarter  
1289 immediately following 10 years from the date the development impact fee was paid  
1290 shall, upon request of the applicant or its assigns, be returned with interest provided  
1291 that an application for a refund prescribed in the ordinance or by-law has been  
1292 submitted within one 180 calendar days prior to the expiration of the 10 year period.  
1293 If no application for refund is received by the city or town within said period, any  
1294 funds not expended or encumbered by the end of the calendar quarter shall then revert  
1295 to and become part of the general fund under section 53 of chapter 44. In the event of  
1296 any disagreement relative to who shall receive the refund, the city or town may retain  
1297 said development impact fee pending instructions given in writing by the parties  
1298 involved or by a court of competent jurisdiction. Notwithstanding the foregoing, a  
1299 city or town authorized to impose development impact fees pursuant to a special act  
1300 shall comply with the requirements set forth in such special act.

1301 e. The applicant and the municipality may agree that the applicant shall construct the  
1302 public capital facility or a portion thereof for which the development impact fee was  
1303 assessed in lieu of paying the development impact fee to the municipality, provided  
1304 that the applicant shall not be required to construct such improvement if it chooses to  
1305 pay the assessed development impact fee.

1306 **G. Land Use Dispute Avoidance**

1307 1. Applicability: As an optional means of avoiding or minimizing land use disputes, the  
1308 owner of land or structures who has applied or intends to apply for a building permit, any  
1309 permit or approval required under this chapter, an approval under sections 81K-GG of

1310 chapter 41, or a comprehensive permit under sections 20-23 of chapter 40B, may request  
1311 of the public official or local board charged with acting on the application to undertake a  
1312 land use dispute avoidance process as hereinafter provided.

1313 2. Initial Conflict Evaluation: The dispute avoidance process may include an initial  
1314 conflict evaluation to determine if a further resolution effort is advisable, and if so,  
1315 whether there should be subsequent resolution efforts to avoid or minimize disputes  
1316 relating to the application.

1317 3. Participation: Both the conflict evaluation and any later resolution effort shall be  
1318 voluntary for those participating requiring the joint written agreement of both the  
1319 applicant and public official or local board which shall be filed with the city or town  
1320 clerk.

1321 4. Neutral Facilitator: The conflict evaluation and any later resolution effort may be  
1322 conducted by a neutral facilitator as defined in section 23C of chapter 233, selected from  
1323 a list prepared by the Massachusetts Office of Dispute Resolution or its successor agency  
1324 or its designee, or as chosen jointly by the applicant and the public official or local board.  
1325 The facilitator and any associate assisting the facilitator shall comply with the standards  
1326 of conduct of the Association for Conflict Resolution or as promulgated by the  
1327 Massachusetts Office of Dispute Resolution or its successor agency or its designee.

1328 5. Costs: Funding for any conflict evaluation or resolution effort under this section may  
1329 be as the applicant and the public official or local board may agree, or the public official  
1330 or local board may provide for the imposition of reasonable fees for the employment of

1331 outside consultants, including the facilitator, in the same manner as set forth in section  
1332 53G of chapter 44.

1333 6. Rules: Public officials or local boards may adopt, and from time to time amend, after a  
1334 public hearing, rules to implement the conflict evaluation or resolution efforts undertaken  
1335 pursuant to this section. Notice of the hearing on the proposed rules, including the  
1336 location, date, and time of the hearing shall be filed with the city or town clerk and  
1337 published once in a newspaper of general circulation in the city or town at least 14 days  
1338 before the public hearing.

1339 7. Process of Conflict Evaluation: As part of the conflict evaluation, the facilitator may  
1340 solicit information and opinions relating to the application, and may identify and notify  
1341 those members of the public likely to be interested in or affected by the application. The  
1342 facilitator may clarify the issues and investigate the willingness of all interested parties to  
1343 work together with the applicant to resolve those issues. The facilitator may identify  
1344 measures or community-enhancing features that would benefit the neighborhood, the  
1345 larger community, and the project itself. Based upon the evaluation, the facilitator may  
1346 determine whether further resolution effort would be productive in reaching a consensus  
1347 of those participating, with the understanding that the outcome may be the withdrawal or  
1348 substantial modification of the application.

1349 8. Special Provisions, Meetings: The facilitator may convene meetings or conduct  
1350 interviews that shall be confidential and privileged from discovery under section 23C of  
1351 chapter 233. The facilitator shall have the protections provided under section 23C of



1352 chapter 233. To the extent that public agencies are participants, their deliberations shall  
1353 be subject to the provisions of section 21(b) (9) of chapter 30A.

1354 9. Report on Conflict Evaluation: In preparing a report on conflict evaluation, or on a  
1355 later resolution effort, the facilitator shall not attribute statements, positions, ideas, or  
1356 interests to specific individuals, organizations, or persons interviewed, and shall  
1357 distribute copies of the report to those participating without prior review or approval of  
1358 any participant. The conflict evaluation report shall indicate whether and how a  
1359 subsequent resolution effort might be appropriate for the application involved, including  
1360 elaborating on how it might be undertaken and by whom.

1361 10. Conflict Resolution: Based upon the conflict evaluation, the applicant and the public  
1362 official or local board may determine if a further resolution effort regarding an  
1363 application is worth undertaking in accordance with the procedures set out in this section,  
1364 or as they may otherwise in writing jointly agree. The applicant and the public official or  
1365 local board may, by an agreement in writing filed with the city or town clerk, stipulate  
1366 and agree to extend any otherwise applicable time requirements of state or local law.

1367 11. Conclusion of Process: At the conclusion of any conflict evaluation or resolution  
1368 efforts, the application which initiated the conflict evaluation and resolution efforts may  
1369 go forward in the ordinary course in accordance with the applicable statute, ordinance, or  
1370 by-law, reflecting if possible the result of any resolution effort, including the opportunity  
1371 for public hearing and comment if so provided by the applicable statute, ordinance, or by-  
1372 law. If the parties so agree, any resolution may be incorporated into the action taken by  
1373 the local board or official. Whether or not a resolution results, the applicant may

1374 nevertheless proceed with the application without prejudice for having participated in a  
1375 conflict evaluation or resolution effort, and the application process shall proceed in due  
1376 course as otherwise provided by statute, ordinance, or by-law.

1377 **40A:10. Enforcement**

1378 A. Zoning Enforcement Officer: The zoning enforcement officer shall be charged with the  
1379 enforcement of the zoning ordinance or by-law.

1380 B. Compliance with Zoning: The zoning enforcement officer shall withhold a permit for the  
1381 construction, alteration, or moving of any building or structure if the building or structure as  
1382 constructed, altered or moved would be in violation of any zoning ordinance or by-law.

1383 C. Compliance with Zoning, New Uses: No permit or license shall be granted for a new use  
1384 of a building, structure, or land which use would be in violation of any zoning ordinance or  
1385 by-law.

1386 D. Enforcement Procedures: If the zoning enforcement officer is requested in writing to  
1387 enforce such ordinances or by-laws against any person allegedly in violation of the same,  
1388 said officer shall notify, in writing, the party requesting such enforcement of any action or  
1389 refusal to act, and the reasons therefor, within 14 days of receipt of such request.

1390 E. Penalties for Violations: Notwithstanding any other provision of general or special law,  
1391 zoning ordinances and by-laws may provide a penalty of up to 1,000 dollars per violation;  
1392 provided, however, that nothing herein shall be construed to prohibit such laws from  
1393 providing that each day such violation continues shall constitute a separate offense.

1394 F. Limits to Enforcement: No action, suit, or proceeding shall be maintained in any court, nor  
1395 any administrative or other action taken to recover a fine or damages or to compel the  
1396 removal, alteration, or relocation of any structure or part of a structure or alteration of a  
1397 structure by reason of any violation of any zoning by-law or ordinance except in accordance  
1398 with the provisions of this section, section 8, and section 11.

1399 G. Duration of Ability to Enforce, Building Permit: If real property has been improved and  
1400 used in accordance with the terms of the original building permit issued by a person duly  
1401 authorized to issue such permits, no action, criminal or civil, the effect or purpose of which is  
1402 to compel the abandonment, limitation or modification of the use allowed by said permit or  
1403 the removal, alteration or relocation of any structure erected in reliance upon said permit by  
1404 reason of any alleged violation of the provisions of this chapter, or of any ordinance or by-  
1405 law adopted thereunder, shall be maintained, unless such action, suit or proceeding is  
1406 commenced and notice thereof recorded in the registry of deeds for each county or district in  
1407 which the land lies within 6 years next after the commencement of the alleged violation of  
1408 law. Such structures shall not be deemed to be a protected nonconforming structure under  
1409 section 6A of this chapter unless such status is specifically conferred in the zoning ordinance  
1410 or by-law.

1411 H. Duration of Ability to Enforce, Variance or Special Permit: No action, criminal or civil,  
1412 the effect or purpose of which is to compel the removal, alteration, or relocation of any  
1413 structure by reason of any alleged violation of the provisions of this chapter, or any ordinance  
1414 or by-law adopted thereunder, or the conditions of any variance or special permit, shall be  
1415 maintained, unless such action, suit or proceeding is commenced and notice thereof recorded  
1416 in the registry of deeds for each county or district in which the land lies within 10 years next

1417 after the commencement of the alleged violation. Such notice shall include names of one or  
1418 more of the owners of record, the name of the person initiating the action, and adequate  
1419 identification of the structure and the alleged violation. Such structures or uses shall not be  
1420 deemed to be a protected nonconforming structure or use under section 6A of this chapter  
1421 unless such status is specifically conferred in the zoning ordinance or by-law.

1422 I. Judicial Review: The superior court and the land court shall have the jurisdiction to enforce  
1423 the provisions of this chapter, and any ordinances or by-laws adopted thereunder, and may  
1424 restrain by injunction violations thereof.

1425 **40A:11. Judicial Review Procedures and Standards**

1426 A. Appeals: Any person aggrieved by a decision of the board of appeals or any permit  
1427 granting authority or special permit granting authority or by the failure of the board of  
1428 appeals to take final action concerning any appeal, application, or petition within the required  
1429 time or by the failure of any permit granting authority or special permit granting authority to  
1430 take final action concerning any application for a site plan review or special permit within the  
1431 required time, whether or not previously a party to the proceeding, or any municipal officer  
1432 or board may appeal to the land court department, the superior court department in which the  
1433 land concerned is situated or, if the land is situated in Hampden county, either to said land  
1434 court or, superior court department or to the division of the housing court department for said  
1435 county, or if the land is situated in a county, region or area served by a division of the  
1436 housing court department either to said land court or superior court department or to the  
1437 division of said housing court department for said county, region or area, or to the division of  
1438 the district court department within whose jurisdiction the land is situated except in Hampden

1439 county, by bringing an action within 20 days after the decision has been filed in the office of  
1440 the city or town clerk. If said appeal is made to said division of the district court department,  
1441 any party shall have the right to file a claim for trial of said appeal in the superior court  
1442 department within 25 days after service on the appeal is completed, subject to such rules as  
1443 the supreme judicial court may prescribe. Notice of the action with a copy of the complaint  
1444 shall be given to such city or town clerk so as to be received within such 20 days. The  
1445 complaint shall allege that the decision exceeds the authority of the board or authority, and  
1446 any facts pertinent to the issue, and shall contain a prayer that the decision be annulled. There  
1447 shall be attached to the complaint a copy of the decision appealed from, bearing the date of  
1448 filing thereof, certified by the city or town clerk with whom the decision was filed. If the  
1449 complaint is filed by someone other than the original applicant, appellant or petitioner, such  
1450 original applicant, appellant, or petitioner and all members of the board of appeals, permit  
1451 granting authority, or special permit granting authority shall be named as parties defendant  
1452 with their addresses.

1453 B. Notice of Filing of Complaint: To avoid delay in the proceedings, instead of the usual  
1454 service of process, the plaintiff shall within 14 days after the filing of the complaint, send  
1455 written notice thereof, with a copy of the complaint, by delivery or certified mail to all  
1456 defendants, including the members of the board of appeals, permit granting authority, or  
1457 special permit granting authority and shall within 21 days after the entry of the complaint file  
1458 with the clerk of the court an affidavit that such notice has been given. If no such affidavit is  
1459 filed within such time the complaint shall be dismissed.

1460 C. Filing of Answer to Complaint: No answer shall be required but an answer may be filed  
1461 and notice of such filing with a copy of the answer and an affidavit of such notice given to all  
1462 parties as provided above within 7 days after the filing of the answer.

1463 D. Intervening Parties: Other persons may be permitted to intervene, upon motion.

1464 E. Hearing: The clerk of the court shall give notice of the hearing as in other cases without  
1465 jury, to all parties whether or not they have appeared. The court shall hear all evidence  
1466 pertinent to the authority of the board, permit granting authority, or special permit granting  
1467 authority and determine the facts, and, upon the facts as so determined, annul such decision if  
1468 found to exceed the authority of such board, permit granting authority, or special permit  
1469 granting authority or make such other decree as justice and equity may require. The  
1470 foregoing remedy shall be exclusive, notwithstanding any defect of procedure or of notice  
1471 other than notice by publication, mailing or posting as required by this chapter, and the  
1472 validity of any action shall not be questioned for matters relating to defects in procedure or of  
1473 notice in any other proceedings except with respect to such publication, mailing or posting  
1474 and then only by a proceeding commenced within 90 days after the decision has been filed in  
1475 the office of the city or town clerk, but the parties shall have all rights of appeal and  
1476 exception as in other equity cases.

1477 F. Special Provisions for Appealing Site Plan Review Decisions: Notwithstanding the  
1478 foregoing, and except where a site plan is required in connection with the issuance of a  
1479 special permit or variance, decisions made under site plan review pursuant to section 9B of  
1480 this chapter, whether made pursuant to statutory or home rule authority, may be appealed by  
1481 a civil action in the nature of certiorari pursuant to section 4 of chapter 249, and not

1482 otherwise. All issues in any proceeding under this subsection shall have precedence over all  
1483 other civil actions and proceedings. A complaint by a plaintiff challenging a site plan  
1484 approval shall allege the specific reasons why the project fails to satisfy the requirements of  
1485 section 9B, the zoning ordinance or by-law, or other applicable law and allege specific facts  
1486 establishing how the plaintiff is aggrieved by such decision. A complaint by an applicant for  
1487 site plan review challenging the denial or conditioned approval of a site plan shall similarly  
1488 allege the specific reasons why the project properly satisfies the requirements of section 9B,  
1489 the zoning ordinance or by-law, or other applicable law. The permit granting authority's  
1490 decision in either case shall be affirmed unless the court concludes the permit granting  
1491 authority abused its discretion under Section 9B, the zoning ordinance or by-law, or other  
1492 applicable law in approving the project, approving with conditions, or denying the project.

1493 G. Appeals by Cities or Towns: A city or town may provide any officer or board of such city  
1494 or town with independent legal counsel for appealing, as provided in this section, a decision  
1495 of a board of appeal, permit granting authority, or special permit granting authority and for  
1496 taking such other subsequent action as parties are authorized to take.

1497 H. Costs: Costs shall not be allowed against the board, permit granting authority, or special  
1498 permit granting authority unless it shall appear to the court that the board, permit granting  
1499 authority, or special permit granting authority in making the decision appealed from acted  
1500 with gross negligence, in bad faith or with malice. Costs shall not be allowed against the  
1501 party appealing from the decision of the board, permit granting authority, or special permit  
1502 granting authority unless it shall appear to the court that said appellant or appellants acted in  
1503 bad faith or with malice in making the appeal to the court.

1504 I. Requirement to Post Bond: The court shall require nonmunicipal plaintiffs to post a surety  
1505 or cash bond in a sum of not less than 2,000 nor more than 15,000 dollars to secure the  
1506 payment of such costs in appeals of decisions approving subdivision plans.

1507 J. Precedence: All issues in any proceeding under this section shall have precedence over all  
1508 other civil actions and proceedings.

1509 K. Mediation of Land Use Appeals:

1510 1. Initiation, Time Periods: After the filing of an appeal hereunder, the parties may agree  
1511 to mediate the decision appealed. In all cases, the parties shall file with the court a  
1512 statement advising the court that the dispute has been submitted for mediation. If the  
1513 parties agree to mediation, the mediation shall begin within 60 days of the date such  
1514 statement was filed, or such other period as the parties may agree or the court may allow  
1515 upon application by any party. The mediation shall conclude not later than 180 days after  
1516 filing, provided that such period may be extended for an additional 180 days by joint  
1517 written agreement of the parties, or for such other additional period as the court may  
1518 allow upon application by any party.

1519 2. Selection of Mediator, Compensation, and Withdrawal from Mediation: The parties  
1520 may select the mediator from a list provided by the court or otherwise as the parties may  
1521 determine. The mediator shall be compensated by the parties as they may agree, or in the  
1522 absence of agreement, as the court may determine. A party may withdraw from  
1523 mediation at any time after written notification to the other parties and to the court, but  
1524 shall remain responsible for that party's share of the costs of mediation until the time of  
1525 withdrawal.



1526 3. Special Provisions: During the mediation any appeal otherwise pending shall be  
1527 stayed. The mediator shall have the protections provided under section 23C of chapter  
1528 233. To the extent that public agencies are participants in the mediation, their  
1529 deliberations shall be subject to the provisions of section 21(b) (9) of chapter 30A.

1530 4. Conclusion of Mediation: At the conclusion of the mediation, the mediator shall file  
1531 with the court a statement describing whether the parties have come to agreement. If  
1532 unresolved, the appeal will then go forward; if the matter has been resolved, the appeal  
1533 will be dismissed with prejudice. The cost of mediation shall be distributed among the  
1534 parties as a cost of the appeal as the parties may agree, or in the absence of agreement, as  
1535 the court may determine. Mediation hereunder shall not be the only method of resolving  
1536 a zoning appeal.

1537 **40A:12. Transition Provisions**

1538 Any rights under section 6 of chapter 40A and any zoning ordinance or by-law relating thereto  
1539 that were finally acquired prior to [ Date ] shall continue in full force and effect for the periods  
1540 of time specified in said statute and local zoning law.

1541 **SECTION 2.** Section 81D of chapter 41 of the General Laws, as appearing in the 2008  
1542 Official Edition, is hereby amended by striking out section 81D and inserting in place thereof the  
1543 following section 81D:-

1544 **41:81D. Master Plan**

1545 1. Requirement to Plan: A planning board established in any city or town shall make a master  
1546 plan for such city or town. The plan shall take effect upon adoption by the legislative body as

1547 provided in subsection 6, below. For a plan to remain in effect, from time to time not to exceed  
1548 10 years from the date of adoption, the planning board shall conduct a comprehensive review of  
1549 the plan and may extend, revise, or remake the plan, and the plan or amendment thereto shall  
1550 thereafter be re-adopted as provided in this section. The plan, once adopted, shall be the official  
1551 master plan of the city or town, replacing any previously adopted master plans.

1552 2. General Description of Plan:

1553 a. The plan shall be a comprehensive framework, through text, maps, and illustrations that  
1554 provides a basis for decision making about land use and the long term physical development  
1555 of the municipality. Other completed and current plans, reports, and studies may be  
1556 incorporated by reference to fulfill in whole or in part the requirements of each subject listed  
1557 below, provided that such material will then be considered part the plan, including its  
1558 implementation. The master plan shall be internally consistent in its policies, forecasts and  
1559 standards, and shall support and provide a coherent rationale for the municipality's zoning  
1560 ordinance or bylaws, subdivision regulations, and other laws, regulations, policies, and  
1561 capital expenditures.

1562 b. The plan shall include the required subjects identified in subsection 3, any optional  
1563 subjects in subsection 4 at the discretion of the municipality, and the regional plan self  
1564 assessment in subsection 5. The plan subjects may be written as separate elements or  
1565 organized and integrated as deemed appropriate by the planning board. Due to the wide  
1566 range of community types, characteristics, and planning needs in the commonwealth it is  
1567 recognized that the subjects addressed with a particular city or town in mind may be

1568 expanded upon or contracted as appropriate, and may vary greatly among communities in the  
1569 focus and depth of their analysis.

1570 3. Required Subjects: The plan shall address the following 5 required subjects, described below  
1571 in a general manner:

1572 a. Goals and Policies: A goals and policies statement that identifies the goals and policies of  
1573 the municipality for its future growth, development, redevelopment, conservation, and  
1574 preservation. Each community shall conduct a citizen participation process to determine  
1575 community values, to establish goals, and to identify patterns of development,  
1576 redevelopment, conservation, and preservation consistent with these goals. The goals and  
1577 policies statement shall address the required and selected optional plan elements

1578 b. Housing:

1579 (i) An inventory of local housing and population characteristics, an assessment and  
1580 forecast of housing needs; a statement of local housing goals, objectives, policies; and  
1581 implementing measures. Where applicable, existing local housing plans and studies may  
1582 be included by reference.

1583 (ii) An analysis of housing units by type of structure (e.g. single family, two family,  
1584 multi-family); affordable housing and subsidized housing; housing available for rental;  
1585 special needs housing; and housing for the elderly, including assisted living residences.

1586 (iii) An analysis of existing local policies, programs, laws, or regulations that encourage  
1587 the preservation, improvement, and development of such housing, including an  
1588 assessment of their adequacy.

1589 (iv) An evaluation of zoning and other policies to provide a variety of housing that meets  
1590 a broad range of housing needs, including but not limited to the affordable housing needs  
1591 of low, moderate, and median income households and the accessible housing needs of  
1592 people with disabilities and special needs. The evaluation shall include specific measures  
1593 for implementing the master plan in order to address these needs, including strategies,  
1594 programs, and assistance for the preservation or rehabilitation of existing housing; the  
1595 construction of new housing; and the adoption or amendment of local ordinances or  
1596 bylaws and regulations permitting, encouraging, or requiring diversity in housing  
1597 locations, types, designs, and area densities that offer alternatives to single family  
1598 detached housing. A current housing production plan consistent with M.G.L. 760 CMR  
1599 56.03(4) shall constitute the subject matter relative to housing under this subsection b.

1600 c. Natural Resources and Energy:

1601 (i) A general overview of the significant natural and energy resources of the municipality.

1602 (ii) Identification of protected and unprotected wetlands and water resources, lands  
1603 critical to sustaining surface and groundwater quality and quantity, environmentally  
1604 sensitive lands, critical wildlife habitat and biodiversity, agricultural lands and forests.  
1605 Priorities for protection of wildlife habitat, water resources, vistas and key landscapes,  
1606 outdoor recreation facilities, and farm and forestry land shall be identified.

1607 (iii) An outline of local laws, regulations, policies, and strategies to address needs for the  
1608 protection, restoration, and sustainable management of these resources, including  
1609 wetlands and water resources, environmentally sensitive lands, critical wildlife habitat

1610 and biodiversity, agricultural lands, and forests; and to promote development that  
1611 respects and enhances the state's natural resources.

1612 (iv) An energy component that explores locally feasible land use strategies to: maximize  
1613 energy efficiency and renewable energy opportunities; support land, energy, water, and  
1614 materials conservation strategies, local clean power generation, distributed generation  
1615 technologies, and innovative industries; and address climate change by reducing  
1616 greenhouse gas emissions and the consumption of fossil fuels.

1617 d. Land Use and Zoning:

1618 (i) An identification of historic settlement patterns and present land uses, and designation  
1619 of the proposed distribution, location, and inter-relationship of public and private land  
1620 uses in a general manner sufficient to guide the development of zoning ordinances or by-  
1621 laws, and maps.

1622 (ii) Land use policies and related maps, which shall be based upon a land use suitability  
1623 analysis identifying areas most suitable for development and related transportation  
1624 infrastructure and facilities. Preservation, growth and development areas shall support  
1625 the revitalization of city and town centers and neighborhoods by promoting preservation  
1626 and development that is compact, conserves land, protects historic resources, integrates  
1627 uses, and coordinates the provision of housing with the location of jobs, transit and  
1628 services, and new infrastructure. The plan shall also identify areas for economic  
1629 development and job creation, related public and private transportation and pedestrian  
1630 connections, and encourage the creation or extension of pedestrian-friendly districts and

1631 neighborhoods that mix commercial, civic, cultural, educational, and recreational  
1632 activities with open space and housing.

1633 (iii) A consideration of the relationship between proposed development intensity and the  
1634 capacity of land and existing and planned public facilities and infrastructure.

1635 (iv) A mapped land use plan illustrating the general land use policies and desired future  
1636 development patterns of the municipality, and a proposed zoning map.

1637 e. Implementation: An implementation program that defines and schedules the specific  
1638 municipal actions necessary to achieve the objectives of the master plan. This program may  
1639 be separately written or integrated into the required and selected subject matter. This  
1640 implementation program shall specify the course of action by which the municipality's  
1641 regulatory structures, including zoning and subdivision control regulations, may need to be  
1642 amended in order not to be inconsistent with the master plan. This element shall examine the  
1643 current land use permitting process in a community and, if necessary, make  
1644 recommendations for the development of clear, predictable, coordinated, and timely  
1645 procedures thereunder, including an assessment of the adequacy and effectiveness of the  
1646 existing structure of local government, including the roles and responsibilities of elected and  
1647 appointed boards, officers, and personnel, to implement the master plan through land use  
1648 ordinances, by-laws, and regulations.

1649 4. Optional Subjects: The following 6 subjects are optional, and described below in a general  
1650 manner:

1651 a. Economic Development:

1652 (i) An inventory and analysis of the local economic base, including: employment; local  
1653 industries and business clusters; labor force characteristics; land and buildings used for  
1654 nonresidential purposes, including vacant space; and office, retail, and industrial market  
1655 conditions.

1656 (ii) An assessment of opportunities and barriers to economic development, including but  
1657 not limited to identification of land use policies and available locations that: support the  
1658 growth of jobs, the retention of existing businesses, and the provision of space for new  
1659 businesses; encourage the reuse and rehabilitation of existing infrastructure, including  
1660 brownfields, rather than the construction of new infrastructure in undeveloped areas; and  
1661 facilitate larger-scale economic redevelopment or development in industry clusters  
1662 consistent or compatible with the regional and local economy.

1663 (iii) An assessment of opportunities and barriers to agriculture, including all branches of  
1664 farming and forestry, where applicable.

1665 (iv) An assessment of opportunities and barriers to self-employment and home  
1666 occupations, including but not limited to consideration of land use policies, infrastructure  
1667 and utilities, and technology.

1668 b. Cultural Resources:

1669 (i) An inventory of the significant cultural, scenic, and historic structures, sites, and  
1670 landscapes of the municipality, including archaeological resources.

1671 (ii) An assessment of policies and strategies to protect and manage the community's  
1672 cultural resources, including but not limited to a community-wide preservation plan,

1673 ordinances or bylaws and incentives for historic preservation, and land use policies to  
1674 facilitate the reuse of historic structures, where appropriate.

1675 c. Open Space and Recreation: An inventory of recreational facilities and open space areas of  
1676 the municipality, and policies and strategies for the management, protection, and  
1677 enhancement of such facilities and areas. A current Open Space and Recreational Plan  
1678 approved by the Division of Conservation Services shall constitute the subject matter relative  
1679 to open space and recreation hereunder.

1680 d. Infrastructure and Capital Facilities: An identification and analysis of existing and  
1681 forecasted needs for infrastructure and facilities used by the public. Scheduled expansion or  
1682 replacement of public facilities, infrastructure components such as water and sewer systems  
1683 or circulation system components and the anticipated costs and revenues associated with  
1684 accomplishment of such activities shall be detailed. This subject shall be required in a master  
1685 plan if development impact fees are to be assessed under section 9F of chapter 40A. The  
1686 master plan may be updated at any time to include this subject matter provided the  
1687 requirements in subsections 5 and 6 are met.

1688 e. Transportation:

1689 (i) An inventory of existing and proposed circulation and transportation systems.

1690 (ii) An assessment of opportunities and barriers to increasing access to available or  
1691 feasible transportation options, including land and water based public transit, bicycling,  
1692 walking, and transportation services for populations with disabilities.



1693 (iii) Identification of strategic investment options for transportation infrastructure to  
1694 encourage smart growth, maximize mobility, conserve fuel, and improve air quality; and  
1695 to facilitate the location of new development where a variety of transportation modes can  
1696 be made available.

1697 f. Partnership Planning: This subject shall be known as the “partnership plan,” and shall be  
1698 required in a master plan if a city or town wishes to accept the provisions of chapter 40U.  
1699 The partnership plan shall be consistent with this section 81D and the requirements set forth  
1700 in chapter 40U relative thereto. A master plan may be updated at any time to include this  
1701 subject matter provided the requirements in subsections 5 and 6 are met.

1702 5. Regional Plan, Self Assessment: Any required or selected optional subjects above shall  
1703 include a self assessment against similar subject matter in a regional plan adopted by the regional  
1704 planning agency under section 5 of chapter 40B and in effect, if any.

1705 6. Adoption of Plan:

1706 a. Proposal of the Plan: The plan shall only be made, extended, revised, or remade from time  
1707 to time by a simple majority vote of the planning board after a public hearing, notice of  
1708 which shall be posted and published in the manner prescribed for zoning amendments under  
1709 section 7 of chapter 40A,

1710 b. Adoption of the Plan: Adoption of the plan, or the extension, revision, or remake of the  
1711 plan, shall be by a simple majority vote the legislative body of the city or town; however, no  
1712 vote of the legislative body to alter the plan or amendment as proposed by the planning board  
1713 shall be other than by a two-thirds vote.

1714 c. The planning board shall, upon completion of any plan or report, or any change or  
1715 amendment to a plan or report produced under this section, furnish a copy of such plan or  
1716 report or amendment thereto, to the Department of Housing and Community Development.

1717 7. Regional Planning Agency, Optional Review and Certification of Plans:

1718 a. Review of Master Plan: Prior to local legislative adoption of a master plan under this  
1719 section, the plan may, at the election of the planning board and chief executive officer, be  
1720 referred to the applicable regional planning agency for review and certification. The regional  
1721 planning agency may, at its election, review the plan for certification, but must provide  
1722 written notice to the city or town within 15 days from receipt of the plan if it intends not to  
1723 review the plan. If the regional planning agency has elected to review the plan it shall act  
1724 within 90 days of receipt of the plan. Failure to act within 90 days shall be deemed a plan  
1725 certification by the regional planning agency. The 90 day review period shall be extended by  
1726 not longer than 90 days by the regional planning agency upon written request by the planning  
1727 board of the city or town.

1728 b. Scope of Review of Master Plan: Review and certification by the regional planning agency  
1729 shall be limited to an assessment of plan compliance with those requirements of this section  
1730 that are applicable to the city or town with due regard for the regional context of the city or  
1731 town. The review process may be interactive and iterative between the regional planning  
1732 agency and the planning board; changes to the plan mutually agreed upon may be made by  
1733 simple majority vote of the planning board during the review period or extensions thereof.  
1734 Once the review is completed by the regional planning agency, with or without certification,  
1735 comments, or outstanding issues, it may be brought to the local legislative body for adoption

1736 if the planning board so votes by a simple majority. A plan that has been certified by the  
1737 regional planning agency and adopted by the city or town shall be presumed to be in  
1738 compliance with this section. A plan that has not been so certified, for any reason including  
1739 non-referral to the regional planning agency, shall not for that reason alone be presumed to  
1740 be out of compliance with this section.

1741 c. Review of Partnership Plan: Review and certification by the regional planning agency of a  
1742 partnership plan pursuant to Chapter 40U shall be in accordance with subsection 7.a, above,  
1743 and shall consider whether a proposed partnership plan is: (i) complete ; and (ii) consistent  
1744 with the commonwealth's land use objectives as set forth in Chapter 40U. A partnership plan  
1745 shall be determined to be complete if, in addition to the requirements for required subjects set  
1746 forth in subsection 3 above of this section 81D it also contains all the elements required in  
1747 section 4 of chapter 40U. A partnership plan shall be determined to be consistent with the  
1748 commonwealth's land use objectives if it satisfies the minimum standards for consistency in  
1749 accordance with section 5 of chapter 40U. The review process may be interactive and  
1750 iterative between the regional planning agency and the planning board; changes to the  
1751 partnership plan mutually agreed upon may be made by simple majority vote of the planning  
1752 board during the review period or extensions thereof. Once the review is completed by the  
1753 regional planning agency and the partnership plan is certified as complete and consistent, it  
1754 may be brought to the local legislative body for adoption if the planning board so votes by a  
1755 simple majority. A partnership plan that has been certified by the regional planning agency  
1756 and adopted by the city or town shall be presumed to be in compliance with this section 81D  
1757 and chapter 40U. A partnership plan that has not been so certified, for any reason including

1758 non-referral to the regional planning agency, shall not be in compliance with this section 81D  
1759 and chapter 40U.

1760 d. Consolidated Review of Master Plan and Partnership Plan: For the purposes of this  
1761 subsection 7, and to meet the planning requirements of a partnership community under  
1762 chapter 40U, a master plan containing a partnership plan may be submitted to the regional  
1763 planning agency for review and certification in a consolidated manner,  
1764 provided the requirements of each plan are met.

1765 **SECTION 3.** Section 81L of chapter 41 of the General Laws, as appearing in the 2008  
1766 Official Edition, is hereby amended by striking out, in lines 52-78 inclusive, the definition of  
1767 “Subdivision” and inserting in place thereof the following definition:-

1768 “Subdivision” shall mean the division of a lot, tract, or parcel of land into 2 or more lots, tracts,  
1769 or parcels of land and shall include re-subdivision. When appropriate to the context, subdivision  
1770 shall include the process of subdivision or the land or territory subdivided. A change in the line  
1771 of any lot, tract, or parcel created by recorded deed or shown on a recorded plan may be defined  
1772 as a minor subdivision and, in such case, be governed by the provisions of section 81P.

1773 **SECTION 4.** Section 81L of said chapter 41, as so appearing, is hereby amended by  
1774 inserting the following definition:-

1775 “Minor Subdivision” shall mean a subdivision created in accordance with section 81P, provided  
1776 however that until rules and regulations are adopted by a planning board under 81P therefor,  
1777 “minor subdivision” shall solely mean the division of a lot, tract, or parcel of land into 2 or more  
1778 lots, tracts, or parcels where, at the time when it is made, every lot within the lot, tract or parcel

1779 so divided has frontage on: a) a public way or a way which the clerk of the city or town certifies  
1780 is maintained and used as a public way; b) a way shown on a plan theretofore approved and  
1781 endorsed in accordance with the subdivision control law; or c) a way in existence when the  
1782 subdivision control law became effective in the city or town in which the land lies, having, in the  
1783 opinion of the planning board, sufficient width, suitable grades and adequate construction to  
1784 provide for the needs of vehicular traffic in relation to the proposed use of the land abutting  
1785 thereon or served thereby, and for the installation of municipal services to serve such land and  
1786 the buildings erected or to be erected thereon. Such frontage shall be of at least such distance as  
1787 is then required by the zoning ordinance or by-law, if any, of said city or town for erection of a  
1788 building on such lot, and if no distance is so required, such frontage shall be of at least 20 feet.

1789           **SECTION 5.** Section 81M of said chapter 41, as so appearing, is hereby amended by  
1790 inserting, after the word “systems”, in line 23, the words:- , and for those aspects of a plan  
1791 adopted by the city or town under section 81D of this chapter which are particular to the  
1792 subdivision of land.

1793           **SECTION 6.** Section 81O of said chapter 41, as so appearing, is hereby amended by  
1794 striking out the second sentence in the first paragraph and inserting in place thereof the following  
1795 sentences:- After the approval of a plan, the location and width of ways, and the number, shape,  
1796 and size of the lots shown thereon, may not be changed unless the plan is amended as provided  
1797 in section 81W. In the alternative, a planning board may adopt rules and regulations under  
1798 sections 81P and 81Q of this chapter defining and regulating such changes as minor  
1799 subdivisions.

1800           **SECTION 7.** Said section 81O of said chapter 41, as so appearing, is hereby amended  
1801 by striking out the second paragraph and inserting in place thereof the following paragraph:-  
1802 For the purposes of the time within which a planning board must act, a plan shall be deemed  
1803 submitted under this section as of the date of the next regularly scheduled meeting of the  
1804 planning board, provided that during posted business hours the plan is both received by the  
1805 planning board and filed with the town clerk no later than 7 calendar days prior to said meeting  
1806 date, or 35 calendar days after such receipt by the planning board and filing with the town clerk,  
1807 whichever shall first occur. An incomplete submission or one not in accordance with submittal  
1808 requirements may be the basis upon which the planning board may deny approval of the plan.  
1809 Notwithstanding the foregoing, a planning board or its designee may give notice to the applicant  
1810 of how the application is incomplete or not in accordance with said submittal requirements and  
1811 may grant to the applicant additional time to effect corrective measures.

1812           **SECTION 8.** Said chapter 41, as so appearing, is hereby amended by striking out section 81P  
1813 and inserting in place thereof the following section 81P:-

1814           **41:81P. Minor Subdivisions**

1815           1) Applicability: Minor subdivisions, as defined in this chapter, and as may be further defined in  
1816 the local subdivision rules and regulations, shall be governed by this section. Section 81S and  
1817 the public hearing requirements in section 81T of this chapter shall not apply to minor  
1818 subdivisions. Except as provided below, all other sections of the subdivision control law that  
1819 apply to subdivisions shall apply to minor subdivisions in so far as apt.

1820           2) Rules and Regulations, Transition Provision: A planning board may adopt alternative rules  
1821 and regulations under section 81Q of this chapter relative to minor subdivisions, but in no case

1822 may such rules and regulations impose a procedural or substantive requirement more stringent  
1823 than those specified in this chapter, this section 81P, or contained in the local rules and  
1824 regulations otherwise applicable to subdivisions. Until such rules and regulations are adopted,  
1825 the procedures under subsection 6 below shall apply to minor subdivisions.

1826 3) Rules and Regulations, Required Provisions: The rules and regulations for minor subdivisions  
1827 shall: a) specify that an application for a minor subdivision may create up to 6 additional  
1828 residential lots within the meaning of the subdivision control law, either on ways described in the  
1829 definition of minor subdivision or on new ways; b) set forth the reasonable requirements and  
1830 standards of the board for those existing ways described in the definition of minor subdivision,  
1831 provided that no requirements shall be made for the location of such ways or for a roadway  
1832 width of greater than 22 feet; c) set forth the reasonable requirements and standards of the board  
1833 for the proposed ways shown on a plan, provided that no requirement may be made for a  
1834 roadway width of greater than 22 feet; and d) establish a time period for the planning board to  
1835 take final action and to file with the city or town clerk a certificate of such action within 65 days  
1836 or less in the case of an existing way, or 95 days or less in the case of a new way.

1837 4) Rules and Regulations, Optional Provisions The rules and regulations for minor subdivisions  
1838 may: a) notwithstanding subsection 1), above require a public hearing under Section 81T of this  
1839 chapter for minor subdivisions served by a new way; b) require that applications for minor  
1840 subdivisions from the same lot, tract, or parcel from which the first minor subdivision was  
1841 created not create more than the maximum number of additional lots in a set period of years; c)  
1842 lessen or eliminate any requirement of section 81U of this chapter otherwise applicable to  
1843 subdivisions; and d) lessen or eliminate any local rule or regulation adopted under section 81Q of  
1844 this chapter otherwise applicable to subdivisions.

1845 5) Rules and Regulations, Optional Provisions Requiring Ratification by Legislative Body:

1846 Subject to ratification by the local legislative body by a simple-majority vote, the rules and  
1847 regulations for minor subdivisions may: a) increase the maximum number of additional lots  
1848 created in an application for a minor subdivision to a number greater than 6; and c) define  
1849 “minor subdivision” more broadly than in section 81L of this chapter.

1850 6) Alternate Procedures for Minor Subdivisions Until Rules and Regulations Adopted: Until such

1851 rules and regulations are adopted, any person wishing to cause to be recorded a plan of land  
1852 situated in a city or town in which the subdivision control law is in effect, who believes that his  
1853 plan does not require approval under the subdivision control law, may submit his plan to the  
1854 planning board of such city or town in the manner prescribed in section 81T, and, if the board  
1855 finds that the plan does not require such approval, it shall forthwith, without a public hearing,  
1856 endorse thereon or cause to be endorsed thereon by a person authorized by it the words “approval  
1857 under the subdivision control law not required” or words of similar import with appropriate name  
1858 or names signed thereto, and such endorsement shall be conclusive on all persons. Such  
1859 endorsement shall not be withheld unless such plan shows a subdivision. If the board shall  
1860 determine that in its opinion the plan requires approval, it shall within 21 days of such submittal,  
1861 give written notice of its determination to the clerk of the city or town and the person submitting  
1862 the plan, and such person may submit his plan for approval as provided by law and the rules and  
1863 regulations of the board, or he may appeal from the determination of the board in the manner  
1864 provided in section 81BB. If the board fails to act upon a plan submitted under this section or  
1865 fails to notify the clerk of the city or town and the person submitting the plan of its action within  
1866 21 days after its submission, it shall be deemed to have determined that approval under the  
1867 subdivision control law is not required, and it shall forthwith make such endorsement on said



1868 plan, and on its failure to do so forthwith the city or town clerk shall issue a certificate to the  
1869 same effect. The plan bearing such endorsement or the plan and such certificate, as the case may  
1870 be, shall be delivered by the planning board, or in case of the certificate, by the city or town  
1871 clerk, to the person submitting such plan. The planning board of a city or town which has  
1872 authorized any person, other than a majority of the board, to endorse on a plan the approval of  
1873 the board or to make any other certificate under the subdivision control law, shall transmit a  
1874 written statement to the register of deeds and the recorder of the land court, signed by a majority  
1875 of the board, giving the name of the person so authorized.

1876 **SECTION 9.** Section 81Q of said chapter 41, as so appearing, is hereby amended by  
1877 inserting, after the second sentence, in line 22, the sentence:- Without limiting the foregoing,  
1878 there shall be a rebuttable presumption that requirements for a roadway width of greater than 24  
1879 feet are unlawfully excessive.

1880 **SECTION 10.** Said section 81Q of said chapter 41, as so appearing, is hereby amended  
1881 by inserting after the word “thereof,” in line 69, the following words:- “except that the rules and  
1882 regulations may require the plan to show a park or parks suitably located for playground or  
1883 recreation purposes benefiting the lots in the subdivision or for providing light and air, and not  
1884 exceeding 5 percent of the land being subdivided.”

1885 **SECTION 11.** Said section 81Q of said chapter 41, as so appearing, is hereby amended  
1886 by inserting after the first paragraph the following paragraphs:-  
1887 After January 1, 2017, no subdivision rule or regulation may be inconsistent with a plan adopted  
1888 in compliance with section 81D of chapter 41. No subdivision rule or regulation shall be deemed  
1889 inconsistent with the plan if it furthers, or at least does not impede, the achievement of the plan's

1890 goals and policies, and if it is not incompatible with the plan's proposed land uses and  
1891 development patterns.

1892 After the effective date of the plan, a subdivision rule or regulation shall enjoy a rebuttable  
1893 presumption in any action, suit, or administrative proceeding that its provisions are not  
1894 inconsistent with the plan. If the presumption is rebutted, inconsistency may serve as the basis  
1895 upon which a court or administrative agency may declare any relevant zoning ordinance or by-  
1896 law provision to be invalid as applied to the property which is the subject of the action, suit, or  
1897 administrative proceeding. For any amendment to a plan adopted after January 1, 2017, no such  
1898 declaration of invalidity may be made in any action, suit, or administrative proceeding for a  
1899 period of 12 months after the effective date of such plan amendment.

1900 For the purposes of this section only, a city or town without a current local plan under section  
1901 81D of chapter 41 may adopt an extant regional plan under section 5 of chapter 40B. Such  
1902 adoption shall be by the same process specified in section 81D of chapter 41.

1903 **SECTION 12.** Section 81T of said chapter 41, as so appearing, is hereby amended by  
1904 striking out, in lines 2-3 inclusive, the following words “or for a determination that approval is  
1905 not required”.

1906 **SECTION 13.** Said section 81U of said chapter 41, as so appearing, is hereby amended  
1907 by striking out, in lines 173-174 inclusive, the words “for a period of not more than three years”.

1908 **SECTION 14.** Section 81X of said chapter 41, as so appearing, is hereby amended by  
1909 striking out, in lines 12-13 inclusive, the following words “such plan bears the endorsement of  
1910 the planning board that approval of such plan is not required, as provided in section eighty-one P,  
1911 or (3)”.

1912           **SECTION 15.** Said section 81X of said chapter 41, as so appearing, is hereby amended  
1913 by striking out, in lines 17-20 inclusive, the following words “or that it is a plan submitted  
1914 pursuant to section eighty-one P and that it has been determined by failure of the planning board  
1915 to act thereon within the prescribed time that approval is not required.”.

1916           **SECTION 16.** Said section 81X of said chapter 41, as so appearing, is hereby amended  
1917 by striking out the fourth paragraph and inserting in place thereof the following paragraphs:-

1918 Perimeter Plans: Notwithstanding the foregoing provisions of this section, the register of deeds  
1919 shall accept for recording, and the land court shall accept with a petition for registration or  
1920 confirmation of title, any plan bearing a professional opinion by a registered professional land  
1921 surveyor that the property lines shown are the lines dividing existing ownerships, and the lines of  
1922 streets and ways shown are those of public or private streets or ways already established, and that  
1923 no new lines for division of existing ownership or for new ways are shown.

1924 Lot Line Changes: The register of deeds and the land court shall accept for recording or  
1925 registration any plan showing a change in the line of any lot, tract, or parcel bearing a  
1926 professional opinion by a registered professional land surveyor and a certificate by the person or  
1927 board charged with the enforcement of the zoning ordinance or by-law of the city or town that  
1928 the property lines shown: do not create an additional building lot; do not create, add to, or alter  
1929 the lines of a street or way; do not render an existing legal lot or structure illegal; do not render  
1930 an existing nonconforming lot or structure more nonconforming; and are not subject to  
1931 alternative local rules and regulations for minor subdivisions under section 81P of this chapter.  
1932 The recording of such plan shall not relieve any owner from compliance with the provisions of  
1933 the Subdivision Control Law or of any other applicable provision of law.

1934           **SECTION 17.** Said section 81BB of said chapter 41, as so appearing, is hereby amended  
1935 by striking out the first paragraph and inserting in place thereof the following paragraph:-

1936           Section 81BB. Any person, whether or not previously a party to the proceedings, or any  
1937 municipal officer or board, aggrieved by a decision of a board of appeals under section 81Y, or  
1938 by any decision of a planning board concerning a plan of a subdivision or minor subdivision of  
1939 land, or by the failure of such a board to take final action concerning such a plan within the  
1940 required time, may appeal to the superior court for the county in which said land is situated or to  
1941 the land court; provided, that such appeal is entered within 20 days after such decision has been  
1942 recorded in the office of the city or town clerk or within 20 days after the expiration of the  
1943 required time as aforesaid, as the case may be, and notice of such appeal is given to such city or  
1944 town clerk so as to be received within such 20 days. A complaint by a plaintiff challenging a  
1945 subdivision or minor subdivision approval under this section shall allege the specific reasons  
1946 why the subdivision or minor subdivision fails to satisfy the requirements of the board's rules  
1947 and regulations or other applicable law and allege specific facts establishing how the plaintiff is  
1948 aggrieved by such decision. A complaint by an applicant challenging a subdivision or minor  
1949 subdivision denial or conditioned approval under this section shall allege the specific reasons  
1950 why the subdivision or minor subdivision properly satisfies the requirements of the board's rules  
1951 and regulations or other applicable law. The board's decision in either case shall be affirmed  
1952 unless the court concludes the board abused its discretion in approving, approving with  
1953 conditions, or denying the subdivision or minor subdivision, as the case may be.

1954           **SECTION 18.** Section 53G of chapter 44 of the General Laws, as appearing in the 2008  
1955 Official Edition, is hereby amended by inserting after the number "9", in line 2, the following  
1956 numbers and letters:- A, 9B, 9G,



1974 The sections herein this chapter shall be known and may be cited as the “Land Use  
1975 Partnership Act.” The purposes of the act shall be to advance the commonwealth’s land use  
1976 objectives, which are as follows:

1977 A) Support the revitalization of city and town centers and neighborhoods by promoting  
1978 development that is compact, conserves land and integrates uses;

1979 B) Support the construction and rehabilitation of homes near jobs, infrastructure and  
1980 transportation options to meet the needs of people of all abilities, income levels, and  
1981 household types;

1982 C) Attract businesses and jobs to locations near housing, infrastructure, and  
1983 transportation options;

1984 D) Protect environmentally sensitive lands, natural resources, agricultural lands, critical  
1985 habitats, wetlands and water resources, and cultural and historic structures and  
1986 landscapes;

1987 E) Construct and promote developments, buildings, and infrastructure that conserve  
1988 natural resources by reducing waste and pollution through efficient use of land, energy  
1989 and water;

1990 F) Support transportation options that maximize mobility, reduce congestion, conserve  
1991 fuel and improve air quality;

1992 G) Maximize energy efficiency and renewable energy opportunities to reduce greenhouse  
1993 gas emissions and consumption of fossil fuels;

1994 H) Promote equitable sharing of the benefits and burdens of development;

1995 I) Make regulatory and permitting processes for development clear, predictable,  
1996 coordinated, and timely in accordance with smart growth and environmental stewardship;  
1997 and  
1998 J) Support the development and implementation of local and regional plans that have  
1999 broad public support and are consistent with these purposes.

2000 **40U:2. Definitions**

2001 As used in this chapter, the following words shall, unless the context clearly requires  
2002 otherwise, have the following meanings:

2003 “Affordable housing” shall have the definition found in Chapter 40A.

2004 “By-right” shall have the definition found in Chapter 40A.

2005 “Chief executive officer” shall have the definition found in Chapter 40A.

2006 “Constructively approved” means deemed approved by the failure of the granting  
2007 authority to issue a decision or determination within the time prescribed, as it may be  
2008 extended by written agreement between the applicant and the granting authority;  
2009 provided that an applicant who seeks approval by reason of the failure of the granting  
2010 authority to act within such time prescribed, shall so notify the city or town clerk, and  
2011 parties in interest, in writing within 14 days from the expiration of the time prescribed or  
2012 extended time, if applicable, of such approval.

2013 “Development agreement”, a contract entered into between a municipality or  
2014 municipalities and a holder of property development rights, the principal purpose of  
2015 which is to establish the development regulations that will apply to the subject property

2016 during the term of the agreement and to establish the conditions to which the  
2017 development will be subject including, without limitation, a schedule of development  
2018 impact fees.

2019 “Economic development district” shall mean a zoning district that: permits or allows  
2020 commercial and/or industrial use; or permits or allows mixed use including commercial  
2021 and/or industrial use; and is an eligible location.

2022 “Eligible location” shall mean an area that by virtue of its physical and regulatory  
2023 suitability for development, the adequacy of transportation and other infrastructure and  
2024 the compatibility of proximate land uses is, in the determination of the regional planning  
2025 agency, a suitable location for development of the type contemplated by a partnership  
2026 plan. Any area that would qualify as an “eligible location” under chapter 40R shall  
2027 automatically qualify as an “eligible location” for a residential development district.

2028 “Housing target number” shall mean a number equal to 5 percent of the total number of  
2029 year-round housing units enumerated for the municipality in the latest available United  
2030 States census as of the date on which the plan was submitted to the regional planning  
2031 agency.

2032 “Implementing regulations” shall mean the local zoning ordinances or by-laws,  
2033 subdivision rules and regulations, and other local land use regulations, or amendments  
2034 thereof, necessary to effectuate the minimum standards for consistency with the  
2035 commonwealth’s land use objectives established or required by a partnership plan.

2036 “Interagency planning board” shall mean a board comprised of the secretary of Housing  
2037 and Economic Development, the secretary of Energy and Environmental Affairs, and the



2038 state permit ombudsman, or their designees, together with a representative designated by  
2039 the Massachusetts Association of Regional Planning Agencies (the “regional  
2040 representative”), a representative designated by the Massachusetts Municipal  
2041 Association (the “municipal representative”), and a representative designated by the  
2042 Massachusetts Association of Planning Directors (the “planning representative”). The  
2043 state permit ombudsman shall serve as the chair of the board and shall vote only in the  
2044 case of a tie.

2045 “Low impact development techniques” shall mean stormwater management techniques  
2046 appropriate to the size, scale, and location of the development proposal that limit off-site  
2047 stormwater runoff (both peak and non-peak flows) to levels substantially similar to  
2048 natural hydrology (or, in the case of a redevelopment site, that reduce such flows from  
2049 pre-existing conditions), by emphasizing decentralized management practices and the  
2050 protection of on-site natural features.

2051 “Minimum area density” shall mean the land area required for a given unit of  
2052 development, which shall not necessarily be expressed as a lot size requirement.

2053 “Natural resource protection zoning” shall mean the power to protect natural resources by  
2054 limiting development in areas designated by the state, a regional planning agency, or by a  
2055 city or town as having significant natural or cultural resource values by requiring  
2056 minimum area densities of one dwelling unit per ten or more acres.

2057 “Open space residential design” shall mean a process for the cluster development of land  
2058 that: requires identification of the significant natural features of the land and concentrates  
2059 development by use of reduced dimensional requirements in order to preserve those

2060 natural features; preserves at least 50 percent of the land's developable area in a natural,  
2061 scenic or open condition or in agricultural, farming or forestry use; and permits the  
2062 development of a number of new housing units at least equal to the quotient of the land's  
2063 developable area divided by the minimum lot area per housing unit required by the  
2064 zoning ordinance or by-law. For the purposes of this definition, the land's developable  
2065 area shall be determined pursuant to applicable state and local land use and  
2066 environmental laws and regulations, and the zoning ordinance or by-law, without regard  
2067 in either case to the suitability of soils or groundwater for on-site wastewater disposal.

2068 "Other local land use regulations" shall mean all local legislative, regulatory, or other  
2069 actions which are more restrictive than state requirements, if any, including subdivision  
2070 and board of health rules and regulations, local wetlands ordinances or by-laws, and other  
2071 local ordinances, by-laws, codes, and regulations.

2072 "Partnership community" shall mean a community for which a partnership plan and  
2073 implementing regulations have been certified by the applicable regional planning agency,  
2074 adopted by the municipality, and remain in effect.

2075 "Partnership plan" shall mean the subject matter contained in section 81D.4.f of chapter  
2076 41 prepared by the planning board in accordance with sections 4 and 5 of this chapter  
2077 40U and which has been certified by the applicable regional planning agency.

2078 "Prompt and predictable permitting" shall mean that zoning and other local land use  
2079 regulations allow development to proceed by right by means of permitting processes that  
2080 are designed to result in final written decisions on all local permits and approvals in less  
2081 than 180 days from the date of the filing of a complete application. For commercial and

2082 industrial development, local permitting pursuant to chapter 43D shall also be deemed  
2083 prompt and predictable permitting.

2084 “Rate of development”, local legislative or regulatory measures adopted by cities and  
2085 towns under this chapter to regulate the number of permits for new construction or  
2086 approvals of new building lots issued in a defined period of time or otherwise in  
2087 accordance with defined standards and criteria.

2088 “Regional planning agency” shall mean the regional or district planning commission  
2089 established pursuant to chapter 40B for the region within which a municipality is located.  
2090 The term shall also mean the Martha’s Vineyard Commission, as described in Chapter  
2091 831 of the Acts of 1977, and the Cape Cod Commission, as described in Chapter 716 of  
2092 the Acts of 1989, the Franklin Council of Governments, as described in Chapter 151 of  
2093 the Acts of 1996, and the Northern Middlesex Council of Governments, as described in  
2094 Chapter 420 of the Acts of 1989.

2095 “Residential development district” shall mean a zoning district that: permits or allows  
2096 residential use at a density of not less than 4 units per acre of developable land for single-  
2097 family residential use, not less than 8 units per acre of developable land for two- and  
2098 three-family and attached townhouse residential use, and not less than 12 units per acre of  
2099 developable land for multi-family residential use, or permits or allows mixed use  
2100 including residential use at such density; is in an eligible location; and does not impose  
2101 other requirements that add unreasonable costs or otherwise unreasonably impair the  
2102 economic feasibility of residential development at such density. A zoning district that  
2103 permits or allows mixed use may qualify as both an economic development district and a

2104 residential development district, if the standards for both districts are met. The  
2105 implementing regulations for any residential development district that permits or allows  
2106 mixed use shall contain adequate provisions to ensure that any contemplated contribution  
2107 towards the housing target number to be provided by such district will be achieved. To  
2108 achieve the minimum densities and housing target number, the implementing regulations  
2109 may employ zoning techniques such as infill development, cottage zoning, transfer of  
2110 development rights, and accessory dwelling units. The foregoing minimum density for  
2111 single-family residential use may be reduced to not less than 2 units per acre of  
2112 developable land upon a determination by the regional planning agency that the lack of  
2113 adequate water supply and/or wastewater infrastructure within the municipality prevents  
2114 full compliance with the minimum density standard. If there is no public water supply or  
2115 public wastewater infrastructure existing anywhere within the municipality, then the  
2116 minimum density for single-family residential use may be reduced to not less than 2 units  
2117 per acre of developable land without the need for a determination by the regional  
2118 planning agency.

2119 **40U:3. Preparation, Adoption, and Certification of a Partnership Plan**

2120 A. A planning board may prepare, and from time to time amend or renew, a proposed  
2121 partnership plan for a municipality.

2122 B. The partnership plan shall be reviewed, certified, and adopted pursuant to the  
2123 requirements of subsections 4-7 of section 81D of chapter 41.

2124 **40U:4. Elements of a Partnership Plan**

2125 A partnership plan shall be consistent with section 81D of chapter 41 and in addition shall  
2126 address at least the following five areas: economic development, housing, open space  
2127 protection, water management, and energy management.

2128 The partnership plan shall contain:

2129 A. an overall statement of the land use goals and objectives of the municipality for its  
2130 future growth and development, including specific reference to each of the five areas;

2131 B. a description of the zoning and other land use regulation policies that will be used to  
2132 implement those goals and objectives, including with respect to each of the five areas;

2133 C. an assessment of the infrastructure improvements needed to support the  
2134 implementation policies and strategies identified in B, above;

2135 D. an overall assessment of the plan's consistency with the commonwealth's land use  
2136 objectives set forth in section 1 herein; and

2137 E. an assessment of the plan's specific compliance with the minimum standards for  
2138 consistency set forth in section 5, below.

2139 The partnership plan may include materials prepared within the last 5 years as part of a local  
2140 planning document, including a master plan prepared pursuant to section 81D of chapter 41.

2141 The partnership plan shall be established and implemented in ways that protect and  
2142 affirmatively promote equal opportunity and diversity, consistent with stated goals of the  
2143 commonwealth. Each municipality, in preparing and implementing its partnership plan, shall  
2144 consider the likely effects that the plan will have on achieving non-discrimination, diversity,  
2145 and equal opportunity.

2146 **40U:5. Minimum Standards for Consistency with Commonwealth's Land Use Objectives**

2147 The minimum standards for consistency with the commonwealth's land use objectives may  
2148 be set forth in regulations duly promulgated by the Interagency Planning Board.

2149 Notwithstanding the foregoing, for plans submitted for certification within the first 5 years of  
2150 the effective date of passage of this act, a determination of consistency with the  
2151 commonwealth's land use objectives shall be mandatory if the following minimum standards  
2152 have been satisfied:

2153 A. The plan establishes prompt and predictable permitting of commercial and/or  
2154 industrial development within one or more economic development districts. This  
2155 standard may be waived or modified upon a determination by the regional planning  
2156 agency that adequate alternatives for economic development exist elsewhere in the region  
2157 and are more appropriately located there.

2158 B. The plan establishes prompt and predictable permitting of residential development  
2159 within one or more residential development districts that can collectively accommodate,  
2160 in the determination of the regional planning agency, a number of new housing units  
2161 (excluding new housing units, other than accessory apartments, which are restricted,  
2162 through zoning or other legal means, as to the number of bedrooms or as to the age of  
2163 their residents) equal to the housing target number. For the initial certification of a plan, a  
2164 municipality's housing target number shall be reduced by the number of new housing  
2165 units for which building permits were issued within 2 years prior to the municipality's  
2166 effective date, to the extent such building permits were issued within residential

2167 development districts for which there was prompt and predictable permitting at the time  
2168 of building permit issuance.

2169 C. The plan requires that, for any zoning district that requires a minimum lot area of  
2170 40,000 square feet or more for single-family residential development, development of 5  
2171 or more new housing units utilize open space residential design, except upon a  
2172 determination by the regional planning agency that open space residential design is not  
2173 feasible. In districts requiring minimum lot areas of between 40,000 and 80,000 square  
2174 feet in nitrogen sensitive areas as defined under Title 5 of the Environmental Code, the  
2175 minimum preservation requirement of 50 percent set forth in section 2, Open Space  
2176 Residential Design, shall be modified to equal the percentage resulting from the  
2177 subtraction of 40,000 square feet from the lot size requirement, divided by the lot size  
2178 requirement, and multiplied by 100.

2179 D. The plan requires, through zoning or general ordinances or by-laws, all development  
2180 that disturbs more than one acre of land, including development by-right, utilize low  
2181 impact development techniques.

2182 E. The plan establishes prompt and predictable permitting of renewable or alternative  
2183 energy generating facilities, renewable or alternative energy research and development  
2184 facilities, or renewable or alternative energy manufacturing facilities, within one or more  
2185 zoning districts that are eligible locations.

2186 The Interagency Planning board shall promulgate regulations to effect the purposes of this  
2187 act. To assist municipalities in this effort, the regulations to be promulgated by the  
2188 Interagency Planning Board hereunder shall include at least one model provision for

2189 implementing regulations for open space residential design, low impact development, and  
2190 clean energy generation/cogeneration facilities that would satisfy the standards hereof.

2191 **40U:6. Preparation, Adoption, Review, and Certification of Implementing Regulations**

2192 A. Prior to or following municipal adoption of a partnership plan, the city or town may  
2193 prepare proposed implementing regulations for the partnership plan.

2194 B. Upon completion of the proposed implementing regulations, the planning board and chief  
2195 executive officer may submit the proposed implementing regulations to the regional planning  
2196 agency for certification.

2197 C. Within 90 days of receiving a submission, the regional planning agency shall determine  
2198 whether the proposed implementing regulations are consistent with the certified partnership  
2199 plan. The implementing regulations shall be deemed consistent with the certified partnership  
2200 plan if they effectuate the minimum standards for consistency with the commonwealth's land  
2201 use objectives established or required by the certified partnership plan. If the regional  
2202 planning agency determines that the implementing regulations are consistent with the  
2203 certified partnership plan, then the agency shall issue a written certification to that effect. If  
2204 the regional planning agency determines that the regulations do not effectuate the minimum  
2205 standards for consistency, then the agency shall provide the municipality with a written  
2206 statement of the reasons for its determination. A municipality may re-submit for certification  
2207 at any time modified implementing regulations that address the issues set forth in the  
2208 agency's statement of reasons. If the regional planning agency does not issue a certification  
2209 or provide a statement of reasons within 90 days after receiving implementing regulations  
2210 (including re-submitted implementing regulations), then the implementing regulations shall



2211 be deemed certified. The municipality shall have the option of submitting its implementing  
2212 regulations together with its submission of its partnership plan pursuant to section 4 herein,  
2213 in which case the regional planning agency shall review both the partnership plan and the  
2214 implementing regulations within the same 90 day period.

2215 D. Following certification by the regional planning agency, the implementing regulations  
2216 may be adopted by the municipality according to the procedures and requirements for each  
2217 type of local law or regulation.

2218 E. The town clerk shall within 20 days of the final approval of all implementing regulations  
2219 file a true copy of the implementing regulations with the regional planning agency.

2220 F. Amendments to the Implementing Regulations by the legislative body or a board made  
2221 subsequent to certification may lead to withdrawal of certification by the regional planning  
2222 agency.

2223 **40U:7. Partnership Community Effective Date**

2224 Within 15 days of receipt by the regional planning agency of a true copy of certified  
2225 implementing regulations duly adopted by the city or town pursuant to a certified partnership  
2226 plan, the agency shall notify the municipality in writing that it is deemed a “partnership  
2227 community”. The date of that notification shall be deemed the “municipality’s effective  
2228 date”.

2229 **40U:8. Effect of Partnership Plan Status on Zoning and Land Use Regulation**

2230 A. Following the municipality’s effective date, local zoning ordinances or by-laws,  
2231 subdivision rules and regulations, and other local land use regulations (other than certified

2232 implementing regulations) which are determined to be inconsistent with the certified  
2233 partnership plan or the certified implementing regulations shall be deemed invalid. Such a  
2234 determination may be sought and obtained through any means otherwise available by statute  
2235 for the determination of the validity of such land use regulations. Any material amendment  
2236 to a certified partnership plan or certified implementing regulations that has not been  
2237 prepared, certified, and adopted in accordance with the provisions of section 81D of chapter  
2238 41 and this chapter shall be presumed to be inconsistent with the certified partnership plan.

2239 B. If a municipality has issued, at the time of the municipality's effective date, a special  
2240 permit that in itself allows new housing units equal to one-half or more of the municipality's  
2241 housing target number, and if such special permit remains in effect for at least 2 years after  
2242 the municipality's effective date, then residential development under such special permit  
2243 which otherwise qualifies hereunder shall also be deemed by right.

2244 C. If at any time more than 2 years after the municipality's effective date the total number of  
2245 housing units for which building permits have been applied for within the residential  
2246 development districts since the municipality's effective date is greater than the housing target  
2247 number (adjusted pro rata for the number of years since the municipality's effective date  
2248 divided by the ten-year time frame of the plan), but the total number of housing units for  
2249 which building permits have been issued within the residential development districts is less  
2250 than the pro rata housing target number, then the provisions of this subsection shall be in  
2251 effect. During such time period, any applications for building permits or other local land use  
2252 permits for residential development within such residential development districts shall  
2253 deemed constructively approved if not acted upon within 180 days after receipt of permit  
2254 applications. In addition, an application received under this section shall be subject only to

2255 those conditions that are necessary to ensure substantial compliance of the proposed  
2256 development project with applicable laws and regulations; and it may be denied only on the  
2257 grounds that the proposed development project does not substantially comply with applicable  
2258 laws and regulations or the applicant failed to submit information and fees required by  
2259 applicable laws and regulations and necessary for an adequate and timely review of the  
2260 development project. The foregoing provisions shall no longer be in effect once the total  
2261 number of housing units for which building permits have been issued within such residential  
2262 development districts equals or exceed the pro rata housing target number.

2263 D. Following the municipality's effective date, in addition to those powers conferred upon  
2264 cities and towns clarified and enumerated in chapter 40A, partnership communities shall  
2265 have the following additional powers:

2266 1. Rate of Development: The power to regulate rate of development, as defined herein. A  
2267 zoning ordinance or by-law that limits the rate of development of new housing units (a  
2268 "rate of development measure") shall not be declared exclusionary, a denial of  
2269 substantive due process, or otherwise against public policy, provided that it complies with  
2270 the following conditions. Within residential development districts identified under section  
2271 5.B, above, the rate of development measure may limit the number of building permits  
2272 issued in any twelve-month period to an amount equal to or greater than one-half of the  
2273 housing target number. In the event the municipality meets its housing target number  
2274 prior to the expiration of the 10-year term of the plan, it may amend said ordinance or by-  
2275 law to restrict the by-right development of new housing units within residential  
2276 development districts for the remainder of the term. For areas not located within  
2277 residential development districts identified under section 5.B, above, any rate of

2278 development measure shall be consistent with the following additional element of the  
2279 partnership plan. The plan shall contain consistent policies and strategies for the  
2280 implementation of rate of development measures that include a study of the need for such  
2281 measures, a methodology by which to determine a reasonable rate of issuance of either  
2282 permits for new construction or approvals of new building lots, a time horizon within  
2283 which such measures shall remain in effect, and a periodic review schedule. A rate of  
2284 development measure shall not restrict the construction of, or creation of building lots  
2285 for, affordable housing units as that term is defined under chapter 40A and it shall not  
2286 apply to structures accessory to residential uses nor to construction work upon an existing  
2287 dwelling unit.

2288 2. Natural Resource Protection Zoning: A zoning ordinance or by-law that requires a  
2289 minimum area density of 10 acres or more per dwelling unit to protect farmland, forestry  
2290 land, or other land of high natural resource value shall not for that reason alone be  
2291 declared exclusionary, a denial of substantive due process, or otherwise against public  
2292 policy. Such land types deemed appropriate for these measures shall be identified in the  
2293 partnership plan. The zoning ordinance or by-law may require dwelling units and other  
2294 development to be concentrated on a portion of the parcel in a manner consistent with the  
2295 natural resource protection goals of the ordinance or by-law. Natural resource protection  
2296 zoning measures that specifically require individual lot sizes greater than 2 acres shall be  
2297 subject to the requirements of section 5.C of this chapter 40U.

2298 3. Vested Rights: Notwithstanding section 6B of chapter 40A, the minimum vesting  
2299 period for a definitive subdivision plan in a partnership community shall not be 8 years,

2300 but shall instead be 4 years. This provision shall not apply to the 3 year minimum vesting  
2301 period for minor subdivisions in said section 6B of chapter 40A.

2302 4. Development Agreements: The power to enter into development agreements as defined  
2303 herein. A development agreement is a contract between the applicant and a city or town  
2304 under which the applicant may agree to contribute public capital facilities to serve the  
2305 proposed development and the municipality or both, to build affordable housing either on  
2306 site or off site, to dedicate or reserve land for open space community facilities or  
2307 recreational use or to contribute funds for any of these purposes. The development  
2308 agreement shall function as a bona fide local land use regulation, establishing the  
2309 permitted uses and densities within the development, and any other terms or conditions  
2310 mutually agreed upon between the applicant and the municipality. A development  
2311 agreement shall vest land use and development rights in the property, and such rights  
2312 would not be subject to subsequent changes in development laws or regulations for the  
2313 duration of the agreement. Any such development agreement shall be consistent with the  
2314 partnership plan and may be entered into by the chief executive officer following a  
2315 majority vote of the governing body.

2316 5. Development Impact Fees: Development impact fees imposed pursuant to section 9F  
2317 of chapter 40A may, in addition to the off-site public capital facilities listed in subsection  
2318 1.b of said section, be used to defray the costs of the following off-site public capital  
2319 facilities: public elementary and secondary schools, libraries, municipal offices,  
2320 affordable housing, and public safety facilities.

2321 **40U:9. Review of Certification by Regional Planning Agency**

2322 A. Any certification or determination of non-certification by a regional planning agency with  
2323 respect to a partnership plan or implementing regulations or a material amendment of either  
2324 is subject to review by the Interagency Planning Board. The Interagency Planning Board  
2325 may, upon the request of the subject municipality or upon its own motion, review any such  
2326 decision in an informal, non-adjudicatory proceeding, may request information from any  
2327 third party and may modify or reverse such decision if the same does not comply with the  
2328 provisions hereof.

2329 B. If a municipality provides written notice to the Interagency Planning Board of the  
2330 certification by a regional planning agency of a partnership plan or implementing regulations  
2331 or a material amendment of either, including a deemed certification resulting from a regional  
2332 planning agency's failure to act, then the board may only review such certification if it  
2333 commences such review with 60 days of such certification.

2334 C. The Interagency Planning Board may through regulation establish a procedure for  
2335 reviewing and approving guidelines prepared by regional planning agencies to be used in the  
2336 certification of plans, implementing regulations and material amendments. If a certification  
2337 or determination of non-certification under review by the Interagency Planning Board has  
2338 been issued by the regional planning agency based upon an approved guideline, then the  
2339 board may only modify or reverse such decision for inconsistency with the approved  
2340 guideline.

2341 **40U:10. Expiration; Renewal of Certified Partnership Community Status; Amendments**

2342 A. A municipality's status as a partnership community shall expire 10 years after the  
2343 municipality's effective date, unless a renewal partnership plan, together with any necessary

2344 implementing regulations, is prepared, certified, and adopted in accordance with the  
2345 provisions of section 81D of chapter 41 and this chapter prior to such date. Each such  
2346 renewal plan shall also expire in 10 years. Notwithstanding the foregoing, the expiration of a  
2347 municipality's status as a partnership community shall not affect the vesting provisions  
2348 currently applicable to the municipality under section 8 of this chapter 40U. Notwithstanding  
2349 the foregoing, the previously certified implementing regulations shall continue to be deemed  
2350 valid until such time as the community duly adopts new regulations.

2351 B. From and after a municipality's effective date, any material amendment to a partnership  
2352 plan or to any certified implementing regulations shall be prepared, certified and adopted in  
2353 accordance with the provisions of section 81D of chapter 41 and this chapter. The  
2354 Interagency Planning Board may by regulation define categories of amendments that shall be  
2355 deemed non-material.

2356 **40U:11. Priority for Infrastructure Funding**

2357 The Executive Office of Housing and Economic Development, the Executive Office of  
2358 Energy and Environmental Affairs, the Executive Office of Transportation, and the  
2359 Executive Office of Administration and Finance shall, when awarding discretionary funds for  
2360 local infrastructure improvements, give priority consideration to infrastructure improvements  
2361 identified in the partnership plans of partnership communities. Within 90 days of the  
2362 effective date of this act, the governor shall issue regulations providing a priority in the  
2363 allocation of state discretionary funding for partnership communities. Said regulations shall  
2364 apply to the distribution of funds, whether appropriated or derived through bonding, for all  
2365 programs listed in the Commonwealth Capital program, so-called, as it is administered by the

2366 Executive Office of Energy and Environmental Affairs; the programs of the Massachusetts  
2367 School Building Authority; the programs for roadway, bridge, transit, bicycle, and pedestrian  
2368 improvements overseen by the Executive Office of Transportation and Public Works; and  
2369 such other programs as the governor may indicate by regulation, provided however that no  
2370 priority consideration issued pursuant to this act will be allowed to deny funding to a  
2371 municipality that might otherwise qualify for grants or loans which may be needed to protect  
2372 the immediate public safety, as determined in a waiver from the provisions of this section  
2373 issued by the secretary of the responsible executive office. Said regulations will ensure that  
2374 all decision-making bodies of the commonwealth shall, in regard to the programs listed  
2375 above, increase the score of the applicant municipality by 20 percent for any partnership  
2376 community, above the score it would otherwise achieve. This 20 percent bonus shall be in  
2377 addition to, rather than as a substitute for other elements of the scoring process which might  
2378 reasonably be related to criteria associated with the Commonwealth's Sustainable  
2379 Development Principles, so-called, as issued and approved from time to time by the  
2380 governor. Nothing herein shall be construed to reduce the scoring preference already  
2381 provided to municipalities participating in the Commonwealth Capital program.

2382 **40U:12. Consideration Under State Programs**

2383 State agencies responsible for regulatory and/or capital spending programs that have a  
2384 material effect on land use and development within partnership communities shall take into  
2385 account the land use goals, objectives and policies of such communities, as set forth in their  
2386 partnership plans, in administering such programs.

2387 **BUDGET**



2388 SECTION 1. Item 7002-0013 is hereby amended by adding the following:- “provided,  
2389 that not more than \$1,000,000 shall be expended for technical assistance grants to municipalities  
2390 for the preparation of plans and implementing regulations, and grants are to be administered by  
2391 the Interagency Planning Board; provided further, that not more than \$500,000 shall be expended  
2392 for technical assistance grants to regional planning agencies for the certification of plans and  
2393 implementing regulations and the preparation of guidelines, and such grants are to be  
2394 administered by the Interagency Planning Board; and provided further, priority for the municipal  
2395 grants administered by the Interagency Planning Board shall be given to those municipalities  
2396 identified by the applicable regional planning agencies as being most likely to prepare and adopt  
2397 partnership plans and implementing regulations, if provided with financial assistance.”