

**SENATE . . . . . No. 00588**

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The Commonwealth of Massachusetts

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PRESENTED BY:

*James B. Eldridge*

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

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

An Act relative to affordable housing community planning.

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\_\_\_\_\_  
PETITION OF:

NAME:

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*James B. Eldridge*  
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*Thomas P. Conroy*

DISTRICT/ADDRESS:

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*Middlesex and Worcester*  
-----  
*13th Middlesex*

# SENATE . . . . . No. 00588

By Mr. Eldridge, petition (accompanied by bill, Senate, No. 588) of Conroy and Eldridge for legislation relative to affordable housing community planning [Joint Committee on Housing].

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE  
□ SENATE  
□ , NO. 739 OF 2009-2010.]

## The Commonwealth of Massachusetts

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

An Act relative to affordable housing community planning.

□.

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

1 SECTION 1. Section 15 of chapter 19 of the General Laws as so appearing is hereby  
2 amended by adding the following paragraph:-

3 (k) to collect and maintain information on the number of group home units in each  
4 community and report such information, including the location of such group home units, to the  
5 department of housing and community development on an annual basis. Such location shall be  
6 held by the department of housing and community development subject to chapter 66A.

7 SECTION 2. Paragraph (b) of section 15 of chapter 19B of the General Laws as so  
8 appearing is hereby amended by adding the following sentence:—

9           The department of developmental services shall report the number of group home units in  
10 each city or town on an annual basis to the department of housing and community development.  
11 The department of developmental services shall also report the location of such group homes to  
12 the department of housing and community development. Such location shall be held by the  
13 department of housing and community development subject to chapter 66A.

14           SECTION 3. Section 3 of chapter 23B of the General Laws as so appearing is hereby  
15 amended by adding the following clause:-

16           (w) count the number of low or moderate income housing units, as defined by chapter  
17 40B and the accompanying department of housing and community development regulations, in  
18 each city or town in the commonwealth on a biennial basis.

19           SECTION 4. Section 20 of chapter 40B of the General Laws as so appearing is hereby  
20 amended by striking out section 20, and inserting in place thereof the following section:—

21           Section 20. As used in this section and in sections 20A to 23, inclusive, the following  
22 words shall, unless a different meaning clearly appears from the context, have the following  
23 meanings:—

24           “Affordable housing threshold”, each city or town shall have a minimum affordable  
25 housing threshold such that at least 10 percent of year round housing units, as enumerated in the  
26 most recent federal decennial census, meet the requirements for inclusion on the subsidized  
27 housing inventory or on sites comprising 1 and one-half per cent or more of total land area zoned  
28 for residential, commercial or industrial use in a manner consistent with sections 20 to 23,  
29 inclusive.

30 “Committee”, the housing appeals committee.

31 “Consistent with local needs”, shall have the meaning set forth in section 20A.

32 “Department”, the department of housing and community development.

33 “Family”, 2 or more persons who live or will live regularly in a unit as their primary  
34 residence whose income and resources are available to meet the family’s needs and who are  
35 either related by blood, marriage, operation of law or who have otherwise evidenced an inter-  
36 dependent relationship.

37 “Group home units”, community housing units or beds serving clients of the department  
38 of developmental services and the department of mental health which are located in a non-  
39 institutional setting. Each such community housing unit or bed shall serve 1 client.

40 “Local board”, any town or city board of survey, board of health, planning board,  
41 conservation commission, building inspector or the officer or board having supervision of the  
42 construction of buildings or the power of enforcing municipal building laws, or city council or  
43 board of selectmen or other boards exercising power specified locally.

44 “Local program”, a housing program established and administered by a city, town or  
45 county which has been authorized and approved by the department.

46 “Low or moderate-income households”, individuals or families living in a housing unit  
47 with combined incomes no higher than 80 percent of the median income for the county in which  
48 the housing unit is located or an area as defined by the United States Office of Management and  
49 Budget, whichever is lower, as determined by the United States department of housing and urban  
50 development or, in the absence of such a determination, by the department.

51 “Low or moderate-income housing”, any year round housing subsidized by the federal or  
52 state government under any program, or subsidized by a local government under a local program  
53 authorized and approved by the department, to produce housing which serves low or moderate-  
54 income households as defined in this chapter.

55 “Subsidy”, the provision of: direct financial assistance; indirect financial assistance  
56 including insurance, guarantees, or other means; in kind assistance; technical assistance; or of  
57 other supportive services through a federal, state or local housing program to assist the  
58 construction of low or moderate-income housing.

59 “Subsidizing agency”, any agency or entity of state, federal or local government which  
60 subsidizes the construction or substantial rehabilitation of low or moderate-income housing and  
61 any housing authority acting pursuant to clause (m) of section 26 of chapter 121B.

62 “Uneconomic”, any condition brought about by any single factor or combination of  
63 factors to the extent that such condition makes it impossible for a public agency or nonprofit  
64 organization to proceed in building or operating low or moderate income housing without  
65 financial loss, or for a limited dividend organization to proceed and still realize a reasonable  
66 return in building or operating such housing within the limitations set by the subsidizing agency  
67 on the size or character of the development or on the amount or nature of the subsidy or on the  
68 tenants, rentals and income permissible, and without substantially changing the rent levels and  
69 units sizes proposed by the public, nonprofit or limited dividend organizations.

70 SECTION 5. Said chapter 40B is hereby further amended by inserting after section 20 the  
71 following four sections:—

72 Section 20A. Decisions and requirements by the planning board shall be considered  
73 consistent with local needs if they are reasonable in view of the regional need for low or  
74 moderate income housing considered with the number of low and moderate income persons in  
75 the city or town affected and the need to protect the health or safety of the occupants of the  
76 proposed housing or of the residents of the city or town, to promote better site and building  
77 design in relation to the surroundings, or to preserve open spaces and the quality of drinking  
78 water supply and water resources; and if such decisions and requirements are applied as equally  
79 as possible to both subsidized and unsubsidized housing. Decisions and requirements shall also  
80 be deemed consistent with local needs when imposed by a planning board after comprehensive  
81 hearing in a city or town where:

82 (1) low or moderate-income housing exists which is at least 10 per cent of the year round  
83 housing units reported in the most recent federal decennial census of the city or town; or on sites  
84 comprising one and one-half per cent or more of total land area zoned for residential, commercial  
85 or industrial use;

86 (2) the development is large scale for the city or town in which it is proposed. A proposed  
87 development shall be large scale if: (a) in a city or town which has a total number of 7,500 or  
88 more year round housing units as enumerated in the most recent federal decennial census, the  
89 application for a comprehensive permit involves construction of more than 300 housing units or  
90 a number of housing units equal to or greater than 2 per cent of all housing units in the city or  
91 town, whichever number is greater; or (b) in a city or town which has between 5,000 and 7,500  
92 year round housing units exclusive, as so enumerated, the application for a comprehensive  
93 permit involves construction of more than 250 housing units; or (c) in a city or town which has  
94 between 2,500 and 5,000 year round housing units inclusive, as so enumerated, the application

95 for a comprehensive permit involves construction of more than 200 housing units; or (d) in a city  
96 or town which has less than 2,500 year round housing units, as so enumerated, the application for  
97 a comprehensive permit involves construction of more than 150 housing units; or

98 (3) the city or town has made recent progress toward attaining its affordable housing  
99 threshold. Recent progress toward its affordable housing threshold shall mean that the number of  
100 housing units that have been created during the 12 months prior to the date of the comprehensive  
101 permit application and that are eligible to be included on the subsidized housing inventory equal  
102 to or greater than 2 per cent of the city or town's total year round housing units as enumerated in  
103 the most recent federal decennial census; or

104 (4) 12 months has not elapsed between the date of application for a comprehensive permit  
105 and the date of the most recent pendency of a prior application for a variance, special permit,  
106 subdivision or other approval related to construction on the same land if that prior application  
107 included no provision for low or moderate income housing, provided that any such application  
108 shall not be considered a prior application if it concerns only insubstantial changes to an existing  
109 use;

110 (5) the city or town has adopted an affordable housing plan approved by the department  
111 pursuant to which there is an increase in its number of low or moderate-income housing units  
112 eligible for inclusion on the subsidized housing inventory by at least one-half of 1 per cent of  
113 total year round housing units every calendar year until housing needs are met pursuant to this  
114 chapter, subject to paragraphs (a) and (b).

115 (a) The affordable housing plan shall be based upon a comprehensive housing needs  
116 assessment, which shall include an analysis of the most recent federal decennial census data of

117 the city or town's demographics and housing stock, development constraints as well as of the  
118 city or town's ability to mitigate them, and the city or town's infrastructure.

119 (b) The affordable housing plan shall address the matters set out in guidelines adopted by  
120 the department, including:—

121 (i) a mix of housing, such as rental and homeownership opportunities for families,  
122 individuals, persons with disabilities or special needs, and the elderly that are consistent with  
123 local needs and feasible within the housing market in which they will be situated;

124 (ii) the strategy by which the city or town will achieve its housing goals based upon its  
125 comprehensive needs assessment;

126 (iii) the characteristics of projects the city or town prefers that are consistent with the  
127 guidelines established by the department for smart growth and development including, but not  
128 limited to, redevelopment and adaptive reuse, cluster housing, higher-density housing, transit or  
129 pedestrian-oriented development which provides access to jobs and services, resource efficient  
130 buildings, and development in locations with existing infrastructure;

131 (iv) a description of the use restrictions which shall be imposed on lower moderate-  
132 income housing units to ensure that each unit will remain affordable to and occupied by low or  
133 moderate-income households;

134 (v) the identification of zoning districts or geographic areas which permit residential uses  
135 which the city or town proposes to modify or has created for the purposes of low or moderate-  
136 income housing developments;



137 (vi) the identification of specific sites or characteristics of sites for which the city or town  
138 will encourage the filing of comprehensive permit applications pursuant to section 21; and

139 (vii) city or town owned parcels, if any, for which the city or town commits to issue  
140 requests for proposals to develop low or moderate-income housing.

141 (c) Upon submission to the department, the plan shall also be submitted to the regional  
142 planning district, commission, or council of governments within such project is located. The  
143 district, commission, or council of governments shall be as established pursuant to this chapter  
144 or the Martha's Vineyard Commission, as described in Chapter 831 of the Acts of 1977, the  
145 Nantucket Planning and Economic Development Commission, as described in Chapter 561 of  
146 the Acts of 1973, the Cape Cod Commission, as described in Chapter 716 of the Acts of 1989,  
147 the Franklin Regional Council of Governments, as described in Chapter 151 of the Acts of 1996,  
148 or the Northern Middlesex Council of Governments, as described in Chapter 420 of the Acts of  
149 1989, or any other regional planning district hereafter established by the general court. The  
150 regional planning district shall have 30 days to comment to the department on the implications of  
151 the plan for housing need, growth and development concerns, and other relevant matters. Within  
152 90 days after its submission to the department by a city or town's chief executive officer, the  
153 department shall approve the plan if it meets the requirements specified herein, otherwise, it shall  
154 disapprove the plan. The department shall notify the city or town of its decision to either approve  
155 or disapprove a plan in writing. If the department disapproves a plan, the notification shall  
156 include a statement of reasons for the disapproval. A city or town that originally submitted a plan  
157 that had been disapproved may submit a new or revised plan to the department at any time. A  
158 city or town may amend its plan from time to time if the department approves the amendment. If

159 the department fails to mail notice of approval or disapproval of a plan or plan amendment  
160 within 90 days after its receipt, the plan or plan amendment shall be deemed to be approved.

161 (d) The department shall certify annually whether a city or town is in compliance with an  
162 approved plan. The department shall determine whether a city or town is in compliance within 30  
163 days of receipt of a city or town's request for such a certification. A city or town shall be in  
164 compliance if it has reached the benchmarks established in its approved plan and has made all  
165 changes necessary to accommodate future planned development. If the department determines  
166 the city or town is in compliance with its plan, the certification shall be retroactive to the date the  
167 certification was requested. Provided further, if a city or town fails to achieve the goals  
168 established in the approved plan and as documented on the subsidized housing inventory the city  
169 or town shall not be in compliance with its plan and shall submit a new plan for certification by  
170 the department.

171 (e) Units which were created and which became eligible to be counted toward a city or  
172 town's affordable housing threshold between August 1, 2002 and December 31, 2002 shall be  
173 credited toward the city or town's affordable housing threshold for the first year of planned  
174 production under an approved affordable housing plan, regardless of the date the plan is  
175 submitted to or certified by the department. An approved plan shall take effect for the purpose of  
176 the definition of consistent with local needs in this section only when the department certifies  
177 that the city or town has approved permits resulting in an initial annual increase in its low-or  
178 moderate-income housing units of at least one-half of 1 per cent of total year round housing units  
179 in accordance with its plan. It is the responsibility of the city or town to request such certification  
180 from the department. Once the department has made such a certification of initial compliance  
181 and subsequent annual certifications of compliance:—

182 (1) The board may, in its discretion, deny, or approve with conditions, any  
183 comprehensive permit applications for the period of 1 year from any certification, and such  
184 denial or approval with conditions shall be deemed consistent with local needs; or, alternatively,

185 (2) The board may, in its discretion, deny or approve with conditions any comprehensive  
186 permit applications for the period of 2 years from any certification, if, in the year it was certified,  
187 the city or town has increased its low or moderate-income housing stock by at least .5 per cent of  
188 total year round housing units in a manner consistent with the plan, or alternatively,

189 (3) The board may, in its discretion, deny, or approve with conditions, any  
190 comprehensive permit applications for the period of 3 years from any certification, if, in the year  
191 it was certified, the city or town has increased its low or moderate-income housing stock by at  
192 least .5 per cent of total year round housing units in a manner consistent with the plan; or

193 (6) the board has approved 3 or more comprehensive permits, at least 3 of which contain  
194 20 or more housing units each within 12 months preceding the filing of an application for a  
195 comprehensive permit and those permits have become final. The board shall have the authority  
196 to choose among multiple applicants which comprehensive permits will be accepted.

197 A developer that has requested a zoning change and that request has been accepted by the  
198 town meeting or the city council may not seek a 40B approval for one year following the zoning  
199 change.

200 Section 20B. (a)(1) To be eligible to submit an application for a comprehensive permit or  
201 to file or maintain an appeal before the committee, the applicant and the project shall fulfill the  
202 following jurisdictional requirements:—

203 (i) The applicant shall be a public agency, a nonprofit organization, or be, or agree to  
204 become, limited dividend organization. An applicant shall satisfy the limited dividend  
205 organization requirement if the owner of the project stipulates in writing to execute a regulatory  
206 agreement with a subsidizing agency which limits the owner's return on building or operating the  
207 project to the amounts set by the subsidizing agency or program if a comprehensive permit is  
208 issued. Such regulatory agreement shall be recorded or filed prior to the beginning of  
209 construction of the land records with the registry of deeds or land court in the registry district or  
210 district office of the land court in which the project is located;

211 (ii) the project shall be fundable by a subsidizing agency under a low and moderate-  
212 income housing subsidy program;

213 (iii) the applicant shall control the site; and

214 (iv) The proposed development shall contain no less than 25 per cent of its total housing  
215 units as units affordable to low or moderate-income households, or in the alternative a proposed  
216 development may contain no less than 20 per cent of its total housing units as affordable to  
217 households whose income does not exceed 50 per cent of the area median income; provided,  
218 further, that the inclusion of commercial, recreational or other land uses which are in conjunction  
219 with the housing development shall not preclude eligibility.

220 (2) Fundability shall be established by submission of a written determination of project  
221 eligibility by a subsidizing agency as follows:

222 (i) A determination of project eligibility shall include: (A) the name and address of the  
223 applicant; (B) the address of the site and site description; (C) the number and type, either  
224 homeownership or rental, of housing units proposed; (D) the name of the housing program or

225 programs under which project eligibility is sought; and (E) relevant details of the particular  
226 project if not mandated by the housing program, including the percentage of units for low or  
227 moderate-income households, income eligibility standards, the duration of use restrictions  
228 requiring occupancy by low or moderate-income households, and the limited dividend status of  
229 the developer;

230 (ii) a determination of project eligibility shall make the following findings: (A) that the  
231 proposed project appears generally eligible under the requirements of the housing programs,  
232 subject to final review of eligibility and to final approval; (B) that the subsidizing agency has  
233 performed an on-site inspection of the site and has reviewed pertinent information submitted by  
234 the applicant; (C) that the proposed housing design and density are generally appropriate for the  
235 site on which it is located, taking into account surrounding land uses, proximity to transportation,  
236 services and public utilities, and design to minimize land use impacts; (D) that the proposed  
237 project appears financially feasible within the housing market in which it will be situated, based  
238 on comparable rentals or sales figures; (E) that an initial pro forma has been reviewed and the  
239 project appears financially feasible on the basis of estimated development costs; and (F) that the  
240 developer of the proposed project meets the general eligibility standards of the housing program  
241 or programs.

242 (iii) In addition to the foregoing, a subsidizing agency shall consider the following in  
243 making a determination of project eligibility; overall density and size; environmental impact,  
244 including impacts on watersheds, rivers, and water bodies, wildlife habitat and existing land  
245 uses; consistency with principles of smart growth, including without limitation land use  
246 protections set forth in the open space and recreation plans adopted by the planning board of the  
247 municipalities, or by the town meeting or city council and approved by the executive office of

248 energy and environmental affairs; impact on historical resources; the impact of other pending  
249 applications for housing development; and other local concerns of the city or town where the  
250 project is located.

251 (iv) Within 10 days of filing of its application for a determination of project eligibility  
252 with a subsidizing agency for preliminary approval of a project, the applicant shall serve written  
253 notice upon the director of the department.

254 (v) Within 10 days of filing the application for a determination of project eligibility the  
255 applicant shall provide written notice and a copy of such application to the chief executive  
256 officer of the involved city or town and to the members of the general court representing such  
257 city or town. The applicant shall also provide written notice of the application to the board of  
258 zoning appeals, board of health, conservation commission, water and sewer district, fire and  
259 police. Within 30 days after such notice, the chief executive officer or designee of the chief  
260 executive officer may schedule and hold a meeting at a location within the involved city or town.  
261 The meeting shall be chaired by the city or town's chief executive officer or designee and shall  
262 be attended by the applicant or its representative. Representatives from local boards are  
263 encouraged to attend the meeting and provide written comment. The purpose of the meeting is to  
264 allow the applicant and the city or town representatives to informally discuss the preliminary  
265 proposal so that the parties involved can develop an understanding of the proposal and to  
266 respond to concerns raised in an effort to achieve an outcome that meets the needs of the  
267 involved city or town as well as the applicant. In addition, a representative from a public or  
268 quasi-public housing agency, or a regional planning agency within the regional planning district  
269 or its designee knowledgeable with respect to chapter 40B may provide technical assistance on  
270 topics including, but not limited to, site design and density, open space, marketing, use

271 restrictions, allowable costs and profit limitations. Following the close of the meeting, the chief  
272 executive officer of the city or town, local boards, and the regional planning district may issue  
273 written comments within 14 days to the subsidizing agency.

274 (vi) Within 10 days of receipt of a written determination of project eligibility from the  
275 subsidizing agency, the applicant shall serve a copy of that determination upon the director of the  
276 department.

277 (vii) An applicant which has obtained a determination of project eligibility shall be  
278 presumed to be eligible to submit an application for comprehensive permit or to file or maintain  
279 an appeal before the committee. Nothing set forth in this section shall be deemed to confer upon  
280 any city or town, or any of its boards, committees, commissions or officials, or upon any other  
281 person the right to appeal or judicial review in any form the determination of project eligibility  
282 by the subsidizing agency, it being intended that the rights of appeal conferred by sections 21  
283 and 22 shall be the exclusive remedy for any party aggrieved by the issuance or denial of any  
284 comprehensive permit hereunder.

285 (viii) If project funding is provided through a non-governmental entity, a public or quasi-  
286 public entity authorized by the department shall make the determination of project eligibility.  
287 The designated entity that issued the project eligibility determination shall administer the project  
288 thereafter as specified in program guidelines issued by the department.

289 (3) A showing that the applicant, or any entity 50 per cent or more of which is owned by  
290 the applicant, owns a 50 per cent or greater interest, legal or equitable, in the proposed site, or  
291 holds any option or contract to purchase the proposed site, shall be considered by the board or  
292 the housing appeals committee to be conclusive evidence of the applicant's interest in the site.

293 (4) No determination of project eligibility shall be issued for a project sooner than 45  
294 days after the filing of its application with the subsidizing agency for preliminary approval of the  
295 project. A determination of project eligibility shall be for a particular financing program or  
296 programs. An applicant may proceed under alternative financing programs if the application to  
297 the board or appeal to the committee so indicates and if full information concerning the project  
298 under the alternative financing arrangements is provided.

299 (5) Failure of the applicant to fulfill any of the requirements in this section may be raised  
300 by the housing appeals committee, the board, or a party at any time, and shall be cause for  
301 dismissal of the application or appeal. No application or appeal shall be dismissed, however,  
302 unless the applicant has had at least 60 days to remedy the failure.

303 (b) In order to appeal to the committee, an applicant shall have applied to the board for a  
304 comprehensive permit in accordance with section 21 of this chapter and shall have been denied  
305 such permit or shall have been granted such permit with conditions which it alleges make the  
306 building or operation of such housing uneconomic.

307 (c) (1) A city or town may record progress towards its affordable housing threshold as  
308 documented in the subsidized housing inventory in the following manner:

309 (i) (a) if at least 25 per cent of housing units within a development are restricted to serve  
310 low or moderate-income households, 100 per cent of housing units within the development shall  
311 be eligible to be included toward the city or town's affordable housing threshold, but if fewer  
312 than 25 per cent of housing units within a development are restricted to serve low or moderate-  
313 income households, only those units which serve low or moderate-income households shall be  
314 eligible to be included toward the city or town's affordable housing threshold or (b) if at least 20



315 per cent of housing units within a development are restricted to serve households with household  
316 income at or below 50 per cent of area median income, 100 per cent of housing units within the  
317 development shall be eligible to be included toward the city or town's affordable housing  
318 threshold but, if fewer than 25 per cent of housing units within a development are restricted to  
319 serve low or moderate-income households, only such restricted units shall be eligible to be  
320 included toward the city or town's affordable housing threshold;

321 (ii) (a) if at least 25 per cent of housing units within a development are restricted to serve  
322 low or moderate-income households, 2 times the actual number of such restricted units, not to  
323 exceed the total number of homeownership units authorized by the permit shall be included  
324 toward the city or town's affordable housing threshold or (b) if at least 20 per cent of housing  
325 units within a development serve households earning at or below 50 per cent of area median  
326 income, 2 times the actual number of units serving such households, not to exceed the total  
327 number of homeownership units authorized by the permit shall be included toward the city or  
328 town's affordable housing threshold, but if fewer than 25 per cent of housing units within a  
329 development are restricted to serve low or moderate-income households, only such units which  
330 are restricted to serve low or moderate-income households shall be eligible to be included toward  
331 the city or town's affordable housing threshold;

332 (iii) any community housing, as defined in chapter 44B which is subject to a use  
333 restriction requiring occupancy by low or moderate income households, provided further, that  
334 such housing payment exclusive of utilities shall not exceed 30 per cent of monthly income of a  
335 household at or below 80 per cent of area median income, adjusted for household size, shall be  
336 eligible to be included toward the city or town's affordable housing threshold;

337 (iv) any accessory apartment which is approved pursuant to a city or town's ordinance or  
338 bylaw and is occupied by persons of low or moderate income; provided further, that such rental  
339 payment exclusive of utilities shall not exceed 30 percent of monthly income of a household  
340 earning at or below 80 percent of area median income, adjusted for household size, shall be  
341 eligible to be included toward the city or town's affordable housing threshold. Each such  
342 accessory apartment unit shall be subject to a use restriction, which may be revocable upon the  
343 sale of the principal residence. Each city or town shall certify annually the number of such  
344 accessory apartments within its borders;

345 (v) all group home units in each city or town as reported annually by the department of  
346 mental health and the department of developmental services to the department shall be eligible to  
347 be included toward the city or town's affordable housing threshold;

348 (vi) housing units created under a local program or subsidy or which qualify as local  
349 initiative units pursuant to regulations promulgated by the department and restricted to serve low  
350 or moderate income households as defined in this chapter shall be eligible to be included toward  
351 the city or town's affordable housing threshold as documented on the subsidized housing  
352 inventory;

353 (vii) low or moderate income housing created pursuant to section 60 of chapter 40 and  
354 subject to a use restriction provided; further, that such housing payment exclusive of utilities  
355 shall not exceed 30 per cent of monthly household income of a household earning at or below 80  
356 per cent of area median income shall be eligible to be included toward the city or town's  
357 affordable housing threshold;

358 (viii) in instances where housing units were developed to serve low or moderate income  
359 households and the use restriction has expired as a result of refinancing or operation of law or  
360 otherwise, only those housing units that continue to serve low or moderate-income households;  
361 provided further, that if such units were constructed pursuant to a comprehensive permit under  
362 chapter 40B they shall be eligible to be included toward the city or town's affordable housing  
363 threshold; and

364 (ix) 50% of the homes in a community, as defined by section 32Q of chapter 140, shall be  
365 eligible to be included toward the city or town's affordable housing threshold as documented on  
366 the subsidized housing inventory.

367 (d) The department shall maintain an inventory of low or moderate income housing units.  
368 Such inventory shall be published biennially; provided further, that such inventory shall be  
369 updated for a specific city or town upon request by such city or town supported by the evidence  
370 thereof. Housing units authorized by a comprehensive permit or special permit which authorizes  
371 the creation of low or moderate income housing subject to a use restriction shall be eligible to be  
372 included toward a city or town's affordable housing threshold as recorded on the subsidized  
373 housing inventory when such comprehensive permit or special permit becomes final, provided  
374 that housing units for which building permits have not been issued within 1 year of the date  
375 when such comprehensive permit or special permit became final shall no longer be eligible to be  
376 counted toward the city or town's affordable housing threshold until the building permits have  
377 been issued. The department may for good cause waive such time requirement. Low or moderate  
378 income housing units not authorized pursuant to such comprehensive permit or special permit  
379 shall be eligible to be counted toward the city or town's affordable housing threshold when a  
380 building or occupancy permit is issued.

381           Section 20C. The Massachusetts Housing Partnership Fund board, as established by  
382 section 35 of chapter 405 of the acts of 1985, or its designee, shall make technical assistance  
383 available to local zoning boards of appeal to assist in their review of applications for  
384 comprehensive permits. No subsidizing agency shall issue a determination of project eligibility  
385 or site approval unless a fee to defray the costs of such technical assistance program has been  
386 collected from the applicant and remitted to the Massachusetts Housing Partnership Fund board  
387 in accordance with a fee schedule adopted by the department. Such fee shall be payable upon the  
388 filing of a comprehensive permit application.

389           Section 20D. The department shall promulgate regulations and establish programs,  
390 policies, guidelines and necessary fee schedules to implement sections 20 to 23, inclusive, of this  
391 chapter. The department shall make available planning and housing development information  
392 and technical assistance to assist cities and towns in reaching their affordable housing threshold  
393 as defined in this chapter.

394           SECTION 6. Section 21 of said chapter 40B, as so appearing, is hereby amended by  
395 striking out, in lines 3 and 4, the following words: “board of appeals, established under section  
396 twelve of chapter forty A” and inserting in place thereof the following words: planning board,  
397 established under section 70 of chapter 41.

398           SECTION 7. Said section 21 of said chapter 40B, is hereby further amended by striking  
399 out, in lines 5, 9, 17, 20 and 24 the following words: “board of appeals” and inserting in place  
400 thereof, in each instance, the following words: planning board.

401 SECTION 8. Section 22 of said chapter 40B, as so appearing, is hereby amended by  
402 striking out, in lines 7 and 10, the following words: “board of appeals” and inserting in place  
403 thereof, in each instance, the following words: planning board.

404 SECTION 9. Section 23 of said chapter 40B, as so appearing, is hereby amended by  
405 striking out, in lines 4, 9, 23 and 30, the following words: “board of appeals” and inserting in  
406 place thereof, in each instance, the following words: planning board.

407 SECTION 10. The first paragraph of section 23 of said chapter 40B, as so appearing, is  
408 hereby amended by inserting after the first sentence the following sentence:—

409 The committee shall receive evidence of and shall consider the following matters: (1) a  
410 city or town’s master plan, comprehensive plan or community development plan, and (2) the  
411 results of the city or town’s efforts to implement such plans.

412 SECTION 11. Notwithstanding any general or special law to the contrary, no application  
413 for a comprehensive permit filed pursuant to sections 20 through 23 of chapter 40B before the  
414 effective date of this act shall be denied as a result of changes pursuant to this act.

415 SECTION 12. There is hereby established a special commission to study the opportunity  
416 to increase the availability of housing for extremely low to moderate-income families and  
417 individuals in the commonwealth by prioritizing the redevelopment of brownfield sites, so-  
418 called, and commercial areas for residential purposes. Said commission shall consist of 3  
419 members of the senate, appointed by the Senate President, 3 members of the house of  
420 representatives, appointed by the Speaker of the House, 1 from each branch shall serve as co-  
421 chairmen, the director of housing and community development or his designee, the director of  
422 Massachusetts Development Finance Agency or his designee, and 5 persons to be appointed by

423 the governor, 1 of whom shall be a representative from Citizen's Housing and Planning  
424 Association, Inc., 1 of whom shall be a representative of the Greater Boston Chamber of  
425 Commerce, 1 of whom shall be a representative from the Massachusetts Homebuilders  
426 Association, and 1 of whom shall be a representative from the Massachusetts Municipal  
427 Association. Said commission shall file its recommendations together with the recommendations  
428 for legislation, if any, with the house and senate clerks who shall forward the same to the house  
429 and senate clerks within 2 years of the passage of this law.

430           SECTION 13. Seventy-five per cent of assisted living units as defined under the General  
431 Laws, requiring an entrance deposit and a monthly fee shall be considered as rental housing  
432 units.