

SENATE No. 783

The Commonwealth of Massachusetts

PRESENTED BY:

Robert A. O’Leary

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 Community Planning.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Robert A. O’Leary	Cape and Islands
Stephen Kulik	1st Franklin
Pam Richardson	6th Middlesex
Peter v. Kocot	1st Hampshire
James Cantwell	4th Plymouth
James B. Eldridge	Middlesex and Worcester
Sarah K. Peake	4th Barnstable
Cleon H. Turner	1st Barnstable
Patricia D. Jehlen	Second Middlesex
John D. Keenan	7th Essex
Thomas J. Calter	12th Plymouth
Timothy J. Toomey, Jr.	26th Middlesex
Kay Khan	11th Middlesex
Susan C. Fargo	Third Middlesex
Timothy Madden	Barnstable, Dukes and Nantucket
Jennifer L. Flanagan	Worcester and Middlesex

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO 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 WHEREAS, Article 89 of the amendments to the constitution of the commonwealth, which was ratified
2 by the voters in 1966, empowers municipalities to “exercise any power or function which the general
3 court has power to confer upon it, which is not inconsistent with the constitution or laws enacted by the
4 general court”;

5 WHEREAS, statutes governing municipal zoning, subdivision control, and planning in Massachusetts
6 have not been updated in over thirty years;

7 WHEREAS, credible studies and reports have documented that Massachusetts’ antiquated and confusing
8 framework of municipal, zoning, subdivision control, and planning laws promotes inefficient land use
9 practices that are contrary to smart growth;

10 WHEREAS, poorly planned residential, commercial, and industrial development exacerbates the
11 affordable housing shortage and threatens the natural and cultural heritage of Massachusetts;

12 WHEREAS, the Massachusetts legislature provided in 2000 through the passage of the community
13 preservation act a new financial tool for municipal open space protection, affordable housing, and historic
14 preservation;

15 NOW, THEREFORE, the time has arrived for the Massachusetts legislature to enhance and modernize
16 the regulatory tools for municipal zoning, subdivision control, and planning to guide local growth through
17 the following bill, which shall be known as the community planning act.

18 **SECTION 1.** Section 1A of chapter 40A of the General Laws, as appearing in the 2006 official
19 edition, is hereby amended by inserting the following definition:-

20 “Development impact fee”, a fee imposed by city zoning ordinance or town zoning by-law for
21 the purpose of offsetting the impacts of a development, and in accordance with the provisions of
22 section 9D of this chapter.

23 **SECTION 2.** Said section 1A of said chapter 40A, as so appearing, is hereby amended
24 by inserting the following definition:-

25 “Rate of development”, local legislative or regulatory measures adopted by cities and towns
26 under section 9F of this chapter to regulate the number of permits for new construction or
27 approvals of new building lots issued in a defined period of time or otherwise in accordance with
28 defined standards and criteria.

29 **SECTION 3.** Said chapter 40A, as so appearing, is hereby amended by inserting after
30 section 1A the following section:-

31 **Section 40A:2. Construction and Purposes**

32 (A) Rule of Construction

33 This chapter shall be so construed as to give full effect to the home rule authority of cities and
34 towns to act with respect to land use planning and regulation under Article 89 of the amendments
35 to the constitution of the commonwealth. It is hereby acknowledged that the source of authority
36 of cities and towns with respect to zoning is article 60 of said amendments, derived through
37 article 89. Nothing in this chapter shall be construed as limiting the constitutional authority of
38 cities and towns unless the language in this chapter expressly so states. Wherever the language of
39 this chapter purports to authorize or enable, it shall be so construed only where such authority is
40 not otherwise available to cities and towns under the constitution or laws of the commonwealth,
41 and in all other cases such language shall be deemed illustrative only.

42 (B) Public Purposes

43 Cities and towns have the authority to adopt zoning ordinances and by-laws for the protection of
44 the public health, safety, and general welfare. Cities and towns have the authority to advance
45 some or all of the zoning objectives listed below and may advance other zoning objectives not so
46 listed as they deem appropriate.

47 (1) The implementation of a plan adopted by the city or town under section 81D of
48 chapter 41.

49 (2) The orderly and sustainable growth, development, redevelopment, conservation,
50 and preservation of a city or town which promotes the types, patterns, and
51 intensities of land use contained in a plan adopted by the city or town under
52 section 81D of chapter 41.

53 (3) The efficient, fair, and timely review of development proposals, including
54 standardized procedures for administration of zoning ordinances or by-laws.

55 (4) The efficient resolution of planning and regulatory conflicts involving public and
56 private interests.

57 (5) The use of innovative development laws, regulations, and planning practices such
58 as development agreements, development impact fees, mitigation measures,
59 design review, inter-municipal transfers of development rights, form-based
60 zoning, agricultural zoning, natural resource protection zoning, special district
61 overlays, village districts, inclusionary zoning provisions which require or
62 provide incentives for the creation of below-market-rate housing, mediation and
63 dispute resolution, and urban growth boundaries.

64 (6) The delineation and balancing of urban and rural development.

- 65 (7) The achievement of a balance of housing choices, types, and opportunities for all
66 income levels and groups, including the creation of below-market-rate housing,
67 the preservation of existing housing stock and the preservation of affordability in
68 housing.
- 69 (8) The integration of residential and commercial, civic, cultural, governmental,
70 recreational, and other compatible land uses at locations that maximize
71 efficiencies in transportation energy use.
- 72 (9) The adequate provision and distribution of educational, health, cultural, and
73 recreational facilities.
- 74 (10) The preservation or enhancement of community amenities or features of
75 significant architectural, historical, cultural, visual, aesthetic, scenic, or
76 archaeological interest.
- 77 (11) The protection of the environment and the conservation of natural resources,
78 including those qualities of the environment and natural resources set forth in
79 article 97 of the constitution of the commonwealth.
- 80 (12) The retention of open land for agricultural production, forest products,
81 horticulture, aquaculture, tourism, outdoor recreation, and freshwater and marine
82 fisheries
- 83 (13) The protection of public investment in infrastructure systems.
- 84 (14) An energy efficient, convenient, and safe transportation infrastructure with as
85 wide a choice of modes as practical, including, wherever possible, maximal
86 access to public transit systems and non-motorized modes.

- 87 (15) The efficient use of energy and the reduction of pollution from energy generation,
88 including the promotion of renewable energy sources and associated technologies.
- 89 (16) The adequate provision of employment opportunities within the city or town and
90 the region, including redevelopment of pre-existing sites, home-based
91 occupations, sustainable natural-resource-based occupations, and housing to
92 support the employment opportunities within the city or town and the region
- 93 (17) The conservation of the value of land and buildings, including the elimination of
94 blight and the rehabilitation of blighted areas.
- 95 (18) The accommodation of regional growth in a fair, equitable, and sustainable
96 manner among municipalities, including coordination of land uses with
97 contiguous municipalities, other municipalities, the state, and other agencies, as
98 appropriate, especially with regard to resources and facilities that extend beyond
99 municipal boundaries or have a direct impact on other municipalities.
- 100 (19) The implementation of rate of development measures of defined duration during
101 which planning or zoning studies are undertaken, and the longer-term use of such
102 measures in a manner consistent with a plan adopted by the city or town under
103 section 81D of chapter 41.
- 104 (20) The implementation of a plan adopted by a regional planning agency under
105 section 5 of chapter 40B.

106 **SECTION 4.** Section 3 of said chapter 40A, as so appearing, is hereby amended by
107 inserting, after the words “or restrict the”, in line 25, the following word:- minimum.

108 **SECTION 5.** Said section 3 of said chapter 40A, as so appearing, is hereby amended by
109 striking out, in line 66, the word “or”, and inserting in place thereof the word:- of.

110 **SECTION 6.** Section 4 of said chapter 40A, as so appearing, is hereby amended by
111 inserting, after the word “permitted.”, in line 3, the following words:- However, this requirement
112 shall not apply to any provision thereof not uniformly applicable where the ordinance or by-law
113 states a valid planning or zoning basis rationally related to the distinguishing characteristics of
114 such structures or uses.

115 **SECTION 7.** Section 5 of said chapter 40A, as so appearing, is hereby amended by inserting,
116 at the beginning of the fifth paragraph, the following words:- Except where a lesser majority vote has
117 been prescribed in a zoning ordinance or by-law adopted by a two-thirds vote of the local legislative
118 body,

119 **SECTION 8.** Said section 5 of said chapter 40A, as so appearing, is hereby amended
120 by striking out, in lines 109-111, the words “provided, however, that such ordinance or
121 amendment shall subsequently be forwarded by the city clerk to the office of the attorney
122 general.”.

123 **SECTION 9.** Said section 5 of said chapter 40A, as so appearing, is hereby amended by
124 inserting, after the tenth paragraph, the following paragraphs:-
125 After January 1, 2014, no zoning ordinance or by-law may be inconsistent with a plan adopted by the city
126 or town under section 81 D of chapter 41. No zoning ordinance or by-law shall be deemed inconsistent
127 with the plan if it furthers, or at least does not impede, the achievement of the plan's goals and policies,
128 and if it is not incompatible with the plan's proposed land uses and development patterns.

129 After the effective date of the plan, a zoning ordinance or by-law shall enjoy a rebuttable presumption in
130 any action, suit, or administrative proceeding that its provisions are not inconsistent with the plan. If the
131 presumption is rebutted, inconsistency may serve as the basis upon which a court or administrative
132 agency may declare any relevant zoning ordinance or by-law provision to be invalid as applied to the
133 property which is the subject of the action, suit, or administrative proceeding. For any amendment to a

134 plan adopted after January 1, 2014, no such declaration of invalidity may be made in any action, suit, or
135 administrative proceeding for a period of 12 months after the effective date of such plan amendment.

136 **SECTION 10.** Said chapter 40A, as so appearing, is hereby amended by striking out section 6
137 and inserting in place thereof the following sections:-

138 **Section 6A. Nonconforming Lots, Structures and Uses**

139 (A) Nonconforming residential lots

140 (1) Increases in lot area, frontage, width, or depth of a zoning ordinance or by-law
141 shall not apply to a lot for single- or two-family residential use which on the date
142 of the first publication of notice of the public hearing on such ordinance or by-law
143 required by section 5 that renders the lot nonconforming:

144 (i) was shown or described as a separate lot on a recorded plan or deed; and

145 (ii) conformed to the lot area, frontage, lot width, and depth requirements in
146 effect on the date of said notice; and

147 (iii) had at least 5,000 square feet of area and 50 feet of frontage in the case of
148 a single-family residential use and at least 7,500 square feet of area and 75
149 feet of frontage in the case of two-family residential use; and

150 (iv) was not held in common ownership with any adjoining land.

151 (2) A lot described in 6A(A)(1) shall have vital access to and frontage on a way of sufficient
152 width, grade, and construction as set forth in regulations established by the planning
153 board.

154 (3) Whenever the lines of a lot described in 6A(A)(1) are changed in any way that renders
155 the lot more conforming, the resulting boundaries of the lot shall govern the application
156 of this section.

157 (4) Whenever any lot described in 6A(A)(1) comes into common ownership with adjacent
158 land, such lot and adjacent land shall be merged and combined for the purposes of this
159 section. Common ownership shall include lots held by separate legal entities, persons, or
160 trusts under common control or having common beneficial interests.

161 (B) Lawfully nonconforming structures and uses

162 (1) A lawfully nonconforming structure or use shall mean a structure or use lawfully in
163 existence on the date of the first publication of notice of the public hearing on such
164 ordinance or by-law required by section 5 rendering such structure or use nonconforming.
165 For the purposes of this section, a structure or use lawfully in existence shall not include
166 a structure or use in violation of the zoning ordinance or by-law, nor a structure built
167 without a legally required building permit.

168 (2) Adoption or amendment of a zoning ordinance or by-law shall not apply to any lawfully
169 existing nonconformity of: i) a lawfully existing nonconforming structure or use; and ii)
170 structures and uses lawfully begun prior to the first publication of notice of the public
171 hearing on the adoption or amendment of the relevant zoning ordinance or by-law
172 required by section five.

173 (3) A zoning ordinance or by-law may regulate a nonconforming structure or use if
174 abandoned or if discontinued for a period of 2 years or more. Abandonment shall consist
175 of any overt act, or failure to act, that would indicate that the owner neither claims or
176 retains any intent to continue the nonconforming structure or use, unless the owner can
177 demonstrate an intent not to abandon it. An involuntary interruption of a nonconforming
178 structure or use, such as by fire and natural catastrophe, does not establish the intent to
179 abandon.

180 (4) This subsection 6A(b) shall not apply to establishments which display live nudity for
181 their patrons, as defined in section 9A, adult bookstores, adult motion picture theaters,
182 adult paraphernalia shops, or adult video stores subject to the provisions of section 9A.

183 (C) Alteration, reconstruction, extension, or structural change of lawfully nonconforming structures
184 and uses

185 (1) A zoning ordinance or by-law shall not prohibit the alteration, reconstruction, extension,
186 or structural change to a lawfully nonconforming single- or two-family residential
187 structure, provided all such construction satisfies the applicable dimensional requirements
188 of the current zoning ordinance or by-law.

189 (2) A zoning ordinance or by-law may permit, as of right or by special permit, lawfully
190 nonconforming structures or uses to be altered, reconstructed, extended, or structurally
191 changed, provided that such actions do not increase the specific nonconformity of the
192 structure or use.

193 (3) A zoning ordinance or by-law may permit, by special permit, nonconforming structures
194 or uses to be altered, changed, reconstructed, or extended in a manner that increases the
195 specific nonconformity of the structure or use, provided that the special permit granting
196 authority finds that such actions are not substantially more detrimental to the
197 neighborhood than the existing lawfully nonconforming structure or use.

198 (4) A zoning ordinance or by-law may regulate nonconforming structures differently than
199 nonconforming uses.

200 (5) A zoning ordinance or by-law may vary by zoning district(s) the requirements for the
201 alteration, reconstruction, extension or structural change for all lawfully nonconforming
202 structures and uses.

203 **Section 6B. Vested Rights: Effective Date of Zoning Amendments**

204 (A) Building permits and special permits

205 (1) Adoption or amendment of a zoning ordinance or by-law shall not apply to a building
206 permit or special permit issued prior to the date of the first publication of notice of the
207 public hearing on the adoption or amendment required by section 5 provided that:

208 (i) construction under the building permit is commenced within 6 months after
209 issuance and is carried through to completion as continuously and expeditiously
210 as is reasonable; or

211 (ii) the use or construction authorized under the special permit is commenced
212 within two years after issuance and is carried through to completion as
213 continuously and expeditiously as is reasonable.

214 (B) Subdivision plans

215 (1) Adoption or amendment of a zoning ordinance or by-law shall not apply to a definitive
216 subdivision plan or to modifications or amendments to such plan under section 81W of
217 chapter 41 for a period of three years after the original definitive subdivision plan
218 approval, provided such approval occurs prior to the date of the first publication of notice
219 of the public hearing on the adoption or amendment of the relevant zoning ordinance or
220 by-law required by section 5.

221 (C) General provisions

222 (1) The vesting provisions of this section 6B shall be extended for a period of time
223 equal to the duration of:

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

- 225 (ii) the period between the filing of any appeal or commencement of any
226 litigation from the decision of any applicable local board or authority and
227 the final disposition thereof, provided final adjudication is in favor of the
228 owner of the lot; and
- 229 (iii) any moratorium upon permitting or construction imposed by any
230 government entity.

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

236 **SECTION 11.** Section 7 of said chapter 40A, as so appearing, is hereby amended by inserting
237 after the word “violation”, in line 44, the following words:- , except that such structures shall not be
238 deemed to be a protected nonconforming structure under section 6A of this chapter unless such status is
239 specifically provided for in the zoning ordinance or by-law.

240 **SECTION 12.** Said chapter 40A, as so appearing, is hereby amended by inserting after section 7
241 the following new section:-

242 **Section 7A. Site plan review**

243 (A) As used in this section, "site plan" shall mean the submission made to a municipality that
244 includes documents and drawings required by an ordinance or by-law to determine whether a
245 proposed use of land or structures is in compliance with applicable local ordinances or by-laws,
246 to evaluate the impacts of the proposed use of land or structures on the neighborhood and/or
247 community, and to evaluate and propose site design modifications that will lessen those impacts.

248 (B) In addition to the home rule authority of cities and towns to require site plan review, a city or
249 town may adopt a local ordinance or by-law under this section requiring the submission, review,
250 and approval of a site plan before authorization is granted for the use of land or structures
251 governed by a zoning ordinance or by-law.

252 (C) Such ordinance or by-law requiring site plan review shall:

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

254 (2) specify the local boards or officials charged with reviewing and approving site plans,
255 which may differ for different types, scales, or categories of uses of land or structures;

256 (3) establish the submission and review process for a site plan submitted in connection with
257 an application for a variance, special permit, or other discretionary zoning approval. This
258 submission and review may be conducted as part of the review of the application for
259 discretionary approval or may be a separate review process under subsection (c)(4)
260 below;

261 (4) establish the submission, review, and approval process for applications not governed by
262 the procedures for review of discretionary zoning approval under subsection (c)(3) above,
263 which may include the requirement of a public hearing held pursuant to the provisions in
264 section eleven of this chapter. Approval of a site plan under this subsection (4) shall
265 require a simple majority vote of the full board and shall be made within the time limits
266 prescribed by ordinance or by-law, not to exceed the time limits for special permits
267 contained in section nine of this chapter. If no decision is issued within the time limit
268 prescribed, the site plan shall be deemed constructively approved as provided in section
269 9, paragraph 11 of this chapter;

- 270 (5) establish standards and criteria by which the use of land or structures and its impact on
271 the neighborhood shall be evaluated; and
- 272 (6) contain provisions that make the terms, conditions, and content of the approved site plan
273 enforceable by the municipality, which may include the requirement of performance
274 guarantees.
- 275 (D) The local board or official charged with review of site plans may adopt, and from time to time
276 amend, rules to implement the local site plan ordinance or by-law adopted under this section.
- 277 (E) A site plan submitted for the use of specific land or structures provided in subsection (c)(4) shall
278 be approved if the site plan:
- 279 (1) satisfies the procedural and submission requirements of the site plan review process
280 applicable to the specific land or structures;
- 281 (2) complies with the regulations applicable to such land or structures in the local zoning
282 ordinance or by-law; and
- 283 (3) meets such standards and criteria as the local zoning ordinance or by-law provides by
284 which the use of land or structures and its impact on the neighborhood shall be evaluated.
- 285 (F) A site plan approved hereunder may include reasonable conditions, safeguards, and limitations to
286 mitigate the impacts of a specific use of land or structures on the neighborhood.
- 287 (G) Decisions made under site plan review may be appealed as specified in the ordinance or by law,
288 which may include direct judicial review pursuant to section seventeen of this chapter.
- 289 (H) Zoning ordinances or by-laws shall provide that a site plan approval granted under this section
290 shall lapse within a specified period of time, not more than two years from the date of the filing
291 of such approval with the city or town clerk, if substantial use or construction has not yet begun,

292 except as extended for good cause by the approving authority designated under (c)(2)
293 above. Such extension shall not include time required to pursue or await the determination of an
294 appeal under subsection (g) above. The aforesaid maximum period of two years may, by
295 ordinance or by-law, be increased to a longer maximum period.

296 (I) The board designated by ordinance or by-law to review site plans under this section may, by rules
297 and regulations adopted by such board, provide for the imposition of reasonable fees for the
298 employment of outside consultants in the same manner as set forth in section 53G of chapter 44.

299 **SECTION 13.** Section 9 of said chapter 40A, as so appearing, is hereby amended by striking out
300 the fourth paragraph and inserting in place thereof the following paragraph:-

301 Zoning ordinances or by-laws may authorize the transfer of development rights of land within a city or
302 town, or within two or more cities and towns that have adopted complementary ordinances or by-laws.
303 Such authorization may be by special permit or by other methods, including, but not limited to, the
304 applicable provisions of sections 81K to 81GG, inclusive, of chapter 41, and in accordance with a
305 planning board's rules and regulations governing subdivision control.

306 **SECTION 14.** Said section 9 of said chapter 40A, as so appearing, is hereby amended
307 by striking out the first sentence in the seventh paragraph, and inserting in place thereof the
308 following sentence:- "Cluster development" means a residential development in which reduced
309 dimensional requirements allow the developed areas to be concentrated in order to create
310 permanently preserved open land elsewhere on the plot.

311 **SECTION 15.** Said section 9 of said chapter 40A, as so appearing, is hereby amended
312 by inserting after the word "plot", in line 59, the following words:- or to be conveyed or owned
313 in a manner specifically prescribed in the ordinance or by-law.

314 **SECTION 16.** Said section 9 of said chapter 40A, as so appearing, is hereby amended by
315 striking out the twelfth paragraph and inserting in place thereof the following paragraph:-

316 Each application for a special permit shall be filed by the petitioner with the city or town clerk and a copy
317 of said application, including the date and time of filing certified by the city or town clerk, shall be filed
318 forthwith by the petitioner with the special permit granting authority. The special permit granting
319 authority shall hold a public hearing, for which notice has been given as provided in section eleven, on
320 any application for a special permit within sixty-five days from the date of filing of such application;
321 provided, however, that a city council having more than five members designated to act upon such
322 application may appoint a committee of such council to hold the public hearing. The decision of the
323 special permit granting authority shall be made within ninety days following the date of the close of such
324 public hearing. The required time limits for a public hearing and said action may be extended by written
325 agreement between the petitioner and the special permit granting authority. A copy of such agreement
326 shall be filed in the office of the city or town clerk. Unless a lesser majority is specified in the zoning
327 ordinance or by-law, issuance of a special permit under this section shall require a vote of two-thirds of
328 the entire special permit granting authority in the case of an authority with more than five members, the
329 vote of at least four members of a five-member authority, or the vote of all members of an authority
330 comprised of fewer than five members.

331 **SECTION 17.** Said section 9 of said chapter 40A, as so appearing, is hereby amended by
332 striking out the fourteenth paragraph and inserting in place thereof the following paragraphs:-

333 A special permit granted under this section shall state that it will lapse within a period of time specified
334 by the special permit granting authority, not more than two years, if a substantial use thereof has not
335 sooner commenced except for good cause or, in the case of a permit for construction, if construction has
336 not begun by such date except for good cause. The aforesaid maximum period of two years may, by
337 ordinance or by-law, be increased to a longer maximum period. The period of time before which a

338 special permit shall lapse shall not include the time required to pursue or await the determination of an
339 appeal from the grant thereof referred to in section seventeen.

340 Upon written application by the grantee of a special permit, the special permit granting authority in its
341 discretion and without a public hearing may, by the same vote majority originally required to approve the
342 special permit, extend the time for the exercise of such special permit for a period of time not to
343 exceed the original duration of the special permit. Such application must be filed no later than sixty-five
344 days prior to the lapse of the special permit. If the permit granting authority does not grant the extension
345 within sixty-five days of the date of application therefor, upon the lapse of the special permit, the special
346 permit may be re-established only after notice and a new hearing pursuant to the provisions of this
347 section.

348 **SECTION 18.** Said chapter 40A, as so appearing, is hereby amended by inserting after section
349 9C the following new section:-

350 Section 9D. Development impact fee

351 (A) Authority

352 (1) In addition to its home rule authority to impose a development impact fee, a city or town
353 may adopt a local ordinance or by-law under this section that requires the payment of a
354 development impact fee as a condition of any permit or approval otherwise required for
355 any proposed development within the scope of this section, and having development
356 impacts as defined in the ordinance or by-law. The development impact fee may be
357 imposed only on construction, enlargement, expansion, substantial rehabilitation, or
358 change of use of a development. The development impact fee shall be used solely for the
359 purposes of defraying the costs of capital facilities to be provided or paid for by the city
360 or town and which are caused by and necessary to support or compensate for the
361 proposed development. Such capital facilities may include the costs related to the

362 provision of equipment, infrastructure, facilities, or studies associated with the following:
363 schools; libraries; municipal offices; water supply; sewers; storm water management and
364 treatment; pollution abatement; solid waste processing and disposal; traffic mitigation;
365 public transportation; child care; parks, playgrounds, and other recreational facilities;
366 police, fire, ambulance, rescue and other public safety facilities; affordable housing; or
367 other capital improvements.

368 (2) Nothing in this section shall prohibit a city or town from imposing other fees
369 or requirements for mitigation of development impacts which it may otherwise impose
370 under state or local law and that are consistent with the constitution and laws of the
371 Commonwealth.

372 (B) Limitations

373 (1) No development impact fee under this section shall be imposed upon any dwelling unit,
374 regardless of how created or permitted, which is subject to a restriction on sale price or
375 rent under the provisions of chapter 184 of the general laws, as amended, ensuring that
376 the unit will remain affordable for a period of at least 30 years to households at or below
377 the area median income as most recently defined by the United States department of
378 housing and urban development or successor agency.

379 (2) The fee shall not be expended for personnel costs, normal operation and maintenance
380 costs, or to remedy deficiencies in existing facilities, except where such deficiencies are
381 exacerbated by the new development, in which case the fee may be assessed only in
382 proportion to the deficiency so exacerbated.

383 (C) Requirements

384 (1) Prior to the imposition of development impact fees under this section, a city or town shall
385 complete a study that: (i) analyzes existing capital improvement plans or the facilities
386 element of a plan adopted under section 81D of chapter 41; (ii) estimates future
387 development based on the then current zoning ordinance or by-law; (iii) assesses the
388 impacts related to such development; (iv) determines the need for capital facilities
389 required to address the impacts of the estimated development including excess facility
390 capacity, if any, currently planned to accommodate future development; (v) develops cost
391 projections for the needed capital facilities and documents costs of existing facilities with
392 planned excess capacity; and (vi) establishes the amount of any development impact fee
393 authorized under this section in accordance with a methodology determined pursuant to
394 the study. The study shall be updated periodically to reflect actual development activity,
395 actual costs of infrastructure improvements completed or underway, plan changes, or
396 amendments to the zoning ordinance or by-law.

397 (2) A development impact fee shall have a rational nexus to, and shall be roughly
398 proportionate to, the impacts created by the development as determined by the study
399 described in (c)(1) above evaluating said impacts.

400 (3) The purposes for which the fee is expended shall reasonably benefit the proposed
401 development

402 (4) The fee may not be assessed more than once for the same impact, nor may the fee be
403 assessed for impacts, or portions thereof, offset by other dedicated means, including state
404 or federal grants or contributions made by the applicant undertaking the development.

405 (D) Administration

- 406 (1) The ordinance or by-law may provide for a waiver or reduction of the development
407 impact fee for any development that furthers an overriding public purpose as set forth in a
408 plan adopted by the city or town under section 81D of chapter 41.
- 409 (2) If the proposed development is located in more than one municipality, the impact fee
410 shall be apportioned among the municipalities in accordance with the land area or other
411 equitable measure of the impacts of the proposed development in each city or town.
- 412 (3) Any development impact fee assessed under this section shall be deposited to a separate,
413 interest bearing account in the city or town in which the proposed development is located.
414 Unless subject to section (d)(4) below, no development impact fee shall be paid to the
415 general treasury or used as general revenues of the city or town subject to the provisions
416 of section 53 of chapter 44 of the General Laws.
- 417 (4) Any funds not expended or encumbered by the end of the calendar quarter immediately
418 following 10 years from the date the development impact fee was paid shall, upon request
419 of the applicant or its assigns, be returned with interest provided that an application for a
420 refund prescribed in the ordinance or by-law has been submitted within one 180 calendar
421 days prior to the expiration of the 10 year period. If no application for refund is received
422 by the city or town within said period, any funds not expended or encumbered by the end
423 of the calendar quarter shall then revert to and become part of the general fund under
424 section 53 of chapter 44. In the event of any disagreement relative to who shall receive
425 the refund, the city or town may retain said development impact fee pending instructions
426 given in writing by the parties involved or by a court of competent jurisdiction.

427 **SECTION 19.** Said chapter 40A, as so appearing, is hereby amended by inserting after section
428 9D the following new section:-

429 **Section 9E. Land use dispute avoidance**

430 (A) As an optional means of avoiding or minimizing land use disputes, the owner of land or structures
431 who has applied or intends to apply for a building permit, any permit or approval required under
432 this chapter, an approval under sections 81K-GG of chapter 41, or a comprehensive permit under
433 sections 20-23 of chapter 40B, may request of the public official or local board charged with
434 acting on the application to undertake a land use dispute avoidance process as hereinafter
435 provided. Such request shall be made in writing and duly noted in the notice of the public
436 meeting of the local board that would respond to such request, and if made to a public official
437 other than a local board, such official shall file a notice of such request with the city or town clerk
438 at least 48 hours prior to responding to such request.

439 (B) The dispute avoidance process may include an initial conflict assessment to determine if a further
440 resolution effort is advisable in accordance with the procedures set out in this section, or as they
441 may otherwise in writing jointly agree.

442 (C) Both the conflict assessment and any later resolution effort shall be voluntary for those
443 participating requiring the joint written agreement of both the applicant and public official or
444 local board and which shall be filed with the city or town clerk.

445 (D) The conflict assessment and any later resolution effort may be conducted by a neutral facilitator
446 as defined in section 23C of chapter 233, selected from a list prepared by the Massachusetts
447 office of dispute resolution, or its successor agency or its designee, or as chosen jointly by the
448 applicant and the public official or local board.

449 (E) The facilitator and any associate shall comply with the standards of conduct of the association for
450 conflict resolution or as promulgated by the Massachusetts office of dispute resolution, or its
451 successor agency or its designee.

452 (F) Funding for any conflict assessment or resolution effort under this section may be as the
453 applicant and the public official or local board shall agree. In the absence of such
454 agreement, the public official or local board may impose reasonable fees for the
455 employment of outside consultants, including the facilitator, in the same manner as set
456 forth in section 53G of chapter 44.

457 (G) Public officials or local boards may, after a public hearing, adopt, and from time to time amend,
458 rules to implement the conflict assessment or resolution efforts undertaken pursuant to this
459 section. Notice of the hearing on the proposed rules, including the location, date, and time of the
460 hearing shall be filed with the city or town clerk and published once in a newspaper of general
461 circulation in the city or town at least fourteen days before the public hearing.

462 (H) As part of the conflict assessment, the facilitator may solicit information and opinions relating to
463 the application, and may identify and notify those members of the public likely to be interested in
464 or affected by the application. The facilitator may clarify the issues and investigate the
465 willingness of all interested parties to work together with the applicant to resolve those issues.
466 The facilitator may identify measures or community-enhancing features that would benefit the
467 neighborhood, the larger community, and the project itself. Based upon the assessment, the
468 facilitator may determine whether further resolution effort would be productive in reaching a
469 consensus of those participating, with the understanding that the outcome may be the withdrawal
470 or substantial modification of the application.

471 (I) The facilitator may convene meetings or conduct interviews that shall be confidential and
472 privileged from discovery under section 23C of chapter 233 and that shall not be subject to the
473 open meeting law under section 23B of chapter 39. The records of such meetings or interviews
474 shall be exempt from disclosure under the public records law under section 10 of chapter 66 and
475 clause 26 of section 7 of chapter 4.

476 (J) In preparing a report on conflict assessment or later resolution effort, the facilitator shall not
477 attribute statements, positions, ideas, or interests to specific individuals, organizations, or persons
478 interviewed, and shall distribute copies of the report to those participating without prior review or
479 approval of any participant. The conflict assessment report shall indicate whether and how a
480 subsequent resolution effort might be appropriate for the application involved, including
481 elaborating on how it might be undertaken and by whom.

482 (K) Whether or not a resolution results, the applicant may nevertheless proceed with the application
483 without prejudice for having participated in a conflict assessment or resolution effort, and the
484 application process shall proceed in due course as otherwise provided by statute, ordinance, or
485 by-law. The applicant and the public official or local board may, by agreement in writing filed
486 with the city or town clerk, stipulate and agree to extend any otherwise applicable time
487 requirements of state or local law.

488 (L) At the conclusion of any conflict assessment or resolution efforts, the application which initiated
489 the conflict assessment and resolution efforts may go forward in accordance with the applicable
490 statute, ordinance, or by-law, reflecting if possible the result of any resolution effort. If the
491 parties so agree, any resolution may be incorporated into the action taken by the local board or
492 official.

493 **SECTION 20.** Said chapter 40A, as so appearing, is hereby amended by inserting after section
494 9E the following new section:-

495 **Section 9F. Rate of development**

496 Except for a defined period of time during which planning or zoning studies are underway, rate of
497 development measures shall be in accordance with this section.

498 A zoning ordinance, by-law, or regulation that regulates the rate of development shall not be inconsistent
499 with a plan adopted under c. 41, section 81D. The subject matter of such plan shall contain consistent
500 policies and strategies for the implementation of rate of development measures that shall include a study
501 of the need for such measures, a methodology by which to determine a reasonable rate of issuance of
502 either permits for new construction or approvals of new building lots, a time horizon within which such
503 measures shall remain in effect, and a periodic review schedule.

504 Rate of development measures shall not restrict the construction of, or creation of building lots for,
505 affordable housing units restricted to remain affordable for a period of at least 30 years to households
506 with income at or below 120 percent of the area median income as such income is most recently
507 determined by the federal department of housing and urban development or successor agency.

508 Rate of development measures shall not apply to structures accessory to residential uses nor to
509 construction work upon an existing dwelling unit.

510 **SECTION 21.** Said chapter 40A, as so appearing, is hereby amended by inserting after section
511 9F the following section:-

512 **Section 9G. Affordable housing**

513 (A) In furtherance of the public purposes zoning objectives stated in section 2A, subsections
514 (B)(5 and 7) of this chapter and in the exercise of their home rule powers, a city or town,
515 by ordinance or by-law, may require or provide incentives for the applicant for a
516 residential development to provide affordable dwelling units within such development.

517 (B) In lieu of constructing the units required on-site, the ordinance or by-law may provide
518 for the construction of such units off-site, the dedication of land for such purpose, or the
519 payment of funds to a separate account created by the city or town sufficient for and
520 dedicated to the provision of affordable housing, provided the applicant demonstrates to

521 the satisfaction of the local approving authority that the units cannot be otherwise
522 provided on-site or that an alternative proposal better meets the needs of the city or town
523 with respect to the provision of affordable housing. Off-site units, land dedication, or
524 payment in-lieu of units shall, in the opinion of the local approving authority and in
525 consideration of local needs, provide affordable housing benefits roughly equivalent to
526 the provision of on-site units.

527 (C) Cities and towns are authorized to establish a separate dedicated account for the deposit
528 of funds received under this section, including municipal housing trust fund accounts
529 under section 55C of chapter 44 or other dedicated accounts of similar purpose. Said
530 funds shall be deposited with the treasurer and dispersed for affordable housing purposes
531 in accordance with the ordinances, by-laws, or regulations of the city or town. Where
532 the application of this section results in less than a full dwelling unit, the board may
533 accept a prorated payment of funds in lieu of unit creation.

534 (D) The affordable units shall be subject to a restriction on sale price or rent under the
535 provisions of chapter 184 of the general laws, as amended, and shall remain affordable,
536 in perpetuity or for a period not less than 30 years.

537 (E) The regulation may further require some or all of the affordable units to be low- or
538 moderate-income housing as defined in sections 20 through 23, inclusive of chapter 40B,
539 of the general laws, and be eligible for inclusion on the subsidized housing inventory
540 subject to and in accordance with applicable regulations and guidelines of the
541 department of housing and community development or successor agency. Nothing in
542 this section shall be construed to require the department of housing and community
543 development to include affordable units created hereunder on the subsidized housing
544 inventory.

545 (F) Nothing in this section shall limit the authority of a planning board under chapter 41, section 81Q
546 of the general laws, the subdivision control law.

547 **SECTION 22.** Said chapter 40A, as so appearing, is hereby amended by striking out section 10
548 and inserting in place thereof the following section:-

549 **Section 10. Variances**

550 Where a literal enforcement of the provisions of the zoning ordinance or by-law would involve substantial
551 hardship to the applicant, upon appeal or upon petition with respect to particular land or structures, the
552 permit granting authority shall have the discretionary authority to grant a variance from the terms of the
553 applicable zoning ordinance or by-law following a public hearing for which notice has been given by
554 publication and posting as provided in section eleven and by mailing to the planning board and all parties
555 in interest.

556 In making its determination, the permit granting authority shall take into consideration the benefit to the
557 applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of
558 the neighborhood or community by such grant. The permit granting authority may also take into
559 consideration the extent to which the claimed hardship is self-created. In order to grant a variance the
560 permit granting authority shall make all of the following findings: (1) the benefit sought by the applicant
561 can not be achieved by some method, feasible for the applicant to pursue, other than a variance; (2) the
562 variance will not have a substantial undesirable effect on nearby properties, or the character of the
563 neighborhood, or on the environment; (3) the variance will not nullify or substantially derogate from the
564 intent or purpose of such ordinance or by-law or the master plan upon which the ordinance or by-law is
565 based; and (4) the claimed hardship relating to the property in question is unique, and does not apply to a
566 substantial portion of the district or neighborhood. In the granting of variances, the permit granting
567 authority shall grant the minimum variance that it shall deem necessary to relieve the hardship.

568 Use variances are not included within the scope of this section unless expressly so authorized by
569 ordinances or by-laws. If so authorized, use variances shall be subject to all the provisions of this section
570 and to any additional more stringent criteria contained in the ordinance or by-law.

571 The permit granting authority may impose conditions, safeguards and limitations both of time and of use,
572 including the continued existence of any particular structures. Variances shall run with the land, except
573 that a use variance may run with land only if so determined by the permit granting authority acting
574 pursuant to an ordinance or by-law enabling such a determination.

575 If the rights authorized by a variance are not exercised within two years of the date of the grant
576 of the variance such variance shall lapse; provided, however, that upon written application by the
577 grantee of such variance, the permit granting authority in its discretion may extend the time for
578 exercise of such rights for a period not to exceed one year. Such application must be filed no
579 later than sixty-five days prior to the lapse of the variance. If the permit granting authority does
580 not grant the extension within sixty-five days of the date of application therefor, upon the lapse
581 of the variance, the variance may be re-established only after notice and a new hearing pursuant
582 to the provisions of this section.

583 **SECTION 23.** Section 17 of said chapter 40A, as so appearing, is hereby amended by
584 inserting after the seventh paragraph the following paragraph:-

585 Mediation of land use appeals: After the filing of an appeal hereunder, the parties may agree to mediate
586 the decision appealed. In all cases, the parties shall file with the court a statement advising the court that
587 the dispute has been submitted for mediation. If the parties agree to mediation, the mediation shall begin
588 within 60 days of the date such statement was filed, or such other period as the parties may agree or the
589 court may allow upon application by any party. The mediation shall conclude not later than 180 days of
590 filing, provided that such period may be extended for an additional 180 days by joint written agreement of
591 the parties, or for such other additional period as the court may allow upon application by any party. The

592 parties may select the mediator from a list provided by the court or otherwise as the parties may
593 determine. The mediator shall be compensated by the parties as they may agree, or in the absence of
594 agreement, as the court may determine. During the mediation any appeal otherwise pending shall be
595 stayed. A party may withdraw from mediation at any time after written notification to the other parties
596 and to the court, but shall remain responsible for that party's share of the costs of mediation until the time
597 of withdrawal. The mediator shall have the protections provided under section 23C of chapter 233, and to
598 the extent that public agencies are participants in the mediation, their deliberations shall not be subject to
599 the provisions of section 23B of chapter 39. At the conclusion of the mediation, the mediator shall file
600 with the court a statement describing whether the parties have come to agreement. If unresolved, the
601 appeal will then go forward; if the matter has been resolved, the appeal will be dismissed with prejudice.
602 The cost of mediation shall be distributed among the parties as a cost of the appeal as the parties may
603 agree, or in the absence of agreement, as the court may determine. Mediation hereunder shall not be the
604 only method of resolving a zoning appeal.

605 **SECTION 24.** Chapter 41 of the General Laws, as appearing in the 2006 official edition, is
606 hereby amended by striking out section 81D and inserting in place thereof the following section:-

607 **Section 81D. Land use and zoning plan**

608 A planning board established in any city or town under section 81A shall make a land use and zoning plan
609 of such city or town and from time to time, not to exceed ten years, shall update or remake such plan.

610 After adoption as provided in this section such plan shall become the official land use and zoning plan of
611 the city or town, replacing any previously-adopted master plans.

612 Such plan shall be a statement, through text, maps, illustrations or other forms of communication that is
613 designed to provide a basis for decision making regarding the long-term physical development of the
614 municipality. Other completed and current plans, reports, and studies may be incorporated by reference to
615 fulfill or partially fulfill the requirements of each element listed below. The land use and zoning plan

616 shall be internally consistent in its policies, forecasts and standards, shall underlie a city or town's zoning
617 bylaws and subdivision regulations, and shall include the following required elements:

618 (1) A goals and policies statement that identifies the goals and policies of the municipality for its future
619 sustainable growth, development, redevelopment, conservation, and preservation. Each community shall
620 conduct an interactive public process to determine community values, and goals and to identify patterns
621 of development, redevelopment, conservation, and preservation that will be consistent with these goals.

622 (2) A housing element that shall consist of identification and analysis of existing and forecast housing
623 needs; an inventory of local housing; local housing goals, objectives and policies; and implementing
624 measures. Where applicable, existing local housing plans may be included by reference.

625 As a percentage of the total housing stock, the local housing inventory shall include an estimate of: i)
626 housing units by physical type (e.g. single-family, two-family, multi-family, etc.); ii) affordable housing
627 and subsidized housing, including subsidized housing that qualifies as such under chapter 40B; iii)
628 housing available for rental; iv) residential community programs; and v) senior, assisted living, and
629 special needs housing. The inventory shall analyze existing local policies, programs, laws or regulations
630 that encourage the preservation, improvement, and development of such housing and shall assess whether
631 they are adequate to achieve their stated objectives.

632 The element shall enumerate local goals, objectives, and policies so as to provide a diversity of housing
633 stock meeting the housing needs of residents from a broad range of income levels and age groups,
634 including those with disabilities and special needs. The element shall identify and evaluate specific
635 measures for inclusion in the implementation element of the master plan necessary to accomplish this
636 purpose, including strategies, programs, and assistance for: the preservation of existing housing stock; the
637 financing of additional housing; the construction or rehabilitation of housing; and for the adoption or
638 amendment of local laws and regulations permitting, encouraging, or requiring diversity in housing

639 locations, types, designs, and area densities that offer complements or alternatives to larger single-family
640 detached housing that are compatible with a community's character and vision.

641 (3) A natural resources and energy element that provides an inventory of the significant natural and
642 energy resources of the municipality. Such element shall outline zoning or other policies and strategies:
643 for the protection, restoration, and sustainable management of such resources, including wetlands and
644 water resources, environmentally sensitive lands, critical wildlife habitat and biodiversity, agricultural
645 lands and forests; and to promote development that respects and enhances the state's natural resources.

646 The energy component of this element shall explore locally-feasible land use strategies to: maximize
647 energy efficiency and renewable energy opportunities; support land, energy, water, and materials
648 conservation strategies, local clean power generation, distributed generation technologies, and innovative
649 industries; and reduces greenhouse gas emissions and consumption of fossil fuels.

650 (4) A land use element that identifies present land use and designates the proposed distribution, location
651 and inter-relationship of public and private land uses in a general manner sufficient to guide the
652 development of zoning ordinances, bylaws, and maps. This element shall examine the current land use
653 permitting process in a community and, if necessary, make recommendations for the development of
654 clear, predictable, coordinated, and timely procedures thereunder. A land use plan map illustrating the
655 general land use policies of the municipality shall be included.

656 To the extent practicable in a community or areas of a community, this element shall support the
657 revitalization of city and town centers and neighborhoods by promoting development that is compact,
658 conserves land, protects historic resources, integrates uses, and coordinates the provision of housing with
659 the location of jobs, transit and services. In these areas the plan shall encourage the creation or extension
660 of pedestrian-friendly districts and neighborhoods that mix commercial, civic, cultural, educational, and
661 recreational activities with open space and homes.

662 This element shall relate the proposed standards of population density and building intensity to the
663 capacity of land available or planned facilities and services and may identify consistent policies and
664 strategies for the use of rate of development measures which shall include a study of the need for such
665 measures, including providing an appropriate share of the housing growth in the region, a methodology
666 by which to determine a reasonable rate of issuance of permits for new construction or approvals of new
667 building lots, a time horizon within which such measures shall remain in effect, and a periodic review
668 schedule.

669 (5) An implementation program element that defines and schedules the specific municipal actions
670 necessary to achieve the objectives of each element of the land use and zoning plan. This element shall
671 specify the course of action by which the municipality's regulatory structures, including zoning and
672 subdivision control regulations, shall, if necessary, be amended so as not to be inconsistent with the land
673 use and zoning plan.

674 The following elements are optional:

675 (6) An economic development element that, as appropriate: identifies land use policies and available
676 locations that supports the growth of new and existing local businesses, including home-based businesses;
677 attract businesses to locations near housing, infrastructure, water, and transportation options; strengthens
678 sustainable natural resource-based businesses, including agriculture, forestry, outdoor recreation, clean
679 energy technology, and fisheries; encourages the reuse and rehabilitation of existing infrastructure,
680 including brownfields, rather than the construction of new infrastructure in undeveloped areas; facilitates
681 larger-scale economic redevelopment or development in industry clusters consistent with regional and
682 local character; and maintains reliable and affordable energy sources that reduce dependence on imported
683 fossil fuels.

684 (7) A cultural resources element that provides an inventory of the significant cultural, scenic, and historic
685 buildings, sites, and landscapes of the municipality, and policies and strategies for their protection and
686 management.

687 (8) An open space and recreation element that provides an inventory of recreational and resources and
688 open space areas of the municipality, and policies and strategies for the management, protection, and
689 enhancement of such resources and areas. An open space and recreational plan approved by the division
690 of conservation services shall constitute an open space and recreational element hereunder.

691 (9) A services and capital facilities element that identifies and analyzes existing and forecasted needs for
692 facilities and services used by the public. Scheduled expansion or replacement of public facilities or
693 circulation system components and the anticipated costs and revenues associated with accomplishment of
694 such activities shall be detailed in this element. This element is required if development impact fees are
695 to be assessed under section 9 of chapter 40A.

696 (10) A transportation element that: provides an inventory of existing and proposed circulation and
697 transportation systems; increases access to available or feasible transportation options including land- and
698 water-based public transit, bicycling, and walking; explores strategic investment options for
699 transportation infrastructure to encourage smart growth, maximize mobility, conserve fuel, and improve
700 air quality; and facilitates the location of new development where a variety of transportation modes can be
701 made available.

702 Any required or selected optional element above shall include a self-assessment against a regional plan
703 adopted by the regional planning agency under section 5 of chapter 40B and in effect, if any.

704 Such plan shall be made, and may be added to or changed from time to time, by a simple majority vote of
705 the planning board after a public hearing, notice of which shall be posted and published in the manner
706 prescribed for zoning by-law amendments under section 5 of chapter 40A, followed by adoption by the
707 legislative body of the city or town by a simple majority vote except where a greater majority vote has

708 been prescribed in an ordinance or by-law adopted by a two-thirds vote of the local legislative body.
709 However, no vote of the legislative body to alter the plan or amendment as adopted by the planning board
710 shall be other than by a two-thirds vote of the legislative body. The planning board shall, upon
711 completion of any plan or report, or any change or amendment to a plan or report produced under this
712 section, furnish a copy of such plan or report or amendment thereto, to the department of housing and
713 community development.

714 Prior to local legislative adoption of a land use and zoning plan under this section, the plan may, at the
715 election of the planning board, be referred to the applicable regional planning agency for review and
716 certification. The regional planning agency may, at its election, review the plan for certification, but must
717 provide written notice to the city or town within 15 days from receipt of the plan if it intends not to
718 review the plan. If the regional planning agency has elected to review the plan it shall act within 90 days
719 of submission of the plan. Failure to act within 90 days shall be deemed a plan certification by the
720 regional planning agency. The 90 day review period shall be extended by no longer than 90 days by the
721 regional planning agency upon written request by the planning board of the city or town.

722 Such review and certification shall be limited to an assessment of plan compliance with the requirements
723 of this section as such requirements are applicable to the city or town within its region. The review
724 process may be interactive and iterative between the regional planning agency and the planning board,
725 and mutually agreed upon changes to the plan may be made by simple majority vote of the planning board
726 during the review period or extensions thereof. Once the review is completed by the regional planning
727 agency, with or without certification, comments, or outstanding issues, it may be brought to the local
728 legislative body for adoption if the planning board so votes by a simple majority. A plan that has been
729 certified by the regional planning agency and adopted by the city or town shall be presumed to be in
730 compliance with this section. A plan that has not been so certified, for whatever reason including non-
731 referral to the regional planning agency, shall not, for that reason, be presumed to be out of compliance
732 with this section.

733 **SECTION 25.** Section 81L of said chapter 41, as so appearing, is hereby amended by striking
734 out, in lines 52-78 inclusive, the definition of “Subdivision” and inserting in place thereof the following
735 definition:-

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

741 **SECTION 26.** Section 81M of said chapter 41, as so appearing, is hereby amended by inserting,
742 after the word “systems”, in line 23, the words:- , and for those aspects of a plan adopted by the city or
743 town under section 81D of this chapter which are particular to the subdivision of land.

744 **SECTION 27.** Section 81O of said chapter 41, as so appearing, is hereby amended by striking
745 out the second sentence in the first paragraph and inserting in place thereof the following sentences:-
746 After the approval of a plan, the location and width of ways, and the number, shape, and size of the lots
747 shown thereon, may not be changed unless the plan is amended as provided in section 81W. In the
748 alternative, a planning board may adopt rules and regulations under sections 81P and 81Q of this chapter
749 defining and regulating such changes as minor subdivisions.

750 **SECTION 28.** Said section 81O of said chapter 41, as so appearing, is hereby amended by
751 striking out the second paragraph and inserting in place thereof the following paragraph:-

752 A plan shall be deemed submitted under this section as of the date of the next regularly scheduled meeting
753 of the planning board, provided that during posted business hours the plan is both delivered to the
754 planning board and filed with the town clerk no later than 7 calendar days prior to said meeting date, or
755 35 calendar days after such delivery to the planning board and filing with the town clerk, whichever shall
756 first occur. An incomplete submission or one not in accordance with submittal requirements may be the

757 basis upon which the planning board may deny approval of the plan. Notwithstanding the foregoing, a
758 planning board or its designee may give notice to the applicant of how the application is incomplete or not
759 in accordance with said submittal requirements and may grant to the applicant additional time to effect
760 corrective measures.

761 **SECTION 29.** Said chapter 41, as so appearing, is hereby amended by striking out section 81P
762 and inserting in place thereof the following section:-

763 **Section 81P. Alternative approvals for minor subdivisions**

764 A planning board may adopt alternative rules and regulations under section 81Q defining and regulating
765 minor subdivisions in a more expeditious manner than would apply to other subdivisions. Such rules and
766 regulations may reduce or eliminate any local rule or regulation made under section 81Q that would
767 otherwise apply to a subdivision and any requirement of sections 81L relative to the definition of
768 preliminary plan, 81S, 81T, or 81U of this chapter. Minor subdivisions under this section shall not create
769 more than 3 additional lots.

770 **SECTION 30.** Section 81Q of said chapter 41, as so appearing, is hereby amended by striking
771 out, in line 59, the words “or use”.

772 **SECTION 31.** Said section 81Q of said chapter 41, as so appearing, is hereby amended by
773 striking out, in lines 62-69 inclusive, the words “No rule or regulation shall require, and no planning
774 board shall impose, as a condition of approval of a subdivision, that any of the land within said
775 subdivision be dedicated to the public use, or conveyed or released to the commonwealth or to the county,
776 city or town in which the subdivision is located, for use as a public way, public park or playground, or for
777 any other public purpose, without just compensation to the owner thereof.” and inserting in place thereof
778 the following words:- The rules and regulations may require the plan to show a park or parks suitably
779 located for playground or recreation purposes or for providing light and air, except that such requirement
780 shall not exceed 10 percent of the land being subdivided.

781 **SECTION 32.** Said section 81Q of said chapter 41, as so appearing, is hereby amended by
782 inserting after the first paragraph the following paragraphs:-

783 Notwithstanding any general or special law to the contrary, a planning board may, by regulation, require
784 an applicant for a residential subdivision to provide affordable dwelling units and to show on the
785 subdivision plan a lot or lots reserved for such units. The required affordable units shall be in addition to,
786 but shall not exceed 25 percent of the number of, market-rate units approved by the board in accordance
787 with any otherwise applicable ordinance, by-law, or regulation. In order to include the additional
788 affordable units, the regulation shall provide for an increase in the permitted density or intensity of
789 residential uses within a subdivision as authorized by a complementary zoning ordinance or by-law
790 relating to the subdivision of land. In lieu of constructing the units required on-site, the regulation may
791 provide for the construction of such units off-site, the dedication of land for such purpose, or the payment
792 of funds to a separate account created by the city or town sufficient for and dedicated to the provision of
793 affordable housing, provided the applicant demonstrates to the satisfaction of the board that the units
794 cannot be otherwise provided on-site or that an alternative proposal better meets the needs of the city or
795 town with respect to the provision of affordable housing. Off-site units, land dedication, or payment in-
796 lieu of units shall, in the opinion of the board and in consideration of local needs, provide affordable
797 housing benefits roughly equivalent to the provision of on-site units. Cities and towns are authorized to
798 establish a separate dedicated account for the deposit of funds received under this section, including
799 municipal housing trust fund accounts under section 55C of chapter 44 or other dedicated accounts of
800 similar purpose. Said funds shall be deposited with the treasurer and dispersed in accordance with the
801 ordinances, by-laws, or regulations of the city or town. Where the application of this section results in less
802 than a full dwelling unit, the board may accept a prorated payment of funds in lieu of unit creation.

803 The affordable units shall be subject to a restriction on sale price or rent under the provisions of chapter
804 184 of the general laws, as amended, and shall remain affordable, in perpetuity or for a period not less
805 than 30 years, to households with income at or below the area median income as such income is most

806 recently determined by the United States department of housing and urban development or successor
807 agency. However, the regulation may allow some of the units to be restricted for sale or rent to
808 households with income up to 120 percent of the area median income, provided the average allowable
809 sale price or rent of all affordable housing units within the subdivision shall be affordable to households
810 with income at or below the area median income, as set forth in the restriction. The regulation may further
811 require some or all of the affordable units to be low- or moderate-income housing as defined in sections
812 20 through 23, inclusive, of chapter 40B of the general laws, and be eligible for inclusion on the
813 subsidized housing inventory in accordance with applicable regulations and guidelines of the department
814 of housing and community development or successor agency.

815 Nothing in this section shall prohibit a city or town from adopting an inclusionary zoning by-law,
816 ordinance or regulation with affordable housing requirements that differ from the provisions stated herein.

817 After January 1, 2014, no rules and regulations adopted under this chapter may be inconsistent with a plan
818 adopted by the city or town under section 81D of chapter 41. No rule or regulation shall be deemed
819 inconsistent with the plan if it furthers, or at least does not impede, the achievement of the plan's goals
820 and policies, and if it is not incompatible with the plan's proposed land uses, design guidelines, and
821 development patterns.

822 After the effective date of the plan, rules and regulations shall enjoy a rebuttable presumption in any
823 action, suit, or administrative proceeding that its provisions are not inconsistent with the plan. If the
824 presumption is rebutted, inconsistency may serve as the basis upon which a court or administrative
825 agency may declare any relevant rule or regulation provision to be invalid as applied to the property
826 which is the subject of the action, suit, or administrative proceeding. For an amendment to the plan
827 adopted after January 1, 2014, no declaration of invalidity may be made in any action, suit, or
828 administrative proceeding for a period of 12 months after the effective date of the plan amendment.

829 **SECTION 33.** Section 81T of said chapter 41, as so appearing, is hereby amended by striking
830 out, in lines 2-3 inclusive, the following words “or for a determination that approval is not required”.

831 **SECTION 34.** Section 81U of said chapter 41, as so appearing, is hereby amended by striking
832 out lines 74 through 79, inclusive, and inserting in place thereof the words “Before endorsement of its
833 approval of a plan, a planning board shall require a performance guarantee such that the construction of
834 ways and the installation of municipal services will be secured by one, or in part by one and in part by
835 another, of the methods described in the following clauses (1), (2), (3), and (4). The method or
836 combination of methods shall be selected by the planning board, provided, however, that the applicant
837 shall have the right and option to substitute a covenant referred to in clause (3).”

838 **SECTION 35.** Said section 81U of said chapter 41, as so appearing, is hereby amended by
839 striking out, in lines 173-174 inclusive, the words “for a period of not more than three years”.

840 **SECTION 36.** Section 81X of said chapter 41, as so appearing, is hereby amended by striking
841 out, in lines 12-13 inclusive, the following words “such plan bears the endorsement of the planning board
842 that approval of such plan is not required, as provided in section eighty-one P, or (3)”.

843 **SECTION 37.** Said section 81X of said chapter 41, as so appearing, is hereby amended by
844 striking out, in lines 17-20 inclusive, the following words “or that it is a plan submitted pursuant to
845 section eighty-one P and that it has been determined by failure of the planning board to act thereon within
846 the prescribed time that approval is not required,”.

847 **SECTION 38.** Said section 81X of said chapter 41, as so appearing, is hereby amended by
848 striking out the fourth paragraph and inserting in place thereof the following paragraph:-

849 Notwithstanding the foregoing provisions of this section, the register of deeds shall accept for recording,
850 and the land court shall accept with a petition for registration or confirmation of title, any plan bearing a
851 professional opinion by a registered professional land surveyor that the property lines shown are the lines

852 dividing existing ownerships, and the lines of streets and ways shown are those of public or private streets
853 or ways already established, and that no new lines for division of existing ownership or for new ways are
854 shown. Similarly, the register of deeds and the land court shall accept for recording or registration any
855 plan showing a change in the line of any lot, tract, or parcel bearing a professional opinion by a registered
856 professional land surveyor and a certificate by the person or board charged with the enforcement of the
857 zoning ordinance or by-law of the city or town that the property lines shown: do not create an additional
858 building lot; do not create, add to, or alter the lines of a street or way; do not render an existing legal lot or
859 structure illegal; do not render an existing nonconforming lot or structure more nonconforming; and are
860 not subject to alternative local rules and regulations for minor subdivisions under section 81P of this
861 chapter. The recording of such plan shall not relieve any owner from compliance with the provisions of
862 the subdivision control law or of any other applicable provision of law.

863 **SECTION 39.** Section 53G of chapter 44 of the General Laws, as appearing in the
864 2006 official edition, is hereby amended by inserting after the word “section”, in line 2, the
865 following figure:- 7A,

866 **SECTION 40.** Said section 53G of said chapter 44, as so appearing, is hereby
867 amended by inserting after the word “nine”, in line 2, the following figure:- , 9E,

868 **SECTION 41.** The provisions of bill sections 1-42 herein, except as otherwise expressly
869 provided, shall not be construed to affect any general or special law other than chapters 40A, 41, and 44,
870 as revised.