

SENATE No. 858

The Commonwealth of Massachusetts

PRESENTED BY:

Brendan P. Crighton

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 adoption of the accompanying bill:

An Act to promote Yes in My Back Yard.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Brendan P. Crighton</i>	<i>Third Essex</i>	
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>2/8/2023</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>2/8/2023</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>2/8/2023</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Worcester and Middlesex</i>	<i>2/8/2023</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>2/14/2023</i>
<i>Adam Gomez</i>	<i>Hampden</i>	<i>2/24/2023</i>

SENATE No. 858

By Mr. Crighton, a petition (accompanied by bill, Senate, No. 858) of Brendan P. Crighton, Sal N. DiDomenico, Michael J. Barrett, Mike Connolly and other members of the General Court for legislation to promote Yes in My Back Yard. Housing.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act to promote Yes in My Back Yard.

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

1 Section 1: Chapter 23A of the General Laws, as so appearing, is hereby amended by
2 adding the following section:-

3 Section 68. In order to meet the housing needs of the Commonwealth, there is hereby
4 established a statewide goal of producing 427,000 new units of housing in Massachusetts by
5 2040. The housing production goal shall also include a goal of having 85,400 units of housing
6 created by 2040 that are affordable to households earning less than 80% of the Area Median
7 Income, with at least 8,500 of these affordable units for households earning less than 30 percent
8 of the Area Median Income. The housing production goal shall also include a goal of having
9 52,000 units for households earning between 80-120% of the Area Median Income.

10 The secretary of housing and economic development shall report annually to the clerks of
11 the house of representatives and the senate, who shall forward the report to the house of
12 representatives and the senate, the chairs of the joint committee on housing, and the chairs of the

13 senate and house committee on ways and means, on progress made towards meeting these
14 housing production goals. The report shall include a breakdown of market-rate units created;
15 units created that are accessible or adaptable for persons with disabilities; units created for
16 persons over the age of 55; and units created by deed restricted affordable housing available to
17 households earning less than 80% Area Median Income, less than 60% Area Median Income,
18 and less than 30% Area Median Income. The secretary of housing and economic development
19 shall also report annually on the number of residential properties purchased by foreign buyers in
20 Massachusetts. As part of the report, the secretary of housing and economic development shall
21 also include information on short-term rentals collected as required by Chapter 337 of the Acts
22 of 2018. The secretary of housing and economic development shall also report annually on the
23 number of units, broken down by municipality, on the Subsidized Housing Inventory as
24 maintained by the Department of Housing and Community Development that are income
25 restricted to income eligible households earning 80% or less than the area median income.

26 Section 2: Section 1A of Chapter 40A of the General Laws, as so appearing, is amended
27 by inserting the following definition:

28 “Bus Station” means a building located at the intersection of two or more bus lines,
29 within

30 which services are available to bus passengers; provided that a bus station does not
31 include a shelter or other structure without walls and a foundation.

32 Chapter 40A, of the General Laws, as so appearing, is hereby amended by adding the
33 following section:-

34 Section 18. (a) Any zoning regulations adopted pursuant to Chapter 40A shall allow, as
35 of right and with no minimum parking requirements for dwelling units, mixed-use development
36 or multifamily housing with a minimum gross density of 15 units per acre, subject to any further
37 limitations imposed by section 40 of chapter 131 and title 5 of the state environmental code
38 established pursuant to section 13 of chapter 21A, and be located not more than 0.5 miles from a
39 commuter rail station, subway station, ferry terminal or bus station, if applicable.

40 (b) Any zoning regulations adopted pursuant to Chapter 40A shall allow, as of right and
41 with no minimum parking requirements for dwelling units, multifamily housing with a minimum
42 gross density of 15 units per acre, subject to any further limitations imposed by section 40 of
43 chapter 131 and title 5 of the state environmental code established pursuant to section 13 of
44 chapter 21A, and be located not more than 0.25 miles from an eligible location.

45 (c) Any development permitted pursuant to subsections (a) or (b) which includes ten or
46 more residential units shall set aside a minimum of fifteen percent of the residential units to
47 households earning at or below 80% of the Area Median Income or a minimum of ten percent of
48 the residential units to households earning at or below 50% of the Area Median Income as
49 determined by the U.S. Department of Housing and Urban Development.

50 (d) If a municipality fails to adopt new regulations or amend existing regulations to
51 comply with the provisions of this section by January 1, 2025, any noncompliant existing
52 regulation shall become null and void and such municipality shall approve or deny applications
53 in accordance with the requirements for regulations set forth in the provisions of this section
54 until such municipality adopts or amends a regulation in compliance with this section.

55 (e) A municipality shall not use or impose standards to discourage, through unreasonable
56 costs or delays, the development of housing described in this section.

57 Section 3: Section 1A of chapter 40A of the General Laws, as so appearing, is hereby
58 amended so that the definition of an accessory dwelling unit is:

59 “Accessory dwelling unit”, a self-contained housing unit, inclusive of sleeping, cooking
60 and sanitary facilities, incorporated within the same structure as a primary dwelling unit or in a
61 detached accessory structure that: (i) maintains a separate entrance, either directly from the
62 outside or through an entry hall or corridor shared with the principal dwelling sufficient to meet
63 the requirements of the state building code for safe egress and (ii) is not larger in floor space than
64 $\frac{1}{2}$ the floor space of the primary dwelling unit or 900 square feet, whichever is greater.

65 Section 3 of chapter 40A of the General Laws, as so appearing, is hereby amended by
66 inserting after the last paragraph the following paragraphs:

67 No zoning ordinance or by-law shall prohibit or require a special permit for the use of
68 land or structures for an accessory dwelling unit, or the rental thereof, in a residential or mixed-
69 use zoning district.

70 The use of land or structures for an accessory dwelling unit may be subject to reasonable
71 regulations, including but not limited to dimensional setbacks, short-term rentals of accessory
72 dwelling units and the bulk and height of structures. However, a locality may not impose an
73 ordinance that requires any of the following:

74 a. Minimum floor space standards greater than is required by state law, as established in
75 the state sanitary code, chapter II

- 76 b. Maximum height standards less than 16 feet high
- 77 c. Rear or side setback standards that exceed what is permitted under the local zoning
78 code for the primary dwelling or what is applicable to the primary dwelling unit if it is a legally
79 existing non-conforming unit
- 80 d. Minimum lot size standards
- 81 e. Discretionary design criteria distinct to ADUs that are not imposed on other residential
82 buildings in that district.
- 83 f. Off-street automobile parking requirements and minimum parking requirements greater
84 than 1 per unit. Parking requirements may be satisfied through tandem driveway parking.
- 85 g. Requirements that the owner of the property reside in either the primary dwelling or
86 the accessory unit.
- 87 An accessory dwelling unit shall not be considered to exceed the allowable density for
88 the lot upon which it is located.
- 89 Municipalities must adopt the naming convention and definition of an ADU as
90 established herein.
- 91 A municipality that does not adopt an ordinance that permits Accessory Dwelling Units
92 as specified in this section shall be subject to the standards established herein. Municipalities are
93 encouraged to adopt less restrictive ordinances.
- 94 The Department of Housing and Community Development shall create and implement
95 guidelines for which municipal regulations are permissible.

96 Nothing in this paragraph shall authorize an accessory dwelling unit to violate the
97 environmental, building, fire, health or sanitary codes, historic or wetlands laws, or ordinances or
98 by-laws.

99 Section 4: The following section is added to Chapter 40A of the Massachusetts General
100 Laws:-

101 Section 19. (a) The purpose of this section shall be to promote and incentivize the reuse
102 of vacant commercial parcels and properties for residential and mixed-use housing, by removing
103 barriers to housing development and establishing a streamlined, ministerial approval process for
104 those types of developments.

105 (b) A development proponent may submit an application for a housing development that
106 shall be a use by right and that shall be subject to a streamlined, ministerial review established
107 under section (d) if the proposed residential or mixed-use development satisfies all of the
108 requirements established in section (c).

109 For the purposes of this section, "Vacant commercial parcel" shall mean any parcel of
110 land zoned for commercial or mixed-use that has no legal structures or improvements on it.

111 "Vacant commercial property" shall mean a commercial or mixed-use building that is not
112 currently legally occupied or in which no person(s) or entity conducts a lawfully licensed
113 business.

114 (c) A development project shall be subject to the streamlined, ministerial review process
115 provided by section (d) if the proposed development satisfies all of the following criteria:

116 1. It is located within a vacant property or on a vacant parcel in an area zoned for
117 commercial or mixed-use purposes.

118 2. At least 20% of the residential floor space area is dedicated to units affordable to
119 households earning up to 80% of the area median income as determined annually by the U.S
120 Department of Housing and Urban Development

121 3. The development is a multi-family housing project

122 4. The development meets all applicable state environmental, fire, building health and
123 sanitary codes, historic or wetlands laws, and any other applicable state ordinances or by-laws.

124 5. The residential density for the development either:

125 a. Meets or exceeds the minimum allowable residential density for the existing zoning
126 designation for the parcel if existing zoning allows multifamily residential use; or

127 b. Meets or exceeds the minimum allowable residential density for the nearest zoning
128 district that permits multi-family housing, if the current zone does not allow multi-family
129 residential use

130 6. The development meets the objective zoning standards for the applicable zone
131 established in subsection 5.

132 For the purposes of this section, objective zoning standards shall mean standards that
133 involve no personal or subjective judgment by a public official and are uniformly verifiable by
134 reference to an external and uniform benchmark or criterion available and knowable by both the
135 development applicant or proponent and the public official before submittal. The applicable

136 objective standards shall be those in effect at the time that the development application is
137 submitted to the local government pursuant to this article.

138 No zoning ordinance or by-law may impose minimum automobile parking requirements,
139 maximum density requirements or subjective design standards on a development application
140 submitted pursuant to this section.

141 For the purposes of this section, subjective design standards shall mean standards that can
142 be interpreted multiple ways, such as compatibility with neighboring properties or promoting
143 harmony and balance in the community.

144 (d) If the local government determines that the proposed development meets the criteria
145 established in section (c), it shall approve the project.

146 If the local government determines that the proposed development does not meet the
147 criteria established in section (c), it shall provide the development proponent written
148 documentation of which standard or standards the development conflicts with, and an
149 explanation for the reason or reasons the development conflicts with that standard or standards,
150 within the 60 days. If the local government fails to do so, the project shall be granted automatic
151 approval.

152 Review of the application shall be conducted by the local agency, official, or board
153 responsible for approving or rejecting housing development projects. That review shall be
154 objective and be strictly focused on assessing compliance with the criteria established in section
155 (c), as well as any reasonable objective standards published and adopted by ordinance or
156 resolution by a local jurisdiction, except those prohibited in section (c).

157 A local government may adopt an ordinance to implement the provisions of this article.

158 The Department of Housing and Community Development shall publish guidelines and
159 coordinate with local governments to ensure compliance with the application process established
160 by this law.

161 Section 5: Section 5 of Chapter 40A of the General Laws, as so appearing, is amended by
162 inserting in paragraph 5 the following after "in accordance with section 3 of chapter 40R.":-

163 (5) an inclusionary zoning ordinance or bylaw, that shall not unduly constrain the
164 production of housing in the area impacted by the inclusionary zoning ordinance or bylaw. The
165 Department of Housing and Community Development shall be responsible for developing
166 guidelines to ensure that municipalities do not adopt inclusionary zoning ordinances or bylaws
167 that constrain the production of housing in that community.

168 Section 6: The secretary of housing and economic development, secretary of energy and
169 environmental affairs, the secretary of transportation, and the executive director of the
170 Massachusetts Development Finance Agency shall jointly submit a report to the joint committee
171 on housing identifying greyfields sites across the commonwealth, options for redevelopment or
172 reuse that may include housing, public use or facilities, mixed use development, or natural
173 restoration and open space, and identify programs within the appropriate state and quasi-public
174 agencies that can be used to support communities in repurposing underutilized land.

175 For the purposes of this act, the term "greyfields" may include, but is not limited to, land
176 with development that is outdated, underutilized, failing, or vacant, including commercial,
177 residential, and industrial properties. This term may also include land that is owned by the
178 Commonwealth, its agencies, or its political subdivisions.

179 Section 7: Section 34 of Chapter 7C of the General Laws, as so appearing, are hereby
180 amended by inserting the following paragraph:-

181 (c) Prior to disposition of publicly owned real property of the commonwealth pursuant to
182 chapter 7C, the commissioner of capital asset management and maintenance in coordination with
183 the secretary of the executive office of housing and economic development shall determine
184 whether such real property shall be made available for low or moderate income housing pursuant
185 to this chapter. In making such determination the commissioner and the secretary shall take into
186 account the following factors:

187 (i) existing zoning that limits the siting of low or moderate-income housing in the city or
188 town in which the publicly owned real property is located;

189 (ii) financial or other deterrents to the production of low or moderate-income housing in
190 the city or town in which the real property is located; and

191 (iii) ensuring that real property for disposition under this chapter is fairly made available
192 to all regions of the commonwealth, including gateway municipalities, rural areas and suburban
193 areas.

194 Upon making the determination that publicly owned real property shall be made to
195 available for disposition under this chapter, the commissioner and the secretary shall,
196 notwithstanding chapter 7C or any other law to the contrary, declare the property available for
197 development of low or moderate-income housing in accordance with this chapter.

198 Section 8: Section 13 of chapter 21A, as so appearing, is hereby amended by striking out
199 the first paragraph and inserting in place thereof the following paragraph:-

200 “A board of health may adopt a local on-site sewage disposal systems regulation, only to
201 the extent that it imposes standards or other requirements that are more stringent than or
202 otherwise exceed those set forth in Title 5 of the State Environmental Code, 310 CMR 15.000,
203 and only if, prior to adoption by the board of health, the Department of Environmental Protection
204 shall review and approve any such proposed on-site sewage disposal systems regulation based
205 upon findings that the proposed regulation has a generally recognized scientific basis, is a
206 recommended best practice technique, is necessary to protect unusual local resources that
207 warrant special or enhanced protection, and does not conflict with Title 5 of the State
208 Environmental Code, 310 CMR 15.000.”