

SENATE No. 2327

Senate, June 9, 2016 – Text of the Senate Bill promoting housing and sustainable development (Senate, No. 2327) (being the text of Senate, No. 2311, printed as amended)

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act promoting housing and sustainable development.

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

1 SECTION 1. Section 3 of chapter 23B of the General Laws, as appearing in the 2014
2 Official Edition, is hereby amended by inserting after clause (v) the following subsection:-

3 (w) establish, conduct and maintain an annual program of education and training for
4 members of local planning boards and zoning boards of appeals; provided, however that the
5 department shall consult with the Massachusetts Association of Regional Planning Agencies
6 regarding development of the program; provided further, that the department may contract with
7 the Massachusetts Citizen Planner Training Collaborative at the University of Massachusetts to
8 provide such education and training. To the extent practicable, the education and training
9 programs shall be offered in various locations throughout the commonwealth.

10 SECTION 2. Said chapter 23B of the General Laws is hereby amended by adding the
11 following section:-

12 Section 31. (a) The secretary of housing and economic development, in consultation with
13 the secretary of energy and environmental affairs, the secretary of transportation and the attorney

14 general, following a public hearing and opportunity for stakeholder feedback, shall develop a
15 municipal opt-in program to advance the state's economic, environmental and social well-being
16 through enhanced planning for economic growth, land conservation, greenhouse gas emissions
17 reductions, workforce housing creation and mobility. The program shall include guidelines and
18 criteria to evaluate municipal applications. Applications meeting program guidelines and criteria
19 shall receive status as a certified community. Certified communities shall be entitled to certain
20 privileges and powers after the certified communities take actions defined in the program to
21 encourage residential development, commercial or industrial development and the conservation
22 of critical land and resources and, as appropriate, to provide incentives to entities seeking local
23 permits and local land use approvals.

24 (b) The executive office of housing and economic development shall develop guidelines
25 for a city or town to receive status as a certified community. The guidelines shall promote: (i)
26 prompt and predictable permitting of commercial or industrial development within economic
27 development districts that allow for an appropriate amount of development to proceed as of right
28 and within a specific reasonable time; (ii) prompt and predictable permitting of residential
29 development within residential development districts that allow for the appropriate amount of
30 development to proceed as of right and within a specific reasonable time; (iii) open space
31 residential design or cluster development as defined in section 1A of chapter 40A and developed
32 in accordance with paragraph (2) of section 3A of said chapter 40A; (iv) low impact
33 development techniques; (v) natural resource protection zoning in areas of significant natural or
34 cultural resources; (vi) reductions in greenhouse gas emissions; (vii) development agreement
35 contracts between a municipality and a holder of development rights to express the
36 responsibilities of both parties and conditions to which the development will be subject; (viii)

37 consolidated hearings and permitting for large development projects; and (ix) joint applications
38 from 2 or more contiguous municipalities who together meet the goals of the program and agree
39 to the requirements of the program .

40 (c) A city or town may apply to the executive office of housing and economic
41 development to become a certified community. A regional planning agency shall make itself
42 available to a city or town during the application process to facilitate best practices. A regional
43 planning agency, in consultation with stakeholders, shall develop model by-laws, ordinances and
44 rules and regulations which may be used or incorporated by communities within the planning
45 agency region in its application to the executive office of housing and economic development or
46 the regional planning agency may recommend model by-laws, ordinances and rules and
47 regulations for a specific community within the region which may be used or incorporated by a
48 city or town in its application to the department.

49 (d) The executive office of housing and economic development shall develop criteria to
50 evaluate a submission by a city or town to become a certified community. At the discretion of
51 the executive office of housing and economic development, applications from a city or town with
52 the endorsement of a regional planning agency may be presumed to meet the criteria or the
53 endorsement may be favorably factored into a determination by the department. If the executive
54 office of housing and economic development determines that it is unable to issue a certification,
55 it shall provide the applicant with a written statement of the reasons for its determination and the
56 applicant shall be allowed to reapply. A municipality's certification shall be for a period of up to
57 10 years and may be renewed at the discretion of the executive office of housing and economic
58 development.

59 (e) The executive office of housing and economic development shall develop incentives
60 to encourage municipal participation in the program. Incentives shall be based upon the program
61 guidelines and criteria. The incentives offered to municipalities may include, but shall not be
62 limited to: (i) reducing the minimum vesting period for a definitive subdivision plan under
63 section 6 of chapter 40A; (ii) authorizing zoning ordinances or bylaws that impose natural
64 resource protection zoning that requires percentages of preserved land of 80 per cent or greater;
65 and (iii) authorizing development impact fees imposed pursuant to section 9E of said chapter
66 40A to be applied to additional off-site public capital facilities; provided, however, that all
67 impact fees shall have a rational nexus to, and shall be roughly proportionate to, the impacts
68 created by the development, and shall otherwise comply with section 9E.

69 (f) To advance economic, environmental and social well-being through enhanced
70 planning for economic growth, land conservation, greenhouse gas emissions reductions,
71 workforce housing creation and mobility, the commonwealth, when awarding discretionary
72 funds for municipal infrastructure or other discretionary funds or grants administered through the
73 executive office of housing and economic development, the executive office of energy and
74 environmental affairs, the Massachusetts department of transportation and the executive office
75 for administration and finance, shall give priority consideration to certified communities.

76 State agencies responsible for regulatory or capital spending programs that have a
77 material effect on local land use and development shall take into account the land use goals,
78 objectives and policies as set forth in master plans adopted under section 81D of chapter 41 in
79 administering regulatory or capital spending programs in certified communities.

80 When awarding discretionary funds for municipal infrastructure and land preservation
81 investments within communities for which there exists a regional plan under section 5 of chapter
82 40B, under chapter 716 of the acts of 1989 or under chapter 831 of the acts of 1977, respectively,
83 the commonwealth shall cause the awards to be consistent with the plan to the maximum extent
84 feasible.

85 (g) The executive office of housing and economic development may issue regulations
86 necessary and appropriate for the implementation of this section.

87 SECTION 3. Section 1A of Chapter 40A of the General Laws, as appearing in the 2014
88 Official Edition, is hereby amended by striking out the definition of “Permit granting authority”
89 and inserting in place thereof the following 9 definitions:-

90 “Affordable housing”, a dwelling unit restricted for purchase or rent by a household with
91 an income at or below 80 per cent of the area median income for the applicable metropolitan or
92 non-metropolitan area, as determined by the United States Department of Housing and Urban
93 Development; provided, however, that affordable housing shall be subject to an affordable
94 housing restriction in accordance with sections 31 to 33, inclusive, of chapter 184 or, if ineligible
95 under said sections 31 to 33, inclusive, of said chapter 184, restricted by other means as required
96 in an ordinance or by-law.

97 “By-right” or “as of right”, development that may proceed under a zoning ordinance or
98 by-law without the need for a special permit, variance, zoning amendment, waiver or other
99 discretionary zoning approval; provided, however, that “by-right” or “as of right” development
100 may be subject to site plan review under section 9D.

101 “Cluster development or open space residential development”, a class of residential
102 development in which reduced dimensional requirements allow the developed areas to be
103 concentrated in order to permanently preserve open land for natural, agricultural or cultural
104 resources elsewhere on the plot.

105 “Development impact fee”, an assessment imposed by a zoning ordinance or by-law to
106 offset the impacts of a development, in an amount roughly proportionate to the impact of the
107 development, and in accordance with section 9E.

108 “Inclusionary housing”, an affordable housing unit or a housing unit restricted for
109 purchase or rent by a household with an income at or below 120 per cent of the median family
110 income determined by the United States Department of Housing and Urban Development for the
111 applicable metropolitan or nonmetropolitan area; provided, however, that a municipality may set
112 the income thresholds for inclusionary housing at a level at or below 120 per cent of median
113 income.

114 “Inclusionary zoning”, zoning ordinances or by-laws that require the creation of
115 affordable housing or inclusionary housing, in accordance with section 9F.

116 “Municipal affordable housing concessions”, measures adopted by a municipality to
117 contribute to the economic feasibility of an inclusionary-zoned residential or mixed use
118 development including, but not limited to, increases in the otherwise maximum allowable
119 density, floor-area ratio or height or reductions in otherwise applicable parking requirements,
120 permitting fees and timeframes.

121 “Natural resource protection zoning”, zoning ordinances or by-laws enacted principally
122 to protect natural resources by establishing higher underlying density divisors relative to other

123 areas, a formulaic method to calculate development rights and compact patterns of development
124 so that a significant majority of the land remains permanently undeveloped and available for
125 agriculture, forestry, recreation, watershed management, carbon sequestration, wildlife habitat or
126 other natural resource values.

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

130 SECTION 3A. Said section 1A of said chapter 40A, as so appearing, is hereby further
131 amended by inserting after the definition of “Special permit granting authority” the following
132 definition:-

133 “Transfer of development rights”, the regulatory procedure whereby the owner of a
134 parcel may convey development rights to the owner of another parcel and where the
135 development rights so conveyed are extinguished on the first parcel and may be exercised on the
136 second parcel in addition to the development rights already existing regarding that parcel.

137 SECTION 4. Said chapter 40A is hereby further amended by inserting after section 1A
138 the following section:-

139 Section 1B. (a) This chapter shall be construed to give full effect to the home rule
140 authority of cities and towns. Nothing in this chapter shall be construed as limiting the
141 constitutional authority of cities and towns unless expressly stated by this chapter. Wherever the
142 language of this chapter purports to authorize or enable, it shall be so construed only where such
143 authority is not otherwise available to cities and towns under the constitution or laws of the
144 commonwealth, and in all other cases such language shall be considered illustrative only.

145 (b) Nothing in this chapter shall limit the authority of the regional planning agencies
146 under chapter 716 of the acts of 1989, chapter 561 of the acts of 1973 and chapter 831 of the acts
147 of 1977 or of any municipality within Barnstable or Nantucket County or the county of Dukes
148 County acting under said chapter 716, said chapter 561 and said chapter 831 including, but not
149 limited to, the designation of districts of critical planning concern, the adoption of regulations for
150 such districts, the review of developments of regional impact and the imposition development
151 impact fees. If this chapter or a regulation issued pursuant to this chapter conflicts with these
152 special acts and any regulations, ordinances, regional policy plans or decisions issued or adopted
153 under these special acts, the latter shall control.

154 SECTION 5. Section 3 of said chapter 40A, as appearing in the 2014 Official Edition, is
155 hereby amended by adding the following paragraph:-

156 No zoning ordinance or by-law shall prohibit or require a special permit for the use of
157 land or structures for an accessory dwelling unit located internally within a single-family
158 dwelling or the rental thereof on a lot not less than 5,000 square feet or on a lot of sufficient area
159 to meet the requirements of title 5 of the state environmental code established by section 13 of
160 chapter 21A, if applicable; provided, however, that such land or structures may be subject to
161 reasonable regulations concerning dimensional setbacks, screening and the bulk and height of
162 structures. The zoning ordinance or by-law may require that the principal dwelling or the
163 accessory dwelling unit be continuously owner-occupied and may limit the total number of
164 accessory dwelling units in the municipality to not less than 5 per cent of the total non-seasonal
165 single-family housing units in the municipality. Not more than 1 additional parking space shall
166 be required for an accessory dwelling unit; provided, however, that, if parking is required for the
167 principal dwelling, that parking shall be retained or replaced. As used in this paragraph,

168 “accessory dwelling unit” shall mean a self-contained housing unit, inclusive of sleeping,
169 cooking and sanitary facilities, incorporated within the same structure as the principal dwelling
170 that: (i) maintains a separate entrance, either directly from the outside or through an entry hall or
171 corridor shared with the principal dwelling sufficient to meet the requirements of the state
172 building code for safe egress; (ii) shall not be sold separately from the principal dwelling; and
173 (iii) is not larger in floor area than 1/2 the floor area of the principal dwelling or 900 square feet,
174 whichever is smaller. Exterior alterations of the principal dwelling to allow separate primary or
175 emergency access to the accessory dwelling unit shall be allowed without a special permit if such
176 alterations are within applicable dimensional setback requirements. Nothing in this paragraph
177 shall authorize an accessory dwelling unit to violate or avoid compliance with the building, fire,
178 health or sanitary codes, historic or wetlands laws, ordinances or by-laws or title 5 of the state
179 environmental code established by said section 13 of said chapter 21A, if applicable. The
180 department of housing and community development may by regulation exempt a municipality
181 from this paragraph if the department determines that: (1) the municipality has a number of
182 multifamily units greater than required under section 3A by a number of housing units not less
183 than 5 per cent of the total non-seasonal housing units in the municipality; or (2) housing sale
184 prices in the municipality have declined over the previous 3-year period.

185 SECTION 6. Said chapter 40A is hereby further amended by inserting after section 3 the
186 following section:-

187 Section 3A. (1) (a) For the purposes of this section, the following words shall have the
188 following meanings unless the context clearly requires otherwise:

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

190 “Eligible locations”, as defined in section 2 of chapter 40R.

191 “Gross density”, a units-per-acre density measurement that includes in the calculation
192 land occupied by public rights-of-way, recreational, civic, commercial and other non-residential
193 uses.

194 “Lot”, an area of land with definite boundaries that are used or available for use as the
195 site of a building.

196 “Multi-family housing”, a building with 3 or more residential dwelling units or 2 or more
197 buildings on the same lot with more than 1 residential dwelling unit in each building.

198 “Rural town”, a municipality with a population density of less than 500 people per square
199 mile as determined by the most recent decennial federal census.

200 (b) Zoning ordinances and by-laws shall provide at least 1 district of reasonable
201 size in which multi-family housing is a permitted use as of right, which may include business,
202 commercial or mixed use zones in eligible locations. For the purposes of this paragraph,
203 “district” shall: (i) include multi-family housing without age restrictions which is suitable for
204 families with children; (ii) have a minimum gross density of 8 units per acre in rural towns and a
205 minimum gross density of 14units per acre in all other municipalities, subject to any further
206 limitations imposed by section 40 of chapter 131 and title 5 of the state environmental code
207 established by section 13 of chapter 21A; provided, however, that multi-family housing districts
208 shall align to the extent possible with existing or planned water, sewer and transportation
209 infrastructure; (iii) be in eligible locations; and (iv) accommodate a reasonable share of the
210 regional need for multi-family housing.

211 A city or town may satisfy the requirement of this subsection by obtaining a
212 determination from the department, acting directly or through a regional planning agency as its
213 designee, that the multi-family provisions of its zoning ordinance or by-law are consistent with
214 the department's regulations established pursuant to subsection (c). If a city or town obtains a
215 determination from the department or regional planning agency under this section, the city or
216 town may use the determination as verification of compliance when applying for discretionary
217 funding by state agency programs that have included a preference or priority for multi-family
218 zoning pursuant to this section.

219 The department may waive or modify the requirements of this subsection for rural
220 municipalities or if a determination is made that no eligible locations exist within a municipality.

221 (c) The department shall promulgate regulations which shall be used to
222 determine if a city or town has satisfied the requirements established in this subsection.

223 (2) Zoning ordinances or by-laws shall provide for open space residential developments
224 as of right. These ordinances or by-laws shall provide that open space residential developments
225 shall be allowed either in a specific district, a subdistrict within that district or in multiple
226 districts through overlay zoning. These ordinances or by-laws shall provide that open space
227 residential developments shall be permitted upon review and approval by a planning board
228 pursuant to section 81K to 81GG, inclusive, of chapter 41 and in accordance with a planning
229 board's rules and regulations governing subdivision control.

230 An open space residential development shall be permitted only on a plot of land of such
231 minimum size as a zoning ordinance or by-law may specify which is divided into building lots
232 with dimensional control, density, open land and use restrictions for such building lots varying

233 from those otherwise permitted by the ordinance or by-law. Such open land, when added to the
234 building lots, shall be at least equal in area to the land area required by the ordinance or by-law
235 for the total number of units or buildings contemplated in the development.

236 A municipality may require either a yield plan or a calculation that deducts for roadways,
237 wetlands and other site constraints in order to determine the yield of housing units in an open
238 space residential development. The open land may be situated to promote and protect maximum
239 solar access within the development. The open land shall either be conveyed to the city or town
240 and accepted by it for park or open space use or be conveyed to a nonprofit organization the
241 principal purpose of which is the conservation of open space or be conveyed to a corporation or
242 trust owned or to be owned by the owners of lots or residential units within the development. If
243 the corporation or trust is utilized, ownership thereof shall pass with conveyances of the lots or
244 residential units. Where the land is not conveyed to the city or town or other governmental
245 agency as dedicated open space, a restriction under sections 31 to 33, inclusive, of chapter 184
246 shall be recorded.

247 Allowance of open space residential development by right in accordance with this section
248 shall not preclude establishment of zoning districts which provide for increases in the
249 permissible density of population or intensity of a particular use within an open space residential
250 development by special permit as provided in section 9.

251 The department of housing and community development and the executive office of
252 energy and environmental affairs shall jointly publish guidelines which may be used to
253 determine if a city or town has satisfied the requirements established in this paragraph.

254 (3) If a zoning ordinance or by-law fails to comply with this section, the superior court or
255 the land court may award appropriate declaratory and injunctive relief in a civil action brought
256 by the attorney general on behalf of the department or by an aggrieved applicant for a local
257 permit.

258 SECTION 7. Section 5 of said chapter 40A, as appearing in the 2014 Official Edition, is
259 hereby amended striking out, in line 78, the word “No” and inserting in place thereof the
260 following words:- Unless otherwise prescribed in a zoning ordinance or by-law, no.

261 SECTION 8. Said section 5 of said chapter 40A, as so appearing, is hereby further
262 amended by inserting after the word “meeting” in line 82, the following words:- “; provided,
263 however, that if a city or town has failed to meet the minimum requirements of paragraph (1) or
264 (2) section 3A, a zoning ordinance or by-law that is consistent with these requirements shall be
265 adopted by a vote of a simple majority of all members of the town council or of the city council
266 where there is a commission form of government or a single branch or of each branch where
267 there are 2 branches or by a vote of a simple majority of town meeting”.

268 SECTION 9. The fourth paragraph of said section 5 of said chapter 40A, as so appearing,
269 is hereby amended by inserting after the first sentence the following sentence:- The report shall
270 evaluate the consistency of the proposed ordinance or by-law or amendment thereto with a
271 master plan under section 81D of chapter 41, if any, in effect.

272 SECTION 10. The fifth paragraph of said section 5 of said chapter 40A, as so appearing,
273 is hereby amended by adding the following sentence:- Any change in the voting majority
274 required to adopt a zoning ordinance, by-law or amendment shall be made by the voting majority
275 then in effect and shall not become effective until 6 months have elapsed after the vote;

276 provided, however, that a voting change shall be limited to a range between a simple majority
277 and a 2/3 majority vote. A majority vote of less than 2/3 shall not be allowed for a specific
278 zoning amendment if the amendment is the subject of a landowner protest.

279 SECTION 11. Section 6 of said chapter 40A, as so appearing, is hereby amended by
280 striking out, in lines 3 to 5, inclusive, the words “or to a building or special permit issued before
281 the first publication of notice of the public hearing on such ordinance or by-law required by
282 section five,”.

283 SECTION 12. Said section 6 of said chapter 40A, as so appearing, is hereby further
284 amended by striking out, in lines 6 and 7, the words “to a building or special permit issued after
285 the first notice of said public hearing,”.

286 SECTION 13. Said section 6 of said chapter 40A, as so appearing, is hereby further
287 amended by striking out the second paragraph and inserting in place thereof the following
288 paragraph:-

289 If a complete application for a building permit or special permit is duly submitted and
290 received, including receipt of payment for any applicable fees, and written notice of the
291 submission has been given to the city or town clerk before the first publication of notice of the
292 public hearing on the ordinance or by-law as required by section 5, the permit shall be governed
293 by the applicable provisions of the zoning ordinance or by-law, if any, in effect at the time of the
294 first submission and receipt while any permit is being processed and, if the permit or an
295 amendment of the permit is finally approved, for 2 years in the case of a building permit and 3
296 years in the case of a special permit from the date of the granting of approval. The period of 2 or
297 3 years shall be extended by a period equal to the time a city or town imposes or has imposed

298 upon it by a state, a federal agency or a court, a moratorium on construction, the issuance of
299 permits or utility connections.

300 SECTION 14. The fourth paragraph of said section 6 of said chapter 40A, as so
301 appearing, is hereby amended by striking out the second sentence.

302 SECTION 15. Said section 6 of said chapter 40A, as so appearing, is hereby amended by
303 striking out the fifth paragraph and inserting in place thereof the following paragraph:-

304 If a complete application for a definitive plan, or a preliminary plan followed within 7
305 months by a definitive plan that is substantially similar to the preliminary plan, is duly submitted
306 to a planning board for approval under the subdivision control law and written notice of the
307 submission has been given to the city or town clerk before the public hearing on the ordinance or
308 by-law required by section 5, the land on the plan shall be governed by the applicable provisions
309 of the zoning ordinance or by-law, if any, in effect at the time of the first submission while any
310 plan is being processed under the subdivision control law and, if the definitive plan or an
311 amendment to the definitive plan is finally approved, for 8 years from the date of the
312 endorsement of the approval; provided, however, that in the case of a minor subdivision in a city
313 or town that has accepted section 81HH of chapter 41, the applicable provisions of the zoning
314 ordinance or by-law shall govern for 4 years from the date of the endorsement of approval. The
315 period of 8 or 4 years shall be extended by a period equal to the time which a city or town
316 imposes or has imposed upon it by a state, a federal agency or a court, a moratorium on
317 construction, the issuance of permits or utility connections.

318 SECTION 16. Section 9 of said chapter 40A, as so appearing, is hereby amended by
319 striking out the third to ninth paragraphs, inclusive.

320 SECTION 17. Said section 9 of said chapter 40A, as so appearing, is hereby further
321 amended by inserting after the word “seven”, in line 241, the following words:- “; provided,
322 however, that a city or town may amend its by-laws to provide that issuance of a special permit
323 shall require an affirmative vote of not less than a simple majority of the special permit granting
324 authority.

325 SECTION 18. Said section 9 of said chapter 40A, as so appearing, is hereby further
326 amended by striking out the fourteenth paragraph and inserting in place thereof the following 2
327 paragraphs:-

328 A special permit granted under this section shall state that it shall lapse within a period of
329 time specified by the special permit granting authority, which shall be not less than 3 years if a
330 substantial use thereof has not sooner commenced except for good cause or, in the case of a
331 permit for construction, if construction has not begun by the specified date except for good
332 cause. The minimum period of 3 years may, by ordinance or by-law, be increased to a longer
333 minimum period. The period of time before which a special permit shall lapse shall not include
334 the time required to pursue or await the determination of an appeal from the grant thereof, as
335 referenced in section 17.

336 Upon written application by the grantee of a special permit, the special permit-granting
337 authority, in its discretion, and after notice and a public hearing, unless under local ordinance or
338 by-law a public hearing is not required, vote by a majority to extend the time for the exercise of a
339 special permit for a period of time not to exceed the original duration of the special permit. The
340 application shall be filed not later than 65 days before the lapse of the special permit. If the
341 permit granting authority does not grant the extension within 65 days of the date of application

342 therefor, upon the lapse of the special permit, the special permit shall only be re-established
343 pursuant to the requirements of this section.

344 SECTION 19. Said section 9 of said chapter 40A, as so appearing, is hereby further
345 amended by inserting after the word “zoned”, in line 201, the following word:- principally.

346 SECTION 20. Said section 9 of said chapter 40A, as so appearing, is hereby further
347 amended by inserting after the word “zoned”, in line 216, the following word:- principally.

348 SECTION 21. Said chapter 40A is hereby further amended by inserting after section 9C
349 the following 4 sections:-

350 Section 9D. (a) As used in this section, “site plan” shall mean the submission made to a
351 municipality that includes documents and drawings required by an ordinance or by-law showing
352 the proposed on-site arrangement of buildings, structures, parking, pedestrian and vehicle
353 circulation, utilities, grading and other site features and improvements existing or to be placed on
354 a parcel of land in connection with the proposed use of land or structures.

355 (b) A zoning ordinance or by-law that requires site plan review for uses allowed by-right
356 shall: (i) establish the different types, scales or categories of uses of land, structures or
357 development subject to site plan review; (ii) specify the local boards or officials charged with
358 reviewing and approving site plans which may differ for different types, scales or categories of
359 uses of land or structures; (iii) set forth what shall be considered a complete application; (iv)
360 establish the process for submission, review and approval for a site plan; (v) establish standards
361 and criteria by which the project and its direct adverse impacts on that portion of properties and
362 public infrastructure located within 300 feet of the parcel boundary shall be evaluated; and (vi)

363 include provisions making the terms, conditions and content of the approved site plan
364 enforceable by the municipality which may include the requirement of performance guarantees.

365 (c) Approval of a site plan under this section, if reviewed by a board, shall require not
366 more than a simple majority vote of the full board and shall be made within the time limits
367 prescribed by ordinance or by-law not to exceed 120 days from the filing of a complete
368 application. Procedures for the administrative review and approval of a site plan by staff or other
369 municipal officials shall be as specified in the ordinance or by-law but the 120-day time limit for
370 a decision shall not be increased unless granted in writing by the person seeking the site plan
371 approval. If no decision is issued within the time limit prescribed and no written extension of the
372 time limit has been granted by the person seeking the site plan review, the site plan shall be
373 deemed constructively approved as provided in section 9; provided, however, that the petitioner
374 shall comply with the constructive approval procedures under said section 9. Copies of the
375 approved site plan submission shall be kept on file by the town or city clerk, the permit granting
376 authority and the municipal building department.

377 (d) A site plan submitted for the use of specific land or structures allowed by-right shall
378 not be denied unless: (i) the proposed site plan cannot be conditioned to meet the requirements
379 set forth in the zoning ordinance or by-law; (ii) the applicant fails to submit the information and
380 fees required by the zoning ordinance or by-law necessary for an adequate and timely review of
381 the design of the proposed land or structures; or (iii) there is no feasible site design change or
382 condition that would adequately mitigate any direct adverse impacts of the proposed
383 improvements on that portion of properties and public infrastructure located within 300 feet of
384 the parcel boundary.

385 (e) A site plan approved under this section may include reasonable conditions,
386 safeguards and limitations to mitigate the direct adverse impacts of the project on that portion of
387 properties and public infrastructure located within 300 feet of the parcel boundary. Conditions
388 may be approved that are directly related to standards and criteria described in the site plan
389 review ordinance or by-law; provided, however, that such conditions shall not conflict with or
390 waive any other applicable requirement of the zoning ordinance or by-law. The record of the
391 decision shall state the reasons for any conditions imposed. If conditions are adopted pursuant to
392 this subsection, the site plan shall be revised to include those conditions before the development
393 permit is issued.

394 (f) Site plan review may not require payment for or performance of any off-site
395 mitigation except when the site plan approval is subject to development impact fees imposed in
396 accordance with section 9E or when a site plan is required in connection with the issuance of a
397 special permit, variance or any other discretionary zoning approval.

398 (g) Except where site plan review is required in connection with the issuance of a special
399 permit, variance or other discretionary zoning approval, decisions made under this section may
400 be appealed pursuant to section 4 of chapter 249. Such civil action may be brought in the
401 superior court or in the land court and shall be commenced within 20 days after the filing of the
402 decision of the site plan review approving authority with the city or town clerk. Notice of such
403 appeal must be given to the city or town clerk so as to be received within 20 days. A complaint
404 by a plaintiff challenging a site plan approval under this section shall allege the specific reasons
405 why the project failed to satisfy the requirements of this section, the zoning ordinance or by-law
406 or other applicable law and shall allege specific facts establishing how the plaintiff is aggrieved
407 by such decision. A complaint by an applicant for site plan review challenging the denial or

408 conditioned approval of a site plan shall similarly allege the specific reasons why the project
409 properly satisfied the requirements of this section, the zoning ordinance or by-law or other
410 applicable law.

411 (h) A site plan, or any extension, modification or renewal thereof, shall not take effect
412 until a notice of site plan approval, identifying the permit granting authority and the date upon
413 which approval was granted, is recorded in the registry of deeds for the county or district in
414 which the land is located and indexed in the grantor index under the name of the owner of record
415 or is recorded and noted on the owner's certificate of title.

416 (i) Zoning ordinances or by-laws shall provide that a site plan approval for a use allowed
417 by-right shall lapse within a specified period of time, not less than 2 years from the date of the
418 filing of the approval with the city or town clerk, if a building permit has not been obtained or
419 substantial use or construction has not yet begun except where extended for good cause by the
420 permit-granting authority either with or without a public hearing, as provided in the zoning
421 ordinance or by-law. Such period of time shall not include the time required to pursue or await
422 the determination of an appeal and shall be measured from the date of the dismissal of the appeal
423 or the entry of final judgment in favor of the applicant.

424 (j) Where an ordinance or by-law provides that a variance, special permit or other
425 discretionary zoning approval shall also require site plan review, the review of the site plan shall
426 be integrated into the processing of the variance, special permit or other discretionary zoning
427 approval and shall not be made the subject of a separate proceeding, hearing or decision. In such
428 a case, the content requirements and approval criteria for a site plan as specified in the zoning
429 ordinance or by-law shall be followed but this section shall not otherwise apply.

430 Section 9E. (a) A local ordinance or by-law that requires the payment of a development
431 impact fee for a permit or approval shall comply with this section. A development impact fee
432 shall have a rational nexus to, and shall be roughly proportionate to, the impacts created by the
433 development. A development impact fee shall reasonably benefit the proposed development and
434 shall be used solely for the purposes of defraying the costs of off-site public capital facilities that
435 support or compensate for the proposed development. Development impact fees shall be applied
436 in a consistent manner pursuant to a proportionate share development impact fee study
437 conducted in accordance with subsection (f).

438 (b) Development impact fees shall be limited to mitigating the impact of the
439 development on the following capital facilities: (i) water supply, treatment and distribution, both
440 potable and for suppression of fires; (ii) wastewater treatment and sanitary sewerage; (iii)
441 drainage, storm water management and treatment; (iv) solid waste; (v) roads, intersections,
442 traffic improvements, public transportation, pedestrian ways and bicycle paths; (vi) parks and
443 recreational facilities; and (vii) publicly owned or publicly financed electric power generation or
444 transmission. Impact fees may be expended on such facilities for the payment of debt service or
445 for studies with a rational nexus to the development, including master plans made in accordance
446 with section 81D of chapter 41 and proportionate share impact fee studies under section 9F. A
447 development impact fee shall not be assessed or expended for personnel costs, normal operation
448 and maintenance costs or to remedy deficiencies in existing facilities; provided, however, that an
449 impact fee may be assessed for mitigation on a facility with a preexisting deficiency to the extent
450 that the preexisting deficiency is exacerbated and not solely to remedy the preexisting deficiency.

451 (c) No development impact fee shall be imposed on a farming or agricultural use
452 recognized in section 1A of chapter 128 or on a dwelling unit with an affordable housing

453 restriction, as defined by section 31 of chapter 184, of not less than 30 years. To the extent that a
454 development contains a nonexclusively farming or agricultural use or nonexclusively affordable
455 housing restricted unit, and the per cent of farming or agricultural use or affordable housing
456 restricted units is not trivial, the by-law or ordinance shall prorate or eliminate the development
457 impact fee.

458 Development impact fees shall be proportionately reduced to the extent that a
459 municipality imposes other fees or requirements, otherwise imposed by law, for mitigation of
460 development including, but not limited to, fees imposed under chapter 40C and section 40 of
461 chapter 131. No fee shall be assessed more than once for the same impact. If, and to the extent
462 that, a municipality receives state or federal funds for mitigation of the development impacts or
463 other grants or contributions for mitigation of development impacts, those funds shall be
464 accounted for in the development impact fee or applied to the development impact fee
465 proportional share development impact study.

466 (d) A development impact fee assessed under this section shall be due and payable not
467 earlier than the issuance of the building permit upon commencement of construction, which may
468 include site preparation work. The fee shall be deposited in a separate, segregated, interest-
469 bearing account in the city or town in which the proposed development is located and no
470 development impact fee shall be paid to the general treasury or used as general expenses of the
471 city or town.

472 Any funds not expended or encumbered by the end of the calendar quarter immediately
473 following 6 years from the date the development impact fee was paid shall be returned with
474 interest. If disagreement exists relative to who shall receive the unexpended or unencumbered

475 fees, the city or town may retain the development impact fee pending instructions given in
476 writing by the parties involved or by a court of competent jurisdiction.

477 (e) A zoning ordinance or by-law may provide that the applicant or developer may
478 construct the public capital facility or a portion thereof for which the development impact fee
479 was assessed or may enter into any other mutual agreement in lieu of paying the development
480 impact fee; provided, however, that the applicant or developer shall not be required to construct
481 the public capital facility or a portion thereof or enter into an alternative agreement if instead the
482 applicant or developer chooses to pay the assessed development impact fee.

483 (f) No development impact fee shall be assessed unless it is assessed pursuant to a valid
484 proportionate-share development impact fee study. A proportionate-share development impact
485 fee study shall establish the proportionate share development impact fee for capital facilities and
486 detail the methodology used to set the fee. The scope of the study may be jurisdiction-wide or
487 limited to a geographic area or category of public capital facilities that development impact fees
488 may be intended to address. A municipality may rely upon credible and professionally
489 recognized methodologies for the study. The study shall be updated not less than every 10 years
490 to reflect actual development activity, actual costs of infrastructure improvements completed or
491 underway, plan changes or amendments to the zoning ordinance or by-law. The study shall
492 identify any preexisting deficiencies in the public capital facilities and shall set forth a feasible
493 implementation plan for how those deficiencies shall be remedied. A proportionate share
494 development impact fee study shall not be valid and no development impact fees shall be
495 assessed if 10 years have passed since the study's creation or its most recent update.

496 An ordinance or by-law may waive or reduce the development impact fee for
497 development that furthers a public purpose as determined in a master plan adopted by the city or
498 town under section 81D of chapter 41 or other formally approved plan designed to set goals for
499 the development of land within the city or town.

500 Notwithstanding this section, a city or town authorized to impose development impact
501 fees pursuant to a special act shall comply with the standards set forth in the special act.

502 Section 9F. (a) A zoning ordinance or by-law may require the applicant for a residential
503 or mixed use development to provide inclusionary housing units. In establishing any such
504 ordinance or by-law, the city or town shall consider the likely impacts of development on the
505 affordable housing assets of the municipality, the ability of the community to meet local and
506 regional housing needs and the economic feasibility of development.

507 (b) An inclusionary housing ordinance or by-law may provide municipal affordable
508 housing concessions which shall be applied among affected developments in a reasonable and
509 consistent manner.

510 (c) In lieu of constructing the required inclusionary housing units onsite, the ordinance or
511 by-law may provide for the construction of such units off-site, the dedication of land for that
512 purpose or the payment of funds to a separate account created by the city or town sufficient for
513 and dedicated to inclusionary housing if the applicant demonstrates to the satisfaction of the local
514 approving authority that the units cannot be otherwise provided onsite or that an alternative
515 proposal better meets the needs of the city or town with respect to the provision of inclusionary
516 housing. Off-site units, land dedication or payment in lieu of units, in the opinion of the board or
517 official designated by ordinance or by-law to administer this section and in consideration of local

518 needs, shall provide inclusionary housing benefits substantially equivalent to the provision of
519 onsite units.

520 (d) A city or town may establish a separate dedicated account for the deposit of funds
521 received under this section, including a Municipal Affordable Housing Trust Fund account under
522 section 55C of chapter 44 or other dedicated accounts of similar purpose. These funds shall be
523 deposited with the treasurer and disbursed for inclusionary housing in accordance with the
524 ordinances, by-laws or regulations of the city or town. If the application of this section results in
525 less than a full dwelling unit, the board may accept a prorated payment of funds in lieu of unit
526 creation.

527 (e) The inclusionary housing units shall be subject to an affordable housing restriction for
528 not less than 30 years, in accordance with sections 31 to 33, inclusive, of chapter 184 or, if
529 ineligible under said sections 31 to 33, inclusive, of said chapter 184, restricted by other means
530 as required in an ordinance or by-law.

531 (f) The ordinance or by-law may require some or all of the inclusionary housing units to
532 be low-income or moderate-income housing as defined in sections 20 to 23, inclusive, of chapter
533 40B, and shall be eligible for inclusion on the local subsidized housing inventory subject to and
534 in accordance with applicable regulations and guidelines of the department of housing and
535 community development. Nothing in this section shall require the department to include
536 affordable units created under this section on the subsidized housing inventory.

537 Section 9G. No ordinance or by-law shall prohibit an owner of land or structures who
538 has applied or intends to apply for a building permit, any permit or approval required under this
539 chapter, an approval under sections 81K to 81GG, inclusive, of chapter 41 or a comprehensive

540 permit under sections 20 to 23, inclusive, of chapter 40B from requesting of the public official or
541 local board charged with acting on the application to undertake a land use dispute avoidance
542 process.

543 If the applicant and the public official or local board agree to a land use dispute
544 avoidance process, the mediator or facilitator for the dispute avoidance process may convene
545 meetings or conduct interviews that shall be confidential and privileged from discovery in
546 accordance with section 23C of chapter 233. The mediator or facilitator shall have the
547 protections provided under said section 23C of said chapter 233. To the extent that public bodies
548 are participants, their deliberations may be held in executive session to the extent permitted by
549 clause 9 of subsection (a) of section 21 of chapter 30A.

550 The applicant and the public official or local board shall, by an agreement in writing filed
551 with the city or town clerk, stipulate and agree to extend any otherwise applicable time
552 requirements of state or local law. Whether a resolution results, the applicant may proceed with
553 the application without prejudice for having participated in a conflict evaluation or resolution
554 effort and the application process shall proceed in due course as otherwise provided by law,
555 ordinance or by-law.

556 SECTION 22. Said chapter 40A is hereby further amended by striking out section 10, as
557 appearing in the 2014 Official Edition, and inserting in place thereof the following section:-

558 Section 10. Where literal enforcement of the zoning ordinance or by-law would result in
559 practical difficulty, financial or otherwise, to the petitioner, upon appeal or upon petition with
560 respect to particular land or structures, the permit-granting authority may grant a variance from
561 the terms of the applicable zoning ordinance or by-law following a public hearing for which

562 notice has been given by publication and posting as provided in section 11 and by mailing notice
563 to all interested parties. The practical difficulty necessitating the variance shall relate to the
564 physical characteristics including, but not limited to, soil conditions, shape or topography or
565 location of the site or of the structures thereon.

566 In making its determination, the permit-granting authority shall take into consideration
567 the benefit to the applicant if the variance is granted as well as the detriments to the health, safety
568 and welfare of the neighborhood or community if the variance is granted. The permit-granting
569 authority shall also consider if: (i) the benefit sought by the applicant can be achieved by another
570 method feasible for the applicant to pursue, other than a variance; (ii) the variance will have a
571 disproportionately adverse effect on nearby properties, the character of the neighborhood or the
572 environment; (iii) the variance will nullify or substantially derogate from the intent or purpose of
573 the ordinance or by-law or a master plan under section 81D of chapter 41 if a master plan is in
574 effect; and (iv) the claimed difficulty relating to the property in question is unique and does not
575 also apply to a substantial portion of the district or neighborhood. The permit-granting authority
576 may also take into consideration the extent to which the claimed difficulty is self-created and
577 may base a denial solely upon a finding that the claimed difficulty is self-created. In the granting
578 of variances, the permit-granting authority shall grant the minimum variance that it deems
579 necessary to relieve the difficulty.

580 Except where local ordinances or by-laws expressly permit variances for use, no variance
581 may authorize a use or activity not otherwise permitted in the district in which the land or
582 structure is located. No variance may authorize a use or activity not otherwise permitted in the
583 district in which the land or structure is located unless the permit-granting authority specifically
584 finds that owing to circumstances relating to the soil conditions, shape or topography of the land

585 or structures and especially affecting such land or structures but not affecting generally the
586 zoning district in which it is located, a literal enforcement of the ordinance or by-law would
587 involve substantial hardship, financial or otherwise, to the petitioner or appellant and that
588 desirable relief may be granted without detriment to the public good and without nullifying or
589 substantially derogating from the intent or purpose of such ordinance or by-law. Variances for
590 use shall be subject to all of this section and any more stringent criteria contained in an ordinance
591 or by-law. Variances for use properly granted prior to January 1, 1976 but limited in time, may
592 be extended on the same terms and conditions that were in effect for that variance upon the
593 effective date.

594 The permit-granting authority may impose conditions, safeguards and limitations on the
595 time and use of a variance, including on the continued existence of particular structures;
596 provided, however, that the permit-granting authority shall not impose conditions, safeguards or
597 limitations based on the continued ownership of the land or structures to which the variance
598 pertains by the applicant, petitioner or an owner.

599 If the rights authorized by a variance are not exercised within 2 years after the date of the
600 grant of the variance, the variance shall lapse; provided, however, that upon written application
601 by the grantee of the variance, the permit-granting authority may extend, without a public
602 hearing unless so required by a zoning ordinance or by-law, the time to exercise such rights for
603 up to 1 year. The application shall be filed not later than 65 days before the lapse of the
604 variance. If the permit-granting authority does not grant the extension before the lapse of the
605 variance then, upon the lapse of the variance the variance may be reestablished only after notice
606 and a new hearing pursuant to this section.

607 SECTION 23. Section 11 of said chapter 40A, as so appearing, is hereby amended by
608 inserting after the word “town” , in line 15, the following words:- , the board of health of the city
609 or town.

610 SECTION 24. Section 17 of said chapter 40A, as so appearing, is hereby amended by
611 inserting after the sixth paragraph the following paragraph:-

612 The court, in its discretion, may require non-municipal plaintiffs in an action under this
613 section to post a surety or cash bond in an amount not to exceed \$15,000 or the bond requirement
614 in section 11 of chapter 40R, whichever is greater, to secure the payment of costs in appeals of
615 decisions approving special permits, variances and site plans where the court finds that the harm
616 to the defendants or to the public interest resulting from the delays of appeal outweighs the
617 burden of the surety or cash bond on the plaintiffs. When making a decision regarding surety or
618 cash bond requirements, the court may consider the relative merits of the appeal and the relative
619 financial means of the appellant and the defendants.

620 SECTION 25. Said chapter 41 is hereby further amended by striking out section 81D, as
621 so appearing, and inserting in place thereof the following section:-

622 Section 81D. (a) A planning board established in a city or town shall make a master plan
623 for the city or town in accordance with this section. The plan shall take effect upon adoption by
624 the legislative body as provided herein. The planning board shall, from time to time, not to
625 exceed 10 years from the date of adoption, conduct a comprehensive review of the plan and may
626 extend, revise or remake the plan subject to approval as provided in this section. The plan, once
627 adopted, shall be the official master plan of the city or town and shall replace any previously
628 adopted master plan.

629 (b) The plan shall be a comprehensive framework, through text, maps and illustrations
630 that provides a basis for decision-making about land use and the long-term physical development
631 of the municipality. The plan shall be internally consistent in its policies, forecasts and standards
632 and may support and provide a rationale for the municipality's zoning ordinance or by-laws,
633 subdivision regulations and other land use laws, regulations, policies and capital expenditures.

634 (c) The plan shall include the elements required by this section and may include any
635 optional subjects at the discretion of the municipality. The plan shall address the following
636 elements:

637 (i) goals and objectives statement of the municipality for its future growth,
638 development, redevelopment, conservation and preservation; provided, however, that each
639 community shall conduct a public participation process to determine community values, establish
640 goals and identify patterns of development, redevelopment, conservation and preservation
641 consistent with these goals; and provided further, that at a minimum, the goals and objectives
642 statement shall address the elements required to be included in the plan;

643 (ii) a housing element that shall include: (A) an inventory of local demographic
644 characteristics, an assessment and forecast of housing needs and a statement of local housing
645 policies; (B) an analysis of housing units by type of structure, affordable housing and subsidized
646 housing, housing available for rental, special needs housing and housing for the elderly; (C) an
647 assessment of existing local policies, programs, laws or regulations that encourage the
648 preservation, improvement and development of housing; and (D) an evaluation of zoning and
649 other land use policies designed to meet local housing needs including, but not limited to, the
650 affordable housing needs of low, moderate and median income households and the accessible

651 housing needs of people with disabilities and special needs; provided, however, that a current
652 housing production plan consistent with sections 20 to 23, inclusive, of chapter 40B or any
653 regulations thereto may fulfill the evaluation requirement of this clause;

654 (iii) a natural resources and energy management element that shall include: (A)
655 identification of the significant natural and energy resources of the municipality; (B)
656 identification of protected and unprotected wetlands and water resources, lands critical to
657 sustaining surface and groundwater quality and quantity, environmentally sensitive lands, critical
658 wildlife habitat and biodiversity, agricultural lands and forests, protection of wildlife habitat,
659 water resources, vistas and key landscapes, outdoor recreation facilities and farm and forestry
660 land; provided, however, that in cities and towns with agricultural commissions created by the
661 legislative or executive body of the city or town, those elements of the plan dealing with
662 agricultural topics shall be prepared jointly by the agricultural commission and the planning
663 board; (C) an examination of local laws, regulations, policies and strategies to address needs for
664 the protection, restoration and sustainable management of natural resources; and (D) an
665 evaluation of locally feasible land use and development strategies to maximize energy efficiency
666 and renewable energy, support land, energy, water and materials conservation strategies, local
667 clean power generation, distributed generation technologies and innovative industries and reduce
668 greenhouse gas emissions and the consumption of fossil fuels;

669 (iv) a land use and zoning element that includes: (A) an identification of historic
670 settlement patterns and present land uses and designation of the proposed distribution, location
671 and interrelationship of public and private land uses; (B) land use policies and related maps
672 which shall be based upon a land use suitability analysis identifying areas most suitable for
673 development and related transportation infrastructure and facilities; (C) growth and development

674 areas that support the revitalization of city and town centers and neighborhoods by promoting
675 development that is compact and walkable, cyclable, conducive to the use of public
676 transportation, conserves land, protects historic resources, integrates uses and coordinates the
677 provision of housing with the location of jobs, transit and services and new infrastructure; (D) an
678 identification of areas for economic development and job creation, related public and private
679 transportation and pedestrian connections and the creation or extension of pedestrian-accessible
680 districts and neighborhoods that mix commercial, civic, cultural, educational and recreational
681 activities with open space and housing; (E) consideration of the relationship between proposed
682 development intensity and the capacity of land and existing and planned public facilities and
683 infrastructure; and (F) a land use map illustrating the land use policies and desired future
684 development patterns of the municipality and a proposed zoning map; and

685 (v) an implementation program element that defines and prioritizes the actions
686 necessary to achieve the goals and objectives of the master plan; provided, however, that the
687 implementation program shall specify the recommended course of action by which the
688 municipality's regulatory structures, including zoning and subdivision control regulations, may
689 need to be amended in order to be consistent with the master plan.

690 (d) In addition to elements required by this section, the master plan may include,
691 depending on community characteristics, any of the following elements:

692 (i) an economic development element that includes: (A) an inventory and
693 analysis of the local economic base; (B) an assessment of opportunities and barriers to economic
694 development; (C) an assessment of opportunities and barriers to agriculture, including all

695 branches of farming and forestry; and (D) an assessment of opportunities and barriers to self-
696 employment and home-based occupations;

697 (ii) a cultural resources element that identifies the significant cultural, scenic and
698 historic structures, sites and landscapes of the municipality, including archaeological resources
699 and policies and strategies to protect and manage the community's cultural resources;

700 (iii) an open space protection and recreation element that inventories recreational
701 facilities and open space areas of the municipality and policies and strategies for the
702 management, protection and enhancement of those facilities and areas as essential public health
703 infrastructure; provided, however, that an open space and recreational plan approved by the
704 division of conservation services shall constitute the open space protection and recreation
705 element under this subsection;

706 (iv) an infrastructure and capital facilities element to identify and analyze
707 existing and forecasted needs for infrastructure and facilities used by the public; provided,
708 however, that the element shall detail scheduled expansion or replacement of public facilities,
709 infrastructure components or circulation system components and the anticipated costs and
710 revenues associated with those activities;

711 (v) a transportation element including: (A) an inventory of existing and proposed
712 circulation, parking and transportation systems; (B) an assessment of opportunities and barriers
713 to increasing access to transportation options, including land and water-based public transit,
714 bicycling, walking, and transportation services for populations with disabilities; and (C)
715 identification of strategic investment options for transportation infrastructure to encourage smart
716 growth, maximize mobility, conserve fuel, reduce greenhouse gas emissions and improve air

717 quality and to facilitate the location of new development where a variety of transportation modes
718 can be made available;

719 (vi) a water management element that includes: (A) an inventory of current and
720 potential municipal sources of water supply, including capacity and safe yield and an assessment
721 of water demand including types of water users, changes in water consumption over time and
722 water billing rate structure; (B) an assessment of the adequacy of existing and proposed water
723 supplies to meet projected demands, water quality and treatment issues, existing measures for
724 water supply protection, water conservation drought management and emergency
725 interconnections; (C) an assessment of the ability of stormwater regulations and practices to limit
726 off-site stormwater runoff to levels substantially similar to natural hydrology through
727 decentralized management practices and the protection of onsite natural features; (D) an analysis
728 of municipal need and capacity for wastewater disposal, including the suitability of sites and
729 water bodies for the discharge of treated wastewater; and (E) recommended strategies for water
730 supply provision and protection, water conservation, wastewater disposal, stormwater
731 management, drought management and emergency interconnections and needed improvements
732 to meet future water resource needs; and

733 (vii) a public health element that includes: (A) an inventory of conditions and
734 assets in the natural and built environment which contribute to or constitute a barrier to health,
735 including a description of conditions with a disproportionate impact on residents based on
736 geography, ethnicity, race, age, socioeconomic status, disability status, immigration status or
737 other characteristics; (B) an assessment of opportunities and barriers to increasing access to
738 conditions and assets in the natural or built environment that contribute to health; and (C)

739 recommendations of available implementation policies and strategies, including zoning and other
740 local laws and regulations, affecting health needs related to the natural or built environment.

741 Any elements included in a master plan shall include a self-assessment against similar
742 subject matter in a regional plan adopted by the regional planning agency under section 5 of
743 chapter 40B in effect, if any, or under any special act.

744 (e) A master plan shall only be made, extended, revised or remade by a simple majority
745 vote of the planning board after a public hearing, notice of which shall be posted and published
746 in the manner prescribed for zoning amendments under section 5 of chapter 40A. Following any
747 vote of the planning board, the planning board shall transmit the plan to the chief executive
748 officer of the city or town and the plan shall be an agenda item or warrant article on a subsequent
749 legislative session of the city or town. Adoption of the plan or the extension, revision or remake
750 of the plan, including any vote of the legislative body to alter the plan or amendment as proposed
751 by the planning board, shall be by a simple majority vote of the legislative body of the city or
752 town. The planning board, upon adoption by the legislative body of a plan or report or any
753 change or amendment to a plan or report produced under this section, shall furnish a copy of the
754 plan or report or any change or amendment to the department of housing and community
755 development.

756 (f) A municipality in Barnstable County or the county of Dukes County may adopt a local
757 comprehensive plan pursuant to chapter 716 of the acts of 1989 or chapter 831 of the acts of
758 1977 and the regulations and regional policy plans adopted thereunder. The regional planning
759 agency shall review the local comprehensive plan solely for consistency with the governing
760 special act and any applicable regulations and regional policy plans; provided, however, that the

761 time requirements of this section shall not apply to the review of local comprehensive plans. An
762 adopted local comprehensive plan certified by the regional planning agency as consistent with
763 this section shall be deemed a master plan in compliance with this section and shall entitle the
764 municipality to any statutory benefits of having an adopted master plan.

765 SECTION 26. Section 81L of said chapter 41, as so appearing, is hereby amended by
766 inserting after the word “thereon”, in line 72, the following words:- ; provided, however, that the
767 division may be deemed a minor subdivision if the city or town has adopted a minor subdivision
768 ordinance or by-law.

769 SECTION 27. Said section 81L of said chapter 41, as so appearing, is hereby further
770 amended by striking out the definition of the word “Lot” and inserting in place thereof the
771 following 2 definitions:-

772 “Lot”, an area of land in 1-ownership, with defined boundaries, used or available for use
773 as the site of 1 or more buildings.

774 “Minor subdivision”, in accordance with section 81HH, the division of a lot, tract or
775 parcel of land into 2 or more lots, tracts or parcels where, at the time when it is made, every lot
776 within the lot, tract or parcel so divided has frontage on: (i) a public way or a way which the
777 clerk of the city or town certifies is maintained and used as a public way; (ii) a way shown on a
778 plan approved and endorsed in accordance with the subdivision control law; or (iii) a way in
779 existence when the subdivision control law became effective in the city or town in which the
780 land lies having, in the opinion of the planning board, sufficient width, suitable grades and
781 adequate construction to provide for the needs of vehicular traffic in relation to the proposed use
782 of the land abutting thereon or served thereby and for the installation of municipal services to

783 serve the land and the buildings erected or to be erected thereon; provided, however, that the
784 frontage shall be of at least the distance as is then required by the zoning ordinance or by-law, if
785 any, of the city or town for erection of a building on the lot and, if no distance is so required, the
786 frontage shall be of at least 20 feet.

787 SECTION 28. Section 81O of said chapter 41, as so appearing, is hereby amended by
788 inserting after the word “effect”, in line 2, the following words:- and a minor subdivision
789 ordinance or by-law is not in effect.

790 SECTION 29. Said section 81O of said chapter 41, as so appearing, is hereby further
791 amended by inserting after the word “feet”, in line 17, the following words:- , unless the city or
792 town has adopted a minor subdivision ordinance or by-law, in which case it shall be approved
793 accordingly.

794 SECTION 30. Section 81Q of said chapter 41, as so appearing, is hereby amended by
795 inserting after the fourth sentence the following sentence:- Design and dimensional requirements
796 for total travel lane widths not greater than 24 feet shall be presumed not to be excessive.

797 SECTION 31. Section 81U of said chapter 41, as so appearing, is hereby amended by
798 striking out, in line 187, the words “for a period of not more than three years”.

799 SECTION 32. Section 81X of said chapter 41, as so appearing, is hereby amended by
800 striking out the fourth paragraph and inserting in place thereof the following 2 paragraphs:-

801 Notwithstanding any other provision of this section, the register of deeds shall accept for
802 recording and the land court shall accept with a petition for registration or confirmation of title,
803 any plan bearing a professional opinion by a registered professional land surveyor that the

804 property lines shown are the lines dividing existing ownerships and the lines of streets and ways
805 shown are those of public or private streets or ways already established and that no new lines for
806 division of existing ownership or for new ways are shown.

807 The register of deeds and the land court shall accept for recording and the land court shall
808 accept with a petition for registration any plan showing a change in the line of any lot, tract or
809 parcel bearing a professional opinion by a registered professional land surveyor and a certificate
810 by the person or board charged with the enforcement of the zoning ordinance or by-law of the
811 city or town that the property lines shown: (i) do not create an additional building lot; (ii) do not
812 create, add to or alter the lines of a street or way; (iii) do not render an existing legal lot or
813 structure illegal; (iv) do not render an existing nonconforming lot or structure more
814 nonconforming; and (v) are not subject to alternative local rules and regulations for minor
815 subdivisions under section 81HH. A request for such a certificate shall be acted upon within 21
816 days and shall not be withheld unless a finding is made that the plan violates any of the aforesaid
817 criteria and the finding is stated in writing to the person making the request. Failure to so act
818 within 21 days shall be deemed an approval of the lot line change. All plans, if approved and as
819 recorded, shall be filed with the planning board and the board of assessors of the city or town.
820 The recording of such a plan shall not relieve any owner from compliance with the subdivision
821 control law or any other applicable law.

822 SECTION 33. Paragraph 1 of section 81BB of said chapter 41, as so appearing, is hereby
823 amended by striking out the second and third sentences and inserting in place thereof the
824 following 4 sentences:- Such civil action shall be in the nature of certiorari pursuant to section 4
825 of chapter 249. A complaint by a plaintiff challenging a subdivision or minor subdivision
826 approval under this section shall allege the specific reasons why the subdivision or minor

827 subdivision fails to satisfy the requirements of the board's rules and regulations or other
828 applicable law and allege specific facts establishing how the plaintiff is aggrieved by the
829 decision. A complaint by an applicant challenging a subdivision or minor subdivision denial or
830 conditioned approval under this section shall similarly allege the specific reasons why the
831 subdivision or minor subdivision properly satisfies the requirements of the board's rules and
832 regulations or other applicable law. The fourth to seventh paragraphs, inclusive, of section 17 of
833 chapter 40A shall govern the allowance of costs and the requirement of a surety or cash bond for
834 actions under this section.

835 SECTION 34. Said chapter 41 is hereby further amended by inserting after section
836 81GG the following section:-

837 Section 81HH. (a) Notwithstanding any general or special law to the contrary, a city or
838 town may, by simple majority vote, adopt an ordinance or by-law indicating the city's or town's
839 intent to regulate a minor subdivision consistent with this section.

840 (b) A minor subdivision shall, except as provided for in this section, be controlled by the
841 subdivision control law. An applicant for a minor subdivision may create up to 6 lots; provided,
842 however, that a local legislative body by a simple majority vote may increase the maximum
843 number of additional lots created in an application for a minor subdivision to a number greater
844 than 6.

845 (c) No application for a minor subdivision shall be: (i) subject to a public hearing if every
846 lot within the lot has frontage on an existing way; (ii) subject to the requirements of section 81S;
847 (iii) subject to requirements for the location of a way; (iv) subject to a requirement that total
848 travelled lanes' widths shall be greater than 22 feet in a residential minor subdivision; (v) subject

849 to a procedural or substantive requirement more stringent than those specified in this chapter or
850 contained in a city or town's local rules and regulations otherwise applicable to subdivisions; and
851 (vi) denied unless such denial is approved by a vote of 2/3 of the members of the planning board.

852 (d) For a minor subdivision on an existing way, the planning board shall take final action
853 and file with the city or town clerk a certificate of such action within 65 days. Failure to take
854 final action and file with the city or town clerk a certificate of such action within 65 days shall be
855 deemed an approval of a minor subdivision on an existing way.

856 (e) For a minor subdivision on a new way, the planning board shall take final action and
857 file with the city or town clerk a certificate of such final action within 95 days. Failure to take
858 final action and file such certificate within 95 days shall be deemed an approval of a minor
859 subdivision on a new way.

860 (f) Nothing in this section shall prohibit a city or town, subject to ratification by the local
861 legislative body by a simple-majority vote, from: (i) defining "minor subdivision" more broadly;
862 (ii) lessening or eliminating a requirement otherwise applicable to subdivisions; or (iii) creating a
863 means by which the planning board may, by agreement with the applicant, accept payments from
864 the applicant in lieu of otherwise required improvements to an existing way; provided, however,
865 that those improvements shall be completed by the city or town in a reasonable period of time.

866 (g) Notwithstanding any provision of this section, the owner of a parcel of land that is in
867 forest, agricultural or horticultural use and that has for at least the prior 2 years from the date of
868 application satisfied the statutory requirements for tax classification under chapter 61 or 61A,
869 may, in a 365-day period, submit to the planning board a plan of lots showing a division of the
870 parcel to create therefrom up to 2 additional lots as if the city or town had not adopted a minor

871 subdivision by-law or ordinance. The plan shall be accompanied by sufficient evidence upon
872 which the planning board shall find that the statutory requirements for tax classification of the
873 original parcel, other than the filing of an application, have been verified and that the number of
874 division lots created from the original parcel, including the lots shown on the plan, does not
875 cumulatively exceed 6 lots. In any case where that area of the original parcel remaining after any
876 division under this paragraph would be insufficient to qualify the remaining original parcel for
877 tax classification, division lots created under this paragraph shall not exceed 2 acres or the area
878 required by the applicable zoning ordinance or by-law by more than 50 per cent, whichever is
879 greater. Where a division lot exceeds 2 acres or exceeds the area required by the applicable
880 zoning ordinance or by-law by more than 50 per cent, whichever is greater, the aggregate area of
881 all division lots shall not exceed 10 per cent of the total area of the original parcel as it existed on
882 the date of first application under this paragraph. Division lots created under this paragraph shall
883 be subject to the vested rights protections for minor subdivisions under the fifth paragraph of
884 section 6 of chapter 40A. Nothing in this paragraph shall prevent further division of any lots or
885 parcels under this chapter. Nothing in this paragraph shall be construed as a requirement to
886 retain the remainder parcel as open space to determine roll-back taxes under said chapter 61 or
887 61A. As used in this paragraph, an “original parcel” shall constitute the area of land bounded by
888 the parcel at the time of first application under this paragraph regardless of how later divided or
889 reconfigured. For the purposes of this paragraph, “original parcel” shall mean any parcel of land
890 that is in forest, agricultural or horticultural use and that has for at least 2 years prior to the date
891 of application satisfied the statutory requirements for tax classification under said chapter 61 or
892 chapter 61A, “division lots” shall mean the 2 additional lots divided from the original parcel
893 subject to the frontage requirements defined in section 81L under minor subdivisions and which

894 may be approved as if the city or town had not adopted a minor subdivision by-law or ordinance
895 and “remainder parcel” shall mean the area of the original parcel remaining after any division
896 under this paragraph.

897 SECTION 34A. Section 4 of chapter 151B of the General Laws, as appearing in the 2014
898 Official Edition, is hereby amended by adding the following paragraph:-

899 20. For a local or state administrative, legislative or regulatory body or instrumentality to
900 engage in a discriminatory land use practice. For the purposes of this paragraph, a
901 “discriminatory land use practice” shall mean: (i) enacting or enforcing any land use regulation,
902 policy or ordinance; (ii) making a permitting or funding decision with respect to housing or
903 proposed housing; or (iii) taking any other action the purpose or effect of which would limit or
904 exclude: (a) housing accommodations for families or individuals with incomes at or below 80 per
905 cent of the area median income as defined by the United States Department of Housing and
906 Urban Development; (b) housing accommodations with sufficient bedrooms for families with
907 children; or (c) families or individuals based on race, color, religious creed, national origin, sex,
908 gender identity, sexual orientation, which shall not include persons whose sexual orientation
909 involves minor children as the sex object, age, genetic information, ancestry, marital status,
910 veteran status or membership in the armed forces, familial status, disability condition, blindness,
911 hearing impairment or because a person possesses a trained dog guide as a consequence of
912 blindness, hearing impairment or other handicap.

913 It shall not be a violation of this chapter if a local government entity whose action or
914 inaction has an unintended discriminatory effect proves that the action or inaction was motivated
915 and justified by a substantial, legitimate, nondiscriminatory, bona fide governmental interest and

916 the complaining party is unable to prove that those interests can be served by any other practice
917 that has a less discriminatory effect.

918 SECTION 35. Section 3A of chapter 185 of the General Laws, as so appearing, is hereby
919 amended by striking out the third and fourth paragraphs and inserting in place thereof the
920 following 2 paragraphs:-

921 The permit session shall have original jurisdiction, concurrently with the superior court
922 department, over civil actions in whole or part: (1) based on or arising out of the appeal of any
923 municipal, regional, or state permit, order, certificate or approval, or the denial thereof,
924 concerning the use or development of real property for residential, commercial, or industrial
925 purposes (or any combination thereof), including without limitation appeals of such permits,
926 orders, certificates or approvals, or denials thereof, arising under or based on or relating to
927 chapter 21, sections 61 to 62H, inclusive, of chapter 30, chapters 30A, 40A to 40C, inclusive,
928 40R, 41, 43D, 91, 131, 131A, or sections 4 and 5 of chapter 249, or chapter 665 of the acts of
929 1956; or any local by-law or ordinance; (2) seeking equitable or declaratory relief designed to
930 secure or protect the issuance of any municipal, regional, or state permit or approval concerning
931 the use or development of real property, or challenging the interpretation or application of any
932 municipal, regional, or state rule, regulation, statute, law, by-law, or ordinance concerning any
933 permit or approval; (3) claims under section 6F of chapter 231, or for malicious prosecution,
934 abuse of process, intentional or negligent interference with advantageous relations, or intentional
935 or negligent interference with contractual relations arising out of, based upon, or relating to the
936 appeal of any municipal, regional, state permit or approval concerning the use or development of
937 real property; and (4) any other claims between persons holding any right, title, or interest in land
938 and any municipal, regional or state board, authority, commission, or public official based on or

939 arising out of any action taken with respect to any permit or approval concerning the use or
940 development of real property but in all such cases of claims (1) to (4), inclusive, only if (a) the
941 action does not contain any claim of right to a jury trial, and (b) the underlying project or
942 development, in the case of a development that is residential or a mix of residential and
943 commercial components, involves either 25 or more dwelling units or the construction or
944 alteration of 25,000 square feet or more of gross floor area or both or, in the case of a
945 commercial or industrial development, involves the construction or alteration of 25,000 square
946 feet or more of gross floor area.

947 Notwithstanding any other general or special law to the contrary, any action not
948 commenced in the permit session, but within the jurisdiction of the permit session as provided in
949 this section, shall be transferred to the permit session upon the filing by any party of a notice
950 demonstrating compliance with the jurisdictional requirements of this section filed with the court
951 where the action was originally commenced with a copy to the chief justice of the land court.
952 Unless the court where the action was originally commenced receives notice within 10 days from
953 the land court that the case to be transferred does not meet the jurisdictional requirements of this
954 section, the original court shall transfer the case file to the land court permit session within 20
955 days after its receipt of the notice of transfer from the party. In the event the court receives
956 notice of noncompliance with jurisdictional requirements, the court where the action was
957 originally commenced shall decide the matter on motion filed by the party claiming
958 noncompliance. If a party to an action commenced in or transferred to the permit session claims
959 a valid right to a jury trial, then the action shall be transferred to the superior court for a jury trial.

960 SECTION 36. Section 4 of chapter 249 of the General Laws, as so appearing, is hereby
961 amended by striking out the second sentence and inserting in its place thereof the following

962 sentence:- Except as otherwise provided by law, such action shall be commenced within 60 days
963 after the proceeding complained of.

964 SECTION 36A. Notwithstanding any general or special law to the contrary, there shall be
965 a special commission to study the use and effectiveness of the zoning approval process of
966 educational uses under section 3 of chapter 40A of the General Laws.

967 The commission shall consist of the secretary of housing and economic development or a
968 designee; the secretary of the executive office of education or a designee; 2 members appointed
969 by the president of the senate, including the senate chair of the joint committee on municipalities
970 and regional government and the senate chair of the joint committee on housing; 1 member
971 appointed by the senate minority leader; 2 members appointed by the speaker of the house of
972 representatives, including the house chair of the joint committee on municipalities and regional
973 government and the house chair of the joint committee on housing; 1 member appointed by the
974 house minority leader; and 5 members to be appointed by the governor, 1 of whom shall be a
975 local official with expertise in zoning, 1 of whom shall be a member of a non-profit social
976 services agency, 1 of whom shall be a member of a non-profit school or higher education
977 institution, 1 of whom shall be a member of an independent non-profit primary or secondary
978 school and 1 of whom shall be a member of an association that represents community-based
979 early education programs.

980 The commission shall study the impact of the education exemption provided by said
981 section 3 of said chapter 40A on municipalities and nonprofit education institutions, which shall
982 include a review of the types of building projects sited under the protection of that educational

983 exemption and the case law decided based on the educational exemption. The commission shall
984 solicit public testimony by holding public hearings or through surveys.

985 The commission shall file the results of its study, together with recommendations for
986 legislation, which shall include a proposed definition of “educational purposes”, with the clerks
987 of the senate and house of representatives not later than June 30, 2017.

988 SECTION 36B. The executive office of housing and economic development shall
989 promulgate regulations necessary and appropriate to implement section 31 of chapter 23B of the
990 General Laws not later than 180 days after the effective date of this act.

991 SECTION 37. A city or town that had adopted a zoning ordinance or by-law under
992 chapter 40A requiring a form of inclusionary zoning before the effective date of this act shall,
993 within 3 years after that effective date, revise the ordinance or by-law to conform to section 9F of
994 chapter 40A of the General Laws. Following 3 years after the effective date of this act, any
995 provision of such a preexisting inclusionary zoning ordinance or by-law that does not conform to
996 said section 9F of said chapter 40A shall only apply to the extent and in a manner consistent with
997 said section 9F of said chapter 40A.

998 SECTION 38. A master plan adopted pursuant to section 81D of chapter 41 of the
999 General Laws and in effect on or before the effective date of this act may continue in full force
1000 and effect, including minor amendments to update or perfect the plan; provided, however, that
1001 the plan shall be revised to conform to said section 81D of said chapter 41 within 10 years after
1002 the effective date of this act.

1003 SECTION 39. Any city or town that had adopted a zoning ordinance or by-law under
1004 chapter 40A requiring site plan review before the effective date of this act shall, within 3 years

1005 after that date, revise the ordinance or by-law to conform to section 9D of chapter 40A of the
1006 General Laws. Following 3 years after the effective date of this act, any provision of a
1007 preexisting site plan review ordinance or by-law that does not conform to said section 9D of said
1008 chapter 40A shall only apply to the extent and manner consistent with said section 9D of said
1009 chapter 40A.

1010 SECTION 40. Any city or town that adopted a zoning ordinance or by-law relating to
1011 zoning variances prior to the effective date of this act shall, within 3 years of the effective date of
1012 this act, revise the ordinance or by-law to conform to section 10 of chapter 40A of the General
1013 Laws, as amended by section 22. Three years after the effective date of this act, any provision of
1014 a preexisting variance zoning ordinance or by-law that does not conform to said section 10 of
1015 said chapter 40A shall only apply to the extent and manner that it is consistent with said section
1016 10 of said chapter 40A.

1017 SECTION 41. Any variance granted prior to the effective date of this act shall be
1018 governed by the terms of the variance and shall run with the land unless a condition, safeguard or
1019 limitation contained therein prescribes otherwise.

1020 SECTION 42. Section 5 shall apply to local approvals submitted on or after July 1, 2017.

1021 SECTION 43. Section 9E of chapter 40A, as inserted by section 21, shall take effect on
1022 January 1, 2018.

1023 SECTION 44. Sections 6 and 8 shall take effect on July 1, 2019; provided, however, that
1024 subsection (c) of paragraph (1) of section 3A of chapter 40A of the General Laws, as appearing
1025 in said section 6, shall take effect on the effective date of this act.