

HOUSE No. 4263

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act to promote housing choices.

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 4A of chapter 40 of the General Laws, as appearing in the 2016
2 Official Edition, is hereby amended by adding the following paragraph:-

3 By a majority vote of their legislative bodies, and with the approval of the mayor, board
4 of selectmen or other chief executive officer, any contiguous cities and towns may enter into an
5 agreement to allocate public infrastructure costs, municipal service costs and local tax revenue
6 associated with the development of an identified parcel or parcels or development within the
7 contiguous communities generally, provided that said agreement is approved by the department
8 of revenue.

9 SECTION 2. Section 1A of chapter 40A of the General Laws, as so appearing, is hereby
10 amended by inserting after the introductory paragraph the following 7 definitions:-

11 “Accessory dwelling unit”, a self-contained housing unit, inclusive of sleeping, cooking
12 and sanitary facilities on the same lot as a principal dwelling, subject to otherwise applicable
13 dimensional and parking requirements, that: (i) maintains a separate entrance, either directly

14 from the outside or through an entry hall or corridor shared with the principal dwelling sufficient
15 to meet the requirements of the state building code for safe egress; (ii) is not larger in floor area
16 than 1/2 the floor area of the principal dwelling or 900 square feet, whichever is smaller; and (iii)
17 is subject to such additional restrictions as may be imposed by a municipality, including but not
18 limited to additional size restrictions, owner-occupancy requirements, and restrictions or
19 prohibitions on short-term rental of accessory dwelling units.

20 “As of right”, development may proceed under a zoning ordinance or by-law without the
21 need for a special permit, variance, zoning amendment, waiver, or other discretionary zoning
22 approval.

23 “Lot”, an area of land with definite boundaries that is used or available for use as the site
24 of a building or buildings.

25 ‘Eligible locations’, areas that by virtue of their infrastructure, transportation access,
26 existing underutilized facilities, or location make highly suitable locations for residential or
27 mixed use smart growth zoning districts or starter home zoning districts, including without
28 limitation (1) areas near transit stations, including rapid transit, commuter rail and bus and ferry
29 terminals; or (2) areas of concentrated development, including town and city centers, other
30 existing commercial districts in cities and towns, and existing rural village districts.

31 “Mixed-use development”, development containing a mix of residential uses and non-
32 residential uses, including, without limitation: commercial, institutional, industrial or other uses.

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

35 “Natural resource protection zoning”, zoning ordinances or by-laws enacted principally
36 to protect natural resources by promoting compact patterns of development and concentrating
37 development within a portion of a parcel of land so that a significant majority of the land remains
38 permanently undeveloped and available for agriculture, forestry, recreation, watershed
39 management, carbon sequestration, wildlife habitat or other natural resource values.

40 “Open space residential development”, a residential development in which the buildings
41 and accessory uses are clustered together into one or more groups separated from adjacent
42 property and other groups within the development by intervening open land. An open space
43 residential development shall be permitted only on a plot of land of such minimum size as a
44 zoning ordinance or by-law may specify which is divided into building lots with dimensional
45 control, density and use restrictions for such building lots varying from those otherwise
46 permitted by the ordinance or by-law and open land. Such open land may be situated to promote
47 and protect maximum solar access within the development. Such open land shall either be
48 conveyed to the city or town and accepted by it for park or open space use, or be made subject to
49 a recorded use restriction enforceable by the city or town or a non-profit organization the
50 principal purpose of which is the conservation of open space, providing that such land shall be
51 kept in an open or natural state and not be built for residential use or developed for accessory
52 uses such as parking or roadway.

53 SECTION 3. Said section 1A of said chapter 40A, as so appearing, is hereby further
54 amended by inserting after the definition of “Special permit granting authority” the following 2
55 definitions:-

56 “TDR zoning”, zoning that authorizes transfer of development rights by permitting
57 landowners in specific preservation areas identified as sending areas to sell their development
58 rights to landowners in specific development districts identified as receiving areas.

59 “Transfer of development rights”, the regulatory procedure whereby the owner of a
60 parcel may convey development rights, extinguishing those rights on the first parcel, and where
61 the owner of another parcel may obtain and exercise those rights in addition to the development
62 rights already existing on that second parcel.

63 SECTION 4. Section 5 of said chapter 40A, as so appearing, is hereby amended by
64 striking out the fifth paragraph and inserting in place thereof the following paragraph:-

65 Except as provided herein, no zoning ordinance or by-law or amendment thereto shall be
66 adopted or changed except by a two-thirds vote of all the members of the town council, or of the
67 city council where there is a commission form of government or a single branch, or of each
68 branch where there are two branches, or by a two-thirds vote of a town meeting; provided,
69 however, the following shall be adopted by a vote of a simple majority of all members of the
70 town council or of the city council where there is a commission form of government or a single
71 branch or of each branch where there are two branches or by a vote of a simple majority of town
72 meeting:

73 (1) An amendment to a zoning ordinance or by-law to allow any of the following as of
74 right: (a) multifamily housing or mixed-use development; in an eligible location; (b) accessory
75 dwelling units, whether within the principal dwelling or a detached structure on the same lot; or
76 (c) open-space residential development.

77 (2) An amendment to a zoning ordinance or by-law to allow by special permit: (a) multi-
78 family housing or mixed-use development in an eligible location (b) an increase in the
79 permissible density of population or intensity of a particular use in a proposed multi-family or
80 mixed use development pursuant to section 9 of chapter 40A of the general laws; (c) accessory
81 dwelling units in a detached structure on the same lot or (d) a diminution in the amount of
82 parking required for residential or mixed-use development pursuant to section 9 of chapter 40A
83 of the general laws;

84 (3) Zoning ordinances or by-laws or amendments thereto that (a) provide for TDR zoning
85 or natural resource protection zoning in instances where the adoption of such zoning promotes
86 concentration of development in areas that the municipality deems most appropriate for such
87 development, but will not result in a diminution in the maximum number of housing units that
88 could be developed within the municipality; or (b) modify regulations concerning the bulk and
89 height of structures, yard sizes, lot area, setbacks, open space, parking and building coverage
90 requirements to allow for additional housing units beyond what would otherwise be permitted
91 under the existing zoning ordinance or by-law.

92 (4) The adoption of a smart growth zoning district or starter home zoning district in
93 accordance with section 3 of chapter 40R of the general laws.

94 Provided, further, that any amendment that requires a simple majority vote shall not be
95 combined with amendments that require a two-thirds majority vote. provided, further, that if in a
96 city or town with a council of fewer than 25 five members there is filed with the clerk prior to
97 final action by the council a written protest against a zoning change under this section, stating the
98 reasons duly signed by owners of 50 per cent or more of the area of the land proposed to be

99 included in such change or of the area of the land immediately adjacent extending 300 feet
100 therefrom, no change of any such ordinance shall be adopted except by a two-thirds vote of all
101 members.

102 SECTION 5. Section 9 of said chapter 40A, as so appearing, is hereby amended by
103 inserting after the word “interests,” in line 34, the following words:- ; provided, however, that
104 nothing herein shall prohibit a zoning ordinance or by-law from allowing transfer of
105 development rights to be permitted as of right, without the need for a special permit or other
106 discretionary zoning approval.

107 SECTION 6. Said section 9 of said chapter 40A, as so appearing, is hereby further
108 amended by striking out, in line 35, the word “cluster” and inserting in place thereof the
109 following words:- open space residential.

110 SECTION 7. Said section 9 of said chapter 40A, as so appearing, is hereby further
111 amended by striking out, in line 39, the word “cluster” and inserting in place thereof the
112 following words:- open space residential.

113 SECTION 8. Said section 9 of said chapter 40A, as so appearing, is hereby further
114 amended by inserting, after the word “control,” in line 43, the following words:- ; provided,
115 however, that nothing herein shall prohibit a zoning ordinance or by-law from allowing open
116 space residential developments to be permitted as of right, without the need for a special permit
117 or other discretionary zoning approval.

118 SECTION 9. Said section 9 of said chapter 40A, as so appearing, is hereby further
119 amended by striking out the 7th paragraph and inserting in place thereof the following
120 paragraph:-

121 Zoning ordinances or by-laws may also provide that special permits may be granted for
122 reduced parking space to residential unit ratio requirements after a finding by the special
123 permit granting authority that the public good would be served and that the area in which the
124 development is located would not suffer a substantial adverse effect from such diminution in
125 parking.

126 SECTION 10. Said section 9 of said chapter 40A, as so appearing, is hereby further
127 amended by inserting after the 12th paragraph the following paragraph:-

128 However, a special permit issued by a special permit granting authority shall require a
129 simple majority vote for any of the following: (a) multifamily housing that is located within .5
130 miles of a commuter rail station, subway station, ferry terminal, or bus station, provided, not less
131 than 10 per cent of the housing is affordable to and occupied by households whose annual
132 income is less than 80 per cent of the area wide median income as determined by the United
133 States Department of Housing and Urban Development and affordability is assured for a period
134 of not less than 30 years through the use of an affordable housing restriction as defined in section
135 31 of chapter 184; (b) mixed-use development in centers of commercial activity within a
136 municipality, including town and city centers, other commercial districts in cities and towns, and
137 rural village districts, provided, not less than 10 per cent of the housing is affordable to and
138 occupied by households whose annual income is less than 80 per cent of the area wide median
139 income as determined by the United States Department of Housing and Urban Development and
140 affordability is assured for a period of not less than 30 years through the use of an affordable
141 housing restriction as defined in section 31 of chapter 184; or (c) A reduced parking space to

142 residential unit ratio requirement, pursuant to this section, provided that a reduction in the
143 parking requirement will result in the production of additional housing units.

144 SECTION 11. Section 3 of chapter 40R of the General Laws, as so appearing, is hereby
145 amended by inserting after the figure “40A,” in line 10, the following words:- ; provided,
146 however, that a smart growth zoning district or starter home zoning district ordinance or by-law
147 shall be adopted by a simple majority vote of all the members of the town council, or of the city
148 council where there is a commission form of government or a single branch, or of each branch
149 where there are two branches, or by a simple majority vote of a town meeting.

150 SECTION 12. Section 1 of chapter 40S of the General Laws, as so appearing, is hereby
151 amended by striking out the word “properties” in line 51 and inserting in place thereof the
152 following word:- buildings.

153 SECTION 13. Said section 1 of said chapter 40S, as so appearing, is hereby further
154 amended by inserting after the figure “40R,” in line 61, the following words:- including without
155 limitation smart growth zoning districts and starter home zoning districts as defined in section 1
156 of said chapter 40R.

157 SECTION 14. The executive office of housing and economic development shall issue
158 guidance to assist local officials determining the voting thresholds for various zoning
159 amendments. Such guidance shall be assembled in consultation with the Department of Housing
160 and Community Development. The Massachusetts Attorney General’s Municipal Law Unit, and
161 Massachusetts Housing Partnership.

162 SECTION 15. The secretary of housing and economic development shall report annually
163 to the clerks of the house of representatives and the senate, who shall forward the report to the

164 house of representatives and the senate, the chairs of the joint committee on housing, and the
165 chairs of the senate and house committees on ways and means, on the activities and status of the
166 Housing Choice Initiative, as described by the governor in a message to the general court dated
167 December 11, 2017, including progress made towards the production of 135,000 new units by
168 2025. The report also shall include a list of all cities and towns that qualify as “housing choice”
169 communities and a list and description of grant funds disbursed to such cities and towns and a
170 description of how the funds were used to support the production of new housing.