

SENATE NO. 151



AN ACT AN ACT TO PROMOTE LIVABLE COMMUNITIES AND ZONING REFORM ACT

*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. (a) the land and waters within the Commonwealth possess distinct natural,
2 scientific, historical, scenic, cultural, architectural, archeological, recreational, economic,
3 agricultural and other values
4 (b) there is a national, regional, state, and local, interest in preserving and enhancing these
5 values; and these values are being threatened and may be irreparably damaged by uncoordinated
6 or inappropriate uses of the Commonwealth's land and resources.
7 (c) the obligation to protect the many valuable resources of the Commonwealth is shared
8 by local, regional, state and national governments, civic organizations, businesses and the
9 general public.

10 (d) these resources are being adversely affected by a lack of effective and coordinated
11 planning among the various levels of government and a lack of adequate funding and technical
12 assistance for municipalities.

13 (e) these resources can be protected if each level of government participates in
14 sustainable planning for smart growth.

15 Section 2.(a) State principles and goals

16 (1) state policies and spending decisions should encourage growth in appropriate and
17 identified places.

18 (2) state resources should be targeted to support development in areas where
19 infrastructure is already in place.

20 (3) state policies and spending decisions should not encourage or subsidize sprawl.

21 (4) state policies and spending decisions should discourage growth in environmentally
22 sensitive areas in order to protect the Commonwealth's most valuable remaining natural
23 resources before they are lost.

24 (b) To that end it shall be the policy of the Commonwealth to :

25 (1) discourage wasteful use of land, water and energy resources;

26 (2) support revitalization and reinvestment in urban areas and older suburbs;

27 (3) encourage the reuse and rehabilitation of existing infrastructure rather than the
28 construction of new infrastructure in undeveloped areas

29 (4) protect, to the maximum extent possible, environmentally sensitive lands, natural
30 resources, wildlife habitats. and cultural, natural, and historic landscapes;

31 (5) support a range of convenient and affordable transportation choices;

32 (6) protect economically productive natural areas including farmland and forests;

33 (7) provide an adequate supply of affordable housing for all income levels throughout
34 each community; particularly for households earning 50 per cent or less of the area median
35 income, as defined by the federal Department of Housing and Urban Development.

36 (8) encourage a clear and transparent development approval process;

37 (9) encourage regional solutions and approaches to planning issues as appropriate, e.g.,
38 transportation, housing supply, and water supply;

39 (10) assist municipalities and regions in planning for growth;

40 (11) require coordination among state agencies so that sustainable development efforts
41 by one agency are not undermined by other state decisions and policies;

42 (12) Encourage coordination and cooperation among levels of government; and

43 (13) Ensure that permitting, funding, and construction activities by state agencies do not
44 enable, contribute to, or perpetuate development that is inconsistent with state, regional and
45 local sustainable development plans.

46 Section 3. For purposes of this chapter, the following words shall have the following
47 meanings:

48 “Agency” any agency, department, board, commission, authority, and instrumentality of the
49 Commonwealth and any authority or any political subdivision which is responsible for siting,
50 designing, funding, constructing or permitting of infrastructure projects, public facilities or
51 private development or which is responsible for which is responsible for transportation, water
52 supply, waste water treatment and disposal and solid waste management facilities or
53 infrastructure.

54 “Secondary growth impacts”, growth that occurs as a result of making infrastructure available.

55 “Sustainable”, purposefully designed to bring about efficient, safe, healthy, prosperous
56 communities that include a sufficient amount of affordable housing while simultaneously
57 maintaining and enhancing the environment, the natural resource base and the ongoing
58 functioning of natural ecosystems that are fundamental to sustaining life and prosperity for
59 current as well as future generations.

60 Section 4. (a) There shall be a council for a sustainable commonwealth, known in this
61 chapter as the council, to be chaired by the governor or his designee. The council shall consist
62 of the following voting members: the director of housing and community development or her
63 designee, the secretary of environmental affairs or his designee, the secretary of transportation
64 and construction or his designee, the secretary of administration and finance or his designee and
65 the director of economic development or his designee. The council shall also include the
66 following non-voting members, who shall serve in an advisory capacity: the chairman of the
67 Massachusetts Water Resources Authority or his designee, the chairman of the Massachusetts
68 Bay Transit Authority or his designee, the secretary of the commonwealth acting as chairman of
69 the Massachusetts historical commission or his designee, two chairs of regional planning
70 agencies nominated by the governor, a municipal planning representative appointed by the
71 governor and a professional planner appointed by the governor.

72 (b) the council for a sustainable commonwealth shall have the following primary
73 responsibilities, to:

74 (1) consider, coordinate and, where appropriate, recommend modifications to the capital
75 planning done by each state agency;

76 (2) resolve inconsistencies among and between each of the capital and operating plans of
77 the agencies and regional sustainable development plans, and any inconsistencies that cannot be

78 resolved through discussion and mediation shall be resolved by a majority vote of the voting
79 members of the council;

80 (3) encourage the state agencies to consider secondary growth impacts in their capital
81 planning and to encourage agencies to site facilities in areas where infrastructure already exists
82 or to create infrastructure in developed areas, rather than in undeveloped areas; and

83 (4) determine and direct the appropriate agency or agencies to provide technical
84 assistance, on an as needed basis, to municipalities as they seek to implement their plans.

85 (5) develop guidelines for an urban initiative program that will be part of each regional
86 sustainable development plan.

87 Section 5. (a) By March 15 of every odd year, each agency shall develop a five-year
88 agency sustainable development plan, known in this chapter as an agency plan that is consistent
89 with the state goals, principles and policies outlined in section 2 and that meets the following
90 criteria:

91 (1) all agencies shall promote, assist and pursue the rehabilitation and revitalization of
92 infrastructure, structures, sites, and areas previously developed and still suitable for economic
93 reuse. Such rehabilitation and revitalization, where practicable, shall be deemed preferable over
94 construction of new facilities or development of areas with significant value in terms of
95 environmental quality and resources. However, all agencies shall recognize that a lack of low
96 and moderate-income housing may necessitate new construction of affordable and mixed
97 income housing in areas in which there is an imbalance between housing supply and demand.

98 (2) all agency plans, and all infrastructure spending under them, shall seek to minimize
99 unnecessary loss or depletion of environmental quality and resources that might result from
100 such activity.

101 (3) all agencies shall consider secondary growth impacts in the development of their
102 agency plans.

103 (4) all agency plans and all infrastructure spending under them, shall consider any
104 applicable regional sustainable development plans created under section 5 of chapter 40B as
105 amended by this act, that are in effect on the date of publication of the agency plans, and
106 conform to the regional plans, where feasible.

107 Section 6. (a) the executive office of environmental affairs, the department of economic
108 development, the department of housing and community development, and the executive office
109 of transportation and construction, when awarding discretionary grants to municipalities,
110 excluding any grants made under chapter 90, shall give priority to municipalities that have
111 adopted certified local sustainable development plans pursuant to chapter 41, section 81D as
112 amended by this Act.

113 (b) the executive office of environmental affairs, the department of economic
114 development, the department of housing and community development, and the executive office
115 of transportation and construction, when awarding grants that require a municipal match, shall
116 reduce the match requirement by no less than 10% for municipalities that have adopted certified
117 local sustainable development plans.

118 SECTION 2. Section 6 of chapter 132C of the General Laws shall be effective 3 years after the
119 effective date of this act.

120 SECTION 3. Section 62A of chapter 30 of the General Laws, as appearing in the 2000 Official
121 Edition, is hereby amended by adding the following paragraph:

122 The secretary of environmental affairs shall consider in his review of any project under
123 this section the consistency of that project with chapter 132C and its consistency with plans
124 created under section 81D of chapter 41 as amended by this act.

125 SECTION 4. The secretary, chairman or director of every agency subject to chapter 132C of
126 the General Laws, within one year from the effective date of this act, and thereafter on an
127 annual basis, shall report on the status and effectiveness of their compliance with said chapter
128 132C. The reports shall be submitted to the governor, the clerks of the house of representatives
129 and the senate and the chairs of the joint committee on natural resources and agriculture, and
130 shall be made available by each agency for public review.

131 SECTION 5. The governor shall, within three months of the effective date of this Act, issue a
132 guidance document for use by agencies in preparing their annual reports under Section 4 of this
133 act and shall, within six months following the submission of the agencies' reports and after
134 consideration of any comments received on such reports, submit to the council for a sustainable
135 commonwealth a summary report and recommendations for the continued implementation of
136 chapter 132C of the General Laws.

137 SECTION 6 Chapter 40B of the General Laws, as so appearing, is hereby amended by striking
138 out Section 5 and inserting in place thereof the following section:

139 Section 5. (a) For purposes of this section, the following words shall have the following
140 meanings:

141 “Concentrated Development Center”, an area composed of concentrated mixed use
142 development established by a municipality or collection of municipalities in conjunction
143 with the regional planning commission.

144 “Council”, the council for a sustainable commonwealth created under chapter 132C.

145 “Regional planning commission”, regional or district planning commissions established
146 under this chapter.

147 “Regional sustainable development plan”, a regional plan.

148 “Sustainable”, purposefully designed to bring about efficient, safe, healthy,
149 economically vital communities that include a sufficient amount of affordable housing
150 while simultaneously maintaining or enhancing the environment, the natural resource
151 base and the ongoing functioning of natural ecosystems that are fundamental to
152 sustaining life and prosperity for current as well as future generations.

153 “Targeted Investment Area”, an area of a municipality or collection of municipalities
154 designated by a regional planning commission, based on municipal recommendations,
155 which is consistent with resource-efficient development and which shall receive priority
156 for public funds.

157 (b) (1) Each regional planning commission shall develop a regional sustainable
158 development plan. This may include the revision or modification of a plan previously created
159 under this chapter. Regional plans shall be revised or updated at least every 5 years. Regional
160 plans shall contain the elements of a complete local sustainable development plan as provided in
161 Chapter 41, Section 81D of the General Laws as amended by this Act. Each RPA shall adapt
162 said elements to the regional plan. Regional plans also shall adhere to the policies of the
163 commonwealth established by section 2 of chapter 132C.

164 (2) Regional plans shall consider all local sustainable development plans, created under
165 section 81D of chapter 41 as amended by this Act, of municipalities within the planning region,
166 which are in effect at the time the regional plan is being developed by the regional planning
167 commission. If any local plans within a region’s planning district are inconsistent with one

168 another, the regional planning commission shall encourage the conflicting municipalities to
169 create consistent plans and make recommendations for bringing the plans into compliance with
170 one another.

171 (c) (1) The regional planning commissions may collectively establish uniform
172 procedures under this section.

173 (2) In developing regional plans, the regional planning commissions shall each employ
174 an open, inclusive and broadly participatory process. The regional planning commissions shall
175 undertake public notification and participation procedures that are designed to seek widespread
176 public participation in the regional planning process, including, but not limited to input from the
177 following: local planning boards and other officials and residents of each municipality within
178 the planning district; business and industry representatives; environmental and public health
179 groups; housing advocates and providers, advocates for the local watershed area or areas;
180 representatives of conservation commissions; officials and/or residents of a neighboring
181 planning region with an interest, and representatives of the commonwealth's agencies and
182 departments who have infrastructure or investments in the planning district.

183 (3) The executive committee of each regional planning commission shall review its
184 regional plan for compliance with this section and internal consistency before forwarding it to
185 its commission members for approval. If a regional plan is approved by a simple majority vote
186 of the regional planning commission's members, the plan shall be considered approved and
187 there shall be a rebuttable presumption that the plan is fully compliant with this section and
188 internally consistent. Once the regional plan is approved by a majority vote of the commission
189 members, the regional planning commission shall forward it to the council for sustainable

190 commonwealth, created under chapter 132C, to enable the commonwealth's agencies to develop
191 capital spending plans that are consistent with the regional plans.

192 (d) The regional planning commissions shall review all local sustainable development
193 plans in their jurisdictions under subsection (d) of section 81D of chapter 41 as amended by this
194 Act.

195 (e) The council shall develop minimum guidelines for regional urban initiative
196 programs. Each regional plan shall include an urban initiative planning component. Each
197 regional planning agency shall have the opportunity to expand and shape the urban initiative
198 program to meet the needs of its region.

199 (1) A fundamental element of the urban initiative program shall include identification
200 and designation of Targeted Investment Areas, based on municipal recommendations.
201 Examples include: infill development in areas with infrastructure capacity; re-development of
202 brownfield sites; and adaptive reuse of structures.

203 (2) The urban initiative program shall also require regional planning commissions to
204 work with their municipal jurisdictions to develop criteria for and identify and designate
205 Concentrated Development Centers. Such areas may vary in size and complexity depending on
206 the degree of urbanization in the region or the area proposing designation. Concentrated
207 Development Centers may be designated in the urban economic core, in urban growth areas, in
208 subregional areas, and in suburban and rural centers.

209 (f) The regional planning commissions shall develop initial regional sustainable
210 development plans under section 5 of chapter 40B of the General Laws no later than 18 months
211 after the effective date of this act. Under no circumstances shall the failure of a regional
212 planning commission to initiate or complete a regional plan prevent a municipality from

213 developing a local sustainable development plan under section 81D of chapter 41 of the General
214 Laws as amended by this Act.

215 (g) Regional planning commissions shall be responsible for developing a process to
216 review major developments affecting more than one community. Regional planning
217 commissions will establish a definition for major developments and procedures for comment
218 and review. The Planning Board of any municipality within a region can request that the
219 regional planning commission hold a public hearing on a major development. Any comments
220 or recommendations that result from the review will be shared with the Massachusetts
221 Environmental Policy Act (MEPA) office, if the project requires MEPA review, or with the
222 appropriate decisionmaking and permitting authorities.

223 SECTION 7. Chapter 41 of the General Laws, as so appearing, is hereby amended by striking
224 out section 81D and inserting in place thereof the following section:

225 Section 81D

226 (a) For purposes of this section, the following words shall have the following meanings:

227 “Council”, the council for a sustainable commonwealth created under chapter 132C.

228 “Land use regulations”, regulations, administered in whole or in part by a municipality,
229 which materially affect the purposes of this section, including but not limited to: zoning,
230 subdivisions, wetlands, public health and transportation.

231 “Local sustainable development plan”, a local plan.

232 “Regional planning commissions”, organizations established under chapter 40B.

233 “Regional sustainable development plans ” or “regional plans”, plans developed under
234 section 5 of chapter 40B.

235 “Sustainable”, purposefully designed to bring about efficient, safe, healthy, economically
236 vital communities that include a sufficient amount of affordable housing, while
237 simultaneously maintaining and enhancing the environment, the natural resource base and
238 the ongoing functioning of natural ecosystems that are fundamental to sustaining life and
239 prosperity for current as well as future generations.

240 (b) (1) A planning board, established in a municipality under section 81A, shall develop, in
241 consultation with other elected and appointed municipal boards, a local sustainable development
242 plan of the municipality and, may, from time to time, extend or perfect such plan. The local
243 plan may be the revision or modification of a plan previously created pursuant to section 81D.
244 The local plan shall be revised or updated at least every 5 years.

245 (2) The local sustainable development plan shall be a plan that is designed to provide a
246 basis for decision-making regarding the long-term sustainable development of the municipality.
247 The local plans shall adhere to policies identified in section 2 of chapter 132C.

248 (3) The local plan may include text, maps, illustrations or other forms of
249 communication. The local plan shall include the following elements:

250 (i) A goals and policies statement which identifies the goals and policies of the
251 municipality to protect its natural resources and to provide for its sustainable growth and
252 development. Each community shall conduct an interactive process as described in subsection
253 (4) to determine municipal priorities and goals, to determine the best way to make development
254 in the municipality sustainable and to identify patterns of development that will be consistent
255 with these goals.

256 (ii) Land use plan element illustrating present land uses and designating the proposed
257 distribution, location, and inter-relationship of public and private land uses. This element shall

258 relate population density and building intensity to the capacity of land available and to planned
259 facilities and services. A land use plan map illustrating the land use policies of the municipality
260 shall be included.

261 (iii) Natural and cultural resources element which provides an inventory of the
262 significant natural, cultural, and historic resource areas of the municipality and policies and
263 strategies for the protection and management of such areas. This element shall also include any
264 strategies for protecting community character.

265 (iv) Watershed protection element which identifies ground and surface water resources
266 contained in whole or in part within a municipality, future needs, and threats, including the
267 impact of development on water supply, water quality, river and stream flow and wildlife
268 habitat.

269 (v) Housing element which identifies and analyzes existing and forecasted housing
270 needs and objectives including programs for the preservation, improvement and development of
271 housing, particularly housing that is affordable to residents of the municipality who are low and
272 moderate income as defined by the federal Department of Housing and Urban Development.
273 This element shall identify policies and strategies to provide a range of local affordable housing
274 opportunities and strategies to rezone areas to allow the development of multi-family housing.

275 (vi) Economic development element which identifies policies and strategies for the
276 expansion or stabilization of the local economic base and the promotion of employment
277 opportunities.

278 (vii) Open space and recreation element which provides an inventory of recreational
279 resources and open space areas of the municipality, and policies and strategies for the
280 management and protection of such resources and areas.

281 (viii) Services and facilities element which identifies and analyzes existing and
282 forecasted needs for facilities and services used by the public, including, but not limited to
283 facilities for: education, public safety, water and sewer services, energy demands and energy
284 conservation, and other utilities.

285 (ix) Transportation element which identifies existing and proposed intermodal
286 transportation systems including roads, mass transit, pedestrian, bicycle, and waterways, as well
287 as the impacts of such systems on land uses within the municipality.

288 (x) Implementation program element which defines and schedules the specific municipal
289 actions, including the identification of the anticipated costs and revenues, associated with each
290 element of the plan. Scheduled expansion or replacement of public facilities or circulation
291 system components and the anticipated costs and revenues associated with accomplishments of
292 such activities shall be detailed in this element. This element shall specify the process by which
293 the municipality's regulatory structure shall be amended so as to be consistent with the plan.

294 (xi) Bylaw or ordinance element that shall outline appropriate land use regulations
295 consistent with the Plan and reasonably necessary to implement the elements of the Plan.

296 (4) In developing local plans, the municipalities shall each employ an open, inclusive
297 and broadly participatory process. The municipalities shall undertake public notification and
298 participation procedures that are designed to seek widespread public participation in the local
299 planning process, including but not limited to input from the following: local officials and
300 residents of the municipality, neighborhood representatives, business and industry
301 representatives in the community, environmental and public health groups, housing advocates
302 and providers, advocates for the local watershed area or areas; conservation commissions; the
303 appropriate regional planning commission, representatives of neighboring municipalities and

304 representatives of the commonwealth's agencies and departments that have infrastructure or
305 investments in the municipality.

306 (5) To the extent that one or more of the elements of the plan is already addressed in
307 another plan, such as an open space and recreation plan, such plan(s) may be included as a
308 component of the local plan in order to satisfy that particular element of the Plan.

309 (6) A municipality which has an established local sustainable development plan and
310 applies for a state grant from the commonwealth shall prepare and keep on file within the
311 municipality an economic development supplement; but the municipality shall not be required
312 to prepare the supplement if the municipality has a supplement on file . The supplement shall
313 be at least one page in length and shall contain the goals of the municipality with respect to
314 industrial or commercial development, affordable housing, and preservation of parks and open
315 space.

316 (7) All local sustainable development plans shall be internally consistent in their
317 policies, forecasts and standards, shall be consistent with the applicable regional sustainable
318 development plan and shall consider the local sustainable development plans of neighboring
319 municipalities.

320 (8) A local plan shall not be in effect until the plan has been reviewed by the applicable
321 regional planning commission in accordance with subsection (c) and the plan has received local
322 approval in accordance with subsection (d).

323 (c) A municipality shall present its completed plan to the applicable regional planning
324 commission for review. The regional planning commission shall, within 60 days of receipt of
325 the plan, prepare and submit to the municipality a written review of the plan that shall certify
326 whether the plan satisfies all the goals and elements required by subsection (b), whether it is

327 both internally consistent and consistent with the applicable regional sustainable development
328 plan, and whether it has given consideration to the local sustainable development plans of
329 neighboring municipalities. The review shall identify any deficiency or omission with respect
330 to each required element and goal described in subsection (b). The review shall include, where
331 appropriate, recommendations as to how any omissions or deficiencies may be rectified. Upon
332 receipt of the regional planning commission's certification indicating satisfactory compliance
333 with this section, the planning board shall file the local plan with the office of the clerk of the
334 municipality.

335 (d) Upon receiving certification from the applicable regional planning commission, the
336 planning board shall present the local plan to the municipality's legislative body for approval
337 with an outline of changes needed in the municipalities zoning ordinances, land use regulations
338 or other municipal law to make the plan effective. Any additions to, modifications of, or
339 amendments to the local plan must be presented to and approved by the local legislative body in
340 the same manner. The local plan or local plan modifications shall, upon approval so described,
341 be made part of the public record and a copy of the plan or plan modifications shall be
342 submitted to the department of housing and community development and the executive office of
343 environmental affairs. The plan and any modifications to the plan shall be filed with the office
344 of the clerk of the municipality and made available to the public.

345 (e) Municipalities shall have five years to make substantial progress towards
346 implementation of their plans. If after five years from the date of certification, the applicable
347 regional planning commission deems that little or no progress has been made towards
348 implementation of the plan through changes in bylaws or ordinances, the plan will be decertified
349 and the regional planning commission shall notify the council of the decertification.

350 SECTION 8 (a) There is hereby established and set up on the books of the commonwealth a
351 Sustainable Development Grant Fund, into which shall be credited monies contributed by the
352 commonwealth including any appropriations or other monies authorized by the general court
353 and specifically designated to be credited to said fund. The fund shall be administered by the
354 council. Amounts credited to said fund shall be provided as grants to municipalities and
355 regional planning commissions for activities relating to the development and preparation of
356 local and regional sustainable development plans under this Act.

357 (b) The council shall adopt regulations establishing the grant program created under this
358 section of the act including, but not limited to: the factors to be used by the Council in
359 determining the amount of the grant funds that will be awarded to each municipality; an
360 application process for municipalities that choose to apply for grant funds; and provisions
361 governing the funding of regional planning commissions in the conducting of their
362 responsibilities under this Act.

363 (c) Factors to be used by the council in determining the amount of grant funds to be
364 provided to each municipality shall include, but not be limited to: complexity of the planning
365 issues confronting each municipality, the planning capacity of the municipality, and the capacity
366 of each municipality to fund the planning process. Regulations shall also create an incentive
367 program for multi-municipal planning.

368 (d) Provided further that chapters 236 and 246 of the acts and resolves of 2002 be
369 amended to authorize and direct the secretary of environmental affairs and the secretary of
370 transportation to appropriate existing funds not to exceed \$35,000,000 for the purposes outlined
371 in this act. Of this amount, \$5,500,000 will be for one time grants to be made to the regional
372 planning commissions established under chapter 40B of the General Laws to facilitate

373 compliance with section 5 of said chapter 40B as amended by this act, in accordance with the
374 following formula: base funding of \$100,000 per year per regional planning commission, plus
375 70 cents per capita based upon the most recent U.S. Census data on population.

376 SECTION 9. Chapter 40A of the General Laws is hereby amended by inserting after section 1
377 the following section:-

378 40A:2. General Purposes of Zoning Ordinances and Bylaws

379 (a) The purpose of the zoning ordinances and bylaws as amended by this act is to provide
380 guidance to municipalities in their regulation of land use, growth, and development
381 through the exercise of home rule powers conferred by article 89 of the Massachusetts
382 constitution. Except as hereinafter provided, cities and towns may adopt zoning
383 ordinances and by-laws in furtherance of the purposes contained in this section for the
384 benefit of their present and future inhabitants to the full extent of the powers of such
385 cities and towns, whether such power is independently authorized by the constitution of
386 the Commonwealth or here by the general court incident to power granted to it by the
387 constitution. The Commonwealth shall limit these powers only where necessary to
388 ensure consistency in zoning and promote regional and statewide interests as specifically
389 provided herein.

390 (b) These zoning ordinances and bylaws are intended to advance the following public
391 purposes of the Commonwealth, each with equal priority and numbered for reference
392 purposes only. The general court recognizes that cities and towns may advance some or
393 all of the purposes listed below or may advance other purposes not listed below as they
394 deem appropriate.

- 395 (1) Implementation of a plan adopted by the city or town under section 81D of
396 chapter 41 as amended by this Act.
- 397 (2) Achievement of a balance of housing choices, types and opportunities for all
398 income levels and groups, to assure the health, safety and welfare of all citizens
399 and their rights to affordable, accessible, safe, and sanitary housing.
- 400 (3) Orderly and sustainable growth and development which recognizes:
- 401 (i) the goals and patterns of land use contained in a plan adopted by the city
402 or town under section 81D of chapter 41 as amended by this Act;
- 403 (ii) the natural characteristics of the land, including its suitability for use
404 based on soil characteristics, topography, and susceptibility to surface or
405 groundwater pollution;
- 406 (iii) the values and dynamic nature of watersheds, coastal and freshwater
407 ponds, the shoreline, and freshwater and coastal wetlands;
- 408 (iv) the values of unique or valuable natural resources and features;
- 409 (v) the availability and capacity of existing and planned public and/or private
410 services and facilities;
- 411 (vi) the need to balance the “built” environment with the “natural”
412 environment; and
- 413 (vii) the use of innovative development regulations and techniques such as
414 development agreements, impact fees, inter-municipal transfers of
415 development rights, agricultural zoning, inclusionary zoning, mediation
416 and dispute resolution, and urban growth boundaries.

- 417 (4) Control, protection or abatement of air, water, groundwater, noise and light
418 pollution, and soil erosion and sedimentation.
- 419 (5) Protection of the natural, historic, cultural, aesthetic, and scenic character of the
420 city or town or areas therein.
- 421 (6) Preservation and promotion of agricultural production, forestry, aquaculture, and
422 open space.
- 423 (7) Protection of the environment and natural resources, including but not limited to
424 farmland, forestland, water quality and quantity, shore lands, ridgelines,
425 recreational resources, open spaces, special habitats and ecosystems and other
426 qualities of the environment and natural resources set forth in article 97 of the
427 Massachusetts constitution.
- 428 (8) Protection of public investment in transportation, water, storm water
429 management systems, sewage treatment and disposal, solid waste treatment and
430 disposal, schools, recreation, public facilities, open space, and other public
431 requirements.
- 432 (9) Improvement and expansion of existing infrastructure and construction of new
433 infrastructure in support of a plan adopted by the city or town under section 81D
434 of chapter 41 as amended by this Act and the purposes listed herein.
- 435 (10) An energy efficient, convenient and safe transportation infrastructure with as
436 wide a choice of modes as practical, including, wherever possible, maximal
437 access to public transit systems.
- 438 (11) Sustained or enhanced economic viability of the community and the region.

- 439 (12) Coordination of land uses with contiguous municipalities, other municipalities,
440 the state, and other agencies, as appropriate, especially with regard to resources
441 and facilities that extend beyond municipal boundaries or have a direct impact on
442 that municipality.
- 443 (13) Accommodation of regional growth in a fair and equitable, but sustainable
444 manner among municipalities.
- 445 (14) Efficient, fair and timely review of development proposals, to clarify and
446 expedite the zoning approval process.
- 447 (15) Effective procedures for the administration of the zoning ordinance or bylaw,
448 including, but not limited to, variances, special permits, other locally-adopted
449 zoning permits, reviews or procedures, and, where adopted, procedures for
450 modification.
- 451 (16) Protection of the public health, safety, and general welfare.
- 452 (17) A range of uses and intensities of use appropriate to the character of the city or
453 town and reflecting current and expected sustainable future needs.
- 454 (18) Safety from fire, flood, and other natural or man-made disasters.
- 455 (19) High level of quality in the design and development of private and public
456 facilities.
- 457 (20) Conservation of the value of land and buildings.
- 458 (21) Conservation and enhancement of community amenities.
- 459 (22) Efficiency in energy usage and the reduction of pollution from energy
460 generation, including the promotion of renewable energy sources and associated
461 technologies.

462 SECTION 10. Section 3 of chapter 40A of the General Laws, as appearing in the 2000 Official
463 Edition, is hereby amended by inserting, after the word "the", in line 25, the following word:-
464 minimum.

465 SECTION 11. Said section 3 of said chapter 40A, as so appearing, is hereby further amended by
466 striking out, in lines 26-34 inclusive, the words "nor shall any such ordinance or by-law
467 prohibit, regulate or restrict the use of land or structures for religious purposes or for
468 educational purposes on land owned or leased by the commonwealth or any of its agencies,
469 subdivisions or bodies politic, or by a religious sect or denomination, or by a nonprofit
470 educational corporation; provided, however, that such land or structures may be subject to
471 reasonable regulations concerning the bulk and height of structures and determining yard sizes,
472 lot area, setbacks, open space, parking and building coverage requirements."

473 SECTION 12. Said section 3 of said chapter 40A, as so appearing, is hereby further amended by
474 striking out the third paragraph and inserting in place thereof the following paragraph:-

475 Zoning ordinances or bylaws shall not prohibit the use of land or structures thereon for: a)
476 educational purposes on land owned or leased by the Commonwealth or any of its agencies,
477 subdivisions or bodies politic or by a nonprofit educational corporation; b) religious purposes by
478 a religious sect or denomination; c) the purposes of operating a child care facility or d) the
479 purposes of operating a community residential program. As used in this section the following
480 words shall have the following meanings: a) "educational purposes" means public and nonprofit
481 private primary, secondary and higher educational purposes; b) "child care facility" means a day
482 care center or school age child care program, as those terms are defined in section 9 of chapter
483 28A; c) "community residential program" means a residential facility licensed by the
484 Commonwealth to provide care or shelter or supervision or education to a maximum of eight (8)

485 individuals with a mental or physical disability or to victims of crime, of physical or mental
486 abuse, or of neglect in a small-scale residential setting with on-site or off-site supervision. The
487 land or structures used for such purposes may, however, be subject to reasonable regulations
488 regarding the bulk and height of structures, yard sizes, frontage, lot area, building coverage
489 requirements, setbacks, floor area ratio, parking, access and egress, lighting, drainage,
490 landscaping, buffering and open space, and similar matters. Compliance with such regulations
491 may be determined as provided by ordinance or bylaw in each city or town, including through
492 site plan review under which reasonable conditions, safeguards, and limitations to mitigate the
493 impact of a specific use of land or structures on the neighborhood may be imposed pursuant to
494 section 7A of this chapter. In addition, the application of such regulations to particular land or
495 structures used for such purposes may be waived in whole or in part by special permit, and
496 reasonable conditions may be imposed as part of the special permit. The waiver may be granted
497 if the special permit granting authority finds, based upon the evidence presented by the person
498 seeking the waiver, that the waiver will not result in substantially more detriment to the
499 neighborhood than the use of the particular land or structures for such purposes without the
500 waiver.”

501 SECTION 13. Section 5 of said chapter 40A, as so appearing, is hereby amended by inserting,
502 after the tenth paragraph, the following paragraphs:-

503 A zoning ordinance or bylaw adopted or amended under this chapter shall not be inconsistent
504 with a plan prepared by the city or town under section 81D of chapter 41 as amended by this
505 Act. Said ordinances or bylaws shall provide that in the instance of uncertainty in the
506 construction or application of any section therein, the ordinance or by-law shall be construed in
507 a manner that will further the implementation of, and not be contrary to, the goals, policies and

508 applicable elements of said plan. This paragraph shall not become effective until five years
509 after it is enacted in the General Laws.

510 SECTION 14. Chapter 40A of the General Laws is hereby amended by striking out section 6
511 and inserting in place thereof the following section:-.

512 40A:6. Applicability of Zoning Ordinances and Bylaws

513 40A:6A. Nonconforming Lots, Structures and Uses

514 (a) Residential Lot Exemption

515 Increases in lot area, frontage, width or depth, or building setback requirements of a zoning
516 ordinance or bylaw shall not apply to a lot for single- or two-family residential use
517 which immediately prior to the effective date of the zoning amendment that rendered the
518 lot nonconforming:

- 519 (1) was shown or described as a separate lot on a recorded plan or deed or on an
520 assessors map or plat and has access to and frontage on an existing public way,
521 or if not, to a way of sufficient width, grade and construction to provide safe
522 access to such lot as the planning board or its designee may determine; and
- 523 (2) conformed to the then existing lot area, frontage and lot width or depth
524 requirements; and
- 525 (3) had at least five thousand square feet of area and fifty feet of frontage in the case
526 of a single-family residential use and at least seventy-five thousand square feet of
527 area and seventy-five feet of frontage in the case of two-family residential use;
528 and

529 (4) was not held in common ownership with any adjoining land. For the purposes of
530 this section, common ownership shall include lots held by separate legal entities,
531 persons or trusts under common control or with common beneficial interests.

532 (b) Lawfully Nonconforming Structures and Uses

533 (1) For the purposes of this section, a lawfully nonconforming structure or use shall
534 be a structure or use lawfully in existence at the time of the effective date of the
535 zoning amendment rendering such structure or use nonconforming.

536 (2) Adoption or amendment of a zoning ordinance or bylaw shall not apply to
537 lawfully nonconforming structures or uses and shall not apply to structures and
538 uses lawfully begun prior to the first publication of notice of the public hearing
539 on the adoption or amendment of the relevant zoning ordinance or bylaw
540 required by section five.

541 (3) A zoning ordinance or bylaw may provide that, if a nonconforming use or
542 structure is abandoned for a period of two years or more, it may not be
543 reestablished. Abandonment shall consist of some overt act, or failure to act,
544 which would lead one to believe that the owner neither claims or retains any
545 interest in continuing the nonconforming use or structure, unless the owner can
546 demonstrate an intent not to abandon it. An involuntary interruption of a
547 nonconforming structure or use, such as by fire and natural catastrophe, does not
548 establish the intent to abandon. However, if a nonconforming structure or use is
549 halted, unused or vacated for a period of two years, the owner shall be presumed
550 to have abandoned it.

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

555 (c) Alteration, Reconstruction, Extension or Structural Change of Lawfully Nonconforming
556 Structures and Uses

557 (1) A zoning ordinance or bylaw shall not prohibit the alteration, reconstruction,
558 extension, or structural change to a lawfully nonconforming single- or two-
559 family residential structure, provided there is no increase in the degree of
560 nonconformity of the structure.

561 (2) A zoning ordinance or bylaw may permit, as of right or by special permit,
562 lawfully nonconforming structures or uses to be altered, reconstructed, extended
563 or structurally changed provided that such actions shall not increase the degree of
564 nonconformity of the structure or use.

565 (3) A zoning ordinance or bylaw may permit, by special permit, lawfully
566 nonconforming structures or uses to be altered, reconstructed, extended or
567 structurally changed in a manner that increases the degree of nonconformity of
568 the structure or use, provided that the permit granting authority finds that such
569 actions shall not be substantially more detrimental to the neighborhood than the
570 lawfully nonconforming structure or use.

571 (4) A zoning ordinance or bylaw may regulate nonconforming structures differently
572 than nonconforming uses.

573 (5) A zoning ordinance or bylaw may vary by zoning district(s) the requirements for
574 the alteration, reconstruction, extension or structural change for all lawfully
575 nonconforming structures and uses, except single- and two-family residential
576 structures.

577 40A:6B. Vested Rights: Effective Date of Zoning Amendments

578 (a) Building Permits and Special Permits

579 (1) Adoption or amendment of a zoning ordinance or bylaw shall not apply to a
580 building permit issued or special permit granted prior to the first publication of
581 notice of the public hearing on the adoption or amendment of the relevant zoning
582 ordinance or bylaw required by section five.

583 (2) The provisions of subsection 6B(a)(1) shall not apply to building permits unless
584 construction under the permit is commenced within six months after issuance and
585 is carried through to completion as continuously and expeditiously as is
586 reasonable.

587 (3) The provisions of subsection 6B (a)(1) shall not apply to special permits unless
588 the use or construction authorized under such permit is commenced within two
589 years.

590 (b) Subdivision Plans

591 (1) Adoption or amendment of a zoning ordinance or bylaw shall not apply to a
592 definitive subdivision plan approved prior to the first publication of notice of the
593 public hearing on the adoption or amendment of the relevant zoning ordinance or
594 bylaw required by section five.

595 (2) The provisions of subsection 6B(b)(1) shall apply for a period of three years.

596 General Provisions

- 597 (1) The time requirements of this section 6B shall be extended for a period of time
598 equal to the duration of:
- 599 (i) any extensions granted by the applicable local board or authority;
 - 600 (ii) the period of an appeal from the decision of any applicable local board or
601 authority taken under applicable provisions of law on a building permit,
602 special permit or definitive subdivision plan; and
 - 603 (iii) any moratoria upon permitting or construction imposed by any
604 government entity.
- 605 (2) The record owner of the land shall have the right, at any time, by an instrument
606 duly recorded in the registry of deeds for the district in which the land lies, a
607 copy of which shall be filed with the building inspector and town clerk, to waive
608 the provisions of this section 6B, in which case the zoning ordinance or bylaw
609 then or thereafter in effect shall apply.

610 SECTION 15. Chapter 40A of the General Laws is hereby amended by inserting after section 7
611 the following section:-

612 40A:7. Site Plan Review

- 613 (a) As used in this section, a "site plan" is a submission made to a municipality that includes
614 documents and drawings required by an ordinance or bylaw and used by the municipality
615 to determine whether a proposed use of land or structures is in compliance with
616 applicable local ordinances or bylaws, to evaluate the effects of the proposed use of land
617 or structures on the neighborhood and/or community, and to evaluate and propose site
618 design modifications that will lessen those impacts.

- 619 (b) A city or town may adopt a local ordinance or bylaw requiring the submission, review
620 and approval of a site plan before authorization is granted for the use of land or
621 structures governed by a zoning ordinance or bylaw.
- 622 (c) Such ordinance or bylaw for site plan review shall:
- 623 (1) establish which uses of land or structures are subject to site plan review;
- 624 (2) specify the local board or official charged with reviewing and
625 approving site plans, which may differ for different types, scales, or categories of
626 uses of land or structures;
- 627 (3) establish the submission and review process for a site plan which is submitted in
628 connection with an application for a variance, special permit, or other
629 discretionary zoning approval. This submission and review may be conducted as
630 part of the review of the application for discretionary approval or may be a
631 separate review process under subsection (c)(4) below;
- 632 (4) establish the submission and review process for applications not governed by the
633 procedures for review of discretionary zoning approval under subsection (c)(3)
634 above, which may include the requirement of a public hearing held pursuant to
635 the provisions in section 11 of this chapter. A decision under this subsection (4)
636 shall require a vote by no more than a majority of the full board and shall be
637 made within the time limits prescribed in the ordinance or bylaw, not to exceed
638 the time limits for special permits contained in section 9 of this chapter. If no
639 decision is issued within the prescribed time limit, the applicant shall be entitled
640 to constructive approval of the site plan submitted as provided in section 9,
641 paragraph (12) of this chapter;

- 642 (5) establish standards by which the use of land or structures and its impact on the
643 neighborhood shall be evaluated; and
- 644 (6) contain provisions that make the terms, conditions, and content of the site plan
645 once approved enforceable by the municipality, which may include the
646 requirement of performance guarantees.
- 647 (d) The local board or official charged with review of site plans may adopt, and from time to
648 time amend, after a public hearing, rules to implement the local site plan ordinance or
649 bylaw adopted under this section. Notice of the proposed rules and of the location, date
650 and time of the public hearing shall be filed with the city or town clerk and published in
651 a newspaper of general circulation in the city or town at least 14 days before the public
652 hearing.
- 653 (e) A site plan submitted for the use of specific land or structures provided in subsection
654 (c)(4) shall be approved if the site plan:
- 655 (1) meets the procedural and submission requirements of the site plan review process
656 applicable to the specific land or structures;
- 657 (2) complies with the regulations applicable to such land or structures in the local
658 zoning ordinance or bylaw; and
- 659 (3) meets such standards as the local zoning ordinance or bylaw provides by which
660 the use of land or structures and its impact on the neighborhood shall be
661 evaluated.
- 662 (f) A site plan approved hereunder may include reasonable conditions, safeguards and
663 limitations to mitigate the impacts of a specific use of land or structures on the
664 neighborhood.

665 (g) Decisions made under site plan review may be appealed as specified in the ordinance or
666 by law, which may include direct judicial review pursuant to section 17 of this chapter.

667 (h) Zoning ordinances or bylaws shall provide that a site plan approval granted under this
668 section shall lapse within a specified period of time, not more than two years from the
669 date of the filing of such approval with the city or town clerk, so long as substantial use
670 or construction has not yet begun, except as extended for good cause by the approving
671 authority designated pursuant to (c)(2) above. Such time shall not include time required
672 to pursue or await the determination of an appeal pursuant to subsection (g) above.

673 SECTION 16. Section 9 of chapter 40A of the General Laws is hereby amended by striking out
674 the fourth paragraph, inserted by section 1 of chapter 197 of the acts of 2002, and inserting in
675 place thereof the following paragraph:-

676 Zoning ordinances or bylaws may provide for the authorization of the transfer of development
677 rights of land within or between districts. Such authorization may be by special permit or by
678 other methods, including but not limited to the applicable provisions of sections 81K to 81GG,
679 inclusive, of chapter 41 and in accordance with a planning board's rules and regulations
680 governing subdivision control.

681 SECTION 17. Section 1A of chapter 40A of the General Laws, as appearing in the 2000
682 Official Edition, is hereby amended by inserting the following definition:-

683 "Development impact fees" a contribution paid to a city or town by the applicant undertaking a
684 development for the purpose of offsetting the impacts related to the development.

685 SECTION 18. Chapter 40A of the General Laws is hereby amended by inserting after section
686 9C the following section:-

687 40A:9D. Development Impact Fees

688 (a) Authority

689 Cities and towns may adopt ordinances and bylaws establishing and governing the
690 procedure by which they may calculate, assess and impose development impact fees on
691 proposed developments, including procedures to allow waiver or reduction of
692 development impact fees for affordable housing developments.

693 (b) Administration

694 (1) Any development impact fee assessed under this section shall be paid to and held
695 in a separate account in the city or town in which the proposed development is
696 located. In the event that the proposed development is located in more than one
697 municipality, the impact fee shall be apportioned among the municipalities in
698 accordance with the land area or other equitable unit measure of the impacts of
699 the proposed development in each city or town having adopted an ordinance or
700 bylaw under this section.

701 (2) Any development impact fee imposed or permitted under this section shall
702 comply with the following:

703 (i) The fee shall be rationally related and reasonably proportional to an
704 impact directly or indirectly created by the development.

705 (ii) The purposes for which the fee is expended shall reasonably benefit the
706 proposed development.

707 (iii) The fee shall be expended for the creation or improvement of capital
708 facilities in accordance with a municipal plan, including, but not limited

709 to, the creation or improvement of streets, sewers, water supplies,
710 pollution abatement, parks, schools and similar capital facilities.

711 (3) Nothing in this section shall prevent a municipality from imposing fees or
712 conditions which it may otherwise impose under applicable laws and
713 constitutional provisions.

714 SECTION 19. Section 17 of chapter 40A of the General Laws, as appearing in the 2000 Official
715 Edition, is hereby amended by inserting after the seventh paragraph the following paragraph:-
716 Mediation of land use appeals: After the filing of an appeal hereunder, the parties may agree to
717 mediate the decision that was appealed. In all events, the parties shall file a statement advising
718 the court in which such appeal was filed that the dispute has been considered for mediation, and
719 if they agree to mediation, such mediation shall begin within within 60 days of the date such
720 statement was filed, or such other period as the parties may agree or the court may allow upon
721 application by any party. Such mediation shall conclude not more than 180 days of such filing,
722 provided that such period may be extended for an additional 180 days upon mutual agreement
723 of the parties, or for such additional period as the court may allow upon application by any
724 party. Mediators may be chosen from a list to be provided by the court in which the appeal was
725 filed or by a mediator selected by the parties and approved by the court upon application. The
726 mediator shall be compensated by the parties as they may agree, or under terms approved by the
727 court as a cost of such appeal as hereinafter provided. During such mediation, however, any
728 appeal otherwise pending is stayed. A party may withdraw from mediation at any time after
729 written notification to the other parties and to the court in which such appeal was filed, but shall
730 remain responsible for that party's share of the costs of mediation until the time of withdrawal.
731 The mediator shall have the protections provided under section 23C of Chapter 233, and to the

732 extent that public agencies are participants in such mediations, their deliberations shall not be
733 subject to the provisions of Chapter 39, Section 29B. At the conclusion of such mediation, the
734 mediator shall file with the court a statement describing whether the parties have come to
735 agreement or not. If unresolved, the appeal will then go forward, and if the matter has been
736 resolved, the appeal will be dismissed with prejudice. The cost of mediation will be distributed
737 among the parties as costs of the appeal as the parties may agree and if not, as the court in which
738 such appeal was filed may determine. Mediation hereunder shall not be the only method of
739 resolving a zoning appeal.

740 SECTION 20. Section 81L of chapter 41 of the General Laws, as appearing in the 2000 Official
741 Edition, is hereby amended by striking out, in lines 52-78 inclusive, the definition of
742 “Subdivision” and inserting in place thereof the following definition:-

743 “Subdivision” shall mean the division of a tract of land into one or more lots and shall include
744 resubdivision. When appropriate to the context, subdivision shall include the process of
745 subdivision or the land or territory subdivided. Except as provided in this chapter, any
746 adjustments to existing lot lines of a recorded lot by any means shall be considered a
747 subdivision. Lot area and frontage shall be of at least such dimension as is then required by
748 zoning or other ordinance or bylaw, if any, of said city or town for erection of a building on
749 such lot. If no such dimensions are so required, such area shall be at least five thousand square
750 feet and such frontage shall be at least fifty feet.

751 SECTION 21. Section 81O of said chapter 41, as so appearing, is hereby amended by striking
752 out the second sentence in the first paragraph and inserting in place thereof the following
753 sentence:- After the approval of a plan the location and width of ways, or the number, shape,
754 and size of the lots shown thereon shall not be changed unless the plan is amended accordingly

755 under section eighty-one W, except that the planning board may adopt alternate rules and
756 regulations pursuant to sections eighty-one P and eighty-one Q of this chapter defining and
757 regulating changes to the number, shape, and size of the lots shown thereon as minor
758 subdivisions.

759 SECTION 22. Said chapter 41, as so appearing, is hereby amended by striking out section 81P
760 and inserting in place thereof the following section:-

761 41:81P. Alternative Approvals for Minor Subdivisions

762 Under section eighty-one Q, a planning board may adopt rules and regulations defining and
763 regulating minor subdivisions in a more expeditious manner than would apply to other
764 subdivisions. Such rules and regulations may establish reduced procedural requirements,
765 review periods, fee schedules, performance guarantees, and construction and design standards
766 than would otherwise apply.

767 SECTION 23. Section 81T of said chapter 41, as so appearing, is hereby amended by striking
768 out, in lines 2-3 inclusive, the following words:- “or for a determination that approval is not
769 required”.

770 SECTION 24. Section 81X of said chapter 41, as so appearing, is hereby amended by striking
771 out, in lines 12-13 inclusive, the following words:- “such plan bears the endorsement of the
772 planning board that approval of such plan is not required, as provided in section eighty-one P, or
773 (3)”.

774 SECTION 25. Section 81X of said chapter 41, as so appearing, is hereby further amended by
775 striking out, in lines 17-20 inclusive, the following words:- “or that it is a plan submitted
776 pursuant to section eighty-one P and that it has been determined by failure of the planning board
777 to act thereon within the prescribed time that approval is not required,”.

778 SECTION 26. Section 81X of said chapter 41, as so appearing, is hereby further amended by
779 striking out the fourth paragraph and inserting in place thereof the following paragraph:-
780 Notwithstanding the foregoing provisions of this section, the register of deeds shall accept for
781 recording and the land court shall accept with a petition for registration or confirmation of title
782 any plan bearing a certificate by a registered land surveyor that 1) the property lines shown are
783 the lines dividing existing ownerships, and the lines of streets and ways shown are those of
784 public or private streets or ways already established, and that no new lines for division of
785 existing ownership or for new ways are shown, or 2) unless subject to section eighty-one O of
786 this chapter or subject to alternate rules and regulations pursuant to section eighty-one P and
787 eighty-one Q of this chapter, the property lines shown do not create a new lot or render an
788 existing lot nonconforming or more nonconforming. The recording of such plan shall not
789 relieve any owner from compliance with the provisions of the subdivision control law or of any
790 other applicable provision of law.

791 SECTION 27. Section 81M of said chapter 41, as so appearing, is hereby amended by inserting,
792 after the word “systems”, in the third sentence, the words:- , and for a plan adopted by the city
793 or town under section 81-D of this chapter.

794 SECTION 28. Section 81O of said chapter 41, as so appearing, is hereby amended by striking
795 out the second paragraph and inserting in place thereof the following paragraph:-
796 A plan shall be deemed submitted under this section at the next regularly-scheduled meeting of
797 the planning board provided it is 1) sent by registered mail or delivered to the planning board
798 and received by said board seven days prior to said meeting, and 2) determined to be complete
799 by the board or their designee at said meeting in accordance with the planning board’s rules and
800 regulations.

801 SECTION 29. Section 81Q of said chapter 41, as so appearing, is hereby amended by inserting
802 after the first paragraph the following paragraphs:-

803 Notwithstanding anything to the contrary in this section, a planning board may adopt a rule or
804 regulation that a plan for a residential subdivision show a lot or lots that shall be reserved for the
805 required construction by the applicant of dwelling units affordable to persons whose household
806 income does not exceed a percentage of the area median income, as such income is determined
807 by the federal Department of Housing and Urban Development. Such requirements shall not
808 exceed fifteen percent of the dwelling units within the subdivision. In lieu of the construction of
809 the required affordable dwelling units within a subdivision, a planning board rule or regulation
810 may allow for the construction of such units off-site, the dedication of land for such purpose, or
811 the payment of sufficient funds to a separate account created by the city or town for such
812 purpose. Cities and towns are hereby empowered to establish said separate accounts to be
813 administered by the treasurer of the city or town.

814 Rules and regulations adopted or amended under this chapter shall not be inconsistent with a
815 plan prepared under section 81D of chapter 41 as amended by this Act. Said rules and
816 regulations shall provide that in the instance of uncertainty in the construction or application of
817 any section therein, the rules and regulations shall be construed in a manner that will further the
818 implementation of, and not be contrary to, the goals, policies and applicable elements of said
819 plan. This paragraph shall not become effective until five years after it is enacted in the General
820 Laws.

821 SECTION 30. Section 81Q of said chapter 41, as so appearing, is hereby amended by striking
822 out, in lines 62-69 inclusive, the words “No rule or regulation shall require, and no planning
823 board shall impose, as a condition of approval of a subdivision, that any of the land within said

824 subdivision be dedicated to the public use, or conveyed or released to the commonwealth or to
825 the county, city or town in which the subdivision is located, for use as a public way, public park
826 or playground, or for any other public purpose, without just compensation to the owner thereof.”
827 and inserting in place thereof the following words:- The rules and regulations may require the
828 plan to show a park or parks suitably located for playground or recreation purposes or for
829 providing light and air and not unreasonable in area in relation to the area of land being
830 subdivided and the prospective uses of such land.

831 SECTION 31. Section 81U of said chapter 41, as so appearing, is hereby amended by striking
832 out, in lines 174-175 inclusive, the words “for a period of not more than three years”.

833 SECTION 32. Section 81U of said chapter 41, as so appearing, is hereby amended by inserting,
834 after the word “applicant”, in line 79, the words “, subject to the discretion and approval of the
835 planning board”.