

# SENATE NO. 1193

## **AN ACT** RELATIVE TO MUNICIPAL ZONING, SUBDIVISION CONTROL, AND PLANNING

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

1 SECTION 1.

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

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

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

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

13 WHEREAS, the Massachusetts legislature provided in 2000 through the passage of the  
14 Community Preservation Act a new financial tool for municipal open space protection,  
15 affordable housing, and historic preservation;  
16 NOW, THEREFORE, the time has arrived for the Massachusetts legislature to enhance and  
17 modernize the regulatory tools for municipal zoning, subdivision control, and planning to guide  
18 local growth through the following bill, which shall be known as the Community Planning Act.  
19 Be it enacted by the Senate and House of Representatives in General Court assembled, and by  
20 the authority of the same, as follows:

21 SECTION 1. Section 1A of chapter 40A of the General Laws, as appearing in the 2005-2006  
22 Official Edition, is hereby amended by inserting the following definition:-  
23 “Development impact fee”, a fee imposed by city zoning ordinance or town zoning by-law for  
24 the purpose of offsetting the impacts of a development, and in accordance with the provisions of  
25 section 9D of this chapter.

26 SECTION 2. Said section 1A of said chapter 40A, as so appearing, is hereby amended by  
27 inserting the following definition:-  
28 “Rate of development”, local legislative or regulatory measures adopted by cities and towns  
29 under section 9F of this chapter to regulate the number of permits for new construction or  
30 approvals of new building lots issued in a defined period of time or otherwise in accordance  
31 with defined standards and criteria.

32 SECTION 3. Said chapter 40A, as so appearing, is hereby amended by inserting after section  
33 1A the following section:-  
34 40A:2. Construction and Purposes  
35 (a) Rule of Construction

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

46 (b) Public Purposes

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

51 (1) The Implementation of a plan adopted by the city or town under section 81D of  
52 chapter 41.

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

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

- 59 (4) The efficient resolution of planning and regulatory conflicts involving public and  
60 private interests.
- 61 (5) The use of innovative development laws, regulations, and planning practices  
62 such as development agreements, development impact fees, design review, inter-  
63 municipal transfers of development rights, agricultural zoning, open space  
64 development, special district overlays, village districts, inclusionary zoning  
65 provisions which require or provide incentives for the creation of below-market-  
66 rate housing, mediation and dispute resolution, and urban growth boundaries.
- 67 (6) The delineation and balancing of urban and rural development.
- 68
- 69 (7) The achievement of a balance of housing choices, types, and opportunities for all  
70 income levels and groups, including the creation of below-market-rate housing,  
71 the preservation of existing housing stock and the preservation of affordability in  
72 housing.
- 73 (8) The integration of residential and commercial, civic, cultural, recreational, and  
74 other compatible land uses at locations that reduce dependence upon the private  
75 automobile.
- 76 (9) The adequate provision and distribution of educational, health, cultural, and  
77 recreational facilities.
- 78 (10) The preservation or enhancement of community amenities or features of  
79 significant architectural, historical, cultural, visual, aesthetic, scenic, or  
80 archaeological interest.

- 81 (11) The protection of the environment and the conservation of natural resources,  
82 including those qualities of the environment and natural resources set forth in  
83 Article 97 of the Constitution of the commonwealth.
- 84 (12) The retention of open land for agricultural production, forest products,  
85 horticulture, aquaculture, tourism, outdoor recreation, and freshwater and marine  
86 fisheries.
- 87 (13) The protection of public investment in infrastructure systems.
- 88 (14) An energy efficient, convenient, and safe transportation infrastructure with as  
89 wide a choice of modes as practical, including, wherever possible, maximal  
90 access to public transit systems and non-motorized modes.
- 91 (15) The efficient use of energy and the reduction of pollution from energy  
92 generation, including the promotion of renewable energy sources and associated  
93 technologies.
- 94 (16) The adequate provision of employment opportunities within the city or town and  
95 the region, including redevelopment of pre-existing sites, home-based  
96 occupations, sustainable natural-resource-based occupations, and housing to  
97 support the employment opportunities within the city or town and the region.
- 98 (17) The conservation of the value of land and buildings, including the elimination of  
99 blight and the rehabilitation of blighted areas.
- 100 (18) The accommodation of regional growth in a fair, equitable, and sustainable  
101 manner among municipalities, including coordination of land uses with  
102 contiguous municipalities, other municipalities, the state, and other agencies, as

103 appropriate, especially with regard to resources and facilities that extend beyond  
104 municipal boundaries or have a direct impact on other municipalities.

105 (19) The implementation of rate of development measures of defined duration during  
106 which planning or zoning studies are undertaken, and the longer-term use of such  
107 measures in a manner consistent with a plan adopted by the city or town under  
108 section 81D of chapter 41.

109 (20) The implementation of a plan adopted by a regional planning agency under  
110 section 5 of chapter 40B.

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

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

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

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

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

127 SECTION 9. Said section 5 of said chapter 40A, as so appearing, is hereby amended by  
128 inserting, after the tenth paragraph, the following paragraphs:-

129 After January 1, 2013, no zoning ordinance or by-law may be inconsistent with a plan adopted  
130 by the city or town under section 81 D of chapter 41. No zoning ordinance or by-law shall be  
131 deemed inconsistent with the plan if it furthers, or at least does not impede, the achievement of  
132 the plan's goals and policies, and if it is not incompatible with the plan's proposed land uses and  
133 development patterns.

134 After the effective date of the plan, a zoning ordinance or by-law shall enjoy a rebuttable  
135 presumption in any action, suit, or administrative proceeding that its provisions are not  
136 inconsistent with the plan. If the presumption is rebutted, inconsistency may serve as the basis  
137 upon which a court or administrative agency may declare any relevant zoning ordinance or by-  
138 law provision to be invalid as applied to the property which is the subject of the action, suit, or  
139 administrative proceeding. For any amendment to a plan adopted after January 1, 2013, no such  
140 declaration of invalidity may be made in any action, suit, or administrative proceeding for a  
141 period of 12 months after the effective date of such plan amendment.

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

144 40A:6. Applicability of Zoning Ordinances and By-laws

145 Sec. 6A. Nonconforming Lots, Structures and Uses

146 (a) Nonconforming Residential Lots

- 147 (1) Increases in lot area, frontage, width, or depth of a zoning ordinance or by-law  
148 shall not apply to a lot for single- or two-family residential use which on the date  
149 of the first publication of notice of the public hearing on such ordinance or by-  
150 law required by section 5 that renders the lot nonconforming:
- 151 (i) was shown or described as a separate lot on a recorded plan or deed; and
  - 152 (ii) conformed to the lot area, frontage, lot width, and depth requirements in  
153 effect on the date of said notice; and
  - 154 (iii) had at least 5,000 square feet of area and 50 feet of frontage in the case of  
155 a single-family residential use and at least 7,500 square feet of area and  
156 75 feet of frontage in the case of two-family residential use; and
  - 157 (iv) was not held in common ownership with any adjoining land.
- 158 (2) A lot described in 6A(a)(1) shall have vital access to and frontage on a way of  
159 sufficient width, grade, and construction as set forth in regulations established by  
160 the planning board.
- 161 (3) Whenever the lines of a lot described in 6A(a)(1) are changed in any way that  
162 renders the lot more conforming, the resulting boundaries of the lot shall govern  
163 the application of this section.
- 164 (4) Whenever any lot described in 6A(a)(1) comes into common ownership with  
165 adjacent land, such lot and adjacent land shall be merged and combined for the  
166 purposes of this section. Common ownership shall include lots held by separate  
167 legal entities, persons, or trusts under common control or having common  
168 beneficial interests.
- 169 (b) Lawfully Nonconforming Structures and Uses

- 170 (1) A lawfully nonconforming structure or use shall mean a structure or use lawfully  
171 in existence on the date of the first publication of notice of the public hearing on  
172 such ordinance or by-law required by section 5 rendering such structure or use  
173 nonconforming. For the purposes of this section, a structure or use lawfully in  
174 existence shall not include a structure or use in violation of the zoning ordinance  
175 or by-law, nor a structure built without a legally required building permit.
- 176 (2) Adoption or amendment of a zoning ordinance or by-law shall not apply to any  
177 lawfully existing nonconformity of: i) a lawfully existing nonconforming  
178 structure or use; and ii) structures and uses lawfully begun prior to the first  
179 publication of notice of the public hearing on the adoption or amendment of the  
180 relevant zoning ordinance or by-law required by section five.
- 181 (3) A zoning ordinance or by-law may regulate a nonconforming structure or use if  
182 abandoned or if discontinued for a period of 2 years or more. Abandonment  
183 shall consist of any overt act, or failure to act, that would indicate that the owner  
184 neither claims or retains any intent to continue the nonconforming structure or  
185 use, unless the owner can demonstrate an intent not to abandon it. An  
186 involuntary interruption of a nonconforming structure or use, such as by fire and  
187 natural catastrophe, does not establish the intent to abandon.
- 188 (4) This subsection 6A(b) shall not apply to establishments which display live nudity  
189 for their patrons, as defined in section 9A, adult bookstores, adult motion picture  
190 theaters, adult paraphernalia shops, or adult video stores subject to the provisions  
191 of section 9A.

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

- 194 (1) A zoning ordinance or by-law shall not prohibit the alteration, reconstruction,  
195 extension, or structural change to a lawfully nonconforming single- or two-  
196 family residential structure, provided all such construction satisfies the  
197 applicable dimensional requirements of the current zoning ordinance or by-law.
- 198 (2) A zoning ordinance or by-law may permit, as of right or by special permit,  
199 lawfully nonconforming structures or uses to be altered, reconstructed, extended,  
200 or structurally changed, provided that such actions do not increase the specific  
201 nonconformity of the structure or use.
- 202 (3) A zoning ordinance or by-law may permit, by special permit, nonconforming  
203 structures or uses to be altered, changed, reconstructed, or extended in a manner  
204 that increases the specific nonconformity of the structure or use, provided that  
205 the special permit granting authority finds that such actions are not substantially  
206 more detrimental to the neighborhood than the existing lawfully nonconforming  
207 structure or use.
- 208 (4) A zoning ordinance or by-law may regulate nonconforming structures differently  
209 than nonconforming uses.
- 210 (5) A zoning ordinance or by-law may vary by zoning district(s) the requirements  
211 for the alteration, reconstruction, extension or structural change for all lawfully  
212 nonconforming structures and uses.

213 Sec. 6B. Vested Rights: Effective Date of Zoning Amendments

- 214 (a) Building Permits and Special Permits

215 (1) Adoption or amendment of a zoning ordinance or by-law shall not apply to a  
216 building permit or special permit issued prior to the date of the first publication  
217 of notice of the public hearing on the adoption or amendment required by section  
218 5 provided that:

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

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

225 (b) Subdivision Plans

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

232 (c) General Provisions

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

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

236

- 237 (ii) the period between the filing of any appeal or commencement of any  
238 litigation from the decision of any applicable local board or authority and  
239 the final disposition thereof, provided final adjudication is in favor of the  
240 owner of the lot; and
- 241 (iii) any moratorium upon permitting or construction imposed by any  
242 government entity.

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

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

252 SECTION 12. Said chapter 40A, as so appearing, is hereby amended by inserting after section 7  
253 the following section:-

254 40A:7A. Site Plan Review

- 255 (a) As used in this section, "site plan" shall mean the submission made to a municipality  
256 that includes documents and drawings required by an ordinance or by-law to determine  
257 whether a proposed use of land or structures is in compliance with applicable local  
258 ordinances or by-laws, to evaluate the impacts of the proposed use of land or structures

259 on the neighborhood and/or community, and to evaluate and propose site design  
260 modifications that will lessen those impacts.

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

265 (c) Such ordinance or by-law requiring site plan review shall:

- 266 (1) establish which uses of land or structures are subject to site plan review;
- 267 (2) specify the local boards or officials charged with reviewing and approving site  
268 plans, which may differ for different types, scales, or categories of uses of land  
269 or structures;
- 270 (3) establish the submission and review process for a site plan submitted in  
271 connection with an application for a variance, special permit, or other  
272 discretionary zoning approval. This submission and review may be conducted as  
273 part of the review of the application for discretionary approval or may be a  
274 separate review process under subsection (c)(4) below;
- 275 (4) establish the submission, review, and approval process for applications not  
276 governed by the procedures for review of discretionary zoning approval under  
277 subsection (c)(3) above, which may include the requirement of a public hearing  
278 held pursuant to the provisions in section eleven of this chapter. Approval of a  
279 site plan under this subsection (4) shall require a simple majority vote of the full  
280 board and shall be made within the time limits prescribed by ordinance or by-  
281 law, not to exceed the time limits for special permits contained in section nine of

282 this chapter. If no decision is issued within the time limit prescribed, the site  
283 plan shall be deemed constructively approved as provided in section 9, paragraph  
284 11 of this chapter;

285 (5) establish standards and criteria by which the use of land or structures and its  
286 impact on the neighborhood shall be evaluated; and

287 (6) contain provisions that make the terms, conditions, and content of the approved  
288 site plan enforceable by the municipality, which may include the requirement of  
289 performance guarantees.

290 (d) The local board or official charged with review of site plans may adopt, and from time  
291 to time amend, rules to implement the local site plan ordinance or by-law adopted under  
292 this section.

293 (e) A site plan submitted for the use of specific land or structures provided in subsection  
294 (c)(4) shall be approved if the site plan:

295 (1) satisfies the procedural and submission requirements of the site plan review  
296 process applicable to the specific land or structures;

297 (2) complies with the regulations applicable to such land or structures in the local  
298 zoning ordinance or by-law; and

299 (3) meets such standards and criteria as the local zoning ordinance or by-law  
300 provides by which the use of land or structures and its impact on the  
301 neighborhood shall be evaluated.

302 (f) A site plan approved hereunder may include reasonable conditions, safeguards, and  
303 limitations to mitigate the impacts of a specific use of land or structures on the  
304 neighborhood.

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

308 (h) Zoning ordinances or by-laws shall provide that a site plan approval granted under this  
309 section shall lapse within a specified period of time, not more than two years from the  
310 date of the filing of such approval with the city or town clerk, if substantial use or  
311 construction has not yet begun, except as extended for good cause by the approving  
312 authority designated under (c)(2) above. Such extension shall not include time required  
313 to pursue or await the determination of an appeal under subsection (g) above. The  
314 aforesaid maximum period of two years may, by ordinance or by-law, be increased to a  
315 longer maximum period.

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

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

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

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

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

336 SECTION 16. Said section 9 of said chapter 40A, as so appearing, is hereby amended by  
337 striking out the twelfth paragraph and inserting in place thereof the following paragraph:-  
338 Each application for a special permit shall be filed by the petitioner with the city or town clerk  
339 and a copy of said application, including the date and time of filing certified by the city or town  
340 clerk, shall be filed forthwith by the petitioner with the special permit granting authority. The  
341 special permit granting authority shall hold a public hearing, for which notice has been given as  
342 provided in section eleven, on any application for a special permit within sixty-five days from  
343 the date of filing of such application; provided, however, that a city council having more than  
344 five members designated to act upon such application may appoint a committee of such council  
345 to hold the public hearing. The decision of the special permit granting authority shall be made  
346 within ninety days following the date of the close of such public hearing. The required time  
347 limits for a public hearing and said action may be extended by written agreement between the  
348 petitioner and the special permit granting authority. A copy of such agreement shall be filed in  
349 the office of the city or town clerk. Unless a lesser majority is specified in the zoning ordinance  
350 or by-law, issuance of a special permit under this section shall require a vote of two-thirds of the

351 entire special permit granting authority in the case of an authority with more than five members,  
352 the vote of at least four members of a five-member authority, or the vote of all members of an  
353 authority comprised of fewer than five members.

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

356 A special permit granted under this section shall state that it will lapse within a period of time  
357 specified by the special permit granting authority, not more than two years, if a substantial use  
358 thereof has not sooner commenced except for good cause or, in the case of a permit for  
359 construction, if construction has not begun by such date except for good cause. The aforesaid  
360 maximum period of two years may, by ordinance or by-law, be increased to a longer maximum  
361 period. The period of time before which a special permit shall lapse shall not include the time  
362 required to pursue or await the determination of an appeal from the grant thereof referred to in  
363 section seventeen.

364 Upon written application by the grantee of a special permit, the special permit granting authority  
365 in its discretion may extend the time for the exercise of such special permit for a period of time  
366 not to exceed one year. Such application must be filed no later than sixty-five days prior to the  
367 lapse of the special permit. If the permit granting authority does not grant the extension within  
368 sixty-five days of the date of application therefor, upon the lapse of the special permit, the  
369 special permit may be re-established only after notice and a new hearing pursuant to the  
370 provisions of this section.

371 SECTION 18. Said chapter 40A, as so appearing, is hereby amended by inserting after section  
372 9C the following section:-

373 40A:9D. Development Impact Fee

374 (a) Authority

375 (1) In addition to its home rule authority to impose a development impact fee, a city  
376 or town may adopt a local ordinance or by-law under this section that requires  
377 the payment of a development impact fee as a condition of any permit or  
378 approval otherwise required for any proposed development within the scope of  
379 this section, and having development impacts as defined in the ordinance or by-  
380 law. The development impact fee may be imposed only on construction,  
381 enlargement, expansion, substantial rehabilitation, or change of use of a  
382 development. The development impact fee shall be used solely for the purposes  
383 of defraying the costs of capital facilities to be provided or paid for by the city or  
384 town and which are caused by and necessary to support or compensate for the  
385 proposed development. Such capital facilities may include the costs related to  
386 the provision of equipment, infrastructure, facilities, or studies associated with  
387 the following: schools; libraries; municipal offices; water supply; sewers; storm  
388 water management and treatment; pollution abatement; solid waste processing  
389 and disposal; traffic mitigation; public transportation; child care; parks,  
390 playgrounds, and other recreational facilities; police, fire, ambulance, rescue and  
391 other public safety facilities; affordable housing; or other capital improvements.

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

396 (b) Limitations

397 (1) No development impact fee under this section shall be imposed upon any  
398 dwelling unit, regardless of how created or permitted, which is subject to a  
399 restriction on sale price or rent under the provisions of G.L. c. 184 as amended  
400 ensuring that the unit will remain affordable for a period of at least 30 years to  
401 households at or below the area median income as most recently defined by the  
402 United States Department of Housing and Urban Development or successor  
403 agency.

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

408 (c) Requirements

409 (1) Prior to the imposition of development impact fees under this section, a city or  
410 town shall complete a study that: (i) analyzes existing capital improvement plans  
411 or the facilities element of a plan adopted under section 81D of chapter 41; (ii)  
412 estimates future development based on the then current zoning ordinance or by-  
413 law; (iii) assesses the impacts related to such development; (iv) determines the  
414 need for capital facilities required to address the impacts of the estimated  
415 development including excess facility capacity, if any, currently planned to  
416 accommodate future development; (v) develops cost projections for the needed  
417 capital facilities and documents costs of existing facilities with planned excess  
418 capacity; and (vi) establishes the amount of any development impact fee  
419 authorized under this section in accordance with a methodology determined

420 pursuant to the study. The study shall be updated periodically to reflect actual  
421 development activity, actual costs of infrastructure improvements completed or  
422 underway, plan changes, or amendments to the zoning ordinance or by-law.

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

426 (3) The purposes for which the fee is expended shall reasonably benefit the proposed  
427 development.

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

432 (d) Administration

433 (1) The ordinance or by-law may provide for a waiver or reduction of the  
434 development impact fee for any development that furthers an overriding public  
435 purpose as set forth in a plan adopted by the city or town under section 81D of  
436 chapter 41.

437 (2) If the proposed development is located in more than one municipality, the impact  
438 fee shall be apportioned among the municipalities in accordance with the land  
439 area or other equitable measure of the impacts of the proposed development in  
440 each city or town.

441 (3) Any development impact fee assessed under this section shall be deposited to a  
442 separate, interest bearing account in the city or town in which the proposed

443 development is located. Unless subject to section (d)(4) below, no development  
444 impact fee shall be paid to the general treasury or used as general revenues of the  
445 city or town subject to the provisions of section 53 of chapter 44 of the General  
446 Laws.

447 (4) Any funds not expended or encumbered by the end of the calendar quarter  
448 immediately following 10 years from the date the development impact fee was  
449 paid shall, upon request of the applicant or its assigns, be returned with interest  
450 provided that an application for a refund prescribed in the ordinance or by-law  
451 has been submitted within one 180 calendar days prior to the expiration of the 10  
452 year period. If no application for refund is received by the city or town within  
453 said period, any funds not expended or encumbered by the end of the calendar  
454 quarter shall then revert to and become part of the general fund under section 53  
455 of chapter 44. In the event of any disagreement relative to who shall receive the  
456 refund, the city or town may retain said development impact fee pending  
457 instructions given in writing by the parties involved or by a court of competent  
458 jurisdiction.

459 SECTION 19. Said chapter 40A, as so appearing, is hereby amended by inserting after section  
460 9D the following section:-

461 40A:9E. Land Use Dispute Avoidance

462 (a) As an optional means of avoiding or minimizing land use disputes, the owner of land or  
463 structures who has applied or intends to apply for a building permit, any permit or  
464 approval required under this chapter, an approval under sections 81K-GG of chapter 41,  
465 or a comprehensive permit under sections 20-23 of chapter 40B, may request of the

466 public official or local board charged with acting on the application to undertake a land  
467 use dispute avoidance process as hereinafter provided. Such request shall be made in  
468 writing and duly noted in the notice of the public meeting of the local board that would  
469 respond to such request, and if made to a public official other than a local board, such  
470 official shall file a notice of such request with the city or town clerk at least 48 hours  
471 prior to responding to such request.

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

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

478 (d) The conflict assessment and any later resolution effort may be conducted by a neutral  
479 facilitator as defined in section 23C of chapter 233, selected from a list prepared by the  
480 Massachusetts Office of Dispute Resolution, or its successor agency or its designee, or  
481 as chosen jointly by the applicant and the public official or local board.

482 (e) The facilitator and any associate shall comply with the standards of conduct of the  
483 Association for Conflict Resolution or as promulgated by the Massachusetts Office of  
484 Dispute Resolution, or its successor agency or its designee.

485 (f) Funding for any conflict assessment or resolution effort under this section may be as the  
486 applicant and the public official or local board shall agree. In the absence of such  
487 agreement, the public official or local board may impose reasonable fees for the

488 employment of outside consultants, including the facilitator, in the same manner as set  
489 forth in section 53G of chapter 44.

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

496 (h) As part of the conflict assessment, the facilitator may solicit information and opinions  
497 relating to the application, and may identify and notify those members of the public  
498 likely to be interested in or affected by the application. The facilitator may clarify the  
499 issues and investigate the willingness of all interested parties to work together with the  
500 applicant to resolve those issues. The facilitator may identify measures or community-  
501 enhancing features that would benefit the neighborhood, the larger community, and the  
502 project itself. Based upon the assessment, the facilitator may determine whether further  
503 resolution effort would be productive in reaching a consensus of those participating,  
504 with the understanding that the outcome may be the withdrawal or substantial  
505 modification of the application.

506 (i) The facilitator may convene meetings or conduct interviews that shall be confidential  
507 and privileged from discovery under section 23C of chapter 233 and that shall not be  
508 subject to the open meeting law under section 23B of chapter 39. The records of such  
509 meetings or interviews shall be exempt from disclosure under the public records law  
510 under section 10 of chapter 66 and clause 26 of section 7 of chapter 4.

511 (j) In preparing a report on conflict assessment or later resolution effort, the facilitator shall  
512 not attribute statements, positions, ideas, or interests to specific individuals,  
513 organizations, or persons interviewed, and shall distribute copies of the report to those  
514 participating without prior review or approval of any participant. The conflict  
515 assessment report shall indicate whether and how a subsequent resolution effort might  
516 be appropriate for the application involved, including elaborating on how it might be  
517 undertaken and by whom.

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

524 (l) At the conclusion of any conflict assessment or resolution efforts, the application which  
525 initiated the conflict assessment and resolution efforts may go forward in accordance  
526 with the applicable statute, ordinance, or by-law, reflecting if possible the result of any  
527 resolution effort. If the parties so agree, any resolution may be incorporated into the  
528 action taken by the local board or official.

529 SECTION 20. Said chapter 40A, as so appearing, is hereby amended by inserting after section

530 9E the following section:-

531 40A:9F. Rate of Development

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

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

541 Rate of Development measures shall not restrict the construction of, or creation of building lots  
542 for, affordable housing units restricted to remain affordable for a period of at least 30 years to  
543 households with income at or below 120 percent of the area median income as such income is  
544 most recently determined by the federal Department of Housing and Urban Development or  
545 successor agency.

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

548 SECTION 21. Said chapter 40A, as so appearing, is hereby amended by inserting after section  
549 9F the following section:-

550 40A:9G. Affordable Housing

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

556 (b) In lieu of constructing the units required on-site, the ordinance or by-law may  
557 provide for the construction of such units off-site, the dedication of land for such  
558 purpose, or the payment of funds to a separate account created by the city or  
559 town sufficient for and dedicated to the provision of affordable housing,  
560 provided the applicant demonstrates to the satisfaction of the local approving  
561 authority that the units cannot be otherwise provided on-site or that an  
562 alternative proposal better meets the needs of the city or town with respect to the  
563 provision of affordable housing. Off-site units, land dedication, or payment in-  
564 lieu of units shall, in the opinion of the local approving authority and in  
565 consideration of local needs, provide affordable housing benefits roughly  
566 equivalent to the provision of on-site units.

567 (c) Cities and towns are authorized to establish a separate dedicated account for the  
568 deposit of funds received under this section, including Municipal Housing Trust  
569 Fund accounts under section 55C of chapter 44 or other dedicated accounts of  
570 similar purpose. Said funds shall be deposited with the treasurer and dispersed  
571 for affordable housing purposes in accordance with the ordinances, by-laws, or  
572 regulations of the city or town. Where the application of this section results in  
573 less than a full dwelling unit, the board may accept a prorated payment of funds  
574 in lieu of unit creation.

575 (d) The affordable units shall be subject to a restriction on sale price or rent under  
576 the provisions of G.L. c. 184, as amended, and shall remain affordable, in  
577 perpetuity or for a period not less than 30 years.

578 (e) The regulation may further require some or all of the affordable units to be low-  
579 or moderate-income housing as defined in G.L. c. 40B, Section 20-23, and be  
580 eligible for inclusion on the Subsidized Housing Inventory subject to and in  
581 accordance with applicable regulations and guidelines of the Department of  
582 Housing and Community Development or successor agency. Nothing in this  
583 section shall be construed to require the Department of Housing and Community  
584 Development to include affordable units created hereunder on the Subsidized  
585 Housing Inventory.

586 (f) Nothing in this section shall limit the authority of a planning board under chapter 41,  
587 section 81Q, the Subdivision Control Law.

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

590 40A:10. Variances

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

597 In making its determination, the permit granting authority shall take into consideration the  
598 benefit to the applicant if the variance is granted, as weighed against the detriment to the health,  
599 safety and welfare of the neighborhood or community by such grant. The permit granting  
600 authority may also take into consideration the extent to which the claimed hardship is self-

601 created. In order to grant a variance the permit granting authority shall make all of the  
602 following findings: (1) the benefit sought by the applicant can not be achieved by some method,  
603 feasible for the applicant to pursue, other than a variance; (2) the variance will not have a  
604 substantial undesirable effect on nearby properties, or the character of the neighborhood, or on  
605 the environment; (3) the variance will not nullify or substantially derogate from the intent or  
606 purpose of such ordinance or by-law or the master plan upon which the ordinance or by-law is  
607 based; and (4) the claimed hardship relating to the property in question is unique, and does not  
608 apply to a substantial portion of the district or neighborhood. In the granting of variances, the  
609 permit granting authority shall grant the minimum variance that it shall deem necessary to  
610 relieve the hardship.

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

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

618 If the rights authorized by a variance are not exercised within two years of the date of the grant  
619 of the variance such variance shall lapse; provided, however, that upon written application by  
620 the grantee of such variance, the permit granting authority in its discretion may extend the time  
621 for exercise of such rights for a period not to exceed one year. Such application must be filed no  
622 later than sixty-five days prior to the lapse of the variance. If the permit granting authority does  
623 not grant the extension within sixty-five days of the date of application therefor, upon the lapse

624 of the variance, the variance may be re-established only after notice and a new hearing pursuant  
625 to the provisions of this section.

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

628 Mediation of land use appeals: After the filing of an appeal hereunder, the parties may agree to  
629 mediate the decision appealed. In all cases, the parties shall file with the court a statement  
630 advising the court that the dispute has been submitted for mediation. If the parties agree to  
631 mediation, the mediation shall begin within 60 days of the date such statement was filed, or  
632 such other period as the parties may agree or the court may allow upon application by any party.  
633 The mediation shall conclude not later than 180 days of filing, provided that such period may be  
634 extended for an additional 180 days by joint written agreement of the parties, or for such other  
635 additional period as the court may allow upon application by any party. The parties may select  
636 the mediator from a list provided by the court or otherwise as the parties may determine. The  
637 mediator shall be compensated by the parties as they may agree, or in the absence of agreement,  
638 as the court may determine. During the mediation any appeal otherwise pending shall be  
639 stayed. A party may withdraw from mediation at any time after written notification to the other  
640 parties and to the court, but shall remain responsible for that party's share of the costs of  
641 mediation until the time of withdrawal. The mediator shall have the protections provided under  
642 section 23C of chapter 233, and to the extent that public agencies are participants in the  
643 mediation, their deliberations shall not be subject to the provisions of section 23B of chapter 39.  
644 At the conclusion of the mediation, the mediator shall file with the court a statement describing  
645 whether the parties have come to agreement. If unresolved, the appeal will then go forward; if  
646 the matter has been resolved, the appeal will be dismissed with prejudice. The cost of

647 mediation shall be distributed among the parties as a cost of the appeal as the parties may agree,  
648 or in the absence of agreement, as the court may determine. Mediation hereunder shall not be  
649 the only method of resolving a zoning appeal.

650 SECTION 24. Section 81D of chapter 41 of the General Laws, as appearing in the 2005-2006  
651 Official Edition, is hereby amended by inserting, after the word “services”, in line 20, the  
652 following words:- , and may identify consistent policies and strategies for the use of rate of  
653 development measures which shall include a study of the need for such measures, a  
654 methodology by which to determine a reasonable rate of issuance of permits for new  
655 construction or approvals of new building lots, a time horizon within which such measures shall  
656 remain in effect, and a periodic review schedule.

657 SECTION 25. Said section 81D of said chapter 41, as so appearing, is hereby amended by  
658 striking out the fifth paragraph, and inserting in place thereof the following words:-

659 (3) Housing element which shall consist of identification and analysis of existing and forecast  
660 housing needs, including: an inventory of local housing; local housing goals, objectives and  
661 policies; and implementing measures. Where applicable, existing local housing plans may be  
662 included by reference.

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

670 The element shall enumerate local goals, objectives, and policies so as to provide a diversity of  
671 housing stock meeting the housing needs of residents from a broad range of income levels and  
672 age groups, including those with disabilities and special needs. The element shall identify and  
673 evaluate specific measures for inclusion in the implementation element of the master plan  
674 necessary to accomplish this purpose, including strategies, programs, and assistance for: the  
675 preservation of existing housing stock; the financing of additional housing; the construction or  
676 rehabilitation of housing; and for the adoption or amendment of local laws and regulations  
677 permitting, encouraging, or requiring diversity in housing locations, types, designs, and area  
678 densities that offer complements or alternatives to single-family detached housing.

679 SECTION 26. Said section 81D of said chapter 41, as so appearing, is hereby amended by  
680 striking out the first sentence in the twelfth paragraph and inserting in place thereof the  
681 following words:- Such plan shall be made, and may be added to or changed from time to time,  
682 by a simple majority vote of the planning board after a public hearing, notice of which shall be  
683 posted and published in the manner prescribed for zoning by-law amendments under section 5  
684 of chapter 40A, followed by adoption by the legislative body of the city or town by a simple  
685 majority vote except where a greater majority vote has been prescribed in an ordinance or by-  
686 law adopted by a two-thirds vote of the local legislative body. However, no vote of the  
687 legislative body to alter the plan or amendment as adopted by the planning board shall be other  
688 than by a two-thirds vote of the legislative body.

689 SECTION 27. Section 81L of said chapter 41, as so appearing, is hereby amended by striking  
690 out, in lines 52-78 inclusive, the definition of "Subdivision" and inserting in place thereof the  
691 following definition:-

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

698 SECTION 28. Section 81M of said chapter 41, as so appearing, is hereby amended by inserting,  
699 after the word “systems”, in line 23, the words:- , and for those aspects of a plan adopted by the  
700 city or town under section 81D of this chapter which are particular to the subdivision of land.

701 SECTION 29. Section 81O of said chapter 41, as so appearing, is hereby amended by striking  
702 out the second sentence in the first paragraph and inserting in place thereof the following  
703 sentences:- After the approval of a plan, the location and width of ways, and the number, shape,  
704 and size of the lots shown thereon, may not be changed unless the plan is amended as provided  
705 in section 81W. In the alternative, a planning board may adopt rules and regulations under  
706 sections 81P and 81Q of this chapter defining and regulating such changes as minor  
707 subdivisions.

708 SECTION 30. Said section 81O of said chapter 41, as so appearing, is hereby amended by  
709 striking out the second paragraph and inserting in place thereof the following paragraph:-  
710 A plan shall be deemed submitted under this section as of the date of the next regularly  
711 scheduled meeting of the planning board, provided that during posted business hours the plan is  
712 both delivered to the planning board and filed with the town clerk no later than 7 calendar days  
713 prior to said meeting date, or 35 calendar days after such delivery to the planning board and  
714 filing with the town clerk, whichever shall first occur. An incomplete submission or one not in

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

720 SECTION 31. Said chapter 41, as so appearing, is hereby amended by striking out section 81P  
721 and inserting in place thereof the following section:-

722 41:81P. Alternative Approvals for Minor Subdivisions

723 A planning board may adopt alternative rules and regulations under section 81Q defining and  
724 regulating minor subdivisions in a more expeditious manner than would apply to other  
725 subdivisions. Such rules and regulations may reduce or eliminate any local rule or regulation  
726 made under section 81Q that would otherwise apply to a subdivision and any requirement of  
727 sections 81L relative to the definition of preliminary plan, 81S, 81T, or 81U of this chapter.

728 Minor subdivisions under this section shall not create more than 3 additional lots.

729 SECTION 32. Section 81Q of said chapter 41, as so appearing, is hereby amended by striking  
730 out, in line 59, the words “or use”.

731 SECTION 33. Said section 81Q of said chapter 41, as so appearing, is hereby amended by  
732 striking out, in lines 62-69 inclusive, the words “No rule or regulation shall require, and no  
733 planning board shall impose, as a condition of approval of a subdivision, that any of the land  
734 within said subdivision be dedicated to the public use, or conveyed or released to the  
735 commonwealth or to the county, city or town in which the subdivision is located, for use as a  
736 public way, public park or playground, or for any other public purpose, without just  
737 compensation to the owner thereof.” and inserting in place thereof the following words:- The

738 rules and regulations may require the plan to show a park or parks suitably located for  
739 playground or recreation purposes or for providing light and air, except that such requirement  
740 shall not exceed 10 percent of the land being subdivided.

741 SECTION 34. Said section 81Q of said chapter 41, as so appearing, is hereby amended by  
742 inserting after the first paragraph the following paragraphs:-

743 Notwithstanding anything to the contrary in the General Laws, a planning board may, by  
744 regulation, require an applicant for a residential subdivision to provide affordable dwelling units  
745 and to show on the subdivision plan a lot or lots reserved for such units. The required affordable  
746 units shall be in addition to, but shall not exceed 25 percent of the number of, market-rate units  
747 approved by the board in accordance with any otherwise applicable ordinance, by-law, or  
748 regulation. In order to include the additional affordable units, the regulation shall provide for an  
749 increase in the permitted density or intensity of residential uses within a subdivision as  
750 authorized by a complementary zoning ordinance or by-law relating to the subdivision of land.

751 In lieu of constructing the units required on-site, the regulation may provide for the construction  
752 of such units off-site, the dedication of land for such purpose, or the payment of funds to a  
753 separate account created by the city or town sufficient for and dedicated to the provision of  
754 affordable housing, provided the applicant demonstrates to the satisfaction of the board that the  
755 units cannot be otherwise provided on-site or that an alternative proposal better meets the needs  
756 of the city or town with respect to the provision of affordable housing. Off-site units, land  
757 dedication, or payment in-lieu of units shall, in the opinion of the board and in consideration of  
758 local needs, provide affordable housing benefits roughly equivalent to the provision of on-site  
759 units. Cities and towns are authorized to establish a separate dedicated account for the deposit  
760 of funds received under this section, including Municipal Housing Trust Fund accounts under

761 section 55C of chapter 44 or other dedicated accounts of similar purpose. Said funds shall be  
762 deposited with the treasurer and dispersed in accordance with the ordinances, by-laws, or  
763 regulations of the city or town. Where the application of this section results in less than a full  
764 dwelling unit, the board may accept a prorated payment of funds in lieu of unit creation.

765 The affordable units shall be subject to a restriction on sale price or rent under the provisions of  
766 G.L. c. 184, as amended, and shall remain affordable, in perpetuity or for a period not less than  
767 30 years, to households with income at or below the area median income as such income is most  
768 recently determined by the U.S. Department of Housing and Urban Development or successor  
769 agency. However, the regulation may allow some of the units to be restricted for sale or rent to  
770 households with income up to 120 percent of the area median income, provided the average  
771 allowable sale price or rent of all affordable housing units within the subdivision shall be  
772 affordable to households with income at or below the area median income, as set forth in the  
773 restriction. The regulation may further require some or all of the affordable units to be low- or  
774 moderate-income housing as defined in G.L. c. 40B, Section 20-23, and be eligible for inclusion  
775 on the Subsidized Housing Inventory in accordance with applicable regulations and guidelines  
776 of the Department of Housing and Community Development or successor agency.

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

780 After January 1, 2013, no rules and regulations adopted under this chapter may be inconsistent  
781 with a plan adopted by the city or town under section 81D of chapter 41. No rule or regulation  
782 shall be deemed inconsistent with the plan if it furthers, or at least does not impede, the

783 achievement of the plan's goals and policies, and if it is not incompatible with the plan's  
784 proposed land uses, design guidelines, and development patterns.

785 After the effective date of the plan, rules and regulations shall enjoy a rebuttable presumption in  
786 any action, suit, or administrative proceeding that its provisions are not inconsistent with the  
787 plan. If the presumption is rebutted, inconsistency may serve as the basis upon which a court or  
788 administrative agency may declare any relevant rule or regulation provision to be invalid as  
789 applied to the property which is the subject of the action, suit, or administrative proceeding. For  
790 an amendment to the plan adopted after January 1, 2013, no declaration of invalidity may be  
791 made in any action, suit, or administrative proceeding for a period of 12 months after the  
792 effective date of the plan amendment.

793 SECTION 35. Section 81T of said chapter 41, as so appearing, is hereby amended by striking  
794 out, in lines 2-3 inclusive, the following words “or for a determination that approval is not  
795 required”.

796 SECTION 36. Section 81U of said chapter 41, as so appearing, is hereby amended by striking  
797 out lines 74 through 79 and inserting in place thereof the words “Before endorsement of its  
798 approval of a plan, a planning board shall require a performance guarantee such that the  
799 construction of ways and the installation of municipal services will be secured by one, or in part  
800 by one and in part by another, of the methods described in the following clauses (1), (2), (3),  
801 and (4). The method or combination of methods shall be selected by the planning board,  
802 provided, however, that the applicant shall have the right and option to substitute a covenant  
803 referred to in clause (3).”

804 SECTION 37. Said section 81U of said chapter 41, as so appearing, is hereby amended by  
805 striking out, in lines 173-174 inclusive, the words “for a period of not more than three years”.

806 SECTION 38. Section 81X of said chapter 41, as so appearing, is hereby amended by striking  
807 out, in lines 12-13 inclusive, the following words “such plan bears the endorsement of the  
808 planning board that approval of such plan is not required, as provided in section eighty-one P, or  
809 (3)”.

810 SECTION 39. Said section 81X of said chapter 41, as so appearing, is hereby amended by  
811 striking out, in lines 17-20 inclusive, the following words “or that it is a plan submitted pursuant  
812 to section eighty-one P and that it has been determined by failure of the planning board to act  
813 thereon within the prescribed time that approval is not required.”.

814 SECTION 40. Said section 81X of said chapter 41, as so appearing, is hereby amended by  
815 striking out the fourth paragraph and inserting in place thereof the following paragraph:-

816 Notwithstanding the foregoing provisions of this section, the register of deeds shall accept for  
817 recording, and the land court shall accept with a petition for registration or confirmation of title,  
818 any plan bearing a professional opinion by a registered professional land surveyor that the  
819 property lines shown are the lines dividing existing ownerships, and the lines of streets and  
820 ways shown are those of public or private streets or ways already established, and that no new  
821 lines for division of existing ownership or for new ways are shown. Similarly, the register of  
822 deeds and the land court shall accept for recording or registration any plan showing a change in  
823 the line of any lot, tract, or parcel bearing a professional opinion by a registered professional  
824 land surveyor and a certificate by the person or board charged with the enforcement of the  
825 zoning ordinance or by-law of the city or town that the property lines shown: do not create an  
826 additional building lot; do not create, add to, or alter the lines of a street or way; do not render  
827 an existing legal lot or structure illegal; do not render an existing nonconforming lot or structure  
828 more nonconforming; and are not subject to alternative local rules and regulations for minor

829 subdivisions under section 81P of this chapter. The recording of such plan shall not relieve any  
830 owner from compliance with the provisions of the subdivision control law or of any other  
831 applicable provision of law.

832 SECTION 41. Section 53G of chapter 44 of the General Laws, as appearing in the 2005-2006  
833 Official Edition, is hereby amended by inserting after the word “section”, in line 2, the  
834 following words:- seven A,

835 SECTION 42. Said section 53G of said chapter 44, as so appearing, is hereby amended by  
836 inserting after the word “nine”, in line 2, the following words:- , nine E,

837 SECTION 43. The provisions of bill sections 1-42 herein, except as otherwise expressly  
838 provided, shall not be construed to affect any general or special law other than chapters 40A, 41,  
839 and 44, as revised.