

# SENATE NO. 1196

## **AN ACT** RELATIVE TO MUNICIPAL ZONING REFORM

*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.

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 (7) The achievement of a balance of housing choices, types, and opportunities for all  
69 income levels and groups, including the creation of below-market-rate housing,  
70 the preservation of existing housing stock and the preservation of affordability in  
71 housing.
- 72 (8) The integration of residential and commercial, civic, cultural, recreational, and  
73 other compatible land uses at locations that reduce dependence upon the private  
74 automobile.
- 75 (9) The adequate provision and distribution of educational, health, cultural, and  
76 recreational facilities.
- 77 (10) The preservation or enhancement of community amenities or features of  
78 significant architectural, historical, cultural, visual, aesthetic, scenic, or  
79 archaeological interest.

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

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

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

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

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

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

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

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

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

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

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

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

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

143 40A:6. Applicability of Zoning Ordinances and By-laws

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

145 (a) Nonconforming Residential Lots

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

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

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

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

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

- 213 (a) Building Permits and Special Permits

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

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

221  
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 (ii) the period between the filing of any appeal or commencement of any  
237 litigation from the decision of any applicable local board or authority and  
238 the final disposition thereof, provided final adjudication is in favor of the  
239 owner of the lot; and
- 240 (iii) any moratorium upon permitting or construction imposed by any  
241 government entity.

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

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

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

253 40A:7A. Site Plan Review

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

353 SECTION 17. Said section 9 of said chapter 40A, as so appearing, is hereby amended by  
354 striking out the fourteenth paragraph and inserting in place thereof the following paragraphs:-  
355 A special permit granted under this section shall state that it will lapse within a period of time  
356 specified by the special permit granting authority, not more than two years, if a substantial use  
357 thereof has not sooner commenced except for good cause or, in the case of a permit for  
358 construction, if construction has not begun by such date except for good cause. The aforesaid  
359 maximum period of two years may, by ordinance or by-law, be increased to a longer maximum  
360 period. The period of time before which a special permit shall lapse shall not include the time  
361 required to pursue or await the determination of an appeal from the grant thereof referred to in  
362 section seventeen.

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

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

373 (a) Authority

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

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

395 (b) Limitations

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

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

407 (c) Requirements

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

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

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

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

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

431   (d)    Administration

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

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

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

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

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

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

460 40A:9E. Land Use Dispute Avoidance

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

529 9E the following section:-

530 40A:9F. Rate of Development

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

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

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

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

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

549 40A:9G. Affordable Housing

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

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

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

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

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

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

587 SECTION 22. Section 17 of said chapter 40A, as so appearing, is hereby amended by inserting  
588 after the seventh paragraph the following paragraph:-

589 Mediation of land use appeals: After the filing of an appeal hereunder, the parties may agree to  
590 mediate the decision appealed. In all cases, the parties shall file with the court a statement  
591 advising the court that the dispute has been submitted for mediation. If the parties agree to  
592 mediation, the mediation shall begin within 60 days of the date such statement was filed, or  
593 such other period as the parties may agree or the court may allow upon application by any party.  
594 The mediation shall conclude not later than 180 days of filing, provided that such period may be  
595 extended for an additional 180 days by joint written agreement of the parties, or for such other  
596 additional period as the court may allow upon application by any party. The parties may select  
597 the mediator from a list provided by the court or otherwise as the parties may determine. The  
598 mediator shall be compensated by the parties as they may agree, or in the absence of agreement,  
599 as the court may determine. During the mediation any appeal otherwise pending shall be

600 stayed. A party may withdraw from mediation at any time after written notification to the other  
601 parties and to the court, but shall remain responsible for that party's share of the costs of  
602 mediation until the time of withdrawal. The mediator shall have the protections provided under  
603 section 23C of chapter 233, and to the extent that public agencies are participants in the  
604 mediation, their deliberations shall not be subject to the provisions of section 23B of chapter 39.  
605 At the conclusion of the mediation, the mediator shall file with the court a statement describing  
606 whether the parties have come to agreement. If unresolved, the appeal will then go forward; if  
607 the matter has been resolved, the appeal will be dismissed with prejudice. The cost of  
608 mediation shall be distributed among the parties as a cost of the appeal as the parties may agree,  
609 or in the absence of agreement, as the court may determine. Mediation hereunder shall not be  
610 the only method of resolving a zoning appeal.

611 SECTION 23. Section 81D of chapter 41 of the General Laws, as appearing in the 2005-2006  
612 Official Edition, is hereby amended by inserting, after the word "services", in line 20, the  
613 following words:- , and may identify consistent policies and strategies for the use of rate of  
614 development measures which shall include a study of the need for such measures, a  
615 methodology by which to determine a reasonable rate of issuance of permits for new  
616 construction or approvals of new building lots, a time horizon within which such measures shall  
617 remain in effect, and a periodic review schedule.

618 SECTION 24. Said section 81D of said chapter 41, as so appearing, is hereby amended by  
619 striking out the fifth paragraph, and inserting in place thereof the following words:-  
620 (3) Housing element which shall consist of identification and analysis of existing and forecast  
621 housing needs, including: an inventory of local housing; local housing goals, objectives and

622 policies; and implementing measures. Where applicable, existing local housing plans may be  
623 included by reference.

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

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

640 SECTION 25. Said section 81D of said chapter 41, as so appearing, is hereby amended by  
641 striking out the first sentence in the twelfth paragraph and inserting in place thereof the  
642 following words:- Such plan shall be made, and may be added to or changed from time to time,  
643 by a simple majority vote of the planning board after a public hearing, notice of which shall be  
644 posted and published in the manner prescribed for zoning by-law amendments under section 5

645 of chapter 40A, followed by adoption by the legislative body of the city or town by a simple  
646 majority vote except where a greater majority vote has been prescribed in an ordinance or by-  
647 law adopted by a two-thirds vote of the local legislative body. However, no vote of the  
648 legislative body to alter the plan or amendment as adopted by the planning board shall be other  
649 than by a two-thirds vote of the legislative body.

650 SECTION 26. Section 81L of said chapter 41, as so appearing, is hereby amended by striking  
651 out, in lines 52-78 inclusive, the definition of “Subdivision” and inserting in place thereof the  
652 following definition:-

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

659 SECTION 27. Section 81M of said chapter 41, as so appearing, is hereby amended by inserting,  
660 after the word “systems”, in line 23, the words:- , and for those aspects of a plan adopted by the  
661 city or town under section 81D of this chapter which are particular to the subdivision of land.

662 SECTION 28. Section 81O of said chapter 41, as so appearing, is hereby amended by striking  
663 out the second sentence in the first paragraph and inserting in place thereof the following  
664 sentences:- After the approval of a plan, the location and width of ways, and the number, shape,  
665 and size of the lots shown thereon, may not be changed unless the plan is amended as provided  
666 in section 81W. In the alternative, a planning board may adopt rules and regulations under

667 sections 81P and 81Q of this chapter defining and regulating such changes as minor  
668 subdivisions.

669 SECTION 29. Said section 81O of said chapter 41, as so appearing, is hereby amended by  
670 striking out the second paragraph and inserting in place thereof the following paragraph:-

671 A plan shall be deemed submitted under this section as of the date of the next regularly  
672 scheduled meeting of the planning board, provided that during posted business hours the plan is  
673 both delivered to the planning board and filed with the town clerk no later than 7 calendar days  
674 prior to said meeting date, or 35 calendar days after such delivery to the planning board and  
675 filing with the town clerk, whichever shall first occur. An incomplete submission or one not in  
676 accordance with submittal requirements may be the basis upon which the planning board may  
677 deny approval of the plan. Notwithstanding the foregoing, a planning board or its designee may  
678 give notice to the applicant of how the application is incomplete or not in accordance with said  
679 submittal requirements and may grant to the applicant additional time to effect corrective  
680 measures.

681 SECTION 30. Said chapter 41, as so appearing, is hereby amended by striking out section 81P  
682 and inserting in place thereof the following section:-

683 41:81P. Alternative Approvals for Minor Subdivisions

684 A planning board may adopt alternative rules and regulations under section 81Q defining and  
685 regulating minor subdivisions in a more expeditious manner than would apply to other  
686 subdivisions. Such rules and regulations may reduce or eliminate any local rule or regulation  
687 made under section 81Q that would otherwise apply to a subdivision and any requirement of  
688 sections 81L relative to the definition of preliminary plan, 81S, 81T, or 81U of this chapter.  
689 Minor subdivisions under this section shall not create more than 3 additional lots.

690 SECTION 31. Section 81Q of said chapter 41, as so appearing, is hereby amended by striking  
691 out, in line 59, the words “or use”.

692 SECTION 32. Said section 81Q of said chapter 41, as so appearing, is hereby amended by  
693 striking out, in lines 62-69 inclusive, the words “No rule or regulation shall require, and no  
694 planning board shall impose, as a condition of approval of a subdivision, that any of the land  
695 within said subdivision be dedicated to the public use, or conveyed or released to the  
696 commonwealth or to the county, city or town in which the subdivision is located, for use as a  
697 public way, public park or playground, or for any other public purpose, without just  
698 compensation to the owner thereof.” and inserting in place thereof the following words:- The  
699 rules and regulations may require the plan to show a park or parks suitably located for  
700 playground or recreation purposes or for providing light and air, except that such requirement  
701 shall not exceed 10 percent of the land being subdivided.

702 SECTION 33. Said section 81Q of said chapter 41, as so appearing, is hereby amended by  
703 inserting after the first paragraph the following paragraphs:-  
704 Notwithstanding anything to the contrary in the General Laws, a planning board may, by  
705 regulation, require an applicant for a residential subdivision to provide affordable dwelling units  
706 and to show on the subdivision plan a lot or lots reserved for such units. The required affordable  
707 units shall be in addition to, but shall not exceed 25 percent of the number of, market-rate units  
708 approved by the board in accordance with any otherwise applicable ordinance, by-law, or  
709 regulation. In order to include the additional affordable units, the regulation shall provide for an  
710 increase in the permitted density or intensity of residential uses within a subdivision as  
711 authorized by a complementary zoning ordinance or by-law relating to the subdivision of land.  
712 In lieu of constructing the units required on-site, the regulation may provide for the construction

713 of such units off-site, the dedication of land for such purpose, or the payment of funds to a  
714 separate account created by the city or town sufficient for and dedicated to the provision of  
715 affordable housing, provided the applicant demonstrates to the satisfaction of the board that the  
716 units cannot be otherwise provided on-site or that an alternative proposal better meets the needs  
717 of the city or town with respect to the provision of affordable housing. Off-site units, land  
718 dedication, or payment in-lieu of units shall, in the opinion of the board and in consideration of  
719 local needs, provide affordable housing benefits roughly equivalent to the provision of on-site  
720 units. Cities and towns are authorized to establish a separate dedicated account for the deposit  
721 of funds received under this section, including Municipal Housing Trust Fund accounts under  
722 section 55C of chapter 44 or other dedicated accounts of similar purpose. Said funds shall be  
723 deposited with the treasurer and dispersed in accordance with the ordinances, by-laws, or  
724 regulations of the city or town. Where the application of this section results in less than a full  
725 dwelling unit, the board may accept a prorated payment of funds in lieu of unit creation.

726 The affordable units shall be subject to a restriction on sale price or rent under the provisions of  
727 G.L. c. 184, as amended, and shall remain affordable, in perpetuity or for a period not less than  
728 30 years, to households with income at or below the area median income as such income is most  
729 recently determined by the U.S. Department of Housing and Urban Development or successor  
730 agency. However, the regulation may allow some of the units to be restricted for sale or rent to  
731 households with income up to 120 percent of the area median income, provided the average  
732 allowable sale price or rent of all affordable housing units within the subdivision shall be  
733 affordable to households with income at or below the area median income, as set forth in the  
734 restriction. The regulation may further require some or all of the affordable units to be low- or  
735 moderate-income housing as defined in G.L. c. 40B, Section 20-23, and be eligible for inclusion

736 on the Subsidized Housing Inventory in accordance with applicable regulations and guidelines  
737 of the Department of Housing and Community Development or successor agency.

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

741 After January 1, 2013, no rules and regulations adopted under this chapter may be inconsistent  
742 with a plan adopted by the city or town under section 81D of chapter 41. No rule or regulation  
743 shall be deemed inconsistent with the plan if it furthers, or at least does not impede, the  
744 achievement of the plan's goals and policies, and if it is not incompatible with the plan's  
745 proposed land uses, design guidelines, and development patterns.

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

754 SECTION 34. Section 81T of said chapter 41, as so appearing, is hereby amended by striking  
755 out, in lines 2-3 inclusive, the following words “or for a determination that approval is not  
756 required”.

757 SECTION 35. Section 81U of said chapter 41, as so appearing, is hereby amended by striking  
758 out lines 74 through 79 and inserting in place thereof the words “Before endorsement of its

759 approval of a plan, a planning board shall require a performance guarantee such that the  
760 construction of ways and the installation of municipal services will be secured by one, or in part  
761 by one and in part by another, of the methods described in the following clauses (1), (2), (3),  
762 and (4). The method or combination of methods shall be selected by the planning board,  
763 provided, however, that the applicant shall have the right and option to substitute a covenant  
764 referred to in clause (3).”

765 SECTION 36. Said section 81U of said chapter 41, as so appearing, is hereby amended by  
766 striking out, in lines 173-174 inclusive, the words “for a period of not more than three years”.

767 SECTION 37. Section 81X of said chapter 41, as so appearing, is hereby amended by striking  
768 out, in lines 12-13 inclusive, the following words “such plan bears the endorsement of the  
769 planning board that approval of such plan is not required, as provided in section eighty-one P, or  
770 (3)”.

771 SECTION 38. Said section 81X of said chapter 41, as so appearing, is hereby amended by  
772 striking out, in lines 17-20 inclusive, the following words “or that it is a plan submitted pursuant  
773 to section eighty-one P and that it has been determined by failure of the planning board to act  
774 thereon within the prescribed time that approval is not required,”.

775 SECTION 39. Said section 81X of said chapter 41, as so appearing, is hereby amended by  
776 striking out the fourth paragraph and inserting in place thereof the following paragraph:-  
777 Notwithstanding the foregoing provisions of this section, the register of deeds shall accept for  
778 recording, and the land court shall accept with a petition for registration or confirmation of title,  
779 any plan bearing a professional opinion by a registered professional land surveyor that the  
780 property lines shown are the lines dividing existing ownerships, and the lines of streets and  
781 ways shown are those of public or private streets or ways already established, and that no new

782 lines for division of existing ownership or for new ways are shown. Similarly, the register of  
783 deeds and the land court shall accept for recording or registration any plan showing a change in  
784 the line of any lot, tract, or parcel bearing a professional opinion by a registered professional  
785 land surveyor and a certificate by the person or board charged with the enforcement of the  
786 zoning ordinance or by-law of the city or town that the property lines shown: do not create an  
787 additional building lot; do not create, add to, or alter the lines of a street or way; do not render  
788 an existing legal lot or structure illegal; do not render an existing nonconforming lot or structure  
789 more nonconforming; and are not subject to alternative local rules and regulations for minor  
790 subdivisions under section 81P of this chapter. The recording of such plan shall not relieve any  
791 owner from compliance with the provisions of the subdivision control law or of any other  
792 applicable provision of law.

793 SECTION 40. Section 53G of chapter 44 of the General Laws, as appearing in the 2005-2006  
794 Official Edition, is hereby amended by inserting after the word “section”, in line 2, the  
795 following words:- seven A,

796 SECTION 41. Said section 53G of said chapter 44, as so appearing, is hereby amended by  
797 inserting after the word “nine”, in line 2, the following words:- , nine E,

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