

December 11, 2017

To the Honorable Senate and House of Representatives,

We should all take pride in the fact that more and more people want to call Massachusetts home. Our economy is growing and our expanding population has different housing preferences today than it had in the past. However, housing production has fallen over the last few decades. As a result, the price of a single family home is rising faster in Massachusetts than it is in any other state. Rents in metropolitan Boston are the third highest in the country. We need more housing of different kinds to provide housing choices to our residents and people who would like to move here.

Earlier today, I announced the Baker-Polito Administration's new Housing Choice Initiative. Recognizing the key role that municipalities play in determining whether housing is built, the Housing Choice Initiative provides incentives, rewards, and technical assistance to our cities and towns to encourage and empower municipalities to plan and build the additional housing that the Commonwealth needs to continue to thrive. Our goal is to produce 135,000 new units by 2025.

By providing incentives and tools rather than mandates, the Housing Choice Initiative respects local decision making. No community needs to participate in the initiative. For those communities that do wish to participate, however, there is a barrier created by the state that the Legislature should eliminate. State law bars cities and towns in Massachusetts from adopting changes to zoning laws unless the municipality is able to secure a 2/3 "supermajority" vote of its legislative body. Only a handful of other states have similar requirements. None of our neighbors in New England place this sort of restriction on local decision making.

It is time to remove this barrier to the adoption of zoning changes that promote sustainable, appropriate and much needed housing production. Therefore, I am pleased to submit for your consideration “An Act to Promote Housing Choices.” This legislation allows cities and towns to adopt the following local zoning by majority vote of their legislative bodies:

- Reducing dimensional requirements, such as minimum lot sizes, to allow homes to be built closer together
- Adopting smart growth zoning districts and starter home zoning districts
- Permitting multi-family housing in locations such as town centers, near transit and in other locations that would be eligible for a smart growth zoning district
- Permitting mixed-use developments in town and city centers, commercial districts and rural village districts
- Allowing a small accessory dwelling unit or “in-law” apartment in the same building or on the same lot as an existing home
- Providing for “Natural Resource Protection Zoning,” “Open Space Residential Development” and transfers of development rights to allow the clustering of new development while protecting open space or conservation land
- Allowing for special permits to enable developments that have more density or fewer parking spaces.

When a majority of a city or town legislative body wants to adopt zoning that will encourage housing production, state law should not stand in the way. I urge your prompt enactment of this legislation.

Respectfully submitted,

Charles D. Baker
Governor



The Commonwealth of Massachusetts

IN THE YEAR TWO THOUSAND AND SEVENTEEN

AN ACT TO PROMOTE HOUSING CHOICES

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

SECTION 1. Section 4A of chapter 40 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by adding the following paragraph:-

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

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

“Accessory dwelling unit”, a self-contained housing unit, inclusive of sleeping, cooking and sanitary facilities on the same lot as a principal dwelling, subject to otherwise applicable dimensional and parking

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

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

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

“Mixed-use development”, development containing a mix of residential uses and non-residential uses, including, without limitation: commercial, institutional, industrial or other uses; all conceived, planned and integrated to create vibrant, workable, livable and attractive neighborhoods.

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

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

“Open space residential development”, a residential development in which the buildings and accessory uses are clustered together into one or more groups separated from adjacent property and other groups within the development by intervening open land. An open space residential development shall be permitted only on a plot of land of such minimum size as a zoning ordinance or by-law may specify which is divided into building lots with dimensional control, density and use restrictions for such building lots varying from those otherwise permitted by the ordinance or by-law and open land. Such open land

may be situated to promote and protect maximum solar access within the development. Such open land shall either be conveyed to the city or town and accepted by it for park or open space use, or be made subject to a recorded use restriction enforceable by the city or town providing that such land shall be kept in an open or natural state and not be built for residential use or developed for accessory uses such as parking or roadway.

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

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

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

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

No zoning ordinance or by-law or amendment thereto shall be adopted or changed except by a two-thirds vote of all the members of the town council, or of the city council where there is a commission form of government or a single branch, or of each branch where there are two branches, or by a two-thirds vote of a town meeting; provided, however, that an amendment to a zoning ordinance or by-law (a) to allow as of right, by special permit and/or with site plan approval multi-family housing in a location that would qualify as an eligible location for a smart growth zoning district under section 2 of chapter 40R of the general laws, (b) to allow as of right (i) accessory dwelling units or (ii) open-space residential development, (c) to allow as of right, by special permit or with site plan approval mixed-use development in an area of concentrated development as defined in section 2 of said chapter 40R of the general laws, (d) to provide for TDR zoning or natural resource protection zoning, where the adoption of such zoning

promotes concentration of development in areas that the municipality deems most appropriate for such development, but does not require a diminution in the maximum number of housing units that could be developed within the municipality, (e) to modify regulations concerning the bulk and height of structures, yard sizes, lot area, setbacks, open space, parking and building coverage requirements to allow provision of additional housing units beyond what would otherwise be permitted under the existing zoning ordinance or by-law; (f) to provide for special permits authorizing increases in the permissible density of population or intensity of a particular use in a proposed development pursuant to section 9 of chapter 40A of the General Laws; (g) to provide for special permits authorizing a diminution in the amount of parking required for residential development pursuant to section 9 of chapter 40A of the General Laws or (h) to adopt a smart growth zoning district or starter home zoning district in accordance with section 3 of chapter 40R of the general laws, shall be adopted by a vote of a simple majority of all members of the town council or of the city council where there is a commission form of government or a single branch or of each branch where there are 2 branches or by a vote of a simple majority of town meeting; provided, however, that if in a city or town with a council of fewer than twenty-five members there is filed with the clerk prior to final action by the council a written protest against such change, stating the reasons duly signed by owners of fifty per cent or more of the area of the land proposed to be included in such change or of the area of the land immediately adjacent extending three hundred feet therefrom, no change of any such ordinance shall be adopted except by a two-thirds vote of all members.

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

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

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

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

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

Zoning ordinances or by-laws may also provide for special permits authorizing decreases in the amount of parking required for the density of population or intensity of a particular use in a proposed development, where the public good would be served and after a finding by the special permit granting authority that the area in which the development is located would not be adversely affected by such diminution in parking.

SECTION 10. Section 3 of chapter 40R of the General Laws, as so appearing, is hereby amended by inserting after the figure “40A,” in line 10, the following words:- ; provided, however, that a smart growth zoning district or starter home zoning district ordinance or by-law shall be adopted by a simple majority vote of all the members of the town council, or of the city council where there is a commission form of government or a single branch, or of each branch where there are 2 branches, or by a simple majority vote of a town meeting.

SECTION 11. Section 1 of chapter 40S of the General Laws, as so appearing, is hereby amended by striking out the word “properties” in line 51 and inserting in place thereof the following word:- buildings.

SECTION 12. Said section 1 of said chapter 40S, as so appearing, is hereby further amended by inserting after the figure “40R,” in line 61, the following words:- including without limitation smart growth zoning districts and starter home zoning districts as defined in section 1 of said chapter 40R.