

The Commonwealth of Massachusetts

In the Year Two Thousand and Six

AN ACT RELATIVE TO MUNICIPAL ZONING, SUBDIVISION CONTROL, AND PLANNING;

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

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

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

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

WHEREAS, the Massachusetts legislature provided in 2000 through the passage of the Community Preservation Act a new financial tool for municipal open space protection, affordable housing, and historic preservation;

NOW, THEREFORE, the time has arrived for the Massachusetts legislature to enhance and modernize the regulatory tools for municipal zoning, subdivision control, and planning to guide local growth through the following bill, which shall be known as the Community Planning Act.

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 1A of chapter 40A of the General Laws, as appearing in the 2005-2006 Official Edition, is hereby amended by inserting the following definition:-

“Development impact fee”, a fee imposed by city zoning ordinance or town zoning by-law for the purpose of offsetting the impacts of a development, and in accordance with the provisions of section 9D of this chapter.

SECTION 2. Said section 1A of said chapter 40A, as so appearing, is hereby amended by inserting the following definition:-

“Rate of development”, local legislative or regulatory measures adopted by cities and towns under section 9F of this chapter to regulate the number of permits for new construction or approvals of new building lots issued in a defined period of time or otherwise in accordance with defined standards and criteria.

SECTION 3. Said chapter 40A, as so appearing, is hereby amended by inserting after section 1A the following section:-

40A:2. Construction and Purposes

(a) Rule of Construction

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

(b) Public Purposes

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

- (1) The Implementation of a plan adopted by the city or town under section 81D of chapter 41.
- (2) The orderly and sustainable growth, development, redevelopment, conservation, and preservation of a city or town which promotes the types, patterns, and intensities of land use contained in a plan adopted by the city or town under section 81D of chapter 41.
- (3) The efficient, fair, and timely review of development proposals, including standardized procedures for administration of zoning ordinances or by-laws.
- (4) The efficient resolution of planning and regulatory conflicts involving public and private interests.

- (5) The use of innovative development laws, regulations, and planning practices such as development agreements, development impact fees, design review, inter-municipal transfers of development rights, agricultural zoning, open space development, special district overlays, village districts, inclusionary zoning provisions which require or provide incentives for the creation of below-market-rate housing, mediation and dispute resolution, and urban growth boundaries.
- (6) The delineation and balancing of urban and rural development.
- (7) The achievement of a balance of housing choices, types, and opportunities for all income levels and groups, including the creation of below-market-rate housing, the preservation of existing housing stock and the preservation of affordability in housing.
- (8) The integration of residential and commercial, civic, cultural, recreational, and other compatible land uses at locations that reduce dependence upon the private automobile.
- (9) The adequate provision and distribution of educational, health, cultural, and recreational facilities.
- (10) The preservation or enhancement of community amenities or features of significant architectural, historical, cultural, visual, aesthetic, scenic, or archaeological interest.
- (11) The protection of the environment and the conservation of natural resources, including those qualities of the environment and natural resources set forth in Article 97 of the Constitution of the commonwealth.
- (12) The retention of open land for agricultural production, forest products, horticulture, aquaculture, tourism, outdoor recreation, and freshwater and marine fisheries.
- (13) The protection of public investment in infrastructure systems.
- (14) An energy efficient, convenient, and safe transportation infrastructure with as wide a choice of modes as practical, including, wherever possible, maximal access to public transit systems and non-motorized modes.
- (15) The efficient use of energy and the reduction of pollution from energy generation, including the promotion of renewable energy sources and associated technologies.
- (16) The adequate provision of employment opportunities within the city or town and the region, including redevelopment of pre-existing sites, home-

based occupations, sustainable natural-resource-based occupations, and housing to support the employment opportunities within the city or town and the region.

- (17) The conservation of the value of land and buildings, including the elimination of blight and the rehabilitation of blighted areas.
- (18) The accommodation of regional growth in a fair, equitable, and sustainable manner among municipalities, including coordination of land uses with contiguous municipalities, other municipalities, the state, and other agencies, as appropriate, especially with regard to resources and facilities that extend beyond municipal boundaries or have a direct impact on other municipalities.
- (19) The implementation of rate of development measures of defined duration during which planning or zoning studies are undertaken, and the longer-term use of such measures in a manner consistent with a plan adopted by the city or town under section 81D of chapter 41.
- (20) The implementation of a plan adopted by a regional planning agency under section 5 of chapter 40B.

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

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

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

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

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

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

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

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

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

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

Sec. 6A. Nonconforming Lots, Structures and Uses

- (a) Nonconforming Residential Lots
 - (1) Increases in lot area, frontage, width, or depth of a zoning ordinance or by-law shall not apply to a lot for single- or two-family residential use which on the date of the first publication of notice of the public hearing on such ordinance or by-law required by section 5 that renders the lot nonconforming:
 - (i) was shown or described as a separate lot on a recorded plan or deed; and
 - (ii) conformed to the lot area, frontage, lot width, and depth requirements in effect on the date of said notice; and
 - (iii) had at least 5,000 square feet of area and 50 feet of frontage in the case of a single-family residential use and at least 7,500 square feet of area and 75 feet of frontage in the case of two-family residential use; and
 - (iv) was not held in common ownership with any adjoining land.

- (2) A lot described in 6A(a)(1) shall have vital access to and frontage on a way of sufficient width, grade, and construction as set forth in regulations established by the planning board.
 - (3) Whenever the lines of a lot described in 6A(a)(1) are changed in any way that renders the lot more conforming, the resulting boundaries of the lot shall govern the application of this section.
 - (4) Whenever any lot described in 6A(a)(1) comes into common ownership with adjacent land, such lot and adjacent land shall be merged and combined for the purposes of this section. Common ownership shall include lots held by separate legal entities, persons, or trusts under common control or having common beneficial interests.
- (b) Lawfully Nonconforming Structures and Uses
- (1) A lawfully nonconforming structure or use shall mean a structure or use lawfully in existence on the date of the first publication of notice of the public hearing on such ordinance or by-law required by section 5 rendering such structure or use nonconforming. For the purposes of this section, a structure or use lawfully in existence shall not include a structure or use in violation of the zoning ordinance or by-law, nor a structure built without a legally required building permit.
 - (2) Adoption or amendment of a zoning ordinance or by-law shall not apply to any lawfully existing nonconformity of: i) a lawfully existing nonconforming structure or use; and ii) structures and uses lawfully begun prior to the first publication of notice of the public hearing on the adoption or amendment of the relevant zoning ordinance or by-law required by section five.
 - (3) A zoning ordinance or by-law may regulate a nonconforming structure or use if abandoned or if discontinued for a period of 2 years or more. Abandonment shall consist of any overt act, or failure to act, that would indicate that the owner neither claims or retains any intent to continue the nonconforming structure or use, unless the owner can demonstrate an intent not to abandon it. An involuntary interruption of a nonconforming structure or use, such as by fire and natural catastrophe, does not establish the intent to abandon.
 - (4) This subsection 6A(b) shall not apply to establishments which display live nudity for their patrons, as defined in section 9A, adult bookstores, adult motion picture theaters, adult paraphernalia shops, or adult video stores subject to the provisions of section 9A.

- (c) Alteration, Reconstruction, Extension, or Structural Change of Lawfully Nonconforming Structures and Uses
- (1) A zoning ordinance or by-law shall not prohibit the alteration, reconstruction, extension, or structural change to a lawfully nonconforming single- or two-family residential structure, provided all such construction satisfies the applicable dimensional requirements of the current zoning ordinance or by-law.
 - (2) A zoning ordinance or by-law may permit, as of right or by special permit, lawfully nonconforming structures or uses to be altered, reconstructed, extended, or structurally changed, provided that such actions do not increase the specific nonconformity of the structure or use.
 - (3) A zoning ordinance or by-law may permit, by special permit, nonconforming structures or uses to be altered, changed, reconstructed, or extended in a manner that increases the specific nonconformity of the structure or use, provided that the special permit granting authority finds that such actions are not substantially more detrimental to the neighborhood than the existing lawfully nonconforming structure or use.
 - (4) A zoning ordinance or by-law may regulate nonconforming structures differently than nonconforming uses.
 - (5) A zoning ordinance or by-law may vary by zoning district(s) the requirements for the alteration, reconstruction, extension or structural change for all lawfully nonconforming structures and uses.

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

- (a) Building Permits and Special Permits
- (1) Adoption or amendment of a zoning ordinance or by-law shall not apply to a building permit or special permit issued prior to the date of the first publication of notice of the public hearing on the adoption or amendment required by section 5 provided that:
 - (i) construction under the building permit is commenced within 6 months after issuance and is carried through to completion as continuously and expeditiously as is reasonable; or
 - (ii) the use or construction authorized under the special permit is commenced within two years after issuance and is carried through to completion as continuously and expeditiously as is reasonable.
- (b) Subdivision Plans

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

(c) General Provisions

- (1) The vesting provisions of this section 6B shall be extended for a period of time equal to the duration of:
 - (i) any extensions granted by the applicable local board or authority;
 - (ii) the period between the filing of any appeal or commencement of any litigation from the decision of any applicable local board or authority and the final disposition thereof, provided final adjudication is in favor of the owner of the lot; and
 - (iii) any moratorium upon permitting or construction imposed by any government entity.
- (2) The record owner of the land shall have the right, at any time, by an instrument duly recorded in the registry of deeds for the district in which the land lies, a copy of which shall be filed with the building inspector and town clerk, to waive the provisions of this section 6B, in which case the zoning ordinance or by-law then or thereafter in effect shall apply.

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

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

40A:7A. Site Plan Review

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

- (b) In addition to the home rule authority of cities and towns to require site plan review, a city or town may adopt a local ordinance or by-law under this section requiring the submission, review, and approval of a site plan before authorization is granted for the use of land or structures governed by a zoning ordinance or by-law.
- (c) Such ordinance or by-law requiring site plan review shall:
 - (1) establish which uses of land or structures are subject to site plan review;
 - (2) specify the local boards or officials charged with reviewing and approving site plans, which may differ for different types, scales, or categories of uses of land or structures;
 - (3) establish the submission and review process for a site plan submitted in connection with an application for a variance, special permit, or other discretionary zoning approval. This submission and review may be conducted as part of the review of the application for discretionary approval or may be a separate review process under subsection (c)(4) below;
 - (4) establish the submission, review, and approval process for applications not governed by the procedures for review of discretionary zoning approval under subsection (c)(3) above, which may include the requirement of a public hearing held pursuant to the provisions in section eleven of this chapter. Approval of a site plan under this subsection (4) shall require a simple majority vote of the full board and shall be made within the time limits prescribed by ordinance or by-law, not to exceed the time limits for special permits contained in section nine of this chapter. If no decision is issued within the time limit prescribed, the site plan shall be deemed constructively approved as provided in section 9, paragraph 11 of this chapter;
 - (5) establish standards and criteria by which the use of land or structures and its impact on the neighborhood shall be evaluated; and
 - (6) contain provisions that make the terms, conditions, and content of the approved site plan enforceable by the municipality, which may include the requirement of performance guarantees.
- (d) The local board or official charged with review of site plans may adopt, and from time to time amend, rules to implement the local site plan ordinance or by-law adopted under this section.

- (e) A site plan submitted for the use of specific land or structures provided in subsection (c)(4) shall be approved if the site plan:
 - (1) satisfies the procedural and submission requirements of the site plan review process applicable to the specific land or structures;
 - (2) complies with the regulations applicable to such land or structures in the local zoning ordinance or by-law; and
 - (3) meets such standards and criteria as the local zoning ordinance or by-law provides by which the use of land or structures and its impact on the neighborhood shall be evaluated.
- (f) A site plan approved hereunder may include reasonable conditions, safeguards, and limitations to mitigate the impacts of a specific use of land or structures on the neighborhood.
- (g) Decisions made under site plan review may be appealed as specified in the ordinance or by law, which may include direct judicial review pursuant to section seventeen of this chapter.
- (h) Zoning ordinances or by-laws shall provide that a site plan approval granted under this section shall lapse within a specified period of time, not more than two years from the date of the filing of such approval with the city or town clerk, if substantial use or construction has not yet begun, except as extended for good cause by the approving authority designated under (c)(2) above. Such extension shall not include time required to pursue or await the determination of an appeal under subsection (g) above. The aforesaid maximum period of two years may, by ordinance or by-law, be increased to a longer maximum period.
- (i) The board designated by ordinance or by-law to review site plans under this section may, by rules and regulations adopted by such board, provide for the imposition of reasonable fees for the employment of outside consultants in the same manner as set forth in section 53G of chapter 44.

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

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

SECTION 14. Said section 9 of said chapter 40A, as so appearing, is hereby amended by striking out the first sentence in the seventh paragraph, and inserting in place thereof the

following sentence:- “Cluster development” means a residential development in which reduced dimensional requirements allow the developed areas to be concentrated in order to create permanently preserved open land elsewhere on the plot.

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

SECTION 16. Said section 9 of said chapter 40A, as so appearing, is hereby amended by striking out the twelfth paragraph and inserting in place thereof the following paragraph:-

Each application for a special permit shall be filed by the petitioner with the city or town clerk and a copy of said application, including the date and time of filing certified by the city or town clerk, shall be filed forthwith by the petitioner with the special permit granting authority. The special permit granting authority shall hold a public hearing, for which notice has been given as provided in section eleven, on any application for a special permit within sixty-five days from the date of filing of such application; provided, however, that a city council having more than five members designated to act upon such application may appoint a committee of such council to hold the public hearing. The decision of the special permit granting authority shall be made within ninety days following the date of the close of such public hearing. The required time limits for a public hearing and said action may be extended by written agreement between the petitioner and the special permit granting authority. A copy of such agreement shall be filed in the office of the city or town clerk. Unless a lesser majority is specified in the zoning ordinance or by-law, issuance of a special permit under this section shall require a vote of two-thirds of the entire special permit granting authority in the case of an authority with more than five members, the vote of at least four members of a five-member authority, or the vote of all members of an authority comprised of fewer than five members.

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

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

Upon written application by the grantee of a special permit, the special permit granting authority in its discretion may extend the time for the exercise of such special permit for a period of time not to exceed one year. Such application must be filed no later than sixty-five days prior to the lapse of the special permit. If the permit granting authority does not

grant the extension within sixty-five days of the date of application therefor, upon the lapse of the special permit, the special permit may be re-established only after notice and a new hearing pursuant to the provisions of this section.

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

40A:9D. Development Impact Fee

(a) Authority

- (1) In addition to its home rule authority to impose a development impact fee, a city or town may adopt a local ordinance or by-law under this section that requires the payment of a development impact fee as a condition of any permit or approval otherwise required for any proposed development within the scope of this section, and having development impacts as defined in the ordinance or by-law. The development impact fee may be imposed only on construction, enlargement, expansion, substantial rehabilitation, or change of use of a development. The development impact fee shall be used solely for the purposes of defraying the costs of capital facilities to be provided or paid for by the city or town and which are caused by and necessary to support or compensate for the proposed development. Such capital facilities may include the costs related to the provision of equipment, infrastructure, facilities, or studies associated with the following: schools; libraries; municipal offices; water supply; sewers; storm water management and treatment; pollution abatement; solid waste processing and disposal; traffic mitigation; public transportation; child care; parks, playgrounds, and other recreational facilities; police, fire, ambulance, rescue and other public safety facilities; affordable housing; or other capital improvements.
- (2) Nothing in this section shall prohibit a city or town from imposing other fees or requirements for mitigation of development impacts which it may otherwise impose under state or local law and that are consistent with the constitution and laws of the Commonwealth.

(b) Limitations

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

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

(c) Requirements

- (1) Prior to the imposition of development impact fees under this section, a city or town shall complete a study that: (i) analyzes existing capital improvement plans or the facilities element of a plan adopted under section 81D of chapter 41; (ii) estimates future development based on the then current zoning ordinance or by-law; (iii) assesses the impacts related to such development; (iv) determines the need for capital facilities required to address the impacts of the estimated development including excess facility capacity, if any, currently planned to accommodate future development; (v) develops cost projections for the needed capital facilities and documents costs of existing facilities with planned excess capacity; and (vi) establishes the amount of any development impact fee authorized under this section in accordance with a methodology determined pursuant to the study. The study shall be updated periodically to reflect actual development activity, actual costs of infrastructure improvements completed or underway, plan changes, or amendments to the zoning ordinance or by-law.
- (2) A development impact fee shall have a rational nexus to, and shall be roughly proportionate to, the impacts created by the development as determined by the study described in (c)(1) above evaluating said impacts.
- (3) The purposes for which the fee is expended shall reasonably benefit the proposed development.
- (4) The fee may not be assessed more than once for the same impact, nor may the fee be assessed for impacts, or portions thereof, offset by other dedicated means, including state or federal grants or contributions made by the applicant undertaking the development.

(d) Administration

- (1) The ordinance or by-law may provide for a waiver or reduction of the development impact fee for any development that furthers an overriding public purpose as set forth in a plan adopted by the city or town under section 81D of chapter 41.
- (2) If the proposed development is located in more than one municipality, the impact fee shall be apportioned among the municipalities in accordance

with the land area or other equitable measure of the impacts of the proposed development in each city or town.

- (3) Any development impact fee assessed under this section shall be deposited to a separate, interest bearing account in the city or town in which the proposed development is located. Unless subject to section (d)(4) below, no development impact fee shall be paid to the general treasury or used as general revenues of the city or town subject to the provisions of section 53 of chapter 44 of the General Laws.
- (4) Any funds not expended or encumbered by the end of the calendar quarter immediately following 10 years from the date the development impact fee was paid shall, upon request of the applicant or its assigns, be returned with interest provided that an application for a refund prescribed in the ordinance or by-law has been submitted within one 180 calendar days prior to the expiration of the 10 year period. If no application for refund is received by the city or town within said period, any funds not expended or encumbered by the end of the calendar quarter shall then revert to and become part of the general fund under section 53 of chapter 44. In the event of any disagreement relative to who shall receive the refund, the city or town may retain said development impact fee pending instructions given in writing by the parties involved or by a court of competent jurisdiction.

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

40A:9E. Land Use Dispute Avoidance

- (a) As an optional means of avoiding or minimizing land use disputes, the owner of land or structures who has applied or intends to apply for a building permit, any permit or approval required under this chapter, an approval under sections 81K-GG of chapter 41, or a comprehensive permit under sections 20-23 of chapter 40B, may request of the public official or local board charged with acting on the application to undertake a land use dispute avoidance process as hereinafter provided. Such request shall be made in writing and duly noted in the notice of the public meeting of the local board that would respond to such request, and if made to a public official other than a local board, such official shall file a notice of such request with the city or town clerk at least 48 hours prior to responding to such request.
- (b) The dispute avoidance process may include an initial conflict assessment to determine if a further resolution effort is advisable in accordance with the procedures set out in this section, or as they may otherwise in writing jointly agree.

- (c) Both the conflict assessment and any later resolution effort shall be voluntary for those participating requiring the joint written agreement of both the applicant and public official or local board and which shall be filed with the city or town clerk.
- (d) The conflict assessment and any later resolution effort may be conducted by a neutral facilitator as defined in section 23C of chapter 233, selected from a list prepared by the Massachusetts Office of Dispute Resolution, or its successor agency or its designee, or as chosen jointly by the applicant and the public official or local board.
- (e) The facilitator and any associate shall comply with the standards of conduct of the Association for Conflict Resolution or as promulgated by the Massachusetts Office of Dispute Resolution, or its successor agency or its designee.
- (f) Funding for any conflict assessment or resolution effort under this section may be as the applicant and the public official or local board shall agree. In the absence of such agreement, the public official or local board may impose reasonable fees for the employment of outside consultants, including the facilitator, in the same manner as set forth in section 53G of chapter 44.
- (g) Public officials or local boards may, after a public hearing, adopt, and from time to time amend, rules to implement the conflict assessment or resolution efforts undertaken pursuant to this section. Notice of the hearing on the proposed rules, including the location, date, and time of the hearing shall be filed with the city or town clerk and published once in a newspaper of general circulation in the city or town at least fourteen days before the public hearing.
- (h) As part of the conflict assessment, the facilitator may solicit information and opinions relating to the application, and may identify and notify those members of the public likely to be interested in or affected by the application. The facilitator may clarify the issues and investigate the willingness of all interested parties to work together with the applicant to resolve those issues. The facilitator may identify measures or community-enhancing features that would benefit the neighborhood, the larger community, and the project itself. Based upon the assessment, the facilitator may determine whether further resolution effort would be productive in reaching a consensus of those participating, with the understanding that the outcome may be the withdrawal or substantial modification of the application.
- (i) The facilitator may convene meetings or conduct interviews that shall be confidential and privileged from discovery under section 23C of chapter 233 and that shall not be subject to the open meeting law under section 23B of chapter 39. The records of such meetings or interviews shall be exempt from disclosure under the public records law under section 10 of chapter 66 and clause 26 of section 7 of chapter 4.

- (j) In preparing a report on conflict assessment or later resolution effort, the facilitator shall not attribute statements, positions, ideas, or interests to specific individuals, organizations, or persons interviewed, and shall distribute copies of the report to those participating without prior review or approval of any participant. The conflict assessment report shall indicate whether and how a subsequent resolution effort might be appropriate for the application involved, including elaborating on how it might be undertaken and by whom.
- (k) Whether or not a resolution results, the applicant may nevertheless proceed with the application without prejudice for having participated in a conflict assessment or resolution effort, and the application process shall proceed in due course as otherwise provided by statute, ordinance, or by-law. The applicant and the public official or local board may, by agreement in writing filed with the city or town clerk, stipulate and agree to extend any otherwise applicable time requirements of state or local law.
- (l) At the conclusion of any conflict assessment or resolution efforts, the application which initiated the conflict assessment and resolution efforts may go forward in accordance with the applicable statute, ordinance, or by-law, reflecting if possible the result of any resolution effort. If the parties so agree, any resolution may be incorporated into the action taken by the local board or official.

SECTION 20. Said chapter 40A, as so appearing, is hereby amended by inserting after section 9E the following section:-

40A:9F. Rate of Development

Except for a defined period of time during which planning or zoning studies are underway, rate of development measures shall be in accordance with this section. A zoning ordinance, by-law, or regulation that regulates the rate of development shall not be inconsistent with a plan adopted under c. 41, Section 81D. The subject matter of such plan shall contain consistent policies and strategies for the implementation of rate of development measures that shall include a study of the need for such measures, a methodology by which to determine a reasonable rate of issuance of either permits for new construction or approvals of new building lots, a time horizon within which such measures shall remain in effect, and a periodic review schedule.

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

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

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

40A:9G. Affordable Housing

- (a) In furtherance of the public purposes zoning objectives stated in section 2A, subsections (b)(5 and 7) of this chapter and in the exercise of their home rule powers, a city or town, by ordinance or by-law, may require or provide incentives for the applicant for a residential development to provide affordable dwelling units within such development.
- (b) In lieu of constructing the units required on-site, the ordinance or by-law may provide for the construction of such units off-site, the dedication of land for such purpose, or the payment of funds to a separate account created by the city or town sufficient for and dedicated to the provision of affordable housing, provided the applicant demonstrates to the satisfaction of the local approving authority that the units cannot be otherwise provided on-site or that an alternative proposal better meets the needs of the city or town with respect to the provision of affordable housing. Off-site units, land dedication, or payment in-lieu of units shall, in the opinion of the local approving authority and in consideration of local needs, provide affordable housing benefits roughly equivalent to the provision of on-site units.
- (c) Cities and towns are authorized to establish a separate dedicated account for the deposit of funds received under this section, including Municipal Housing Trust Fund accounts under section 55C of chapter 44 or other dedicated accounts of similar purpose. Said funds shall be deposited with the treasurer and dispersed for affordable housing purposes in accordance with the ordinances, by-laws, or regulations of the city or town. Where the application of this section results in less than a full dwelling unit, the board may accept a prorated payment of funds in lieu of unit creation.
- (d) The affordable units shall be subject to a restriction on sale price or rent under the provisions of G.L. c. 184, as amended, and shall remain affordable, in perpetuity or for a period not less than 30 years.
- (e) The regulation may further require some or all of the affordable units to be low- or moderate-income housing as defined in G.L. c. 40B, Section 20-23, and be eligible for inclusion on the Subsidized Housing Inventory subject to and in accordance with applicable regulations and guidelines of the Department of Housing and Community Development or successor agency. Nothing in this section shall be construed to require the Department of Housing and Community Development to include affordable units created hereunder on the Subsidized Housing Inventory.

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

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

40A:10. Variances

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

In making its determination, the permit granting authority shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. The permit granting authority may also take into consideration the extent to which the claimed hardship is self-created. In order to grant a variance the permit granting authority shall make all of the following findings: (1) the benefit sought by the applicant can not be achieved by some method, feasible for the applicant to pursue, other than a variance; (2) the variance will not have a substantial undesirable effect on nearby properties, or the character of the neighborhood, or on the environment; (3) the variance will not nullify or substantially derogate from the intent or purpose of such ordinance or by-law or the master plan upon which the ordinance or by-law is based; and (4) the claimed hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood. In the granting of variances, the permit granting authority shall grant the minimum variance that it shall deem necessary to relieve the hardship.

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

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

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

the permit granting authority does not grant the extension within sixty-five days of the date of application therefor, upon the lapse of the variance, the variance may be re-established only after notice and a new hearing pursuant to the provisions of this section.

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

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

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

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

(3) Housing element which shall consist of identification and analysis of existing and forecast housing needs, including: an inventory of local housing; local housing goals,

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

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

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

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

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

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

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

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

SECTION 30. Said section 81O of said chapter 41, as so appearing, is hereby amended by striking out the second paragraph and inserting in place thereof the following paragraph:-

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

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

41:81P. Alternative Approvals for Minor Subdivisions

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

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

SECTION 33. Said section 81Q of said chapter 41, as so appearing, is hereby amended by striking out, in lines 62-69 inclusive, the words “No rule or regulation shall require,

and no planning board shall impose, as a condition of approval of a subdivision, that any of the land within said subdivision be dedicated to the public use, or conveyed or released to the commonwealth or to the county, city or town in which the subdivision is located, for use as a public way, public park or playground, or for any other public purpose, without just compensation to the owner thereof.” and inserting in place thereof the following words:- The rules and regulations may require the plan to show a park or parks suitably located for playground or recreation purposes or for providing light and air, except that such requirement shall not exceed 10 percent of the land being subdivided.

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

Notwithstanding anything to the contrary in the General Laws, a planning board may, by regulation, require an applicant for a residential subdivision to provide affordable dwelling units and to show on the subdivision plan a lot or lots reserved for such units. The required affordable units shall be in addition to, but shall not exceed 25 percent of the number of, market-rate units approved by the board in accordance with any otherwise applicable ordinance, by-law, or regulation. In order to include the additional affordable units, the regulation shall provide for an increase in the permitted density or intensity of residential uses within a subdivision as authorized by a complementary zoning ordinance or by-law relating to the subdivision of land. In lieu of constructing the units required on-site, the regulation may provide for the construction of such units off-site, the dedication of land for such purpose, or the payment of funds to a separate account created by the city or town sufficient for and dedicated to the provision of affordable housing, provided the applicant demonstrates to the satisfaction of the board that the units cannot be otherwise provided on-site or that an alternative proposal better meets the needs of the city or town with respect to the provision of affordable housing. Off-site units, land dedication, or payment in-lieu of units shall, in the opinion of the board and in consideration of local needs, provide affordable housing benefits roughly equivalent to the provision of on-site units. Cities and towns are authorized to establish a separate dedicated account for the deposit of funds received under this section, including Municipal Housing Trust Fund accounts under section 55C of chapter 44 or other dedicated accounts of similar purpose. Said funds shall be deposited with the treasurer and dispersed in accordance with the ordinances, by-laws, or regulations of the city or town. Where the application of this section results in less than a full dwelling unit, the board may accept a prorated payment of funds in lieu of unit creation.

The affordable units shall be subject to a restriction on sale price or rent under the provisions of G.L. c. 184, as amended, and shall remain affordable, in perpetuity or for a period not less than 30 years, to households with income at or below the area median income as such income is most recently determined by the U.S. Department of Housing and Urban Development or successor agency. However, the regulation may allow some of the units to be restricted for sale or rent to households with income up to 120 percent of the area median income, provided the average allowable sale price or rent of all affordable housing units within the subdivision shall be affordable to households with income at or below the area median income, as set forth in the restriction. The regulation

may further require some or all of the affordable units to be low- or moderate-income housing as defined in G.L. c. 40B, Section 20-23, and be eligible for inclusion on the Subsidized Housing Inventory in accordance with applicable regulations and guidelines of the Department of Housing and Community Development or successor agency.

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

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

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

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

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

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

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

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

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

Notwithstanding the foregoing provisions of this section, the register of deeds shall accept for recording, and the land court shall accept with a petition for registration or confirmation of title, any plan bearing a professional opinion by a registered professional land surveyor that the property lines shown are the lines dividing existing ownerships, and the lines of streets and ways shown are those of public or private streets or ways already established, and that no new lines for division of existing ownership or for new ways are shown. Similarly, the register of deeds and the land court shall accept for recording or registration any plan showing a change in the line of any lot, tract, or parcel bearing a professional opinion by a registered professional land surveyor and a certificate by the person or board charged with the enforcement of the zoning ordinance or by-law of the city or town that the property lines shown: do not create an additional building lot; do not create, add to, or alter the lines of a street or way; do not render an existing legal lot or structure illegal; do not render an existing nonconforming lot or structure more nonconforming; and are not subject to alternative local rules and regulations for minor subdivisions under section 81P of this chapter. The recording of such plan shall not relieve any owner from compliance with the provisions of the subdivision control law or of any other applicable provision of law.

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

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

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