

HOUSE No. 4075

The Commonwealth of Massachusetts



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December 11, 2017

To the Honorable 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

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Message from [BACKING TEXT].

The Commonwealth of Massachusetts

—————
In the One Hundred and Ninetieth General Court
(2017-2018)
—————

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:

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

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

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

11 “Accessory dwelling unit”, a self-contained housing unit, inclusive of sleeping, cooking
12 and sanitary facilities on the same lot as a principal dwelling, subject to otherwise applicable
13 dimensional and parking requirements, that: (i) maintains a separate entrance, either directly

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

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

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

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

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

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

36 “Open space residential development”, a residential development in which the buildings
37 and accessory uses are clustered together into one or more groups separated from adjacent
38 property and other groups within the development by intervening open land. An open space
39 residential development shall be permitted only on a plot of land of such minimum size as a
40 zoning ordinance or by-law may specify which is divided into building lots with dimensional
41 control, density and use restrictions for such building lots varying from those otherwise
42 permitted by the ordinance or by-law and open land. Such open land may be situated to promote
43 and protect maximum solar access within the development. Such open land shall either be
44 conveyed to the city or town and accepted by it for park or open space use, or be made subject to
45 a recorded use restriction enforceable by the city or town providing that such land shall be kept
46 in an open or natural state and not be built for residential use or developed for accessory uses
47 such as parking or roadway.

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

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

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

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

60 No zoning ordinance or by-law or amendment thereto shall be adopted or changed except
61 by a two-thirds vote of all the members of the town council, or of the city council where there is
62 a commission form of government or a single branch, or of each branch where there are two
63 branches, or by a two-thirds vote of a town meeting; provided, however, that an amendment to a
64 zoning ordinance or by-law (a) to allow as of right, by special permit and/or with site plan
65 approval multi-family housing in a location that would qualify as an eligible location for a smart
66 growth zoning district under section 2 of chapter 40R of the general laws, (b) to allow as of right
67 (i) accessory dwelling units or (ii) open-space residential development, (c) to allow as of right,
68 by special permit or with site plan approval mixed-use development in an area of concentrated
69 development as defined in section 2 of said chapter 40R of the general laws, (d) to provide for
70 TDR zoning or natural resource protection zoning, where the adoption of such zoning promotes
71 concentration of development in areas that the municipality deems most appropriate for such
72 development, but does not require a diminution in the maximum number of housing units that
73 could be developed within the municipality, (e) to modify regulations concerning the bulk and
74 height of structures, yard sizes, lot area, setbacks, open space, parking and building coverage
75 requirements to allow provision of additional housing units beyond what would otherwise be
76 permitted under the existing zoning ordinance or by-law; (f) to provide for special permits
77 authorizing increases in the permissible density of population or intensity of a particular use in a
78 proposed development pursuant to section 9 of chapter 40A of the General Laws; (g) to provide
79 for special permits authorizing a diminution in the amount of parking required for residential
80 development pursuant to section 9 of chapter 40A of the General Laws or (h) to adopt a smart

81 growth zoning district or starter home zoning district in accordance with section 3 of chapter 40R
82 of the general laws, shall be adopted by a vote of a simple majority of all members of the town
83 council or of the city council where there is a commission form of government or a single branch
84 or of each branch where there are 2 branches or by a vote of a simple majority of town meeting;
85 provided, however, that if in a city or town with a council of fewer than twenty-five members
86 there is filed with the clerk prior to final action by the council a written protest against such
87 change, stating the reasons duly signed by owners of fifty per cent or more of the area of the land
88 proposed to be included in such change or of the area of the land immediately adjacent extending
89 three hundred feet therefrom, no change of any such ordinance shall be adopted except by a two-
90 thirds vote of all members.

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

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

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

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

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

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

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

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

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