HOUSE No. 4290

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, March 6, 2018.

The committee on Housing to whom was referred the message from His Excellency the Governor (accompanied by bill, House, No. 4075) of Charles D. Baker recommending legislation to promote housing choices, reports recommending that the accompanying bill (House, No. 4290), ought to pass [Representative Tyler of Boston dissents].

For the committee,

KEVIN G. HONAN.

FILED ON: 3/6/2018

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:-

"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.

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 site24 of a building or buildings.

25 "Mixed-use development", development containing a mix of residential uses and non26 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

permanently undeveloped and available for agriculture, forestry, recreation, watershed
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 or a non-profit organization the 46 principal purpose of which is the conservation of open space, providing that such land shall be 47 kept in an open or natural state and not be built for residential use or developed for accessory 48 uses such as parking or roadway.

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

52 "TDR zoning", zoning that authorizes transfer of development rights by permitting 53 landowners in specific preservation areas identified as sending areas to sell their development 54 rights to landowners in specific development districts identified as receiving areas.

55	"Transfer of development rights", the regulatory procedure whereby the owner of a
56	parcel may convey development rights, extinguishing those rights on the first parcel, and where
57	the owner of another parcel may obtain and exercise those rights in addition to the development
58	rights already existing on that second parcel.
59	SECTION 4. Section 5 of said chapter 40A, as so appearing, is hereby amended by
60	striking out the fifth paragraph and inserting in place thereof the following paragraph:-
61	Except as provided herein, no zoning ordinance or by-law or amendment thereto shall be
62	adopted or changed except by a two-thirds vote of all the members of the town council, or of the
63	city council where there is a commission form of government or a single branch, or of each
64	branch where there are two branches, or by a two-thirds vote of a town meeting; provided,
65	however, the following shall be adopted by a vote of a simple majority of all members of the
66	town council or of the city council where there is a commission form of government or a single
67	branch or of each branch where there are two branches or by a vote of a simple majority of town
68	meeting:
69	(1) An amendment to a zoning ordinance or by-law to allow any of the following as
70	of right: (a) multifamily housing or mixed-use development in a location that would qualify as an
71	eligible location for a smart growth zoning district under section 2 of chapter 40R of the general
72	laws; (b) accessory dwelling units; or (c) open-space residential development.

An amendment to a zoning ordinance or by-law to allow by special permit: (a)
multi-family housing or mixed-use development 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)
an increase 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; or (c) a diminution in the
amount of parking required for residential or mixed-use development pursuant to section 9 of
chapter 40A of the general laws;

80 (3) Zoning ordinances or by-laws or amendments thereto that (a) provide for TDR 81 zoning or natural resource protection zoning in instances where the adoption of such zoning 82 promotes concentration of development in areas that the municipality deems most appropriate for 83 such development, but will not result in a diminution in the maximum number of housing units 84 that could be developed within the municipality; or (b) modify regulations concerning the bulk 85 and height of structures, yard sizes, lot area, setbacks, open space, parking and building coverage 86 requirements to allow for additional housing units beyond what would otherwise be permitted 87 under the existing zoning ordinance or by-law.

88 (4) The adoption of a smart growth zoning district or starter home zoning district in
89 accordance with section 3 of chapter 40R of the general laws.

90 Provided, further, that any amendment that requires a simple majority vote shall not be 91 combined with amendments that require a two-thirds majority vote. provided, further, that if in a 92 city or town with a council of fewer than twenty-five members there is filed with the clerk prior 93 to final action by the council a written protest against a zoning change under this section, stating 94 the reasons duly signed by owners of fifty per cent or more of the area of the land proposed to be 95 included in such change or of the area of the land immediately adjacent extending three hundred 96 feet therefrom, no change of any such ordinance shall be adopted except by a two-thirds vote of 97 all members.

98	SECTION 5. Section 9 of said chapter 40A, as so appearing, is hereby amended by
99	inserting after the word "interests," in line 34, the following words:-; provided, however, that
100	nothing herein shall prohibit a zoning ordinance or by-law from allowing transfer of
101	development rights to be permitted as of right, without the need for a special permit or other
102	discretionary zoning approval.
103	SECTION 6. Said section 9 of said chapter 40A, as so appearing, is hereby further
104	amended by striking out, in line 35, the word "cluster" and inserting in place thereof the
101	following words:- open space residential.
105	tonowing words open space residential.
106	SECTION 7. Said section 9 of said chapter 40A, as so appearing, is hereby further
107	amended by striking out, in line 39, the word "cluster" and inserting in place thereof the
108	following words:- open space residential.
109	SECTION 8. Said section 9 of said chapter 40A, as so appearing, is hereby further
109 110	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.
110	amended by inserting, after the word "control," in line 43, the following words:-; provided,
110 111	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
110 111 112	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
110 111	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
110 111 112	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
 110 111 112 113 	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 other discretionary zoning approval.
 110 111 112 113 114 	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 other discretionary zoning approval. SECTION 9. Said section 9 of said chapter 40A, as so appearing, is hereby further
 110 111 112 113 114 115 116 	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 other discretionary zoning 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:-
 110 111 112 113 114 115 116 117 	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 other discretionary zoning 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 that special permits may be granted for
 110 111 112 113 114 115 116 	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 other discretionary zoning 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:-

granting authority that the public good would be served and that the area in which thedevelopment is located would not be adversely affected by such diminution in parking.

SECTION 10. Section 9, of chapter 40A, as appearing in the 2016 official edition, is
hereby further amended after the last sentence on line 127 by inserting the following:-

However, a special permit issued by a special permit granting authority shall require asimple majority vote for any of the following:

(a) multifamily housing that is located within .5 miles of a commuter rail station, subway
station, ferry terminal, or bus station, provided, not less than 10 per cent of the housing is
affordable to and occupied by households whose annual income is less than 80 per cent of the
area wide median income as determined by the United States Department of Housing and Urban
Development and affordability is assured for a period of not less than 30 years through the use of
an affordable housing restriction as defined in section 31 of chapter 184.

(b) mixed-use development in centers of commercial activity within a municipality,
including town and city centers, other commercial districts in cities and towns, and rural village
districts, provided, not less than 10 per cent of the housing is affordable to and occupied by
households whose annual income is less than 80 per cent of the area wide median income as
determined by the United States Department of Housing and Urban Development and
affordability is assured for a period of not less than 30 years through the use of an affordable
housing restriction as defined in section 31 of chapter 184.

(c) A reduced parking space to residential unit ratio requirement, pursuant to this section,
provided that a reduction in the parking requirement will result in the production of additional
housing units.

SECTION 11. 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 two branches, or by a simple majority vote of a town meeting.

SECTION 12. 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 13. 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.

154 SECTION 14. The secretary of housing and economic development shall report annually 155 to the clerks of the house of representatives and the senate, who shall forward the report to the 156 house of representatives and the senate, the chairs of the joint committee on housing, and the 157 chairs of the senate and house committees on ways and means, on the activities and status of the 158 Housing Choice Initiative, as described by the governor in a message to the general court dated 159 December 11, 2017, including progress made towards the production of 135,000 new units by 160 2025. The report also shall include a list of all cities and towns that qualify as "housing choice" 161 communities and a list and description of grant funds disbursed to such cities and towns and a 162 description of how the funds were used to support the production of new housing.