

HOUSE No. 3507

The Commonwealth of Massachusetts



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GOVERNOR

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COMMONWEALTH OF MASSACHUSETTS
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KARYN POLITO
LIEUTENANT GOVERNOR

February 27, 2019

To the Honorable Senate and House of Representatives,

In December 2017, the Baker-Polito Administration launched the Housing Choice Initiative. This program encourages cities and town to plan and build the additional housing that is vital to the success of our Commonwealth. By providing incentives, rewards and technical assistance to municipalities, the Housing Choice Initiative has put us on a path to produce 135,000 new units of housing by 2025. We are proud that nearly seventy communities have been designated Housing Choice communities and are participating in the program. Last fall we announced \$5 million in capital grants for thirty-one communities to assist them address crucial infrastructure needs to support local housing production efforts.

At the same time that we announced the Housing Choice Initiative, I filed legislation to address a significant barrier to housing production that the state has created. 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. This self-inflicted wound has damaged our ability to build the housing our residents need.

Our bill received widespread, bi-partisan support. Therefore, I am re-filing this legislation in the form in which it was reported favorably by the Joint Committee on Housing as “An Act to Promote Housing Choices.” As was the case with the original bill, 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
- Allowing multi-family housing as of right or by special permit in locations such as town centers, near transit and in other locations that would be eligible for a smart growth zoning district
- Allowing mixed-use developments by special permit 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 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. Each year that passes means another season of town meetings that come and go with the supermajority requirement in place. Each year is a missed opportunity to build needed housing in accordance with local decision-making governed by majority rule. Time is of the essence as we join together to meet our urgent housing needs. I urge your prompt enactment of this legislation.

Respectfully submitted

Charles D. Baker,
Governor

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The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

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 7 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

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

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

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

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

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

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

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

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

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

“Transfer of development rights”, the regulatory procedure whereby the owner of a parcel may convey development rights, extinguishing those rights on the first parcel, and where

the owner of another parcel may obtain and exercise those rights in addition to the development rights already existing on that second parcel.

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

Except as provided herein, no zoning ordinance or by-law or amendment thereto shall be adopted or changed except by a two-thirds vote of all the members of the town council, or of the city council where there is a commission form of government or a single branch, or of each branch where there are two branches, or by a two-thirds vote of a town meeting; provided, however, the following shall be adopted by a vote of a simple majority of all members of the town council or of the city council where there is a commission form of government or a single branch or of each branch where there are two branches or by a vote of a simple majority of town meeting:

(1) An amendment to a zoning ordinance or by-law to allow any of the following as of right: (a) multifamily 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) accessory dwelling units; or (c) open-space residential development.

(2) An amendment to a zoning ordinance or by-law to allow by special permit: (a) multifamily 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;

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

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

Provided, further, that any amendment that requires a simple majority vote shall not be combined with amendments that require a two-thirds majority vote. provided, further, that if in a city or town with a council of fewer than 25 five members there is filed with the clerk prior to final action by the council a written protest against a zoning change under this section, stating the reasons duly signed by owners of 50 per cent or more of the area of the land proposed to be included in such change or of the area of the land immediately adjacent extending 300 feet therefrom, no change of any such ordinance shall be adopted except by a two-thirds vote of all members.

SECTION 5. Section 9 of said chapter 40A, as so appearing, is hereby amended by inserting after the word “interests,” in line 34, the following words:- ; provided, however, that

nothing herein shall prohibit a zoning ordinance or by-law from allowing transfer of development rights to be permitted as of right, without the need for a special permit or other discretionary zoning approval.

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

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

SECTION 8. Said section 9 of said chapter 40A, as so appearing, is hereby further amended by inserting, after the word “control,” in line 43, the following words:- ; provided, however, that nothing herein shall prohibit a zoning ordinance or by-law from allowing open space residential developments to be permitted as of right, without the need for a special permit or 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 reduced parking space to residential unit ratio requirements after a finding by the special permit granting authority that the public good would be served and that the area in which the development is located would not be adversely affected by such diminution in parking.

SECTION 10. Said section 9 of said chapter 40A, as so appearing, is hereby further amended by inserting after the 12th paragraph the following paragraph:-

However, a special permit issued by a special permit granting authority shall require a simple 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; or (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.

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