SENATE DOCKET, NO. 1138 FILED ON: 1/18/2013

SENATE . . . . . No. 71

The Commonwealth of Massachusetts

PRESENTED BY:

James B. Eldridge

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act promoting healthy communities.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
James B. Eldridge	*Middlesex and Worcester*
Daniel A. Wolf	*Cape and Islands*
Paul McMurtry	*11th Norfolk*
Denise Andrews	*2nd Franklin*
Jonathan Hecht	*29th Middlesex*

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SENATE . . . . . No. 71

By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 71) of James B. Eldridge, Daniel A. Wolf, Paul McMurtry, Denise Andrews and other members of the General Court for legislation relative to comprehensive land use reform and partnership. Community Development and Small Businesses.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
SENATE
, NO. *1019* OF 2011-2012.]

The Commonwealth of Massachusetts

An Act promoting healthy communities.

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. Chapter 40A of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out the chapter in its entirety and inserting in place thereof the following Chapter 40A:-

CHAPTER 40A

ZONING

1. Title, Authority, and Purposes
2. Definitions
3. Consistency with Master Plan
4. Powers of Cities and Towns
5. Exemptions from Zoning, Limitations on Local Authority
6. Nonconformities and Vested Rights
7. Adoption and Amendment of Zoning Ordinances and By-laws

8. Boards of Appeal, Zoning Administrators

9. Permits and Approvals, Procedures, and Zoning Tools

10. Enforcement

11. Judicial Review Procedures and Standards

12. Transition Provisions

40A:1. Title, Authority, and Purposes

A. Title of Chapter

This chapter shall be known and may be cited as "The Zoning Act".

B. Authority

The authority of cities and towns to act with respect to land use planning, zoning, and regulation is contained in Article 89 of the Articles of Amendment to the Constitution of the Commonwealth, also known as the "Home Rule Amendment." This chapter shall be construed to give full effect to the home rule authority of cities and towns. 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.

Nothing in this chapter shall be construed as limiting the authority of the regional planning agencies under St. 1989, c. 716, as amended, entitled "An Act Establishing the Cape Cod Commission," and St. 1977, c. 831, as amended, entitled "An Act Further Regulating the Protection of the Land and Waters of the Island of Martha's Vineyard," or any municipality within Barnstable or Dukes county acting pursuant to these special acts, including but not limited to the designation of districts of critical planning concern, the adoption of regulations for such districts, the review of developments of regional impact, and the imposition development impact fees. Where the provisions of this chapter conflict with these special acts and any regulations, ordinances, regional policy plans, or decisions issued or adopted thereunder, the latter shall control.

C. Purposes of the Zoning Act

The purposes of this Zoning Act are:

1. To reaffirm that all local powers established under Article 89 of the Articles of Amendment to the Constitution of the Commonwealth fully exist, except as expressly limited by

this statute or other laws, and that all powers purportedly enabled in prior state zoning statutes are continued without the necessity of specifically enumerating them.

2. To impose certain limits on the exercise of home rule authority in order to recognize significant state interests.

3. To confer explicit authority on cities and towns in furtherance of the purposes of this act where such powers are not explicitly or implicitly conferred by said Article 89 or by any general or special law.

4. To establish uniform procedures and standards for the issuance of certain types of approvals that apply throughout the commonwealth.

5. To protect legitimate property rights and investment-backed expectations created prior to the enactment of new land use laws and regulations.

6. To ensure that constitutional principles of due process and equal protection are not violated by local land use laws and regulations.

7. To ensure local land use laws and regulations can utilize the best available means of protecting the health, safety, and welfare of the Commonwealth's residents.

D. Purposes of Zoning Ordinances and By-laws

The authority of cities and towns to adopt zoning ordinances and by-laws for the protection of the public health, safety, and general welfare includes, without limitation, all of the purposes listed below as well as any other purposes not limited by section 7 or reserved to the commonwealth by section 8 of said Article 89, subject to any limitations contained in this Zoning Act or in any other law.

1. The Implementation of a plan adopted by the city or town under section 81D of chapter 41 or other plan designed to set goals for the development of land within the city or town.

2. The orderly and sustainable growth, development, redevelopment, conservation, and preservation of a city or town that 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 or other plan designed to set goals for the development of land within the city or town.

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 planning and zoning laws, regulations, and practices such as but not limited to development agreements, development impact fees, design review, intra- and inter-municipal transfers of development rights, form-based zoning, agricultural zoning, natural resource protection zoning, cluster zoning, planned-unit-development zoning, special district overlays, village districts, urban growth boundaries, dispute resolution, mediation, and inclusionary zoning provisions which require, or provide incentives for, the creation of inclusionary housing units.

6. The delineation, differentiation, 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 affordable housing, the preservation of existing housing stock, and the preservation of affordability in housing.

8. The provision of 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.

9. The cost-effective provision of Complete Streets in all development such that all users including pedestrians, bicyclists, transit riders, and motor vehicle drivers of all ages and abilities are safely and efficiently accommodated on the roadways and adjoining facilities such as sidewalks, bicycle lanes, and side paths.

10. The integration of residential, commercial, civic, cultural, governmental, recreational, and other compatible land uses at locations that maximize efficiencies in transportation energy use and minimize environmental impact.

11. The adequate provision and distribution of educational, health, social service, cultural, and recreational facilities.

12. The preservation or enhancement of community amenities and features of significant architectural, historical, cultural, visual, aesthetic, scenic, or archaeological interest.

13. 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.

14. The retention of open land for agricultural production, forest products, horticulture, aquaculture, tourism, outdoor recreation, and freshwater and marine fisheries.

15. The protection of public investment in infrastructure systems.

16. The efficient use of energy and the reduction of pollution from energy generation, including the promotion of renewable energy sources and associated technologies, protection of solar access, and reduced dependence on fossil fuel energy generation.

110 17. The adequate provision of employment opportunities within the city or town and the
111 region, including redevelopment of pre-existing sites, home-based occupations, sustainable
112 natural-resource-based occupations, and housing to support the employment opportunities within
113 the city or town and the region.

114 18. The conservation of the value of land and buildings, including the elimination of
115 blight and the rehabilitation of blighted areas.

116 19. The accommodation of regional growth in a fair, equitable, and sustainable manner
117 among municipalities, including coordination of land uses with contiguous municipalities, other
118 municipalities, the state, and other agencies, as appropriate, especially with regard to resources
119 and facilities that extend beyond municipal boundaries or have a direct impact on other
120 municipalities.

121 20. The implementation of a plan adopted by a regional planning agency under section 5
122 of chapter 40B.

123 21. The promotion of local land use decisions that promote the planning and
124 development of healthy communities. This shall include public health, or acknowledging state
125 and federal health agency recommendations that all Americans benefit from daily physical
126 activity, that only a fraction of the population meets these recommendations, and that the built
127 environment and community design directly affects the routine physical activity levels of
128 residents; economic health, or well-planned, compact, mixed-use development and enlightened
129 designs that help support vibrant and thriving villages, town centers, and cities, with robust local
130 economies; and environmental health, or reducing adverse air and water quality impacts,
131 congestion, and costs associated with development that encourages only automobile travel and
132 undermines active transportation modes.

133 40A:2. Definitions

134 As used in this chapter the following words shall have the following meanings:

135 "Affordable housing", A dwelling unit restricted for purchase or rent by a household with
136 an income at or below 80 percent of the median family income for the applicable metropolitan or
137 non-metropolitan area, as determined by the U.S. Department of Housing and Urban
138 Development (HUD). Affordable housing shall be subject to an affordable housing restriction in
139 accordance with sections 31 and 32 of chapter 184, or, if ineligible under said sections, restricted
140 by other means as required in an ordinance or by-law.

141 "By-right" or "as of right", refers to an approval not requiring a variance, special permit,
142 zoning amendment, waiver, or other discretionary zoning approval. Examples of by-right
143 approvals are building permits and site plan reviews.

144 “Chief administrative officer”, when used in connection with the operation of municipal
145 governments, shall include the mayor of a city and the board of selectmen in a town unless some
146 other local office is designated to be the chief administrative officer under the provisions of a
147 local charter.

148 “Chief executive officer”, when used in connection with the operation of municipal
149 governments shall include the mayor in a city and the board of selectmen in a town unless some
150 other municipal office is designated to be the chief executive officer under the provisions of a
151 local charter.

152 “Cluster development” means a class of residential development in which reduced
153 dimensional requirements allow the developed areas to be concentrated in order to permanently
154 preserve natural or cultural resources elsewhere on the plot. This general class of development
155 may also be referred to in local zoning by other names such as open space design, open space
156 residential design, conservation design/development, or flexible development.

157 “Complete Streets” means a principal of roadway design, construction, and maintenance
158 that assures consideration and appropriate accommodation of all types of users- pedestrians,
159 bicyclists, transit riders, motor vehicles, and freight carriers- of all ages and abilities, during any
160 and all facility construction, upgrade, repair, and maintenance, based on current conditions,
161 adjoining land uses, and both current and potential future volumes of each type of user.

162 “Development agreement”, a contract entered into between a municipality or
163 municipalities and a holder of property development rights, the principal purpose of which is to
164 establish the development regulations that will apply to the subject property during the term of
165 the agreement and to establish the conditions to which the development will be subject including,
166 without limitation, a schedule of development impact fees.

167 “Form-based zoning”, text and graphics in a zoning ordinance or by-law that specify the
168 built form of the community, general intensity of use, and the relationship between buildings and
169 the outdoor public spaces they shape. Form-based codes may regulate building type, exterior
170 building materials, minimum and maximum building heights, frontage type, build-to lines, street
171 type, street and streetscape design, public open spaces, and any other parameter of the built or
172 natural environment which gives form to the exterior of buildings and the spaces between them.
173 Form-based codes may combine in a single document standards for new subdivision streets,
174 existing and new public streets and sidewalks, and use and dimensional standards. Such
175 combined standards may be in the form of a “regulating plan” that integrates building,
176 dimensional, use, street, sidewalk, and parking requirements. Form-based codes may also specify
177 lot-by-lot in a detailed regulating plan, building forms and allowed use mixes, even if such
178 specification is not uniform throughout a zoning district, provided that it is based upon a plan for
179 the area subject to the code. Form-based codes may specify prescribed future lot division lines
180 which will be allowed as a matter of right in any future division of land.

181 “Health Impact Assessment,” an analysis of all of the potential health costs and benefits
182 of a project or policy under consideration, including but not limited to environmental health (e.g.
183 air and water quality, soil contamination, noise pollution), safety and accidental injury (e.g.
184 motor vehicle collisions), and physical activity and nutrition (e.g. through impacts on routine
185 walking, bicycling, transit use, and active recreation, and the availability of healthy food
186 sources).

187 “Inclusionary housing units”, affordable housing units or housing units restricted for
188 purchase or rent by a household with an income at or below 120 percent of the median family
189 income for the applicable metropolitan or non-metropolitan area, as determined by the U.S.
190 Department of Housing and Urban Development.

191 “Inclusionary zoning”, zoning ordinances or by-laws that require, or provide incentives
192 for, the creation of affordable housing units or housing units restricted for purchase or rent by a
193 household with an income at or below 120 percent of the median family income for the
194 applicable metropolitan or non-metropolitan area, as determined by the U.S. Department of
195 Housing and Urban Development, or the payment of funds dedicated to the provision of such
196 housing as a condition of approval of a development and in accordance with the provisions of
197 section 9E of this chapter.

198 “Legislative body”, when used in connection with the operation of municipal
199 governments shall include that agency of the municipal government which is empowered to
200 enact ordinances or by-laws, adopt an annual budget and other spending authorizations, loan
201 orders, bond authorizations, and other financial matters, whether styled a city council, board of
202 aldermen, town council, town meeting or by any other title.

203 “Multi-Modal Transportation Impact Analysis,” an analysis of a proposed project or
204 development that estimates effects on pedestrian, bicycle, and transit, as well as motor vehicle
205 traffic patterns, volumes, safety, and efficiency to inform a full suite of impact mitigation
206 options, such as provision of enhanced pedestrian and bicycle facilities, bicycle parking, and
207 transit access, as well as or in lieu of only motor vehicle accommodation.

208 “Natural resource protection zoning (NRPZ)”, zoning ordinances or by-laws principally
209 to protect natural resources by establishing very low underlying densities, compact patterns of
210 development so that a significant majority of the land remains permanently undeveloped and
211 available for agriculture, forestry, recreation, watershed management, carbon sequestration,
212 wildlife habitat, or other natural resource values.

213 “Permit granting authority”, the board of appeals, zoning administrator, or planning board
214 as designated by zoning ordinance or by-law for the issuance of permits, or as otherwise
215 provided by charter, ordinance, or by-law.

216 “Site plan”, the submission made to a municipality that includes documents and drawings
217 required by an ordinance or by-law to determine whether a proposed use of land or structures or
218 development is in compliance with applicable local ordinances or by-laws, to evaluate the
219 impacts of the proposed use of land or structures on the neighborhood and/or community, and to
220 evaluate and propose site or structural design modifications or required conditions that will
221 lessen those impacts. Such site plan may be required independently of or as a required
222 component of a special permit, variance, or other discretionary zoning approval.

223 “Site plan review,” the review and approval of a site plan by a designated municipal
224 board pursuant to section 9B of this chapter. Site plan review may be required independently for
225 specified uses permitted by-right, or as a required component of a special permit, variance, or
226 other discretionary zoning approval.

227 “Solar access,” the access of a solar energy system to direct sunlight.

228 “Solar energy system,” a device or structural design feature, a substantial purpose of
229 which is to provide daylight for interior lighting or provide for the collection, storage and
230 distribution of solar energy for space heating or cooling, electricity generating, or water heating.

231 “Special permit”, a discretionary approval for a use that satisfies conditions prescribed in
232 a zoning ordinance or by-law in accordance with section 9A of this chapter.

233 “Special permit granting authority”, Chief executive officer, board of appeals, zoning
234 administrator, or planning board as designated by zoning ordinance or by-law for the issuance of
235 special permits, or other body or as otherwise provided by charter, ordinance, or by-law.

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

240 “Unified development ordinance or by-law”, An ordinance or bylaw that combines in a
241 single document standards and procedures for land use approvals that derive from different
242 chapters of the General Laws, including but not limited to chapters 40A, 40B, 40C, and 41,
243 combining procedures for subdivision, comprehensive permits, historic districts, streets and
244 sidewalks, as well as the use and dimensional standards typically found in zoning.

245 “Variance”, an exemption from a zoning ordinance or regulation in accordance with
246 section 9C of this chapter permitting an aspect of zoning that would not otherwise be allowed.

247 “Zoning”, ordinances and by-laws, adopted by cities and towns under this chapter to
248 regulate the use of land, buildings, and structures to the full extent of the independent
249 constitutional powers of cities and towns to protect the health, safety, and general welfare of
250 their present and future inhabitants.

251 “Zoning administrator”, a person designated by the board of appeals pursuant to section 8
252 of this chapter to assume certain duties of said board.

253 “Zoning enforcement officer”, the inspector of buildings, building commissioner, or local
254 inspector, or if there are none, the chief executive officer, or as otherwise provided by charter,
255 ordinance, or by-law.

256 40A:3. Consistency with Master Plan

257 A. Requirement: After January 1, 2018, no zoning ordinance or by-law may be
258 inconsistent with a plan adopted in compliance with section 81D of chapter 41. No zoning
259 ordinance or by-law shall be deemed inconsistent with the plan if it furthers, or at least does not
260 impede, the achievement of the plan's goals and policies, and if it is not incompatible with the
261 plan's proposed land uses and development patterns.

262 B. Rebuttable Presumption: After the effective date of the plan, a zoning ordinance or by-
263 law shall enjoy a rebuttable presumption in any action, suit, or administrative proceeding that its
264 provisions are not inconsistent with the plan. If the presumption is rebutted, inconsistency may
265 serve as the basis upon which a court or administrative agency may declare any relevant zoning
266 ordinance or by-law provision to be invalid as applied to the property which is the subject of the
267 action, suit, or administrative proceeding. For any amendment to a plan adopted after January 1,
268 2018, no such declaration of invalidity may be made in any action, suit, or administrative
269 proceeding for a period of 12 months after the effective date of such plan amendment.

270 C. Exception: In Barnstable or Dukes Counties inconsistency with a local comprehensive
271 plan adopted pursuant to St. 1989, c. 716, as amended, or St. 1977, c. 831, as amended, and the
272 regional policy plans and regulations adopted thereunder to serve as a municipality’s master plan
273 for purposes of Chapter 41, Section 81D shall not serve as a basis for declaring a zoning
274 ordinance or bylaw provision to be invalid under this section.

275 40A:4. Powers of Cities and Towns

276 A. Powers Enumerated: To resolve uncertainty regarding the authority of cities and towns
277 to assert powers conferred by Article 89 of the Articles of Amendment to the Constitution of the
278 Commonwealth and by general or special laws, this chapter confers or confirms the following
279 zoning powers:

280 1. to impose development impact fees subject to the requirements set forth in Section 9F;

281 2. to use inclusionary zoning techniques, subject to the requirements set forth in Section
282 9E;

283 3. to enact unified development ordinances or by-laws and form-based zoning, as defined
284 herein, which are based upon multiple sources of statutory authority to regulate land use;

285 4. to provide for the transfer of development rights, including the inter-municipal transfer
286 of development rights between or among municipalities with complementary ordinances or by-
287 laws. Such authorization may be by special permit or by other methods, including, but not
288 limited to, the applicable provisions of sections 81K to 81GG, inclusive, of chapter 41, and in
289 accordance with a planning board's rules and regulations governing subdivision control. Any
290 inter-municipal transfer of development rights plan must be reviewed by the Department of
291 Housing and Community Development prior to adoption to ensure that it is consistent with
292 federal and state fair housing laws, provided that a plan shall be deemed consistent unless the
293 Department makes a written finding of inconsistency within 30 days of submission; and

294 5. to provide for cluster development, which may proceed by right or by other methods,
295 including, but not limited to, the applicable provisions of sections 81K to 81GG, inclusive, of
296 chapter 41, and in accordance with a planning board's rules and regulations governing
297 subdivision control.

298 6. to require Multi-Modal Transportation Analysis, as defined herein, rather than merely
299 Traffic Impact Analysis, in assessing the pedestrian, bicycle, and transit as well as motor vehicle
300 traffic impacts and mitigation required of a proposal or development.

301 7. to require advisory Health Impact Assessments, as defined herein, of proposed projects
302 so that permit granting authorities may be fully informed of the environmental, safety, and
303 transportation-related health effects of a proposal and can pursue appropriate mitigation as
304 needed.

305 B. Rule of Construction: To the extent that the powers enumerated in this section are
306 construed to be inherent in the constitutional and existing statutory authority of cities and towns
307 and not pre-empted by other state laws, such enumeration is hereby deemed to be merely
308 confirmatory or illustrative.

309 40A:5. Exemptions from Zoning, Limitations on Local Authority

310 A. Building Code: No zoning ordinance or by-law shall regulate or restrict the use of
311 materials, or methods of construction of structures regulated by the state building code. This
312 shall not prevent the regulation of exterior materials on existing or new buildings under form-
313 based codes or in zones specifically identified by statute, ordinance, or by-law as having historic
314 or architectural significance.

315 B. Flood Plain, Wetlands: No zoning ordinance or by-law shall exempt land or structures
316 from flood plain or wetlands regulations established pursuant to general law.

317 C. Agriculture:

318 1. No zoning ordinance or by-law regulating the use of agricultural lands, shall prohibit,
319 unreasonably regulate, or require a special permit for the use of land for the primary purpose of

320 commercial agriculture, nor prohibit, unreasonably regulate or require a special permit for the
321 use, expansion, reconstruction, or construction of structures thereon for the primary purpose of
322 commercial agriculture. In areas not zoned for commercial agriculture, however, all such
323 activities may be limited to parcels of 5 acres or more or to parcels 2 acres or more if the sale of
324 products produced from commercial agricultural on the parcel generates at least $1,000 per acre
325 based on gross sales dollars. For such purposes, land divided by a public or private way or a
326 waterway shall be construed as one parcel.

327 2. No zoning or general ordinance or by-law shall prohibit, unreasonably regulate, or
328 require a special permit for those facilities used for the sale of agricultural products, provided
329 that at least one of the following two sales-ratio tests is met:

330 a. Seasonally at least 25 percent of such products for sale, based on either gross sales
331 dollars or volume, have been produced by the owner or lessee of the land on which the facility is
332 located; or

333 b. Annually at least 25 percent of such products have been produced by the owner or
334 lessee of the land on which the facility is located, and at least an additional 50 per cent of such
335 products shall have been produced in Massachusetts on land, other than that on which the facility
336 is located, used for the primary purpose of commercial agriculture, whether by the owner or
337 lessee of the land on which the facility is located or by another.

338 3. For the purposes of this subsection 5.C the following definitions shall apply:

339 "commercial agriculture" shall be as defined in section 1A of chapter 128, and shall
340 include aquaculture, silviculture, horticulture, floriculture and viticulture; it shall further include
341 those facilities for the primary purpose of processing agricultural products produced by the farm
342 operation and those alternative energy generating facilities for the primary purpose of producing
343 energy to be used by or transmitted for use by farms for agricultural purposes;

344 "seasonally" shall mean either the months of June, July, August, and September of every
345 year or the harvest season of the primary crop raised on land of the owner or lessee;

346 "horticulture" shall include the growing and keeping of nursery stock and the sale
347 thereof; and

348 "nursery stock produced by the owner or lessee of the land" shall mean said nursery stock
349 that is nourished, maintained, and managed while on the premises.

350 4. Renewable Energy on Agricultural Land for Municipal Uses: The planning board, with
351 the approval of the chief executive officer of the city or town, may grant a special permit for
352 renewable energy generating facilities, as defined in 220 CMR 18.02, whether directly or under a
353 net-metering arrangement approved by the Commissioner of the Department of Agricultural
354 Resources, on agricultural land to serve the energy needs of municipally owned or controlled

355 facilities, provided that: (1) the parcel on which the renewable energy generating facility is
356 located is not less than five acres and remains primarily in commercial agricultural use as
357 defined in Section 5C(3); (2) the location and design of all renewable energy generating
358 structures and equipment have been approved by the Commissioner of the Department of
359 Agricultural Resources to assure the least possible use of or adverse impact on agricultural
360 resources, prime agricultural soils, or farm viability; and (3) the renewable energy capacity of
361 any farm is limited to one megawatt (1,000 kilowatts), unless waived up to a limit of two
362 megawatts (2,000 kilowatts) by the Commissioner of Agricultural Resources, provided that such
363 waiver is approved by the planning board and the chief executive officer of the municipality.

364 The Department of Agricultural Resources shall promulgate regulations governing the
365 siting, construction, operation, and decommissioning of such facilities, which may include
366 prescription or approval of the commercial relationships created to own and operate such
367 facilities.

368 D. Interior Area: No zoning ordinance or by-law shall require a minimum interior area of
369 a single family residential building, but may restrict the maximum interior area of a single family
370 residential building.

371 E. Religious, Educational Purposes: No zoning ordinance or by-law shall prohibit,
372 regulate or restrict the use of land or structures for religious purposes or for educational purposes
373 on land owned or leased by the commonwealth or any of its agencies, subdivisions, or bodies
374 politic, or by a religious sect or denomination, or by a nonprofit educational corporation.
375 However, such land or structures may be subject to reasonable regulations concerning the bulk
376 and height of structures and determining yard sizes, lot area, setbacks, open space, parking, and
377 building coverage requirements.

378 F. Public Service Corporation: Lands or structures used, or to be used by a public service
379 corporation, may be exempted in particular respects from the operation of a zoning ordinance or
380 by-law if, upon petition of the corporation, the Department of Public Utilities shall, after notice
381 given pursuant to section 9D. and public hearing in the town or city, determine the exemptions
382 required and find that the present or proposed use of the land or structure is reasonably necessary
383 for the convenience or welfare of the public; provided, however, that if lands or structures used
384 or to be used by a public service corporation are located in more than one municipality such
385 lands or structures may be exempted in particular respects from the operation of any zoning
386 ordinance or by-law if, upon petition of the corporation, the Department of Public Utilities shall
387 after notice to all affected communities and public hearing in one of said municipalities,
388 determine the exemptions required and find that the present or proposed use of the land or
389 structure is reasonably necessary for the convenience or welfare of the public.

390 G. Child Care Facility:

391 1. As used in this paragraph, the term "child care facility" shall mean a child care center
392 or a school-aged child care program, as defined in section 1A of chapter 15D.

393 2. No zoning ordinance or by-law in any city or town shall prohibit, or require a special
394 permit for, the use of land or structures or the expansion of existing structures for the primary,
395 accessory, or incidental purpose of operating a child care facility. Such land or structures may be
396 subject to reasonable regulations concerning the bulk and height of structures and determining
397 yard sizes, lot area, setbacks, open space, parking, and building coverage requirements.

398 3. When any zoning ordinance or by-law in any city or town limits the floor area of any
399 structure, such floor area shall be measured exclusive of any portion of such structure in which a
400 child care facility is to be operated as an accessory or incidental use, and the otherwise allowable
401 floor area of such structure shall be increased by an amount equal to the floor area of such child
402 care facility up to a maximum increase of 10 percent. In any case where the otherwise allowable
403 floor area of a structure has been increased pursuant to the provisions of this section, the portion
404 of such structure in which a child care facility is to be operated as an accessory or incidental use
405 shall not be used for any other purpose unless, following the completion of such structure, the
406 board authorized to grant variances under such zoning ordinance or by-law shall have
407 determined, with the written concurrence of the office for children, that the public interest and
408 convenience do not require the operation of such facility. The procedures governing the granting
409 of variances, including all rights of appeal, shall apply to any such determination.

410 H. Child Care Homes: Family child care home and large family child care home, as
411 defined in section 1A of chapter 15D, shall be an allowable use unless a city or town prohibits or
412 specifically regulates such use in its zoning ordinances or by-laws.

413 I. Disabled Persons, Congregate Living Arrangements: Notwithstanding any general or
414 special law to the contrary, local land use and health and safety laws, regulations, practices,
415 ordinances, by-laws, and decisions of a city or town shall not discriminate against a disabled
416 person. Imposition of health and safety laws or land-use requirements on congregate living
417 arrangements among unrelated persons with disabilities that are not imposed on families and
418 groups of similar size of other unrelated persons shall constitute discrimination. The provisions
419 of this paragraph shall apply to every city or town, including, but not limited to the City of
420 Boston and the City of Cambridge.

421 J. Manufactured Homes: No zoning ordinance or by-law shall prohibit the owner and
422 occupier of a residence which has been destroyed by fire or natural disaster from placing a
423 manufactured home on the site of such residence and residing in such home for a period not to
424 exceed 18 months immediately after such event. Any such manufactured home shall be subject
425 to the provisions of the state sanitary code.

426 K. Handicapped Access Ramps: No dimensional lot requirement of a zoning ordinance or
427 by-law, including, but not limited to, set back, front yard, side yard, rear yard, and open space

428 shall apply to access ramps on private property used solely for the purpose of facilitating ingress
429 or egress of a physically handicapped person, as defined in section 13A of chapter 22.

430 L. Solar Energy Systems: No zoning ordinance or by-law shall prohibit or unreasonably
431 regulate the installation of solar energy systems or the building of structures that facilitate the
432 collection of solar energy, except where necessary to protect the public health, safety, or welfare.

433 M. Amateur Radio Antennas: No zoning ordinance or by-law shall prohibit the
434 construction or use of an antenna structure by a federally licensed amateur radio operator.
435 Zoning ordinances and by-laws may reasonably regulate the location and height of such antenna
436 structures for the purposes of health, safety, or aesthetics; provided, however, that such
437 ordinances and by-laws reasonably allow for sufficient height of such antenna structures so as to
438 effectively accommodate amateur radio communications by federally licensed amateur radio
439 operators and constitute the minimum practicable regulation necessary to accomplish the
440 legitimate purposes of the city or town enacting such ordinance or by-law.

441 N. Renewable Energy, Agricultural Land: No zoning or general ordinance or by-law shall
442 prohibit or unreasonably regulate the installation or operation of renewable energy generating
443 structures and equipment, as defined in 220 CMR 18.00, on land primarily in agricultural use,
444 except where necessary to protect the public health, safety or welfare; provided, however, that:

445 1. not less than 75 percent of the energy generated thereby shall be used or transmitted
446 for use in agricultural operations on land and in structures in agricultural use or to serve the
447 energy needs of educational facilities of the commonwealth or any of its agencies, subdivisions
448 or bodies politic, or of a religious sect or denomination, or of a nonprofit educational
449 corporation, or of municipally owned or controlled facilities, whether directly or under a net-
450 metering arrangement approved by the Commissioner of the Department of Agricultural
451 Resources;

452 2. the location and design of all renewable energy generating structures and equipment
453 have been approved by the Commissioner of the Department of Agricultural Resources to assure
454 the least possible impact on agricultural resources;

455 3. the renewable energy capacity on any single parcel of land in agricultural use is limited
456 to 2 megawatts (2,000 kilowatts), unless waived by the Commissioner of Agricultural Resources;
457 and

458 4. the land on which the renewable energy generating structure and equipment is located
459 remains primarily in agricultural use.

460 The Department of Agricultural Resources shall promulgate regulations governing the
461 siting, construction, and operation of such facilities, which may include prescription or approval
462 of the commercial relationships created to own and operate such facilities.

463 O. Hazardous Waste Facilities: A hazardous waste facility as defined in section 2 of
464 chapter 21D shall be permitted to be constructed as of right on any locus presently zoned for
465 industrial use pursuant to the ordinances and by-laws of any city or town provided that all
466 permits and licenses required by law have been issued to the developer and a siting agreement
467 has been established pursuant to sections 12 and 13 of chapter 21D. Following the submission of
468 a notice of intent, pursuant to section 7 of chapter 21D, a city or town may not adopt any zoning
469 change which would exclude the facility from the locus specified in said notice of intent. This
470 section shall not prevent any city or town from adopting a zoning change relative to the proposed
471 locus for the facility following the final disapproval and exhaustion of appeals for permits and
472 licenses required by law and by chapter 21D.

473 P. Solid Waste Disposal Facilities: A facility, as defined in section 150A of chapter 111,
474 which has received a site assignment pursuant to said section 150A, shall be permitted to be
475 constructed or expanded on any locus zoned for industrial use unless specifically prohibited by
476 the ordinances and by-laws of the city or town in which such facility is proposed to be
477 constructed or expanded, in effect as of July 1, 1987; provided, however, that all permits and
478 licenses required by law have been issued to the proposed operator. A city or town shall not
479 adopt an ordinance or by-law prohibiting the siting of such a facility or the expansion of an
480 existing facility on any locus zoned for industrial use, or require a license or permit granted by
481 said city or town, except a special permit imposing reasonable conditions on the construction or
482 operation of the facility, unless such prohibition, license or permit was in effect on or before July
483 1, 1987. A city or town may adopt and enforce a zoning or non-zoning ordinance or by-law of
484 general application that has the effect of prohibiting the siting or expansion of a facility in the
485 following areas: recharge areas of surface drinking water supplies as shall be reasonably defined
486 by rules and regulations of the Department of Environmental Protection, areas subject to section
487 40 of chapter 131, and the regulations promulgated thereunder; and areas within the zone of
488 contribution of existing or potential public supply wells as defined by said department. No
489 special permit authorized by this section may be denied for any such facility by any city or town;
490 provided, however, that a special permit granting authority may impose reasonable conditions on
491 the construction or operation of the facility, which shall be enforceable pursuant to the provisions
492 of section 10.

493 Q. Exclusionary Zoning: All cities and towns shall, in their zoning ordinances and by-
494 laws, provide opportunities for the creation of at least their municipality's fair share of housing
495 for households of median income, with due regard for regional housing needs as established by
496 the regional planning agency and/or the Department of Housing and Community Development.
497 This shall not preclude the establishment of zoning districts where only low-density development
498 is permitted in order to protect natural and cultural resources, provided that the city or town has
499 made adequate accommodation for a range of housing types and income levels in other zoning
500 districts.

501 40A:6. Nonconformities and Vested Rights

A. Nonconforming Lots, Structures, and Uses

1. Nonconforming Residential Lots:

a. Any increases in the minimum allowable lot area, frontage, width, depth, yard, or setbacks 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 7 that renders the lot nonconforming:

(i) is shown or described as a separate lot on a recorded plan or deed;

(ii) has 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

(iii) at the time of recording or endorsement, whichever occurred sooner, conformed to the lot requirements then in effect, and was not then or thereafter held in common ownership with any adjoining land.

b. A lot described in 1a above shall have actual and practical access to and frontage on a way. Access to the lot shall be over such frontage unless the ordinance or by-law provides otherwise.

c. Whenever the lines of a lot described in 1.a above are changed in any way that renders the lot more conforming, the resulting boundaries of the lot shall be governed by this section.

d. In order to reduce nonconformities, whenever any lot described in 1.a above 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.

2. Nonconforming Structures and Uses:

a. A 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 7 rendering such structure or use nonconforming. For the purposes of this section, the term lawfully in existence shall not mean a structure or use that on such date was either in violation of the zoning ordinance or by-law or was a structure that had been built or altered without a legally required building permit.

b. Adoption or amendment of a zoning ordinance or by-law shall not apply to any lawful pre-existing nonconformity of:

(i) an existing nonconforming structure or use; and

535 (ii) structures and uses lawfully begun prior to the first publication of notice of the public
536 hearing on the adoption or amendment of the relevant zoning ordinance or by-law required by
537 section 7.

538 c. A zoning ordinance or by-law may regulate a previously existing nonconforming
539 structure or use if abandoned or discontinued for a period of 2 years or more. Abandonment
540 shall consist of any overt act, or failure to act, that would indicate that the owner neither claims
541 nor retains any intent to continue the nonconforming structure or use, unless the owner can
542 demonstrate through credible evidence the intent not to abandon it. An involuntary interruption
543 of a nonconforming structure or use, such as by fire or natural disaster, does not alone establish
544 the intent to abandon such structure or use.

545 d. This subsection A.2 shall not apply to establishments which display live nudity for
546 their patrons, as defined in section 9A, adult bookstores, adult motion picture theaters, adult
547 paraphernalia shops, or adult video stores subject to the provisions of section 9A.

548 3. Alteration, Reconstruction, Extension, or Structural Change of Nonconforming
549 Structures and Uses:

550 a. A zoning ordinance or by-law shall not prohibit the alteration, reconstruction,
551 extension, or structural change of a nonconforming single- or two-family residential structure,
552 provided all such construction satisfies the applicable dimensional requirements of the current
553 zoning ordinance or by-law other than lot area or frontage.

554 b. A zoning ordinance or by-law may permit, by right or by special permit,
555 nonconforming structures to be altered, reconstructed, extended, or structurally changed, and
556 nonconforming uses to be extended or changed, provided, in either case, that such actions do not
557 increase the specific nonconformity of the structure or use.

558 c. A zoning ordinance or by-law may permit, by special permit, nonconforming structures
559 to be altered, reconstructed, extended, or structurally changed, or nonconforming uses to be
560 extended or changed, in a manner that increases the specific nonconformity of the structure or
561 use, provided, in either case, that the special permit granting authority finds that such actions are
562 not substantially more detrimental to the neighborhood than the existing nonconforming
563 structure or use.

564 d. A zoning ordinance or by-law may regulate nonconforming structures differently than
565 nonconforming uses.

566 e. A zoning ordinance or by-law may vary by zoning district(s) the requirements for the
567 alteration, reconstruction, extension or structural change of nonconforming structures, and for the
568 extension or change of nonconforming uses.

569 B. Vested Rights: Effective Date of Zoning Amendments

570 1. Building Permits, Special Permits, and Subdivision Plans:

571 a. Adoption or amendment of a zoning ordinance or by-law shall not apply to the work or
572 use proposed in a building permit, special permit, or definitive subdivision plan applied for in a
573 complete application submitted prior to the adoption or amendment required by section 7,
574 provided that:

575 (i) the building permit, special permit, or definitive subdivision plan is ultimately
576 approved; and

577 (ii) the period of time during which the ordinance or by-law does not apply shall extend
578 after such approval for 2 years in the case of a building permit, 3 years in the case of a special
579 permit, and 8 years in the case of a definitive subdivision plan.

580 2. General Provisions:

581 a. The provisions of B.1 above shall continue in effect notwithstanding later approved
582 modifications or amendments of a building permit, special permit, or definitive subdivision plan
583 made under section 81W of chapter 41 or other applicable state or local provisions provided
584 there is no required application for a new building permit, special permit, or definitive
585 subdivision plan. Modification or amendment shall not itself serve to lengthen the period of time
586 when the ordinance or by-law shall not apply.

587 b. The vested rights provisions of this section 6B shall be extended for a period of time
588 equal to the duration of:

589 (i) extensions granted by the applicable local board or authority;

590 (ii) the period between the filing of an appeal or commencement of litigation from the
591 decision of an applicable local board or authority and the final disposition thereof, provided final
592 adjudication is in favor of the applicant; and

593 (iii) a moratorium upon permitting or construction imposed by any government entity.

594 c. The minimum periods of time when the ordinance or by-law shall not apply in 1(a)(ii)
595 above may be lengthened by ordinance or by-law.

596 d. The record owner of the land shall have the right, at any time, by an instrument duly
597 recorded in the registry of deeds for the district in which the land lies, a copy of which shall be
598 filed with the building inspector and city or town clerk, to waive all of the provisions of this
599 section 6B, in which case the zoning ordinance or by-law then or thereafter in effect shall apply.

600 e. For the purposes of this section the term definitive subdivision plan shall include a
601 minor subdivision under section 81L and 81P of chapter 41, provided the planning board has
602 adopted rules and regulations for minor subdivisions under section 81Q of said chapter. In such

603 cases, the period of time during which the ordinance or by-law does not apply shall extend after
604 approval of the minor subdivision for 3 years.

605 40A:7. Adoption and Amendment of Zoning Ordinances and By-laws

606 Zoning ordinances or by-laws shall be adopted and from time to time changed by
607 amendment, addition or repeal only in the manner hereinafter provided.

608 A. Initiation: Adoption or change of zoning ordinances or by-laws may be initiated by the
609 chief administrative officer of the city or town, by the chief executive officer, if different, by the
610 board of appeals, by an individual owning land to be affected by change or adoption, by request
611 of registered voters of a town pursuant to section 10 of chapter 39, by 10 registered voters in a
612 city, by a planning board, by a regional planning agency, or by other methods provided by
613 municipal charter, ordinance, or by-law. The chief administrative officer shall within 14 days of
614 receipt of such zoning ordinance or by-law submit it to the planning board for review, unless the
615 proposal had been initiated by the planning board itself.

616 B. Hearings Required: No zoning ordinance or by-law or amendment thereto shall be
617 adopted until after the planning board in a city or town, and the legislative body of a city or a
618 committee designated or appointed for the purpose by said legislative body, has each held a
619 public hearing thereon, together or separately, at which interested persons shall be given an
620 opportunity to be heard. Said public hearing shall be held within 65 days after the proposed
621 zoning ordinance or by-law is submitted to the planning board or if there is no planning board,
622 within 65 days after the proposed zoning ordinance or by-law is submitted to the chief
623 administrative officer.

624 C. Notice: Notice of the time and place of such public hearing, of the subject matter,
625 sufficient for identification, and of the place where texts and maps thereof may be inspected shall
626 be published in a newspaper of general circulation in the city or town once in each of 2
627 successive weeks, the first publication to be not less than 14 days before the day of said hearing,
628 and by posting such notice in a conspicuous place in the city or town hall for a period of not less
629 than 14 days before the day of said hearing. Notice of said hearing shall also be sent by mail,
630 postage prepaid to the regional planning agency, if any, and to the planning board of each
631 abutting city and town. The regional planning agency, the planning boards of all abutting cities
632 and towns, and nonresident property owners who may not have received notice by mail as
633 specified in this section, may grant a waiver of notice or submit an affidavit of actual notice to
634 the city or town clerk prior to action by the legislative body on a proposed zoning ordinance, by-
635 law or change thereto. Zoning ordinances or by-laws may provide that a separate, conspicuous
636 statement shall be included with property tax bills sent to nonresident property owners, stating
637 that notice of such hearings under this chapter shall be sent by mail, postage prepaid, to any such
638 owner who files an annual request for such notice with the city or town clerk no later than
639 January first, and pays a reasonable fee established by such ordinance or by-law. In cases

640 involving boundary, density or use changes within a district, notice shall be sent to any such
641 nonresident property owner who has filed such a request with the city or town clerk and whose
642 property lies in the district where the change is sought. No defect in the form of any notice
643 under this chapter shall invalidate any zoning ordinances or by-laws unless such defect is found
644 to be misleading. Notice shall be provided to all municipal departments, which shall be accorded
645 the opportunity to provide advisory comments to the board in writing.

646 D. Notice to Farmland Advisory Board: Prior to the adoption of any zoning ordinance or
647 by-law or amendment thereto which seeks to further regulate matters established by section 40 of
648 chapter 131 or regulations authorized thereunder relative to agricultural and aquacultural
649 practices, the city or town clerk shall, not later than 7 days prior to the legislative body's public
650 hearing relative to the adoption of said new or amended zoning ordinances or by-laws, give
651 notice of the said proposed zoning or general ordinances or by-laws to the Farmland Advisory
652 Board established pursuant to section 40 of chapter 131 and to the Commissioner of the
653 Department of Agricultural Resources.

654 E. Planning Board Report: No vote to adopt any such proposed ordinance or by-law or
655 amendment thereto shall be taken until a report with recommendations by a planning board has
656 been submitted to the legislative body, or 21 days after said hearing has elapsed without
657 submission of such report. After such notice, hearing and report, or after 21 days shall have
658 elapsed after such hearing without submission of such report, the legislative body may adopt,
659 reject, or amend and adopt any such proposed ordinance or by-law.

660 F. Failure to Vote: If legislative body of a city fails to vote to adopt any proposed
661 ordinance within 90 days after the legislative body's hearing, or if the legislative body of a town
662 fails to vote to adopt any proposed by-law within 6 months after the planning board hearing, no
663 action shall be taken thereon until after a subsequent public hearing is held with notice and report
664 as provided.

665 G. Vote Required for Adoption: No zoning ordinance or by-law or amendment thereto
666 shall be adopted or changed except by a two-thirds vote of the legislative body of the city or
667 town. A lesser majority vote may be prescribed in a zoning ordinance or by-law adopted by a
668 two-thirds vote of the local legislative body, except that such lesser majority shall not become
669 effective until 6 months have elapsed after the vote.

670 H. Unfavorable Action, Repetitive Petitions: No proposed zoning ordinance or by-law
671 which has been unfavorably acted upon by the legislative body of a city or town shall be
672 considered by the legislative body within 2 years after the date of such unfavorable action unless
673 the adoption of such proposed ordinance or by-law is recommended in the final report of the
674 planning board.

675 I. Review by the Attorney General: When zoning by-laws or amendments thereto are
676 submitted to the attorney general for approval as required by section 32 of chapter 40, the

677 attorney general shall also be furnished with a statement which may be prepared by the planning
678 board explaining the by-laws or amendments proposed, which statement may be accompanied by
679 explanatory maps or plans.

680 J. Effective Date: The effective date of the adoption or amendment of any zoning
681 ordinance or by-law shall be the date on which such adoption or amendment was voted upon by
682 the legislative body, provided, however, that in towns the posting and publication requirements
683 of section 32 of chapter 40 have been satisfied. If, in a town, said by-law is subsequently
684 disapproved, in whole or in part, by the attorney general, the previous zoning by-law, to the
685 extent that such previous zoning by-law was changed by the disapproved by-law or portion
686 thereof, shall be deemed to have been in effect from the date of such vote. In a municipality
687 which is not required to submit zoning ordinances to the attorney general for approval pursuant
688 to section 32 of chapter 40, the effective date of such ordinance or amendment shall be the date
689 established by charter or ordinance.

690 K. Official Copy: A true copy of the zoning ordinance or by-law with any amendments
691 thereto shall be kept on file available for inspection in the office of the clerk of such city or town.

692 L. Claim of Invalidity: No claim of invalidity of any zoning ordinance or by-law arising
693 out of any possible defect in the procedure of adoption or amendment shall be made in any legal
694 proceedings and no state, regional, county, or municipal officer shall refuse, deny, or revoke any
695 permit, approval, or certificate because of any such claim of invalidity, unless legal action is
696 commenced within the time period specified in sections 32 and 32A of chapter 40 and notice
697 specifying the court, parties, invalidity claimed, and date of filing, is filed together with a copy of
698 the petition with the town or city clerk within 7 days after commencement of the action.

699 M. Zoning Districts: Zoning districts shall be shown on a zoning map in a manner
700 sufficient for identification. Such maps shall be part of zoning ordinances or by-laws. Assessors'
701 or property plans may be used as the basis for zoning maps. If more than four sheets or plates are
702 used for a zoning map, an index map showing districts in outline shall be part of the zoning map
703 and of the zoning ordinance or by-law.

704 N. Zoning District Boundary Lines: No provision of a zoning ordinance or by-law shall
705 be valid which sets apart districts by any boundary line which may be changed without adoption
706 of an amendment to the zoning ordinance or by-law.

707 O. Uniformity: No zoning ordinance or by-law shall regulate uses or structures in a
708 manner that is not uniformly applicable within a zoning district except where such regulations
709 are supported by a valid planning or zoning basis rationally related to the distinguishing
710 characteristics of such structures or uses.

711 40A:8. Boards of Appeal, Zoning Administrators

712 A. Zoning Board of Appeals: Zoning ordinances or by-laws shall provide for a zoning
713 board of appeals, according to the provisions of this section, unless otherwise provided by
714 charter.

715 B. Membership: The board shall consist of 3 or 5 members who shall be appointed by the
716 chief executive officer of a town, and by the chief executive officer of a city subject to
717 confirmation by the legislative body, unless otherwise provided by charter, ordinance, or bylaw,
718 and who shall serve for terms of such length and so arranged that the term of one member shall
719 expire each year.

720 C. Chairman, Clerk: The board shall annually elect a chairman from its own number and
721 a clerk, and may, subject to appropriation, employ experts and clerical and other assistants.

722 D. Removal of Member: Any member may be removed for cause by the appointing
723 authority upon written charges and after a public hearing.

724 E. Vacancies: Vacancies shall be filled for unexpired terms in the same manner as in the
725 case of original appointments.

726 F. Associate Members: Zoning ordinances or by-laws may provide for the appointments
727 in like manner of associate members of the board of appeals; and, if provision for associate
728 members has been made, the chairman of the board may designate any such associate member to
729 sit on the board in case of absence, inability to act or conflict of interest on the part of any
730 member thereof, or in the event of a vacancy on the board until said vacancy is filled in the
731 manner provided in this section.

732 G. Powers: A board of appeals shall have the following powers:

733 1. To hear and decide appeals in accordance with this section.

734 2. To hear and decide applications for special permits upon which the board is
735 empowered to act under a zoning ordinance or by-law.

736 3. To hear and decide petitions for variances as set forth in section 9C.

737 4. To hear and decide appeals from decisions of a zoning administrator, if any, in
738 accordance with this section.

739 In exercising the powers granted by this section, a board of appeals may, in conformity
740 with the provisions of this chapter, make orders or decisions, reverse or affirm in whole or in
741 part, or modify any order or decision, and to that end shall have all the powers of the officer from
742 whom the appeal is taken and may issue or direct the issuance of a permit.

743 H. Appeals to the Zoning Board of Appeals: An appeal to the zoning board of appeals
744 may be taken by any person aggrieved by reason of the appellant's inability to obtain a permit or

745 an enforcement action from any administrative officer under the provisions of this chapter, by
746 the regional planning agency in whose area the city or town is situated, or by any person
747 including an officer or board of the city or town, or of an abutting city or town aggrieved by an
748 order or decision of the inspector of buildings, or other administrative official, in violation of any
749 provision of this chapter or any ordinance or by-law adopted thereunder.

750 1. Any appeal shall be taken within 30 days from the date of the order or decision which
751 is being appealed. The appellant shall file a notice of appeal specifying the grounds thereof, with
752 the city or town clerk, and a copy of said notice, including the date and time of filing certified by
753 the town clerk, shall be filed forthwith by the petitioner with the officer or board whose order or
754 decision is being appealed, and to the permit granting authority, specifying in the notice grounds
755 for such appeal. Such officer or board shall forthwith transmit to the board of appeals all
756 documents and papers constituting the record of the case in which the appeal is taken.

757 2. Any appeal to a board of appeals from the order or decision of a zoning administrator,
758 if any, appointed in accordance with this section shall be taken within 30 days of the date of such
759 order or decision or within 30 days from the date on which the appeal, application or petition in
760 question shall have been deemed denied in accordance with said section 8J, as the case may be,
761 by having the appellant file a notice of appeal, specifying the grounds thereof with the city or
762 town clerk and a copy of said notice including the date and time of filing certified by the city or
763 town clerk shall be filed forthwith in the office of the zoning administrator and in the case of an
764 appeal under this subsection 8I with the officer whose decision was the subject of the initial
765 appeal to said zoning administrator. The zoning administrator shall forthwith transmit to the
766 board of appeals all documents and papers constituting the record of the case in which the appeal
767 is taken.

768 I. Procedures:

769 1. Meetings: Meetings of the board shall be held at the call of the chairman or when
770 called in such other manner as the board shall determine in its rules. The board of appeals shall
771 hold a hearing on any appeal, application, or petition within 65 days from the receipt of notice by
772 the board of such appeal, application or petition. The board shall cause notice of such hearing to
773 be published and sent to parties in interest as provided in section 9D. The chair, or in his absence
774 the acting chair, may administer oaths, summon witnesses, and call for the production of papers.

775 2. Votes: The concurring vote of all members of the board of appeals consisting of 3
776 members, and a concurring vote of 4 members of a board consisting of 5 members, shall be
777 necessary to reverse an order or decision of an administrative official under this chapter or to
778 effect a variance in the application of an ordinance or by-law. A zoning board of appeals acting
779 as a special permit granting authority is governed by the voting requirements of section 9A(2)(a)
780 of this Zoning Act.

3. Hearings, Decisions, and Appeals: All hearings of the board of appeals shall be open to the public and held in accordance with section 9D. The decision of the board shall be made and recorded with the municipal clerk within 114 days after the date of the filing of an appeal, application or petition, except in regard to special permits, as provided for in section 9A. The required time limits for a public hearing and said action may be extended by written agreement between the applicant and the board of appeals. A copy of such agreement shall be filed in the office of the city or town clerk. Failure by the board to take final action within said 114 days or extended time, if applicable, shall be deemed to be the grant of the appeal, application, or petition. The petitioner who seeks such approval by reason of the failure of the board to take final action within the time prescribed shall notify the city or town clerk, in writing, within 14 days from the expiration of said 114 days or extended time, if applicable, of such approval and that notice has been sent by the petitioner to parties in interest. The petitioner shall send such notice to parties in interest, by mail and each notice shall specify that appeals, if any, shall be made pursuant to section 11 and shall be filed within 20 days after the date the city or town clerk received such written notice from the petitioner that the board failed to take final action within the time prescribed. After the expiration of 20 days without notice of appeal pursuant to section 11, or, if appeal has been taken, after receipt of certified records of the court in which such appeal is adjudicated, indicating that such approval has become final, the city or town clerk shall issue a certificate stating the date of approval, the fact that the board failed to take final action and that the approval resulting from such failure has become final, and such certificate shall be forwarded to the petitioner. The board shall, within the 114 day time limit, cause to be made a detailed record of its proceedings, indicating the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and setting forth clearly the reason for its decision and of its official actions, copies of all of which shall be filed in the office of the city or town clerk and shall be a public record. Notice of the decision shall be mailed forthwith to the petitioner, applicant or appellant, to the parties in interest designated in section 9D, and to every person present at the hearing who requested that notice be sent to him and stated the address to which such notice was to be sent. Each notice shall specify that appeals, if any, shall be made pursuant to section 11 and shall be filed within 20 days after the date of filing of such notice in the office of the city or town clerk.

J. Zoning Administrator: A zoning ordinance or by-law may authorize the appointment of a zoning administrator, who, unless otherwise provided by charter, shall be appointed by the board of appeals, subject to confirmation by the city council or board of selectmen, to serve at the pleasure of the board of appeals pursuant to such qualifications as may be established by the city council or board of selectmen. The board of appeals may delegate to said zoning administrator some of its powers and duties by a concurring vote of all members of the board of appeals consisting of 3 members, and a concurring vote of all except one member of a board consisting of 5 members. Any person aggrieved by a decision or order of the zoning administrator, whether or not previously a party to the proceeding, or any municipal office or board, may appeal to the board of appeals, as provided in this section, within 30 days after the

821 decision of the zoning administrator has been filed in the office of the city or town clerk. Any
822 appeal, application or petition filed with said zoning administrator as to which no decision has
823 issued within 35 days from the date of filing shall be deemed denied and shall be subject to
824 appeal to the board of appeals as provided in this section 8.

825 K. Rules: The board of appeals shall adopt rules, not inconsistent with the provisions of
826 the zoning ordinance or by-law for the conduct of its business and for purposes of this chapter
827 and shall file a copy of said rules with the city or town clerk. If a board of appeals has appointed
828 a zoning administrator in accordance with subsection 8J, said rules shall set forth the fact of such
829 appointment, the identity of the persons from time to time appointed to such position, the powers
830 and duties delegated to such individual and any limitations thereon.

831 40A:9. Permits and Approvals, Procedures, and Zoning Tools

832 A. Special Permits

833 1. Requirements:

834 a. General: Any zoning ordinance or by-law that provides for the issuance of special
835 permits shall state the types of land uses and development for which special permits are required
836 and the districts where such special permits are required. Special permits shall be issued only for
837 uses which are in harmony with the general purpose and intent of the ordinance or by-law, and
838 shall be subject to general or specific provisions set forth therein; and such permits may also
839 impose conditions, safeguards, and limitations on time or use.

840 b. Special Permit Granting Authority: Zoning ordinances or by-laws may provide that
841 certain classes of special permits shall be issued by one special permit granting authority and
842 others by another special permit granting authority as provided in the ordinance or by-law. Such
843 special permit granting authority shall adopt and from time to time amend rules relative to the
844 issuance of such permits, and shall file a copy of said rules in the office of the city or town clerk.
845 Such rules shall prescribe a size, form, contents, style and number of copies of plans and
846 specifications, which may include the requirement of submission of a site plan, and the
847 procedure for a submission, review, and approval of such permits.

848 c. Increases in Density or Intensity: Any zoning ordinance or by-law that provides for
849 special permits authorizing increases in permissible density of population or intensity of a
850 particular use shall provide that the petitioner or applicant shall, as a condition for the grant of
851 the special permit, provide improvements or amenities in the public interest. Such zoning
852 ordinances or by-laws shall state the specific types of improvements or amenities required, and
853 the maximum increases in density of population or intensity of use which may be authorized by
854 such special permits.

855 2. Procedures:

856 a. Application, Hearing, and Vote Majorities: Each application for a special permit shall
857 be filed by the petitioner with the city or town clerk and a copy of said application, including the
858 date and time of filing certified by the city or town clerk, shall be filed forthwith by the petitioner
859 with the special permit granting authority. The special permit granting authority shall hold a
860 public hearing, for which notice has been given as provided in subsection 9D, on any application
861 for a special permit within 65 days from the date of filing of such application; provided,
862 however, that a city council having more than 5 members designated to act upon such
863 applications may appoint a committee of such council to hold the public hearing. The decision of
864 the special permit granting authority shall be made within 90 days following the date of the close
865 of such public hearing. The required time limits for a public hearing and said action may be
866 extended by written agreement between the petitioner and the special permit granting authority.
867 A copy of such agreement shall be filed in the office of the city or town clerk. Unless a lesser
868 majority is specified in the zoning ordinance or by-law, issuance of a special permit under this
869 section shall require a vote of two-thirds of the entire special permit granting authority in the
870 case of an authority with more than 5 members, the vote of at least 4 members of a 5-member
871 authority, or the vote of all members of an authority comprised of fewer than 5 members.

872 b. Review of Special Permit by Other Boards and Agencies: Zoning ordinances or by-
873 laws may provide that petitions for special permits shall be submitted to and reviewed by any
874 other town agency or board and may further provide that such reviews may be held jointly. Any
875 such board or agency to which petitions are referred for review shall make such
876 recommendations as they deem appropriate and shall send copies thereof to the special permit
877 granting authority and to the applicant; provided, however, that failure of any such board or
878 agency to make recommendations within 35 days of receipt by such board or agency of the
879 petition shall be deemed lack of opposition thereto.

880 c. Final Action, Failure to Take Final Action, Appeal: The special permit granting
881 authority shall cause to be made a detailed record of its proceedings, indicating the vote of each
882 member upon each question, or if absent or failing to vote, indicating such fact, and setting forth
883 clearly the reason for its decision and of its official actions, copies of all of which shall be filed
884 within 14 days in the office of the city or town clerk and shall be deemed a public record, and
885 notice of the decision shall be mailed forthwith to the petitioner, applicant or appellant, to the
886 parties in interest designated in section 9D, and to every person present at the hearing who
887 requested that notice be sent to him and stated the address to which such notice was to be sent.
888 Each such notice shall specify that appeals, if any, shall be made pursuant to section 11 and shall
889 be filed within 20 days after the date of filing of such notice in the office of the city or town
890 clerk. Failure by the special permit granting authority to take final action within said 90 days or
891 extended time, if applicable, shall be deemed to be a grant of the special permit. The petitioner
892 who seeks such approval by reason of the failure of the special permit granting authority to act
893 within such time prescribed, shall notify the city or town clerk, in writing within 14 days from
894 the expiration of said 90 days or extended time, if applicable, of such approval and that notice

895 has been sent by the petitioner to parties in interest. The petitioner shall send such notice to
896 parties in interest by mail and each such notice shall specify that appeals, if any, shall be made
897 pursuant to section 11 and shall be filed within 20 days after the date the city or town clerk
898 received such written notice from the petitioner that the special permit granting authority failed
899 to act within the time prescribed. After the expiration of 20 days without notice of appeal
900 pursuant to section 11, or, if appeal has been taken, after receipt of certified records of the court
901 in which such appeal is adjudicated, indicating that such approval has become final, the city or
902 town clerk shall issue a certificate stating the date of approval, the fact that the special permit
903 granting authority failed to take final action and that the approval resulting from such failure has
904 become final, and such certificate shall be forwarded to the petitioner.

905 d. Recordation of Special Permit: A special permit, or any extension, modification or
906 renewal thereof, shall not take effect until a copy of the decision bearing the certification of the
907 city or town clerk that 20 days have elapsed after the decision has been filed in the office of the
908 city or town clerk is recorded in the registry of deeds for the county and district in which the land
909 is located and indexed in the grantor index under the name of the owner of record or is recorded
910 and noted on the owner's certificate of title.

911 The certification shall include either:

912 (i) a statement that no appeal has been filed or that if such appeal has been filed, that it
913 has been dismissed or denied, or;

914 (ii) if it is a special permit which has been approved by reason of the failure of the special
915 permit granting authority to act thereon within the time prescribed, a copy of the petition for the
916 special permit accompanied by the statement of the city or town clerk stating the fact that the
917 special permit granting authority failed to act within the time prescribed, and no appeal has been
918 filed, and that the grant of the petition resulting from such failure to act has become final or that
919 if such appeal has been filed, that it has been dismissed or denied.

920 The fee for recording or registering shall be paid by the owner or applicant.

921 The person exercising rights under a duly appealed special permit does so at risk that a
922 court will reverse the permit and that any construction performed under the permit may be
923 ordered undone. This section shall in no event terminate or shorten the tolling, during the
924 pendency of any appeals, of the time periods provided under section 6B.

925 e. Lapse, Extension: A special permit granted under this section shall state that it will
926 lapse within a period of time specified by the special permit granting authority, not less than 3
927 years, if a substantial use thereof has not sooner commenced except for good cause due to
928 circumstances beyond the control of the petitioner or, in the case of a special permit for
929 construction, if construction has not begun by such date except for good cause due to
930 circumstances beyond the control of the petitioner. The period of time before which a special

931 permit shall lapse shall not include the time required to pursue or await the determination of an
932 appeal from the grant thereof referred to in section 11. Upon written application by the grantee of
933 a special permit, the special permit granting authority in its discretion and with or without a
934 public hearing as provided in the ordinance or bylaw may, by the same vote majority originally
935 required to approve the special permit, extend the time for the exercise of such special permit for
936 a period of time not to exceed the original duration of the special permit. Such application must
937 be filed no later than 65 days prior to the lapse of the special permit. If the permit granting
938 authority does not grant the extension within 65 days of the date of application therefor, upon the
939 lapse of the special permit, the special permit may be re-established only after notice and a new
940 hearing pursuant to the provisions of this section.

941 3. Special Permits for Specific Uses:

942 a. Shared Elderly Housing: Any zoning ordinance or by-law that provides for the use of
943 structures as shared elderly housing upon the issuance of a special permit shall specify the
944 maximum number of elderly occupants allowed not to exceed a total number of 6any age
945 requirements, and any other conditions deemed necessary for the special permits to be granted.

946 b. Adult Uses, Live Nudity: Any zoning ordinance or by-law that provides for special
947 permits authorizing the establishment of adult bookstores, adult motion picture theaters, adult
948 paraphernalia stores, adult video stores or establishments which display live nudity for their
949 patrons as hereinafter defined may state the specific improvements, amenities or locations of
950 proposed uses for which such permit may be granted and may provide that the proposed use be a
951 specific distance from any district designated by zoning ordinance or by-law for any residential
952 use or from any other adult bookstore or adult motion picture theatre or from any establishment
953 licensed under the provisions of section 12 of chapter 138. Such zoning ordinance or by-law
954 shall prohibit the issuance of such special permits to any person convicted of violating the
955 provisions of section 63 of chapter 119 or section 28 of chapter 272.

956 As used in this section, the following words shall have the following meanings:

957 "Adult bookstore", an establishment having as a substantial or significant portion of its
958 stock in trade, books, magazines, and other matter which are distinguished or characterized by
959 their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as
960 defined in section 31 of chapter 272.

961 "Adult motion picture theatre", an enclosed building used for presenting material
962 distinguished by an emphasis on matter depicting, describing, or relating to sexual conduct or
963 sexual excitement as defined in section 31 of chapter 272.

964 "Adult paraphernalia store," an establishment having as a substantial or significant
965 portion of its stock devices, objects, tools, or toys which are distinguished or characterized by

966 their association with sexual activity, including sexual conduct or sexual excitement as defined in
967 section 31 of chapter 272.

968 "Adult video store," an establishment having as a substantial or significant portion of its
969 stock in trade, videos, movies, or other film material which are distinguished or characterized by
970 their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as
971 defined in said section 31 of said chapter 272.

972 "Establishment which displays live nudity for its patrons", any establishment which
973 provides live entertainment for its patrons, which includes the display of nudity, as that term is
974 defined in section 31 of chapter 272. Any existing adult bookstore, adult motion picture theater,
975 adult paraphernalia store or establishment which displays live nudity for its patrons, or adult
976 video store shall apply for such permit within 90 days following the adoption of said zoning
977 ordinance or by-law by a municipality.

978 Nothing contained herein shall be construed as limiting the power and authority of cities
979 and towns to regulate the use of land, structures or buildings through zoning ordinances or by-
980 laws.

981 B. Site Plan Review

982 1. Requirements: Any ordinance or by-law that requires site plan review for uses allowed
983 by-right shall:

984 a. establish which uses of land or structures or development are subject to site plan
985 review;

986 b. specify the local boards or officials charged with reviewing and approving site plans,
987 which may differ for different types, scales, or categories of uses of land or structures;

988 c. set forth what constitutes a complete application;

989 d. establish the submission, review, and approval process, which may or may not include
990 a requirement for a public hearing under section 9D. Approval of a site plan under this section, if
991 reviewed by a board, shall require no greater than a simple majority vote of the full board and
992 shall be made within the time limits prescribed by ordinance or by-law, not to exceed 95 days
993 from the filing of a complete application. Approval of a site plan by staff or other municipal
994 official or officials shall be as specified in the ordinance or by-law. If no decision is issued
995 within the time limit prescribed and no written extension of the time limit has been granted by
996 the person seeking the site plan review, the site plan shall be deemed constructively approved as
997 provided in section 9A.2.c of this chapter;

998 e. establish standards and criteria by which the use of land or structures and its impact on
999 the neighborhood shall be evaluated; and

1000 f. contain provisions that make the terms, conditions, and content of the approved site
1001 plan enforceable by the municipality, which may include the requirement of performance
1002 guarantees.

1003 2. Approval Criteria for Uses Allowed By-right: This section does not allow a permit
1004 granting authority, in a decision on a site plan, to prohibit or deny a use that is permitted by-right
1005 in the applicable zoning district. A site plan submitted for the use of specific land or structures
1006 allowed by-right shall be approved if the site plan:

1007 a. satisfies the procedural and submission requirements of the site plan review process
1008 applicable to the specific land or structures;

1009 b. complies with the regulations applicable to such land or structures in the local zoning
1010 ordinance or by-law; and

1011 c. meets such standards and criteria as the local zoning ordinance or by-law provides by
1012 which the use of land or structures and its impact on the neighborhood shall be evaluated, or may
1013 be conditioned to meet such standards and criteria.

1014 3. Conditions, Safeguards, and Limitations:

1015 a. A site plan approved hereunder may include reasonable conditions, safeguards, and
1016 limitations to mitigate the impacts of a specific use of land or structures on the neighborhood.
1017 The permit granting authority may adopt such conditions which, in its opinion, are directly
1018 related to standards and criteria described in the site plan review ordinance or by-law, provided
1019 such conditions do not conflict with or waive any other applicable requirement of the zoning
1020 ordinance or by-law. The permit granting authority shall base any conditions it adopts on
1021 competent, credible evidence it shall incorporate into the record of its decision. If the permit
1022 granting authority adopts conditions pursuant to this paragraph, the site plan shall be revised to
1023 include such conditions before the development permit is issued.

1024 b. Site plan review may not require the payment or performance of any off-site
1025 mitigation, except to mitigate any extraordinary adverse impacts of the project on adjacent
1026 properties or public infrastructure, or when the site plan approval is subject to development
1027 impact fees imposed in accordance with the provisions of section 9F of this chapter, or when a
1028 site plan is required in connection with the issuance of a special permit or variance.

1029 4. Appeals: Decisions on uses allowed by-right shall be appealable as specified in the
1030 ordinance or by law, which may include direct judicial review pursuant to section 11.

1031 5. Duration, Lapse, Extensions: Zoning ordinances or by-laws shall provide that a site
1032 plan approval for a use allowed by-right shall lapse within a specified period of time, not less
1033 than 2 years from the date of the filing of such approval with the city or town clerk, if a building
1034 permit has not been obtained or substantial use or construction has not yet begun, except as

1035 extended for good cause by the permit granting authority. Such period of time shall not include
1036 time required to pursue or await the determination of an appeal under subsection 4, above.

1037 6. Consultant Fees: The board designated by ordinance or by-law to review site plans
1038 under this section may, by rules and regulations adopted by such board, provide for the
1039 imposition of reasonable fees for the employment of outside consultants in the same manner as
1040 set forth in section 53G of chapter 44.

1041 7. Discretionary Approvals: Where an ordinance or by-law provides that a variance,
1042 special permit, or other discretionary zoning approval shall also require site plan review, the
1043 review of the site plan shall be integrated into the processing of the variance, special permit, or
1044 other discretionary zoning approval and not made the subject of a separate proceeding, hearing,
1045 or decision. In such case, the content requirements and approval criteria for a site plan as
1046 specified in the zoning ordinance or by-law shall be followed, but this section 9B shall not
1047 otherwise apply.

1048 8. Transition Provision: In cities or towns that have adopted a zoning ordinance or by-law
1049 requiring a form of site plan review or site plan approval prior to the effective date of this act, the
1050 provisions of this section 9B shall not be effective with respect to such zoning ordinance or by-
1051 law until the date 2 years after the effective date of this act.

1052 C. Variances

1053 1. Authority: Where a literal enforcement of the provisions of the zoning ordinance or by-
1054 law would cause substantial hardship to the petitioner, upon appeal or upon petition with respect
1055 to particular land or structures, the permit granting authority shall have the discretionary
1056 authority to grant a variance from the terms of the applicable zoning ordinance or by-law
1057 following a public hearing for which notice has been given by publication and posting as
1058 provided in section 9D and by mailing to the planning board and all parties in interest.

1059 2. Standards: In making its determination, the permit granting authority shall take into
1060 consideration the benefit to the applicant if the variance is granted, as weighed against the
1061 detriment to the health, safety and welfare of the neighborhood or community by such grant.
1062 The permit granting authority may also take into consideration the extent to which the claimed
1063 hardship is self-created. In order to grant a variance the permit granting authority shall make all
1064 of the following findings:

1065 a. the benefit sought by the applicant cannot be achieved by some method, feasible for
1066 the applicant to pursue, other than a variance;

1067 b. the variance will not have a substantial undesirable effect on nearby properties, or the
1068 character of the neighborhood, or on the environment;

1069 c. the variance will not nullify or substantially derogate from the intent or purpose of such
1070 ordinance or by-law or the master plan under section 81D of chapter 41 upon which the
1071 ordinance or by-law is based; and

1072 d. the claimed hardship relating to the property in question is unique, and does not apply
1073 to a substantial portion of the district or neighborhood.

1074 In the granting of variances, the permit granting authority shall grant the minimum
1075 variance that it shall deem necessary to relieve the hardship.

1076 3. Use Variances: Use variances are not allowed unless expressly so authorized by an
1077 ordinance or by-law. If so authorized, use variances shall be subject to all the provisions of this
1078 section and to any additional more stringent criteria contained in the ordinance or by-law.

1079 4. Conditions, Safeguards, and Limitations: The permit granting authority may impose
1080 conditions, safeguards and limitations both of time and of use, including the continued existence
1081 of any particular structures.

1082 5. Duration: Variances shall run with the land, except that a use variance may run with
1083 land only if so determined by the permit granting authority acting pursuant to an ordinance or by-
1084 law enabling such a determination.

1085 6. Recordation of Variance: No variance, or any extension, modification or renewal
1086 thereof, shall take effect until a copy of the decision bearing the certification of the city or town
1087 clerk that 20 days have elapsed after the decision has been filed in the office of the city or town
1088 clerk is recorded in the registry of deeds for the county and district in which the land is located
1089 and indexed in the grantor index under the name of the owner of record or is recorded and noted
1090 on the owner's certificate of title.

1091 The certification shall include either:

1092 a. a statement that no appeal has been filed or that if such appeal has been filed, that it has
1093 been dismissed or denied, or;

1094 b. if it is a variance which has been approved by reason of the failure of the permit
1095 granting authority to act thereon within the time prescribed, a copy of the petition for the
1096 variance accompanied by the statement of the city or town clerk stating the fact that the permit
1097 granting authority failed to act within the time prescribed, and no appeal has been filed, and that
1098 the grant of the petition resulting from such failure to act has become final or that if such appeal
1099 has been filed, that it has been dismissed or denied.

1100 The fee for recording or registering shall be paid by the owner or applicant.

1101 7. Lapse, Extension: If the rights authorized by a variance are not exercised within two
1102 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, either with or without a public hearing as provided in the zoning ordinance or bylaw, the time for exercise of such rights for a period not to exceed one year. Such application must be filed no later than 65 days prior to the lapse of the variance. If the permit granting authority does not grant the extension within 65 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.

D. Procedures for Applications, Hearings, and Decisions

Unless otherwise provided for in this chapter, applications, hearings, and decisions shall be in accordance with this section 9D.

1. Applications: An application for a special permit or site plan review, or petition for a variance or appeal shall be filed by the applicant or petitioner with the city or town clerk, and a copy of said appeal, application, or petition, including the date and time of filing, certified by the city or town clerk, shall be transmitted forthwith by the applicant or petitioner to the permit granting authority or special permit granting authority as the case may be.

2. Public Hearings:

a. Notice of Hearing: In all cases where notice of a public hearing is required notice shall be given by publication in a newspaper of general circulation in the city or town once in each of 2 successive weeks, the first publication to be not less than 14 days before the day of the hearing and by posting such notice in a conspicuous place in the city or town hall for a period of not less than 14 days before the day of such hearing. In all cases where notice to individuals or specific boards or other agencies is required, notice shall be sent by mail, postage prepaid. "Parties in interest" as used in this chapter shall mean the petitioner, abutters, owners of land directly opposite on any public or private street or way, and abutters to the abutters within 300 feet of the property line of the petitioner as they appear on the most recent applicable tax list, notwithstanding that the land of any such owner is located in another city or town, the planning board of the city or town, and the planning board of every abutting city or town. The assessors maintaining any applicable tax list shall certify to the permit granting authority or special permit granting authority the names and addresses of parties in interest and such certification shall be conclusive for all purposes. The permit granting authority or special permit granting authority may accept a waiver of notice from, or an affidavit of actual notice to any party in interest or, in his stead, any successor owner of record who may not have received a notice by mail, and may order special notice to any such person, giving not less than 5 nor more than 10 additional days to reply. Notice shall be provided to all municipal departments, which shall be accorded the opportunity to provide advisory comments to the board in writing.

b. Content of Notice: Publications and notices required by this section shall contain the name of the petitioner, a description of the area or premises, street address, if any, or other

adequate identification of the location, of the area or premises which is the subject of the petition, the date, time and place of the public hearing, the subject matter of the hearing, and the nature of action or relief requested if any. No such hearing shall be held on any day on which a state or municipal election, caucus or primary is held in such city or town.

c. Consolidated Public Hearing on Special Permit for Subdivision: When a planning board or department is also the special permit granting authority for a special permit applicable to a subdivision plan, the planning board or department may hold the special permit public hearing together with a public hearing required by sections 81K to 81GG inclusive of chapter 41 and allow for the publication of a single advertisement giving notice of the consolidated hearing.

3. Decisions:

a. Notice of Decision: Upon the granting of a variance, special permit, site plan review, or any extension, modification or renewal thereof, the permit granting authority or special permit granting authority shall issue to the owner and to the applicant if other than the owner a copy of its decision, certified by the permit granting authority or special permit granting authority, containing the name and address of the owner, identifying the land affected, setting forth compliance with the statutory requirements for the issuance of such variance, special permit, or site plan review and certifying that copies of the decision and all plans referred to in the decision have been filed with the planning board and city or town clerk.

b. Final Unfavorable Decisions, Reconsideration: No appeal, application or petition which has been unfavorably and finally acted upon by the special permit granting or permit granting authority shall be acted favorably upon within 2 years after the date of final unfavorable action unless said special permit granting authority or permit granting authority finds, by a unanimous vote of a board of 3 members or by a vote of 4 members of a board of 5 members or two-thirds vote of a board of more than 5 members, specific and material changes in the conditions upon which the previous unfavorable action was based, and describes such changes in the record of its proceedings, and unless all but one of the members of the planning board consents thereto and after notice is given to parties in interest of the time and place of the proceedings when the question of such consent will be considered. The aforesaid restriction upon reconsideration shall not apply to applications for site plan review for uses allowed by-right.

c. Withdrawal of Petition or Application: Any petition for a variance or application for a special permit or a site plan review which has been transmitted to the permit granting authority or special permit granting authority may be withdrawn, without prejudice by the petitioner prior to the publication of the notice of a public hearing thereon, but thereafter may be withdrawn without prejudice only with the approval of the special permit granting authority or permit granting authority.

E. Inclusionary Zoning

1177 1. Authority: In furtherance of the purposes of zoning ordinances and by-laws stated in
1178 section 1 of this chapter and in the exercise of their home rule powers, a city or town, by
1179 ordinance or by-law, may require or provide incentives for the applicant for a residential
1180 development to provide inclusionary housing units within such development.

1181 2. Off-Site Units, Land Dedications, Payment of Funds: In lieu of constructing the
1182 required inclusionary housing units on-site, the ordinance or by-law may provide for the
1183 construction of such units off-site, the dedication of land for such purpose, or the payment of
1184 funds to a separate account created by the city or town sufficient for and dedicated to the
1185 provision of inclusionary housing, provided the applicant demonstrates to the satisfaction of the
1186 local approving authority that the units cannot be otherwise provided on-site or that an
1187 alternative proposal better meets the needs of the city or town with respect to the provision of
1188 inclusionary housing. Off-site units, land dedication, or payment in-lieu of units shall, in the
1189 opinion of the board or official designated by ordinance or by-law to administer the provisions of
1190 this section 9E and in consideration of local needs, provide inclusionary housing benefits roughly
1191 equivalent to the provision of on-site units.

1192 3. Dedicated Accounts: Cities and towns are authorized to establish a separate dedicated
1193 account for the deposit of funds received under this section, including Municipal Housing Trust
1194 Fund accounts under section 55C of chapter 44 or other dedicated accounts of similar purpose.
1195 Said funds shall be deposited with the treasurer and disbursed for inclusionary housing purposes
1196 in accordance with the ordinances, by-laws, or regulations of the city or town. Where the
1197 application of this section results in less than a full dwelling unit the board may accept a prorated
1198 payment of funds in lieu of unit creation.

1199 4. Price or Rent Restriction: The inclusionary housing units shall be subject to an
1200 affordable housing restriction in accordance with sections 31 and 32 of chapter 184 or, if
1201 ineligible under said sections, restricted by other means as required in an ordinance or by-law for
1202 a period of not less than 30 years.

1203 5. Eligibility for Subsidized Housing Inventory: The ordinance or by-law may further
1204 require some or all of the inclusionary housing units to be low- or moderate-income housing as
1205 defined in section 20-23 of chapter 40B, and be eligible for inclusion on the local subsidized
1206 housing inventory subject to and in accordance with applicable regulations and guidelines of the
1207 Department of Housing and Community Development or successor agency. Nothing in this
1208 section shall be construed to require the Department of Housing and Community Development to
1209 include affordable units created hereunder on the subsidized housing inventory.

1210 F. Development Impact Fees

1211 1. Authority:

1212 a. Any city or town that adopts a local ordinance or by-law requiring the payment of a
1213 development impact fee as a requirement of any permit or approval otherwise required for any
1214 proposed development having development impacts as defined in the ordinance or by-law, shall
1215 do so only in accordance with this section or any authority conferred by a special act. The
1216 development impact fee may be imposed only on construction, enlargement, expansion,
1217 substantial rehabilitation, or change of use of a development. The development impact fee shall
1218 be used solely for the purposes of defraying the costs of off-site public capital facilities to be
1219 provided or paid for by the city or town and which are either caused by or necessary to support
1220 or compensate for the proposed development, or, in the case of a city or town authorized to
1221 impose such fees under the provisions of a special act, then such fees may be used for the
1222 purposes set forth in the special act.

1223 b. Such off-site public capital facilities may include the provision of infrastructure,
1224 facilities, land, or studies including master plans under section 81D of chapter 41, partnership
1225 plans under chapter 40V, and impact fee studies required under subsection 3(a-c) herein
1226 associated with the following:

1227 (i) water supply, treatment, and distribution, both potable and for suppression of fires;

1228 (ii) wastewater treatment and sanitary sewerage;

1229 (iii) stormwater management and treatment;

1230 (iv) solid waste;

1231 (v) roads, public transportation, pedestrian ways, and bicycle paths; and

1232 (vi) parks, open space, and recreational facilities.

1233 c. Nothing in this section shall prohibit a city or town from imposing other fees or
1234 requirements for mitigation of development impacts which it may otherwise impose under state
1235 or local law.

1236 2. Limitations:

1237 a. No development impact fee under this section shall be imposed upon any affordable
1238 housing dwelling unit, regardless of how created or permitted, which is subject to a restriction on
1239 sale price or rent under the provisions of sections 31 and 32 of chapter 184 as amended ensuring
1240 that the unit will remain affordable for a period of at least 30 years. The foregoing limitation
1241 shall not apply to cities and towns imposing development impact fees under a special act.

1242 b. The fee shall not be expended for personnel costs, normal operation and maintenance
1243 costs, or to remedy deficiencies in existing facilities, except where such deficiencies are
1244 exacerbated by the new development, in which case the fee may be assessed only in proportion
1245 to the deficiency so exacerbated.

1246 3. Requirements:

1247 a. Prior to the imposition of development impact fees under this section, a city or town
1248 shall complete a study that:

1249 (i) analyzes any existing capital improvement plans and the infrastructure and capital
1250 facilities subject matter of a plan adopted under section 81D of chapter 41 or the capital facilities
1251 planning element of a local comprehensive plan adopted pursuant to Chapter 716 of the Acts of
1252 1989, as amended;

1253 (ii) estimates future development based on the then current zoning ordinance or by-law;

1254 (iii) assesses the impacts related to such development;

1255 (iv) determines the need for capital facilities required to address the impacts of the
1256 estimated development including excess facility capacity, if any, currently planned to
1257 accommodate future development;

1258 (v) develops cost projections for the needed capital facilities and documents costs of
1259 existing facilities with planned excess capacity; and

1260 (vi) establishes the amount of any development impact fee authorized under this section
1261 in accordance with a methodology determined pursuant to the study.

1262 b. The scope of the study may be limited to a geographic area and/or the category or
1263 categories of public capital facilities that development impact fees may be intended to address.
1264 A municipality may rely upon a recognized methodology for the study as approved by the
1265 Interagency Planning Board under chapter 40U.

1266 c. The study shall be updated periodically, at intervals of not greater than 10 years, to
1267 reflect actual development activity, actual costs of infrastructure improvements completed or
1268 underway, plan changes, or amendments to the zoning ordinance or by-law.

1269 d. A development impact fee shall have a rational nexus to, and shall be roughly
1270 proportionate to, the impacts created by the development as determined by said study evaluating
1271 said impacts, and it shall be applied to affected development in a consistent manner.
1272 Notwithstanding the foregoing, a city or town authorized to impose development impact fees
1273 pursuant to a special act shall comply with the standards set forth in such special act.

1274 e. The purposes for which the fee is expended shall reasonably benefit the proposed
1275 development.

1276 f. The fee may not be assessed more than once for the same impact, nor may the fee be
1277 assessed for impacts, or portions thereof, offset by other dedicated means, including state or
1278 federal grants or contributions made by the applicant undertaking the development.

1279 4. Administration:

1280 a. The ordinance or by-law may waive or reduce the development impact fee for any
1281 category of development that furthers an overriding public purpose as determined in a plan
1282 adopted by the city or town under section 81D of chapter 41 or other plan designed to set goals
1283 for the development of land within the city or town.

1284 b. If the proposed development is located in more than one municipality, the impact fee
1285 shall be apportioned among the municipalities in accordance with the land area or other equitable
1286 measure of the impacts of the proposed development in each city or town.

1287 c. Any development impact fee assessed under this section shall be payable no sooner
1288 than the issuance of a building permit, or in the case of a phased development, for a building
1289 permit for any phase thereof. The fee shall be deposited to a separate, interest bearing account in
1290 the city or town in which the proposed development is located. Unless subject to section 4d
1291 below, no development impact fee shall be paid to the general treasury or used as general
1292 revenues of the city or town subject to the provisions of section 53 of chapter 44.

1293 d. Any funds not expended or encumbered by the end of the calendar quarter immediately
1294 following 10 years from the date the development impact fee was paid shall, upon request of the
1295 applicant or its assigns, be returned with interest provided that an application for a refund
1296 prescribed in the ordinance or by-law has been submitted within one 180 calendar days prior to
1297 the expiration of the 10 year period. If no application for refund is received by the city or town
1298 within said period, any funds not expended or encumbered by the end of the calendar quarter
1299 shall then revert to and become part of the general fund under section 53 of chapter 44. In the
1300 event of any disagreement relative to who shall receive the refund, the city or town may retain
1301 said development impact fee pending instructions given in writing by the parties involved or by a
1302 court of competent jurisdiction. Notwithstanding the foregoing, a city or town authorized to
1303 impose development impact fees pursuant to a special act shall comply with the requirements set
1304 forth in such special act.

1305 e. The applicant and the municipality may agree that the applicant shall construct the
1306 public capital facility or a portion thereof for which the development impact fee was assessed in
1307 lieu of paying the development impact fee to the municipality, provided that the applicant shall
1308 not be required to construct such improvement if it chooses to pay the assessed development
1309 impact fee.

1310 G. Land Use Dispute Avoidance

1311 1. Applicability: As an optional means of avoiding or minimizing land use disputes, the
1312 owner of land or structures who has applied or intends to apply for a building permit, any permit
1313 or approval required under this chapter, an approval under sections 81K-GG of chapter 41, or a
1314 comprehensive permit under sections 20-23 of chapter 40B, may request of the public official or

1315 local board charged with acting on the application to undertake a land use dispute avoidance
1316 process as hereinafter provided.

1317 2. Initial Conflict Evaluation: The dispute avoidance process may include an initial
1318 conflict evaluation to determine if a further resolution effort is advisable, and if so, whether there
1319 should be subsequent resolution efforts to avoid or minimize disputes relating to the application.

1320 3. Participation: Both the conflict evaluation and any later resolution effort shall be
1321 voluntary for those participating requiring the joint written agreement of both the applicant and
1322 public official or local board which shall be filed with the city or town clerk.

1323 4. Neutral Facilitator: The conflict evaluation and any later resolution effort may be
1324 conducted by a neutral facilitator as defined in section 23C of chapter 233, selected from a list
1325 prepared by the Massachusetts Office of Dispute Resolution or its successor agency or its
1326 designee, or as chosen jointly by the applicant and the public official or local board. The
1327 facilitator and any associate assisting the facilitator shall comply with the standards of conduct of
1328 the Association for Conflict Resolution or as promulgated by the Massachusetts Office of
1329 Dispute Resolution or its successor agency or its designee.

1330 5. Costs: Funding for any conflict evaluation or resolution effort under this section may
1331 be as the applicant and the public official or local board may agree, or the public official or local
1332 board may provide for the imposition of reasonable fees for the employment of outside
1333 consultants, including the facilitator, in the same manner as set forth in section 53G of chapter
1334 44.

1335 6. Rules: Public officials or local boards may adopt, and from time to time amend, after a
1336 public hearing, rules to implement the conflict evaluation or resolution efforts undertaken
1337 pursuant to this section. Notice of the hearing on the proposed rules, including the location, date,
1338 and time of the hearing shall be filed with the city or town clerk and published once in a
1339 newspaper of general circulation in the city or town at least 14 days before the public hearing.

1340 7. Process of Conflict Evaluation: As part of the conflict evaluation, the facilitator may
1341 solicit information and opinions relating to the application, and may identify and notify those
1342 members of the public likely to be interested in or affected by the application. The facilitator
1343 may clarify the issues and investigate the willingness of all interested parties to work together
1344 with the applicant to resolve those issues. The facilitator may identify measures or community-
1345 enhancing features that would benefit the neighborhood, the larger community, and the project
1346 itself. Based upon the evaluation, the facilitator may determine whether further resolution effort
1347 would be productive in reaching a consensus of those participating, with the understanding that
1348 the outcome may be the withdrawal or substantial modification of the application.

1349 8. Special Provisions, Meetings: The facilitator may convene meetings or conduct
1350 interviews that shall be confidential and privileged from discovery under section 23C of chapter

1351 233. The facilitator shall have the protections provided under section 23C of chapter 233. To
1352 the extent that public agencies are participants, their deliberations shall be subject to the
1353 provisions of section 21(b) (9) of chapter 30A.

1354 9. Report on Conflict Evaluation: In preparing a report on conflict evaluation, or on a
1355 later resolution effort, the facilitator shall not attribute statements, positions, ideas, or interests to
1356 specific individuals, organizations, or persons interviewed, and shall distribute copies of the
1357 report to those participating without prior review or approval of any participant. The conflict
1358 evaluation report shall indicate whether and how a subsequent resolution effort might be
1359 appropriate for the application involved, including elaborating on how it might be undertaken
1360 and by whom.

1361 10. Conflict Resolution: Based upon the conflict evaluation, the applicant and the public
1362 official or local board may determine if a further resolution effort regarding an application is
1363 worth undertaking in accordance with the procedures set out in this section, or as they may
1364 otherwise in writing jointly agree. The applicant and the public official or local board may, by
1365 an agreement in writing filed with the city or town clerk, stipulate and agree to extend any
1366 otherwise applicable time requirements of state or local law.

1367 11. Conclusion of Process: At the conclusion of any conflict evaluation or resolution
1368 efforts, the application which initiated the conflict evaluation and resolution efforts may go
1369 forward in the ordinary course in accordance with the applicable statute, ordinance, or by-law,
1370 reflecting if possible the result of any resolution effort, including the opportunity for public
1371 hearing and comment if so provided by the applicable statute, ordinance, or by-law. If the
1372 parties so agree, any resolution may be incorporated into the action taken by the local board or
1373 official. Whether or not a resolution results, the applicant may nevertheless proceed with the
1374 application without prejudice for having participated in a conflict evaluation or resolution effort,
1375 and the application process shall proceed in due course as otherwise provided by statute,
1376 ordinance, or by-law.

1377 40A:10. Enforcement

1378 A. Zoning Enforcement Officer: The zoning enforcement officer shall be charged with
1379 the enforcement of the zoning ordinance or by-law.

1380 B. Compliance with Zoning: The zoning enforcement officer shall withhold a permit for
1381 the construction, alteration, or moving of any building or structure if the building or structure as
1382 constructed, altered or moved would be in violation of any zoning ordinance or by-law.

1383 C. Compliance with Zoning, New Uses: No permit or license shall be granted for a new
1384 use of a building, structure, or land which use would be in violation of any zoning ordinance or
1385 by-law.

1386 D. Enforcement Procedures: If the zoning enforcement officer is requested in writing to
1387 enforce such ordinances or by-laws against any person allegedly in violation of the same, said
1388 officer shall notify, in writing, the party requesting such enforcement of any action or refusal to
1389 act, and the reasons therefor, within 14 days of receipt of such request.

1390 E. Penalties for Violations: Notwithstanding any other provision of general or special
1391 law, zoning ordinances and by-laws may provide a penalty of up to 1,000 dollars per violation;
1392 provided, however, that nothing herein shall be construed to prohibit such laws from providing
1393 that each day such violation continues shall constitute a separate offense.

1394 F. Limits to Enforcement: No action, suit, or proceeding shall be maintained in any court,
1395 nor any administrative or other action taken to recover a fine or damages or to compel the
1396 removal, alteration, or relocation of any structure or part of a structure or alteration of a structure
1397 by reason of any violation of any zoning by-law or ordinance except in accordance with the
1398 provisions of this section, section 8, and section 11.

1399 G. Duration of Ability to Enforce, Building Permit: If real property has been improved
1400 and used in accordance with the terms of the original building permit issued by a person duly
1401 authorized to issue such permits, no action, criminal or civil, the effect or purpose of which is to
1402 compel the abandonment, limitation or modification of the use allowed by said permit or the
1403 removal, alteration or relocation of any structure erected in reliance upon said permit by reason
1404 of any alleged violation of the provisions of this chapter, or of any ordinance or by-law adopted
1405 thereunder, shall be maintained, unless such action, suit or proceeding is commenced and notice
1406 thereof recorded in the registry of deeds for each county or district in which the land lies within 6
1407 years next after the commencement of the alleged violation of law. Such a structure shall not be
1408 deemed to be a protected nonconforming structure under section 6A of this chapter unless such
1409 status is specifically conferred in the zoning ordinance or by-law.

1410 H. Duration of Ability to Enforce, Variance or Special Permit: No action, criminal or
1411 civil, the effect or purpose of which is to compel the removal, alteration, or relocation of any
1412 structure by reason of any alleged violation of the provisions of this chapter, or any ordinance or
1413 by-law adopted thereunder, or the conditions of any variance or special permit, shall be
1414 maintained, unless such action, suit or proceeding is commenced and notice thereof recorded in
1415 the registry of deeds for each county or district in which the land lies within 10 years next after
1416 the commencement of the alleged violation. Such notice shall include names of one or more of
1417 the owners of record, the name of the person initiating the action, and adequate identification of
1418 the structure and the alleged violation. Such a structure or use shall not be deemed to be a
1419 protected nonconforming structure or use under section 6A of this chapter unless such status is
1420 specifically conferred in the zoning ordinance or by-law.

1421 I. Judicial Review: The superior court and the land court shall have jurisdiction to enforce
1422 the provisions of this chapter and any ordinances or by-laws adopted thereunder and may restrain
1423 by injunction violations thereof.

1424 40A:11. Judicial Review Procedures and Standards

1425 A. Appeals: A person aggrieved and any municipal officer or board, whether or not
1426 previously a party to the proceeding, may appeal any decision or failure to act with respect to any
1427 matter governed by this chapter, as provided in this section. This section shall apply to:

1428 1. the decision of the board of appeals or any permit granting authority or special permit
1429 granting authority;

1430 2. the failure of the board of appeals to take final action concerning any appeal,
1431 application, or petition within the required time; and

1432 3. the failure of any permit granting authority or special permit granting authority to take
1433 final action concerning any application for a site plan review or special permit within the
1434 required time.

1435 The appeals shall be commenced by bringing an action within 20 days after the decision
1436 has been filed in the office of the city or town clerk, or within 20 days of the date by which the
1437 zoning authority was required to take final action. Notice of the action with a copy of the
1438 complaint shall be given to such city or town clerk so as to be received within such 20 days.

1439 The appeal shall be made to the land court department, the superior court department in
1440 which the land concerned is situated or, if the land is situated in Hampden county, either to said
1441 land court or, superior court department or to the division of the housing court department for
1442 said county, or if the land is situated in a county, region or area served by a division of the
1443 housing court department either to said land court or superior court department or to the division
1444 of said housing court department for said county, region or area, or to the division of the district
1445 court department within whose jurisdiction the land is situated except in Hampden county. If
1446 said appeal is made to said division of the district court department, any party shall have the right
1447 to file a claim for trial of said appeal in the superior court department within 25 days after service
1448 on the appeal is completed, subject to such rules as the supreme judicial court may prescribe.

1449 There shall be attached to the complaint a copy of the decision appealed from, bearing the
1450 date of filing thereof, certified by the city or town clerk with whom the decision was filed. The
1451 complaint shall allege that the decision exceeds the authority of the board or authority, and any
1452 facts pertinent to the issue, and shall contain a prayer that the decision be annulled.

1453 If the complaint is filed by someone other than the original applicant, appellant or
1454 petitioner, such original applicant, appellant, or petitioner and all members of the board of

1455 appeals, permit granting authority, or special permit granting authority shall be named as parties
1456 defendant with their addresses.

1457 B. Notice of Filing of Complaint: To avoid delay in the proceedings, instead of the usual
1458 service of process, the plaintiff shall within 14 days after the filing of the complaint, send written
1459 notice thereof, with a copy of the complaint, by delivery or certified mail to all defendants,
1460 including the members of the board of appeals, permit granting authority, or special permit
1461 granting authority and shall within 21 days after the entry of the complaint file with the clerk of
1462 the court an affidavit that such notice has been given. If no such affidavit is filed within such
1463 time the complaint shall be dismissed.

1464 C. Filing of Answer to Complaint: No answer shall be required but an answer may be
1465 filed and notice of such filing with a copy of the answer and an affidavit of such notice given to
1466 all parties as provided above within 7 days after the filing of the answer.

1467 D. Intervening Parties: Other persons may be permitted to intervene, upon motion.

1468 E. Hearing: The clerk of the court shall give notice of the hearing as in other cases
1469 without jury, to all parties whether or not they have appeared. The court shall hear all evidence
1470 pertinent to the authority of the board, permit granting authority, or special permit granting
1471 authority and determine the facts, and, upon the facts as so determined, annul such decision if
1472 found to exceed the authority of such board, permit granting authority, or special permit granting
1473 authority or make such other decree as justice and equity may require. The foregoing remedy
1474 shall be exclusive, notwithstanding any defect of procedure or of notice other than notice by
1475 publication, mailing or posting as required by this chapter, and the validity of any action shall not
1476 be questioned for matters relating to defects in procedure or of notice in any other proceedings
1477 except with respect to such publication, mailing or posting and then only by a proceeding
1478 commenced within 90 days after the decision has been filed in the office of the city or town
1479 clerk, but the parties shall have all rights of appeal and exception as in other equity cases.

1480 F. Special Provisions for Appealing Site Plan Review Decisions: Notwithstanding the
1481 foregoing, and except where a site plan is required in connection with the issuance of a special
1482 permit or variance, decisions made under site plan review pursuant to section 9B of this chapter,
1483 whether made pursuant to statutory or home rule authority, may be appealed using the
1484 procedures and standards applicable to a civil action in the nature of certiorari pursuant to section
1485 4 of chapter 249, and not otherwise. All issues in any proceeding under this subsection shall have
1486 precedence over all other civil actions and proceedings. A complainant challenging a site plan
1487 approval or conditional approval shall allege the specific reasons why the project fails to satisfy
1488 the requirements of section 9B, the zoning ordinance or by-law, or other applicable law and
1489 allege specific facts establishing how the plaintiff is aggrieved by such decision. A complaint
1490 challenging the denial or conditioned approval of a site plan shall similarly allege the specific
1491 reasons why the project properly satisfies the requirements of section 9B, the zoning ordinance

1492 or by-law, or other applicable law. The permit granting authority's decision in either case shall
1493 be affirmed unless the court concludes the permit granting authority abused its discretion under
1494 section 9B, the zoning ordinance or by-law, or other applicable law in approving the project,
1495 approving with conditions, or denying the project.

1496 G. Appeals by Cities or Towns: A city or town may provide any officer or board of such
1497 city or town with independent legal counsel for appealing, as provided in this section, a decision
1498 of a board of appeal, permit granting authority, or special permit granting authority and for
1499 taking such other subsequent action as parties are authorized to take.

1500 H. Costs: Costs shall not be allowed against the board, permit granting authority, or
1501 special permit granting authority unless it shall appear to the court that the board, permit granting
1502 authority, or special permit granting authority in making the decision appealed from acted with
1503 gross negligence, in bad faith or with malice. Costs shall not be allowed against the party
1504 appealing from the decision of the board, permit granting authority, or special permit granting
1505 authority unless it shall appear to the court that said appellant or appellants acted in bad faith or
1506 with malice in making the appeal to the court.

1507 I. Requirement to Post Bond: The court may require non-municipal appellants to post a
1508 surety or cash bond in a sum of not less than 2,000 nor more than 15,000 dollars to secure the
1509 payment of any costs incurred by the appellee as a result of the appeal of a zoning or subdivision
1510 plan approval decision if it appears to the court that said appellant or appellants acted in bad faith
1511 or with malice in making the appeal to the court.

1512 J. Precedence: All issues in any proceeding under this section shall have precedence over
1513 all other civil actions and proceedings.

1514 K. Mediation of Land Use Appeals:

1515 1. Initiation, Time Periods: After the filing of an appeal hereunder, the parties may agree
1516 to mediate the appeal. In all such cases, the parties shall file with the court a statement advising
1517 the court that the dispute has been submitted for mediation. If the parties agree to mediation, the
1518 mediation shall begin within 60 days of the date such statement was filed, or such other period as
1519 the parties may agree or the court may allow upon application by any party. The mediation shall
1520 conclude not later than 180 days after filing, provided that such period may be extended for an
1521 additional 180 days by joint written agreement of the parties, or for such other additional period
1522 as the court may allow upon application by any party.

1523 2. Selection of Mediator, Compensation, and Withdrawal from Mediation: The parties
1524 may select the mediator from a list provided by the court or otherwise as the parties may
1525 determine. The mediator shall be compensated by the parties as they may agree, or in the
1526 absence of agreement, as the court may determine. A party may withdraw from mediation at any

1527 time after written notification to the other parties and to the court, but shall remain responsible
1528 for that party's share of the costs of mediation until the time of withdrawal.

1529 3. Special Provisions: During the mediation, any appeal otherwise pending shall be
1530 stayed. The mediator shall have the protections provided under section 23C of chapter 233. To
1531 the extent that public agencies are participants in the mediation, their deliberations shall be
1532 subject to the provisions of section 21(a)(9) of chapter 30A.

1533 4. Conclusion of Mediation: At the conclusion of the mediation, the mediator shall file
1534 with the court a statement describing whether the parties have come to agreement. If unresolved,
1535 the appeal will then go forward; if the matter has been resolved, the appeal will be dismissed
1536 with prejudice. Mediation hereunder shall not be the only method of resolving a zoning appeal.

1537 40A:12. Transition Provisions

1538 Any rights under section 6 of chapter 40A and any zoning ordinance or by-law relating
1539 thereto that were finally acquired prior to [Date] , shall continue in full force and effect for the
1540 periods of time specified in said statute and local zoning law.

1541 SECTION 2. Section 81D of chapter 41 of the General Laws, as appearing in the 2010
1542 Official Edition, is hereby amended by striking out section 81D and inserting in place thereof the
1543 following section 81D:-

1544 41:81D. Master Plan

1545 1. Requirement to Plan: A planning board established in any city or town shall make a
1546 master plan for such city or town. The plan shall take effect upon adoption by the legislative
1547 body as provided in subsection 6, below. For a plan to remain in effect, from time to time not to
1548 exceed 10 years from the date of adoption, the planning board shall conduct a comprehensive
1549 review of the plan and may extend, revise, or remake the plan, and the plan or amendment
1550 thereto shall thereafter be re-adopted as provided in this section. The plan, once adopted, shall
1551 be the official master plan of the city or town, replacing any previously adopted master plans.

1552 2. General Description of Plan:

1553 a. The plan shall be a comprehensive framework, through text, maps, and illustrations
1554 that provides a basis for decision making about land use and the long term physical development
1555 of the municipality. Other completed and current plans, reports, and studies may be incorporated
1556 by reference to fulfill in whole or in part the requirements of each subject listed below, provided
1557 that such material will then be considered part the plan, including its implementation. The
1558 master plan shall be internally consistent in its policies, forecasts and standards, and shall support
1559 and provide a coherent rationale for the municipality's zoning ordinance or bylaws, subdivision
1560 regulations, and other laws, regulations, policies, and capital expenditures.

1561 b. The plan shall include the required subjects identified in subsection 3, any optional
1562 subjects in subsection 4 at the discretion of the municipality, and the regional plan self
1563 assessment in subsection 5. The plan subjects may be written as separate elements or organized
1564 and integrated as deemed appropriate by the planning board. Due to the wide range of
1565 community types, characteristics, and planning needs in the commonwealth it is recognized that
1566 the subjects addressed with a particular city or town in mind may be expanded upon or
1567 contracted as appropriate, and may vary greatly among communities in the focus and depth of
1568 their analysis.

1569 3. Required Subjects: The plan shall address the following 5 required subjects, described
1570 below in a general manner:

1571 a. Goals and Policies: A goals and policies statement that identifies the goals and policies
1572 of the municipality for its future growth, development, redevelopment, conservation, and
1573 preservation. Each community shall conduct a public participation process to determine
1574 community values, establish goals, and identify patterns of development, redevelopment,
1575 conservation, preservation, and protection of public health consistent with these goals. The goals
1576 and policies statement shall address the required and any additional selected optional plan
1577 subjects.

1578 b. Housing:

1579 (i) An inventory of local housing and population characteristics, an assessment and
1580 forecast of housing needs, and a statement of local housing goals, objectives, policies; and
1581 implementing measures. Where applicable, existing local housing plans and studies may be
1582 included by reference.

1583 (ii) An analysis of housing units by type of structure (e.g. single family, two family,
1584 multi-family); affordable housing and subsidized housing; housing available for rental; special
1585 needs housing; and housing for the elderly, including assisted living residences.

1586 (iii) An analysis of existing local policies, programs, laws, or regulations that encourage
1587 the preservation, improvement, and development of such housing, including an assessment of
1588 their adequacy.

1589 (iv) An evaluation of zoning and other policies to provide a variety of housing that meets
1590 a broad range of housing needs, including but not limited to the affordable housing needs of low,
1591 moderate, and median income households and the accessible housing needs of people with
1592 disabilities and special needs. The evaluation shall include specific measures for implementing
1593 the master plan in order to address these needs, including strategies, programs, and assistance for
1594 the preservation or rehabilitation of existing housing; the construction of new housing; and the
1595 adoption or amendment of local ordinances or bylaws and regulations permitting, encouraging,
1596 or requiring diversity in housing locations, types, designs, and area densities that offer

1597 alternatives to single family detached housing. A current housing production plan consistent
1598 with M.G.L. 760 CMR 56.03(4) shall constitute the subject matter relative to housing under this
1599 subsection b

1600 (v) A description of the impact of existing and forecasted housing characteristics and
1601 needs on the health of the community.

1602 c. Natural Resources and Energy Management:

1603 (i) A general overview of the significant natural and energy resources of the municipality.

1604 (ii) Identification of protected and unprotected wetlands and water resources, lands
1605 critical to sustaining surface and groundwater quality and quantity, environmentally sensitive
1606 lands, critical wildlife habitat and biodiversity, agricultural lands and forests. Priorities for
1607 protection of wildlife habitat, water resources, vistas and key landscapes, outdoor recreation
1608 facilities, and farm and forestry land shall be identified.

1609 (iii) An outline of local laws, regulations, policies, and strategies to address needs for the
1610 protection, restoration, and sustainable management of these resources and to promote
1611 development that respects and enhances the state's natural resources.

1612 (iv) An energy component that explores locally feasible land use strategies to: maximize
1613 energy efficiency and renewable energy opportunities; support land, energy, water, and materials
1614 conservation strategies, local clean power generation, distributed generation technologies, and
1615 innovative industries; and address climate change by reducing greenhouse gas emissions and the
1616 consumption of fossil fuels.

1617 (v) A description of the impact of existing and forecasted natural resource and energy
1618 characteristics and needs on the health of the community.

1619 d. Land Use and Zoning:

1620 (i) An identification of historic settlement patterns and present land uses, and designation
1621 of the proposed distribution, location, and inter-relationship of public and private land uses in a
1622 general manner sufficient to guide the development of zoning ordinances or by-laws, and maps.

1623 (ii) Land use policies and related maps, which shall be based upon a land use suitability
1624 analysis identifying areas most suitable for development and related transportation infrastructure
1625 and facilities. Growth and development areas shall support the revitalization of city and town
1626 centers and neighborhoods by promoting development that is compact, conserves land, protects
1627 historic resources, integrates uses, and coordinates the provision of housing with the location of
1628 jobs, transit and services, and new infrastructure. The plan shall also identify areas for economic
1629 development and job creation, related public and private transportation and pedestrian
1630 connections, and encourage the creation or extension of pedestrian-friendly districts and

1631 neighborhoods that mix commercial, civic, cultural, educational, and recreational activities with
1632 open space and housing.

1633 (iii) A consideration of the relationship between proposed development intensity and the
1634 capacity of land and existing and planned public facilities and infrastructure.

1635 (iv) A land use map illustrating the general land use policies and desired future
1636 development patterns of the municipality and a proposed zoning map.

1637 (v) A description of the impact of existing and forecasted land use, zoning, and
1638 transportation characteristics and needs on the health of the community.

1639 e. Implementation: An implementation program that defines and schedules the specific
1640 municipal actions necessary to achieve the goals and objectives of the master plan in accordance
1641 with the policies outlined therein. This program may be separately written or integrated into the
1642 required and selected subject matter. This implementation program shall specify the course of
1643 action by which the municipality's regulatory structures, including zoning and subdivision
1644 control regulations, may need to be amended in order not to be inconsistent with the master plan.
1645 This element shall examine the current land use permitting process in a community and, if
1646 necessary, make recommendations for the development of clear, predictable, coordinated, and
1647 timely procedures thereunder, including an assessment of the adequacy and effectiveness of the
1648 existing structure of local government, including the roles and responsibilities of elected and
1649 appointed boards, officers, and personnel to implement the master plan through land use
1650 ordinances, by-laws, and regulations.

1651 4. Optional Subjects: The following 7 subjects are optional, and described below in a
1652 general manner:

1653 a. Economic Development:

1654 (i) An inventory and analysis of the local economic base, including: employment; local
1655 industries and business clusters; labor force characteristics; land and buildings used for
1656 nonresidential purposes, including vacant space; and office, retail, and industrial market
1657 conditions.

1658 (ii) An assessment of opportunities and barriers to economic development, including but
1659 not limited to identification of land use policies and available locations that: support the growth
1660 of jobs, the retention of existing businesses, and the provision of space for new businesses;
1661 encourage the reuse and rehabilitation of existing infrastructure, including brownfields, rather
1662 than the construction of new infrastructure in undeveloped areas; and facilitate larger-scale
1663 economic redevelopment or development in industry clusters consistent or compatible with the
1664 regional and local economy.

1665 (iii) An assessment of opportunities and barriers to agriculture, including all branches of
1666 farming and forestry, where applicable.

1667 (iv) An assessment of opportunities and barriers to self-employment and home
1668 occupations, including but not limited to consideration of land use policies, infrastructure and
1669 utilities, and technology.

1670 (v) A description of the impact of existing and forecasted economic base and economic
1671 development on the public health.

1672 b. Cultural Resources:

1673 (i) An inventory of the significant cultural, scenic, and historic structures, sites, and
1674 landscapes of the municipality, including archaeological resources.

1675 (ii) An assessment of policies and strategies to protect and manage the community's
1676 cultural resources, including but not limited to a community-wide preservation plan, ordinances
1677 or bylaws and incentives for historic preservation, and land use policies to facilitate the reuse of
1678 historic structures, where appropriate.

1679 (iii) Where applicable, a description of the impact of cultural resources on the public
1680 health shall be included.

1681 c. Open Space Protection and Recreation: An inventory of recreational facilities and open
1682 space areas of the municipality, and policies and strategies for the management, protection, and
1683 enhancement of such facilities and areas. A current Open Space and Recreational Plan approved
1684 by the Division of Conservation Services shall constitute the subject matter relative to open
1685 space and recreation hereunder. A description of the impact of existing and forecasted open
1686 space characteristics and needs on the public health.

1687 d. Infrastructure and Capital Facilities: An identification and analysis of existing and
1688 forecasted needs for infrastructure and facilities used by the public. Scheduled expansion or
1689 replacement of public facilities, infrastructure components such as water and sewer systems or
1690 circulation system components and the anticipated costs and revenues associated with
1691 accomplishment of such activities shall be detailed. This subject shall be required in a master
1692 plan if development impact fees are to be assessed under section 9F of chapter 40A. The master
1693 plan may be updated at any time to include this subject matter provided the requirements in
1694 subsections 5 and 6 are met. A description of the impact of existing and forecasted infrastructure
1695 and capital facilities characteristics and needs on the public health.

1696 e. Transportation:

1697 (i) An inventory of existing and proposed circulation, parking, and transportation
1698 systems.

1699 (ii) An assessment of opportunities and barriers to increasing access to available or
1700 feasible transportation options, including land and water based public transit, bicycling, walking,
1701 and transportation services for populations with disabilities.

1702 (iii) Identification of strategic investment options for transportation infrastructure to
1703 encourage smart growth, maximize mobility, conserve fuel, and improve air quality; and to
1704 facilitate the location of new development where a variety of transportation modes can be made
1705 available.

1706 (iv) A description of the impact of existing and forecasted transportation characteristics
1707 and needs of the public health.

1708 f. Partnership Planning: This subject shall be known as the "partnership plan," and shall
1709 be required in a master plan if a city or town wishes to accept the provisions of chapter 40V.
1710 The partnership plan shall be consistent with this section 81D and the requirements set forth in
1711 chapter 40V relative thereto. A master plan may be updated at any time to include this subject
1712 matter provided the requirements in subsections 5 and 6 are met.

1713 5. Regional Plan, Self-Assessment: Any required or selected optional subjects above shall
1714 include a self assessment against similar subject matter in a regional plan adopted by the regional
1715 planning agency under section 5 of chapter 40B and in effect, if any.

1716 6. Adoption of Plan:

1717 a. Proposal of the Plan: The plan shall only be made, extended, revised, or remade from
1718 time to time by a simple majority vote of the planning board after a public hearing, notice of
1719 which shall be posted and published in the manner prescribed for zoning amendments under
1720 section 7 of chapter 40A

1721 b. Adoption of the Plan: Adoption of the plan, or the extension, revision, or remake of the
1722 plan, shall be by a simple majority vote of the legislative body of the city or town; however, no
1723 vote of the legislative body to alter the plan or amendment as proposed by the planning board
1724 shall be other than by a two-thirds vote.

1725 c. Distribution of the Plan: The planning board shall, upon adoption by the legislative
1726 body of any plan or report, or any change or amendment to a plan or report produced under this
1727 section, furnish a copy of such plan or report or amendment thereto, to the Department of
1728 Housing and Community Development.

1729 7. Regional Planning Agency, Optional Review and Certification of Plans:

1730 a. Review of Master Plan: Prior to local legislative adoption of a master plan under this
1731 section, the plan may, at the election of the planning board and chief executive officer, be
1732 referred to the applicable regional planning agency for review and certification. The regional

1733 planning agency may, at its election, review the plan for certification, but must provide written
1734 notice to the city or town within 15 days from receipt of the plan if it intends not to review the
1735 plan. If the regional planning agency has elected to review the plan it shall act within 90 days of
1736 receipt of the plan. Failure to act within 90 days shall be deemed a plan certification by the
1737 regional planning agency. The 90 day review period shall be extended by not longer than 90
1738 days by the regional planning agency upon written request by the planning board of the city or
1739 town.

1740 b. Scope of Review of Master Plan: Review and certification by the regional planning
1741 agency shall be limited to an assessment of plan compliance with those requirements of this
1742 section that are applicable to the city or town with due regard for the regional context of the city
1743 or town. The review process may be interactive and iterative between the regional planning
1744 agency and the planning board; changes to the plan mutually agreed upon may be made by
1745 simple majority vote of the planning board during the review period or extensions thereof. Once
1746 the review is completed by the regional planning agency, with or without certification,
1747 comments, or outstanding issues, it may be brought to the local legislative body for adoption if
1748 the planning board so votes by a simple majority. A plan that has been certified by the regional
1749 planning agency and adopted by the city or town shall be presumed to be in compliance with this
1750 section. A plan that has not been so certified, for any reason including non-referral to the
1751 regional planning agency, shall not for that reason alone be presumed to be out of compliance
1752 with this section.

1753 c. Review of Partnership Plan: Review and certification by the regional planning agency
1754 of a partnership plan pursuant to Chapter 40V shall be in accordance with subsection 7.a, above,
1755 and shall consider whether a proposed partnership plan is: (i) complete ; and (ii) consistent with
1756 the commonwealth's land use objectives as set forth in Chapter 40V. A partnership plan shall be
1757 determined to be complete if, in addition to the requirements for required subjects set forth in
1758 subsection 3 of this section 81D it also contains all the elements required in section 4 of chapter
1759 40V. A partnership plan shall be determined to be consistent with the commonwealth's land use
1760 objectives if it satisfies the minimum standards for consistency in accordance with section 5 of
1761 chapter 40V. The review process may be interactive and iterative between the regional planning
1762 agency and the planning board; changes to the partnership plan mutually agreed upon may be
1763 made by simple majority vote of the planning board during the review period or extensions
1764 thereof. Once the review is completed by the regional planning agency and the partnership plan
1765 is certified as complete and consistent, it may be brought to the local legislative body for
1766 adoption if the planning board so votes by a simple majority. A partnership plan that has been
1767 certified by the regional planning agency and adopted by the city or town shall be presumed to
1768 be in compliance with this section 81D and chapter 40V. A partnership plan that has not been so
1769 certified, for any reason including non-referral to the regional planning agency, shall not be in
1770 compliance with this section 81D and chapter 40V.

1771 d. Consolidated Review of Master Plan and Partnership Plan: For the purposes of this
1772 subsection 7, and to meet the planning requirements of a partnership community under chapter
1773 40V, a master plan containing a partnership plan may be submitted to the regional planning
1774 agency for review and certification in a consolidated manner, provided the requirements of each
1775 plan are met.

1776 e. Barnstable and Dukes Counties: Instead of adopting a master plan pursuant to the
1777 requirements of this section 81D, a municipality in Barnstable or Dukes county may adopt a
1778 local comprehensive plan pursuant to the special acts that protect those two regions, St. 1989, c.
1779 716, as amended, and St. 1977, c. 831, as amended, respectively, and the regulations and
1780 regional policy plans adopted thereunder. The regional planning agency shall review the local
1781 comprehensive plan solely for consistency with the governing special act (St. 1989, c. 716 or St.
1782 1977, c. 831, as these acts may be amended) and any regulations and regional policy plans
1783 adopted thereunder, rather than the requirements for master plans set forth in this section 81D.
1784 The time limits and requirements set forth in subsection 7.a. through 7.d. of this section 81D
1785 shall not apply to the review of such local comprehensive plans. A local comprehensive plan
1786 certified by the regional planning agency as consistent with this subsection 7.e. shall be deemed
1787 a master plan in compliance with this section 81D and shall entitle the municipality to the
1788 partnership plan benefits enumerated in Chapter 40U, Sections 8.D.1, 8.D.3, 11, and 12. To be
1789 entitled to any other benefits in Chapter 40U, the municipality must comply with all partnership
1790 plan requirements of this section 81D and Chapter 40U.

1791 SECTION 3. Section 81L of chapter 41 of the General Laws, as appearing in the 2010
1792 Official Edition, is hereby amended by striking out, in lines 52-78 inclusive, the definition of
1793 "Subdivision" and inserting in place thereof the following definition:-

1794 "Subdivision" shall mean the division of a lot, tract, or parcel of land into 2 or more lots,
1795 tracts, or parcels of land and shall include re-subdivision. When appropriate to the context,
1796 subdivision shall include the process of subdivision or the land or territory subdivided. A change
1797 in the line of any lot, tract, or parcel created by recorded deed or shown on a recorded plan may
1798 be defined as a minor subdivision and, in such case, be governed by the provisions of section
1799 81P.

1800 SECTION 4. Section 81L of said chapter 41, as so appearing, is hereby amended by
1801 inserting the following definition:-

1802 "Minor Subdivision" shall mean a subdivision created in accordance with section 81P,
1803 provided however that until rules and regulations are adopted by a planning board under 81P
1804 therefor, "minor subdivision" shall solely mean the division of a lot, tract, or parcel of land into 2
1805 or more lots, tracts, or parcels where, at the time when it is made, every lot within the lot, tract or
1806 parcel so divided has frontage on: a) a public way or a way which the clerk of the city or town
1807 certifies is maintained and used as a public way; b) a way shown on a plan theretofore approved

1808 and endorsed in accordance with the subdivision control law; or c) a way in existence when the
1809 subdivision control law became effective in the city or town in which the land lies, having, in the
1810 opinion of the planning board, sufficient width, suitable grades and adequate construction to
1811 provide for the needs of vehicular traffic in relation to the proposed use of the land abutting
1812 thereon or served thereby, and for the installation of municipal services to serve such land and
1813 the buildings erected or to be erected thereon. Such frontage shall be of at least such distance as
1814 is then required by the zoning ordinance or by-law, if any, of said city or town for erection of a
1815 building on such lot, and if no distance is so required, such frontage shall be of at least 20 feet.

1816 SECTION 5. Chapter 41, as so appearing, is hereby amended by striking out section
1817 81M and inserting in place thereof the following section 81M:–

1818 Section 81M. The subdivision control law has been enacted for the purpose of protecting
1819 the safety, convenience and welfare of the inhabitants of the cities and towns in which it is, or
1820 may hereafter be, put in effect by regulating the laying out and construction of ways in
1821 subdivisions providing access to the several lots therein, but which have not become public
1822 ways, ensuring sanitary conditions in subdivisions, promoting and protecting the public health,
1823 and in proper cases parks and open areas. The powers of a planning board and of a board of
1824 appeal under the subdivision control law shall be exercised with due regard for the provision of
1825 adequate access to all of the lots in a subdivision by ways that will be safe and convenient for
1826 travel; for lessening congestion in such ways and in the adjacent public ways; for reducing
1827 danger to life and limb in the operation of motor vehicles; for securing safety in the case of fire,
1828 flood, panic and other emergencies; for promoting and protecting the public health; for ensuring
1829 compliance with the applicable zoning ordinances or by-laws; for securing adequate provision
1830 for water, sewerage, drainage, underground utility services, fire, police, and other similar
1831 municipal equipment, and street lighting and other requirements where necessary in a
1832 subdivision; and for coordinating the ways in a subdivision with each other and with the public
1833 ways in the city or town in which it is located and with the ways in neighboring subdivisions.
1834 Such powers may also be exercised with due regard for the policy of the commonwealth to
1835 encourage the use of solar energy and protect the access to direct sunlight of solar energy
1836 systems, and for those aspects of a plan adopted by the city of town under section 81D of this
1837 chapter which are particular to the subdivision of land. It is the intent of the subdivision control
1838 law that any subdivision plan filed with the planning board shall receive the approval of such
1839 board if said plan conforms to the recommendation of the board of health and to the reasonable
1840 rules and regulations of the planning board pertaining to subdivisions of land; provided,
1841 however, that such board may, when appropriate, waive, as provided for in section eighty-one R,
1842 such portions of the rules and regulations as is deemed advisable.

1843 SECTION 6. Section 81O of said chapter 41, as so appearing, is hereby amended by
1844 striking out the second sentence in the first paragraph and inserting in place thereof the following
1845 sentences:- After the approval of a plan, the location and width of ways, and the number, shape,
1846 and size of the lots shown thereon, may not be changed unless the plan is amended as provided

1847 in section 81W. In the alternative, a planning board may adopt rules and regulations under
1848 sections 81P and 81Q of this chapter defining and regulating such changes as minor
1849 subdivisions.

1850 SECTION 7. Said section 81O of said chapter 41, as so appearing, is hereby amended by
1851 striking out the second paragraph and inserting in place thereof the following paragraph:-

1852 For the purposes of the time within which a planning board must act, a plan shall be
1853 deemed submitted under this section as of the date of the next regularly scheduled meeting of the
1854 planning board, provided that during posted business hours the plan is both received by the
1855 planning board and filed with the town clerk no later than 7 calendar days prior to said meeting
1856 date, or 35 calendar days after such receipt by the planning board and filing with the town clerk,
1857 whichever shall first occur. An incomplete submission or a submission not in accordance with
1858 submittal requirements may be the basis upon which the planning board may deny approval of
1859 the plan. Notwithstanding the foregoing, a planning board or its designee may give notice to the
1860 applicant of how the application is incomplete or not in accordance with said submittal
1861 requirements and may grant to the applicant additional time to effect corrective measures.

1862 SECTION 8. Said chapter 41, as so appearing, is hereby amended by striking out section
1863 81P and inserting in place thereof the following section 81P:-

1864 41:81P. Minor Subdivisions

1865 1) Applicability: Minor subdivisions, as defined in this chapter, and as may be further
1866 defined in the local subdivision rules and regulations, shall be governed by this section. Section
1867 81S and the public hearing requirements in section 81Tof this chapter shall not apply to minor
1868 subdivisions. Except as provided below, all other sections of the subdivision control law that
1869 applies to subdivisions shall apply to minor subdivisions in so far as apt.

1870 2) Rules and Regulations, Transition Provision: A planning board may adopt alternative
1871 rules and regulations under section 81Q of this chapter relative to minor subdivisions, but in no
1872 case may such rules and regulations impose a procedural or substantive requirement more
1873 stringent than those specified in this chapter, this section 81P, or contained in the local rules and
1874 regulations otherwise applicable to subdivisions. Until such rules and regulations are adopted,
1875 the procedures under subsection 6 below shall apply to minor subdivisions.

1876 3) Rules and Regulations, Required Provisions: The rules and regulations for minor
1877 subdivisions shall: a) specify that an application for a minor subdivision may create up to 6
1878 additional residential lots within the meaning of the subdivision control law, either on ways
1879 described in the definition of minor subdivision or on new ways; b) set forth the reasonable
1880 requirements and standards of the board for those existing ways described in the definition of
1881 minor subdivision, provided that no requirements shall be made for the location of such ways or
1882 for a roadway width of greater than 22 feet; c) set forth the reasonable requirements and

1883 standards of the board for the proposed ways shown on a plan, provided that no requirement may
1884 be made for a roadway width of greater than 22 feet; and d) establish a time period for the
1885 planning board to take final action and to file with the city or town clerk a certificate of such
1886 action within 65 days or less in the case of an existing way, or 95 days or less in the case of a
1887 new way.

1888 4) Rules and Regulations, Optional Provisions: The rules and regulations for minor
1889 subdivisions may: a) notwithstanding subsection 1, above require a public hearing under Section
1890 81T of this chapter for minor subdivisions served by a new way; b) require that applications for
1891 minor subdivisions from the same lot, tract, or parcel from which the first minor subdivision was
1892 created not create more than the maximum number of additional lots in a set period of years; c)
1893 lessen or eliminate any requirement of section 81U of this chapter otherwise applicable to
1894 subdivisions; d) lessen or eliminate any local rule or regulation adopted under section 81Q of this
1895 chapter otherwise applicable to subdivisions.

1896 5) Rules and Regulations, Optional Provisions Requiring Ratification by Legislative
1897 Body: Subject to ratification by the local legislative body by a simple-majority vote, the rules
1898 and regulations for minor subdivisions may: a) increase the maximum number of additional lots
1899 created in an application for a minor subdivision to a number greater than 6; and b) define
1900 "minor subdivision" more broadly than in section 81L of this chapter.

1901 6) Alternate Procedures for Minor Subdivisions Until Rules and Regulations Adopted:
1902 Until such rules and regulations are adopted, any person wishing to cause to be recorded a plan
1903 of land situated in a city or town in which the subdivision control law is in effect, who believes
1904 that his plan does not require approval under the subdivision control law, may submit his plan to
1905 the planning board of such city or town in the manner prescribed in section 81T, and, if the board
1906 finds that the plan does not require such approval, it shall forthwith, without a public hearing,
1907 endorse thereon or cause to be endorsed thereon by a person authorized by it the words "approval
1908 under the subdivision control law not required" or words of similar import with appropriate name
1909 or names signed thereto, and such endorsement shall be conclusive on all persons. Such
1910 endorsement shall not be withheld unless such plan shows a subdivision. If the board shall
1911 determine that in its opinion the plan requires approval, it shall within 21 days of such submittal,
1912 give written notice of its determination to the clerk of the city or town and the person submitting
1913 the plan, and such person may submit his plan for approval as provided by law and the rules and
1914 regulations of the board, or he may appeal from the determination of the board in the manner
1915 provided in section 81BB. If the board fails to act upon a plan submitted under this section or
1916 fails to notify the clerk of the city or town and the person submitting the plan of its action within
1917 21 days after its submission, it shall be deemed to have determined that approval under the
1918 subdivision control law is not required, and it shall forthwith make such endorsement on said
1919 plan, and on its failure to do so forthwith the city or town clerk shall issue a certificate to the
1920 same effect. The plan bearing such endorsement or the plan and such certificate, as the case may
1921 be, shall be delivered by the planning board, or in case of the certificate, by the city or town

1922 clerk, to the person submitting such plan. The planning board of a city or town which has
1923 authorized any person, other than a majority of the board, to endorse on a plan the approval of
1924 the board or to make any other certificate under the subdivision control law, shall transmit a
1925 written statement to the register of deeds and the recorder of the land court, signed by a majority
1926 of the board, giving the name of the person so authorized.

1927 SECTION 9. Section 81Q of chapter 41, as so appearing, is hereby amended by inserting,
1928 after the first sentence, the sentence:- Notice shall be provided to all municipal departments,
1929 which shall be accorded the opportunity to provide advisory comments to the board in writing.

1930 SECTION 10. Section 81Q of said chapter 41, as so appearing, is hereby amended by
1931 inserting, after the second sentence, in line 22, the sentence:- Without limiting the foregoing,
1932 there shall be a rebuttable presumption that requirements for a roadway width of greater than 24
1933 feet are unlawfully excessive.

1934 SECTION 11. Said section 81Q of said chapter 41, as so appearing, is hereby amended
1935 by inserting after the word "thereof," in line 69, the following words:- "except that the rules and
1936 regulations may require the plan to show a park or parks suitably located for playground or
1937 recreation purposes benefiting the lots in the subdivision or for providing light and air, and not
1938 exceeding 5 percent of the land being subdivided."

1939 SECTION 12. Said section 81Q of said chapter 41, as so appearing, is hereby amended
1940 by inserting after the first paragraph the following paragraphs:-

1941 After January 1, 2018, no subdivision rule or regulation may be inconsistent with a plan
1942 adopted in compliance with section 81D of chapter 41. No subdivision rule or regulation shall
1943 be deemed inconsistent with the plan if it furthers, or at least does not impede, the achievement
1944 of the plan's goals and policies, and if it is not incompatible with the plan's proposed land uses
1945 and development patterns.

1946 After the effective date of the master plan, a subdivision rule or regulation shall enjoy a
1947 rebuttable presumption in any actionsuit, or administrative proceeding that its provisions are not
1948 inconsistent with the master plan. If the presumption is rebutted, inconsistency may serve as the
1949 basis upon which a court or administrative agency may declare any relevant subdivision rule or
1950 regulation to be invalid as applied to the property which is the subject of the actionsuit, or
1951 administrative proceeding. For any amendment to a plan adopted after January 1, 2018, no such
1952 declaration of invalidity may be made in any actionsuit, or administrative proceeding for a period
1953 of 12 months after the effective date of such master plan amendment.

1954 In Barnstable or Dukes Counties inconsistency with a local comprehensive plan adopted
1955 pursuant to St. 1989, c. 716, as amended, or St. 1977, c. 831, as amended, and the regional policy
1956 plans and regulations adopted thereunder to serve as a municipality's master plan for purposes of

1957 Chapter 41, Section 81D shall not serve as a basis for declaring a subdivision regulation
1958 provision to be invalid under this section.

1959 SECTION 13. Section 81S of chapter 41, as so appearing is hereby amended by striking
1960 the first and second paragraphs and inserting in place thereof the following paragraph: -

1961 Any person before submitting his definitive subdivision plan for approval shall submit to
1962 the planning board and the board of health, a preliminary plan, and shall give notice to the clerk
1963 of such city or town by delivery or by registered mail, postage prepaid, that he has submitted
1964 such plan.

1965 SECTION 14. Section 81T of said chapter 41, as so appearing, is hereby amended by
1966 striking out, in lines 2-3 inclusive, the following words "or for a determination that approval is
1967 not required".

1968 SECTION 15. Section 81T of chapter 41, as so appearing, is hereby amended by adding
1969 the following sentence:- Notice shall be provided to all municipal department, which shall be
1970 accorded the opportunity to provide advisory comments to the board in writing.

1971 SECTION 16. Said section 81U of said chapter 41, as so appearing, is hereby amended
1972 by striking out, in lines 173-174 inclusive, the words "for a period of not more than three years".

1973 SECTION 17. Section 81X of said chapter 41, as so appearing, is hereby amended by
1974 striking out, in lines 12-13 inclusive, the following words "such plan bears the endorsement of
1975 the planning board that approval of such plan is not required, as provided in section eighty-one P,
1976 or (3)".

1977 SECTION 18. Said section 81X of said chapter 41, as so appearing, is hereby amended
1978 by striking out, in lines 17-20 inclusive, the following words "or that it is a plan submitted
1979 pursuant to section eighty-one P and that it has been determined by failure of the planning board
1980 to act thereon within the prescribed time that approval is not required,".

1981 SECTION 19. Said section 81X of said chapter 41, as so appearing, is hereby amended
1982 by striking out the fourth paragraph and inserting in place thereof the following paragraphs:-

1983 Perimeter Plans: Notwithstanding the foregoing provisions of this section, the register of
1984 deeds shall accept for recording, and the land court shall accept with a petition for registration or
1985 confirmation of title, any plan bearing a professional opinion by a registered professional land
1986 surveyor that the property lines shown are the lines dividing existing ownerships, and the lines of
1987 streets and ways shown are those of public or private streets or ways already established, and that
1988 no new lines for division of existing ownership or for new ways are shown.

1989 Lot Line Changes: The register of deeds and the land court shall accept for recording or
1990 registration any plan showing a change in the line of any lot, tract, or parcel bearing a

1991 professional opinion by a registered professional land surveyor and a certificate by the person or
1992 board charged with the enforcement of the zoning ordinance or by-law of the city or town that
1993 the property lines shown: do not create an additional building lot; do not create, add to, or alter
1994 the lines of a street or way; do not render an existing legal lot or structure illegal; do not render
1995 an existing nonconforming lot or structure more nonconforming; and are not subject to
1996 alternative local rules and regulations for minor subdivisions under section 81P of this chapter.
1997 The recording of such plan shall not relieve any owner from compliance with the provisions of
1998 the Subdivision Control Law or of any other applicable provision of law.

1999 SECTION 20. Said section 81BB of said chapter 41, as so appearing, is hereby amended
2000 by striking out the first paragraph and inserting in place thereof the following paragraph:-

2001 Section 81BB. Any person, whether or not previously a party to the proceedings, or any
2002 municipal officer or board, aggrieved by a decision of a board of appeals under section 81Y, or
2003 by any decision of a planning board concerning a plan of a subdivision or minor subdivision of
2004 land, or by the failure of such a board to take final action concerning such a plan within the
2005 required time, may appeal to the superior court for the county in which said land is situated or to
2006 the land court; provided, that such appeal is entered within 20 days after such decision has been
2007 recorded in the office of the city or town clerk or within 20 days after the expiration of the
2008 required time as aforesaid, as the case may be, and notice of such appeal is given to such city or
2009 town clerk so as to be received within such 20 days. A complaint by a plaintiff challenging a
2010 subdivision or minor subdivision approval under this section shall allege the specific reasons
2011 why the subdivision or minor subdivision fails to satisfy the requirements of the board's rules
2012 and regulations or other applicable law and allege specific facts establishing how the plaintiff is
2013 aggrieved by such decision. A complaint by an applicant challenging a subdivision or minor
2014 subdivision denial or conditioned approval under this section shall allege the specific reasons
2015 why the subdivision or minor subdivision properly satisfies the requirements of the board's rules
2016 and regulations or other applicable law. The board's decision in either case shall be affirmed
2017 unless the court concludes the board abused its discretion in approving, approving with
2018 conditions, or denying the subdivision or minor subdivision, as the case may be.

2019 SECTION 21. Section 53G of chapter 44 of the General Laws, as appearing in the 2010
2020 Official Edition, is hereby amended by inserting after the number "9", in line 2, the following
2021 numbers and letters:- A, 9B, 9G,

2022 SECTION 22. The General Laws are hereby amended by inserting after Chapter 40V
2023 the following chapter:- CHAPTER 40V LAND USE PARTNERSHIP ACT

2024 CHAPTER 40V

2025 LAND USE PARTNERSHIP ACT

2026 1. Preamble; Statement of the Commonwealth's Land Use Objectives

2027 2. Definitions

2028 3. Preparation, Adoption, and Certification of a Partnership Plan

2029 4. Elements of a Partnership Plan

2030 5. Minimum Standards for Consistency with Commonwealth's Land Use Objectives

2031 6. Preparation, Adoption, Review, and Certification of Implementing Regulations

2032 7. Partnership Community Effective Date

2033 8. Effect of Partnership Plan Status on Zoning and Land Use Regulation

2034 9. Review of Certification by Regional Planning Agency

2035 10. Expiration; Renewal of Certified Partnership Community Status; Amendments

2036 11. Priority for Infrastructure Funding

2037 12. Consideration Under State Programs

2038 40V:1. Preamble; Statement of the Commonwealth's Land Use Objectives

2039 The sections herein this chapter shall be known and may be cited as the "Land Use
2040 Partnership Act." The purposes of the act shall be to advance the commonwealth's land use
2041 objectives, which are as follows:

2042 A) Support the revitalization of city and town centers and neighborhoods by promoting
2043 development that is compact, conserves land and integrates uses;

2044 B) Support the construction and rehabilitation of homes near jobs, infrastructure and
2045 transportation options to meet the needs of people of all abilities, income levels, and household
2046 types;

2047 C) Attract businesses and jobs to locations near housing, infrastructure, and
2048 transportation options;

2049 D) Protect environmentally sensitive lands, natural resources, agricultural lands, critical
2050 habitats, wetlands and water resources, and cultural and historic structures and landscapes;

2051 E) Construct and promote developments, buildings, and infrastructure that conserve
2052 natural resources by reducing waste and pollution through efficient use of land, energy and
2053 water;

2054 F) Support transportation options that maximize mobility, reduce congestion, conserve
2055 fuel and improve air quality;

2056 G) Maximize energy efficiency and renewable energy opportunities to reduce greenhouse
2057 gas emissions and consumption of fossil fuels;

2058 H) Promote equitable sharing of the benefits and burdens of development;

2059 I) Make regulatory and permitting processes for development clear, predictable,
2060 coordinated, and timely in accordance with smart growth and environmental stewardship; and

2061 J) Support the development and implementation of local and regional plans that have
2062 broad public support and are consistent with these purposes.

2063 K) Promotion of a physical and built environment that promotes and protects public
2064 health.

2065 40V:2. Definitions

2066 As used in this chapter, the following words shall, unless the context clearly requires
2067 otherwise, have the following meanings:

2068 "Affordable housing" shall have the definition found in Chapter 40A.

2069 "By-right" shall have the definition found in Chapter 40A.

2070 "Chief executive officer" shall have the definition found in Chapter 40A.

2071 "Constructively approved" means deemed approved by the failure of the granting
2072 authority to issue a decision or determination within the time prescribed, as it may be extended
2073 by written agreement between the applicant and the granting authority; provided that an
2074 applicant who seeks approval by reason of the failure of the granting authority to act within such
2075 time prescribed, shall so notify the city or town clerk, and parties in interest, in writing within 14
2076 days from the expiration of the time prescribed or extended time, if applicable, of such approval.

2077 "Development agreement", a contract entered into between a municipality or
2078 municipalities and a holder of property development rights, the principal purpose of which is to
2079 establish the development regulations that will apply to the subject property during the term of
2080 the agreement and to establish the conditions to which the development will be subject including,
2081 without limitation, a schedule of development impact fees.

2082 "Economic development district" shall mean a zoning district that: permits or allows
2083 commercial and/or industrial use; or permits or allows mixed use including commercial and/or
2084 industrial use; and is an eligible location.

2085 "Eligible location" shall mean an area that by virtue of its physical and regulatory
2086 suitability for development, the adequacy of transportation and other infrastructure and the
2087 compatibility of proximate land uses is, in the determination of the regional planning agency, a

2088 suitable location for development of the type contemplated by a partnership plan. Any area that
2089 would qualify as an "eligible location" under chapter 40R shall automatically qualify as an
2090 "eligible location" for a residential development district.

2091 "Housing target number" shall mean a number equal to 5 percent of the total number of
2092 year-round housing units enumerated for the municipality in the latest available United States
2093 census as of the date on which the plan was submitted to the regional planning agency.

2094 "Implementing regulations" shall mean the local zoning ordinances or by-laws,
2095 subdivision rules and regulations, and other local land use regulations, or amendments thereof,
2096 necessary to effectuate the minimum standards for consistency with the commonwealth's land
2097 use objectives established or required by a partnership plan.

2098 "Interagency planning board" shall mean a board comprised of the secretary of Housing
2099 and Economic Development, the secretary of Energy and Environmental Affairs, and the state
2100 permit ombudsman, or their designees, together with a representative designated by the
2101 Massachusetts Association of Regional Planning Agencies (the "regional representative"), a
2102 representative designated by the Massachusetts Municipal Association (the "municipal
2103 representative"), and a representative designated by the Massachusetts Association of Planning
2104 Directors (the "planning representative"). The state permit ombudsman shall serve as the chair
2105 of the board and shall vote only in the case of a tie.

2106 "Low impact development techniques" shall mean stormwater management techniques
2107 appropriate to the size, scale, and location of the development proposal that limit off-site
2108 stormwater runoff (both peak and non-peak flows) to levels substantially similar to natural
2109 hydrology (or, in the case of a redevelopment site, that reduce such flows from pre-existing
2110 conditions), by emphasizing decentralized management practices and the protection of on-site
2111 natural features.

2112 "Minimum area density" shall mean the land area required for a given unit of
2113 development, which shall not necessarily be expressed as a lot size requirement.

2114 "Natural resource protection zoning" shall have the meaning ascribed to it in chapter
2115 40A.

2116 "Open space residential design" shall mean a process for the cluster development of land
2117 that: requires identification of the significant natural features of the land and concentrates
2118 development by use of reduced dimensional requirements in order to preserve those natural
2119 features; preserves at least 50 percent of the land's developable area in a natural, scenic or open
2120 condition or in agricultural, farming or forestry use; and permits the development of a number of
2121 new housing units at least equal to the quotient of the land's developable area divided by the
2122 minimum lot area per housing unit required by the zoning ordinance or by-law. For the purposes
2123 of this definition, the land's developable area shall be determined pursuant to applicable state

2124 and local land use and environmental laws and regulations, and the zoning ordinance or by-law,
2125 without regard in either case to the suitability of soils or groundwater for on-site wastewater
2126 disposal.

2127 "Other local land use regulations" shall mean all local legislative, regulatory, or other
2128 actions which are more restrictive than state requirements, if any, including subdivision and
2129 board of health rules and regulations, local wetlands ordinances or by-laws, and other local
2130 ordinances, by-laws, codes, and regulations.

2131 "Partnership community" shall mean a community for which a partnership plan and
2132 implementing regulations have been certified by the applicable regional planning agency,
2133 adopted by the municipality, and remain in effect.

2134 "Partnership plan" shall mean the subject matter contained in section 81D.4.f of chapter
2135 41 prepared by the planning board in accordance with sections 4 and 5 of this chapter 40V and
2136 which has been certified by the applicable regional planning agency.

2137 "Prompt and predictable permitting" shall mean that zoning and other local land use
2138 regulations allow development to proceed by right by means of permitting processes that are
2139 designed to result in final written decisions on all local permits and approvals in less than 180
2140 days from the date of the filing of a complete application. For commercial and industrial
2141 development, local permitting pursuant to chapter 43D shall also be deemed prompt and
2142 predictable permitting.

2143 "Rate of development" local legislative or regulatory measures adopted by cities and
2144 towns under this chapter to regulate the number of permits for new construction or approvals of
2145 new building lots issued in a defined period of time or otherwise in accordance with defined
2146 standards and criteria.

2147 "Regional planning agency" shall mean the regional or district planning commission
2148 established pursuant to chapter 40B for the region within which a municipality is located. The
2149 term shall also mean the Martha's Vineyard Commission, as described in Chapter 831 of the
2150 Acts of 1977, the Nantucket Planning and Economic Development Commission, as described in
2151 Chapter 561 of the Acts of 1973, the Cape Cod Commission, as described in Chapter 716 of the
2152 Acts of 1989, the Franklin Regional Council of Governments, as described in Chapter 151 of the
2153 Acts of 1996, and the Northern Middlesex Council of Governments, as described in Chapter 420
2154 of the Acts of 1989.

2155 "Residential development district" shall mean a zoning district that: permits or allows
2156 residential use at a density of not less than 4 units per acre of developable land for single-family
2157 residential use, not less than 8 units per acre of developable land for two- and three-family and
2158 attached townhouse residential use, and/or not less than 12 units per acre of developable land for
2159 multi-family residential use, or permits or allows mixed use including residential use at such

2160 density; is in an eligible location; and does not impose other requirements that add unreasonable
2161 costs or otherwise unreasonably impair the economic feasibility of residential development at
2162 such density. A zoning district that permits or allows mixed use may qualify as both an economic
2163 development district and a residential development district, if the standards for both districts are
2164 met. The implementing regulations for any residential development district that permits or
2165 allows mixed use shall contain adequate provisions to ensure that any contemplated contribution
2166 towards the housing target number to be provided by such district will be achieved. To achieve
2167 the minimum densities and housing target number, the implementing regulations may employ
2168 zoning techniques such as infill development, cottage zoning, transfer of development rights, and
2169 accessory dwelling units. The foregoing minimum density for single-family residential use may
2170 be reduced to not less than 2 units per acre of developable land upon a determination by the
2171 regional planning agency that the lack of adequate water supply and/or wastewater infrastructure
2172 within the municipality prevents full compliance with the minimum density standard. If there is
2173 no public water supply or public wastewater infrastructure existing anywhere within the
2174 municipality, then the minimum density for single-family residential use may be reduced to not
2175 less than 2 units per acre of developable land without the need for a determination by the
2176 regional planning agency.

2177 40V:3. Preparation, Adoption, and Certification of a Partnership Plan

2178 A. A planning board may prepare, and from time to time amend or renew, a proposed
2179 partnership plan for a municipality.

2180 B. The partnership plan shall be reviewed, certified, and adopted pursuant to the
2181 requirements of subsections 4-7 of section 81D of chapter 41.

2182 40V:4. Subjects of a Partnership Plan

2183 A partnership plan shall be consistent with section 81D of chapter 41and in addition shall
2184 address at least the following five areas: economic development, housing, open space protection,
2185 water management, and energy management.

2186 The partnership plan shall contain:

2187 A. an overall statement of the land use goals and objectives of the municipality for its
2188 future growth and development, including specific reference to each of the five areas;

2189 B. a description of the zoning and other land use regulation policies that will be used to
2190 implement those goals and objectives, including with respect to each of the five areas;

2191 C. an assessment of the infrastructure improvements needed to support the
2192 implementation policies and strategies identified in B, above;

2193 D. an overall assessment of the plan's consistency with the commonwealth's land use
2194 objectives set forth in section 1 herein; and

2195 E. an assessment of the plan's specific compliance with the minimum standards for
2196 consistency set forth in section 5, below.

2197 The partnership plan may include materials prepared within the last 5 years as part of a
2198 local planning document, including a master plan prepared pursuant to section 81D of chapter
2199 41.

2200 The partnership plan shall be established and implemented in ways that protect and
2201 affirmatively promote equal opportunity and diversity, consistent with stated goals of the
2202 commonwealth. Each municipality, in preparing and implementing its partnership plan, shall
2203 consider the likely effects that the plan will have on achieving non-discrimination, diversity, and
2204 equal opportunity.

2205 40V:5. Minimum Standards for Consistency with Commonwealth's Land Use
2206 Objectives

2207 The minimum standards for consistency with the commonwealth's land use objectives
2208 may be set forth in regulations duly promulgated by the Interagency Planning Board.

2209 Notwithstanding the foregoing, for plans submitted for certification within the first 5
2210 years of the effective date of passage of this act, a determination of consistency with the
2211 commonwealth's land use objectives shall be mandatory if the following minimum standards
2212 have been satisfied:

2213 A. The plan establishes prompt and predictable permitting of commercial and/or
2214 industrial development within one or more economic development districts. This standard may
2215 be waived or modified upon a determination by the regional planning agency that adequate
2216 alternatives for economic development exist elsewhere in the region and are more appropriately
2217 located there.

2218 B. The plan establishes prompt and predictable permitting of residential development
2219 within one or more residential development districts that can collectively accommodate, in the
2220 determination of the regional planning agency, a number of new housing units (excluding new
2221 housing units, other than accessory apartments, which are restricted, through zoning or other
2222 legal means, as to the number of bedrooms or as to the age of their residents) equal to the
2223 housing target number. For the initial certification of a plan, a municipality's housing target
2224 number shall be reduced by the number of new housing units for which building permits were
2225 issued within 2 years prior to the municipality's effective date, to the extent such building
2226 permits were issued within residential development districts for which there was prompt and
2227 predictable permitting at the time of building permit issuance.

2228 C. The plan requires that, for any zoning district that requires a minimum lot area of
2229 40,000 square feet or more for single-family residential development, development of 5 or more
2230 new housing units utilize open space residential design, except upon a determination by the
2231 regional planning agency that open space residential design is not feasible. In districts requiring
2232 minimum lot areas of between 40,000 and 80,000 square feet in nitrogen sensitive areas as
2233 defined under Title 5 of the Environmental Code, the minimum preservation requirement of 50
2234 percent set forth in section 2, Open Space Residential Design, shall be modified to equal the
2235 percentage resulting from the subtraction of 40,000 square feet from the lot size requirement,
2236 divided by the lot size requirement, and multiplied by 100.

2237 D. The plan requires, through zoning or general ordinances or by-laws, all development
2238 that disturbs more than one acre of land, including development by-right, utilize low impact
2239 development techniques.

2240 E. The plan establishes prompt and predictable permitting of renewable or alternative
2241 energy generating facilities, renewable or alternative energy research and development facilities,
2242 or renewable or alternative energy manufacturing facilities, within one or more zoning districts
2243 that are eligible locations.

2244 The Interagency Planning board shall promulgate regulations to effect the purposes of
2245 this act. To assist municipalities in this effort, the regulations to be promulgated by the
2246 Interagency Planning Board hereunder shall include at least one model provision for
2247 implementing regulations for open space residential design, low impact development, and clean
2248 energy generation/cogeneration facilities that would satisfy the standards hereof.

2249 40V:6. Adoption, Review, and Certification of a Partnership Plan

2250 Adoption, review, and certification of a partnership plan shall be in accordance with,
2251 sections 81D(6) and (7) of chapter 41.

2252 40V:6. Preparation, Adoption, Review, and Certification of Implementing Regulations

2253 A. Prior to or following municipal adoption of a partnership plan, the city or town may
2254 prepare proposed implementing regulations for the partnership plan.

2255 B. Upon completion of the proposed implementing regulations, the planning board and
2256 chief executive officer may submit the proposed implementing regulations to the regional
2257 planning agency for certification.

2258 C. Within 90 days of receiving a submission, the regional planning agency shall
2259 determine whether the proposed implementing regulations are consistent with the certified
2260 partnership plan. The implementing regulations shall be deemed consistent with the certified
2261 partnership plan if they effectuate the minimum standards for consistency with the
2262 commonwealth's land use objectives established or required by the certified partnership plan. If

2263 the regional planning agency determines that the implementing regulations are consistent with
2264 the certified partnership plan, then the agency shall issue a written certification to that effect. If
2265 the regional planning agency determines that the regulations do not effectuate the minimum
2266 standards for consistency, then the agency shall provide the municipality with a written statement
2267 of the reasons for its determination. A municipality may re-submit for certification at any time
2268 modified implementing regulations that address the issues set forth in the agency's statement of
2269 reasons. If the regional planning agency does not issue a certification or provide a statement of
2270 reasons within 90 days after receiving implementing regulations (including re-submitted
2271 implementing regulations), then the implementing regulations shall be deemed certified. The
2272 municipality shall have the option of submitting its implementing regulations together with its
2273 submission of its partnership plan pursuant to section 4 herein, in which case the regional
2274 planning agency shall review both the partnership plan and the implementing regulations within
2275 the same 90 day period.

2276 D. Following certification by the regional planning agency, the implementing regulations
2277 may be adopted by the municipality according to the procedures and requirements for each type
2278 of local law or regulation.

2279 E. The town clerk shall within 20 days of the final approval of all implementing
2280 regulations file a true copy of the implementing regulations with the regional planning agency.

2281 F. Amendments to the Implementing Regulations by the legislative body or a board made
2282 subsequent to certification may lead to withdrawal of certification by the regional planning
2283 agency.

2284 40V:7. Partnership Community Effective Date

2285 Within 15 days of receipt by the regional planning agency of a true copy of certified
2286 implementing regulations duly adopted by the city or town pursuant to a certified partnership
2287 plan, the agency shall notify the municipality in writing that it is deemed a "partnership
2288 community". The date of that notification shall be deemed the "municipality's effective date".

2289 40V:8. Effect of Partnership Plan Status on Zoning and Land Use Regulation

2290 A. Following the municipality's effective date, local zoning ordinances or by-laws,
2291 subdivision rules and regulations, and other local land use regulations (other than certified
2292 implementing regulations) which are determined to be inconsistent with the certified partnership
2293 plan or the certified implementing regulations shall be deemed invalid Such a determination
2294 may be sought and obtained through any means otherwise available by statute for the
2295 determination of the validity of such land use regulations. Any material amendment to a
2296 certified partnership plan or certified implementing regulations that has not been prepared,
2297 certified, and adopted in accordance with the provisions of section 81D of chapter 41 and this
2298 chapter shall be presumed to be inconsistent with the certified partnership plan.

2299 B. If a municipality has issued, at the time of the municipality's effective date, a special
2300 permit that in itself allows new housing units equal to one-half or more of the municipality's
2301 housing target number, and if such special permit remains in effect for at least 2 years after the
2302 municipality's effective date, then residential development under such special permit which
2303 otherwise qualifies hereunder shall also be deemed by right.

2304 C. If at any time more than 2 years after the municipality's effective date the total number
2305 of housing units for which building permits have been applied for within the residential
2306 development districts since the municipality's effective date is greater than the housing target
2307 number (adjusted pro rata for the number of years since the municipality's effective date divided
2308 by the ten-year time frame of the plan), but the total number of housing units for which building
2309 permits have been issued within the residential development districts is less than the pro rata
2310 housing target number, then the provisions of this subsection shall be in effect. During such time
2311 period, any applications for building permits or other local land use permits for residential
2312 development within such residential development districts shall deemed constructively approved
2313 if not acted upon within 180 days after receipt of permit applications. In addition, an application
2314 received under this section shall be subject only to those conditions that are necessary to ensure
2315 substantial compliance of the proposed development project with applicable laws and
2316 regulations; and it may be denied only on the grounds that the proposed development project
2317 does not substantially comply with applicable laws and regulations or the applicant failed to
2318 submit information and fees required by applicable laws and regulations and necessary for an
2319 adequate and timely review of the development project. The foregoing provisions shall no
2320 longer be in effect once the total number of housing units for which building permits have been
2321 issued within such residential development districts equals or exceed the pro rata housing target
2322 number.

2323 D. Following the municipality's effective date, in addition to those powers conferred
2324 upon cities and towns clarified and enumerated in chapter 40A, partnership communities shall
2325 have the following additional powers:

2326 1. Rate of Development: The power to regulate rate of development, as defined herein. A
2327 zoning ordinance or by-law that limits the rate of development of new housing units (a "rate of
2328 development measure") shall not be declared exclusionary, a denial of substantive due process,
2329 or otherwise against public policy, provided that it complies with the following conditions.
2330 Within residential development districts identified under section 5.B, above, the rate of
2331 development measure may limit the number of building permits issued in any twelve-month
2332 period to an amount equal to or greater than one-half of the housing target number. In the event
2333 the municipality meets its housing target number prior to the expiration of the 10-year term of
2334 the plan, it may amend said ordinance or by-law to restrict the by-right development of new
2335 housing units within residential development districts for the remainder of the term. For areas not
2336 located within residential development districts identified under section 5.B, above, any rate of
2337 development measure shall be consistent with the following additional element of the partnership

2338 plan. The plan shall contain consistent policies and strategies for the implementation of rate of
2339 development measures that include a study of the need for such measures, a methodology by
2340 which to determine a reasonable rate of issuance of either permits for new construction or
2341 approvals of new building lots, a time horizon within which such measures shall remain in effect,
2342 and a periodic review schedule. A rate of development measure shall not restrict the construction
2343 of, or creation of building lots for, affordable housing units as that term is defined under chapter
2344 40A and it shall not apply to structures accessory to residential uses nor to construction work
2345 upon an existing dwelling unit.

2346 2. Natural Resource Protection Zoning: A zoning ordinance or by-law that requires a
2347 minimum area density of 10 acres or more per dwelling unit to protect areas designated by the
2348 state, a regional planning agency, or by a city or town as having significant natural resource
2349 values shall not for that reason alone be declared exclusionary, a denial of substantive due
2350 process, or otherwise against public policy. Such land types deemed appropriate for these
2351 measures shall be identified in the partnership plan. The zoning ordinance or by-law may require
2352 dwelling units and other development to be concentrated on a portion of the parcel in a manner
2353 consistent with the natural resource protection goals of the ordinance or by-law. Natural resource
2354 protection zoning measures that specifically require individual lot sizes greater than 2 acres shall
2355 be subject to the requirements of section 5.C of this chapter 40V.

2356 3. Vested Rights: Notwithstanding section 6B of chapter 40A, the minimum vesting
2357 period for a definitive subdivision plan in a partnership community shall not be 8 years, but shall
2358 instead be 4 years. This provision shall not apply to the 3 year minimum vesting period for
2359 minor subdivisions in said section 6B of chapter 40A.

2360 4. Development Agreements: The power to enter into development agreements as defined
2361 herein. A development agreement is a contract between the applicant and a city or town under
2362 which the applicant may agree to contribute public capital facilities to serve the proposed
2363 development and the municipality or both, to build affordable housing either on site or off site, to
2364 dedicate or reserve land for open space community facilities or recreational use or to contribute
2365 funds for any of these purposes. The development agreement shall function as a bona fide local
2366 land use regulation, establishing the permitted uses and densities within the development, and
2367 any other terms or conditions mutually agreed upon between the applicant and the municipality.
2368 A development agreement shall vest land use and development rights in the property, and such
2369 rights would not be subject to subsequent changes in development laws or regulations for the
2370 duration of the agreement. Any such development agreement shall be consistent with the
2371 partnership plan and may be entered into by the chief executive officer following a majority vote
2372 of the legislative body.

2373 5. Development Impact Fees: Development impact fees imposed pursuant to section 9F
2374 of chapter 40A may, in addition to the off-site public capital facilities listed in subsection 1.b of
2375 said section, be used to defray the costs of the following off-site public capital facilities: public

2376 elementary and secondary schools, libraries, municipal offices, affordable housing, and public
2377 safety facilities.

2378 40V:9. Review of Certification by Regional Planning Agency

2379 A. Any certification or determination of non-certification by a regional planning agency
2380 with respect to a partnership plan or implementing regulations or a material amendment of either
2381 is subject to review by the Interagency Planning Board. The Interagency Planning Board may,
2382 upon the request of the subject municipality or upon its own motion, review any such decision in
2383 an informal, non-adjudicatory proceeding, may request information from any third party and may
2384 modify or reverse such decision if the same does not comply with the provisions hereof.

2385 B. If a municipality provides written notice to the Interagency Planning Board of the
2386 certification by a regional planning agency of a partnership plan or implementing regulations or a
2387 material amendment of either, including a deemed certification resulting from a regional
2388 planning agency's failure to act, then the board may only review such certification if it
2389 commences such review with 60 days of such certification.

2390 C. The Interagency Planning Board may through regulation establish a procedure for
2391 reviewing and approving guidelines prepared by regional planning agencies to be used in the
2392 certification of plans, implementing regulations and material amendments. If a certification or
2393 determination of non-certification under review by the Interagency Planning Board has been
2394 issued by the regional planning agency based upon an approved guideline, then the board may
2395 only modify or reverse such decision for inconsistency with the approved guideline.

2396 40V:10. Expiration; Renewal of Certified Partnership Community Status; Amendments

2397 A. A municipality's status as a partnership community shall expire 10 years after the
2398 municipality's effective date, unless a renewal partnership plan, together with any necessary
2399 implementing regulations, is prepared, certified, and adopted in accordance with the provisions
2400 of section 81D of chapter 41 and this chapter prior to such date. Each such renewal plan shall
2401 also expire in 10 years. Notwithstanding the foregoing, the expiration of a municipality's status
2402 as a partnership community shall not affect the vesting provisions currently applicable to the
2403 municipality under section 8 of this chapter 40V. Notwithstanding the foregoing, the previously
2404 certified implementing regulations shall continue to be deemed valid until such time as the
2405 community duly adopts new regulations.

2406 B. From and after a municipality's effective date, any material amendment to a
2407 partnership plan or to any certified implementing regulations shall be prepared, certified and
2408 adopted in accordance with the provisions of section 81D of chapter 41 and this chapter. The
2409 Interagency Planning Board may by regulation define categories of amendments that shall be
2410 deemed non-material.

2411 40V:11. Priority for Infrastructure Funding

2412 The Executive Office of Housing and Economic Development, the Executive Office of
2413 Energy and Environmental Affairs, the Executive Office of Transportation, and the Executive
2414 Office of Administration and Finance shall, when awarding discretionary funds for local
2415 infrastructure improvements, give priority consideration to infrastructure improvements
2416 identified in the partnership plans of partnership communities. Within 90 days of the effective
2417 date of this act, the governor shall issue regulations providing a priority in the allocation of state
2418 discretionary funding for partnership communities. Said regulations shall apply to the
2419 distribution of funds, whether appropriated or derived through bonding, for all programs listed in
2420 the Commonwealth Capital program, so-called, as it is administered by the Executive Office of
2421 Energy and Environmental Affairs; the programs of the Massachusetts School Building
2422 Authority; the programs for roadway, bridge, transit, bicycle, and pedestrian improvements
2423 overseen by the Executive Office of Transportation and Public Works; and such other programs
2424 as the governor may indicate by regulation, provided however that no priority consideration
2425 issued pursuant to this act will be allowed to deny funding to a municipality that might otherwise
2426 qualify for grants or loans which may be needed to protect the immediate public safety, as
2427 determined in a waiver from the provisions of this section issued by the secretary of the
2428 responsible executive office. Said regulations will ensure that all decision-making bodies of the
2429 commonwealth shall, in regard to the programs listed above, increase the score of the applicant
2430 municipality by 20 percent for any partnership community, above the score it would otherwise
2431 achieve. This 20 percent bonus shall be in addition to, rather than as a substitute for other
2432 elements of the scoring process which might reasonably be related to criteria associated with the
2433 Commonwealth's Sustainable Development Principles, so-called, as issued and approved from
2434 time to time by the governor. Nothing herein shall be construed to reduce the scoring preference
2435 already provided to municipalities participating in the Commonwealth Capital program.

2436 40V:12. Consideration under State Programs

2437 State agencies responsible for regulatory and/or capital spending programs that have a
2438 material effect on land use and development within partnership communities shall take into
2439 account the land use goals, objectives and policies of such communities, as set forth in their
2440 partnership plans, in administering such programs.

2441 Capital Funding

2442 To provide for a capital outlay program to fund local and regional planning for the
2443 several purposes and subject to the conditions specified in this act, are hereby made available
2444 subject to the laws regulating the disbursement of public funds-

2445 7006-xxxx For a technical assistance program in the form of grants to municipalities or
2446 regional planning agencies for the preparation of plans under section 81D of chapter 41, within
2447 Barnstable and Dukes Counties local comprehensive plans adopted pursuant to St. 1989, c. 716,

2448 as amended, or St. 1977, c. 831, as amended, sections 3-5 of chapter 40V, and regional plans in
2449 the manner described in section 5 of chapter 40B created by any regional planning agency
2450 including those created under special law or act, provided that the grants are to be administered
2451 by the Interagency Planning Board; and provided further, priority for the municipal grants
2452 administered by the Interagency Planning Board shall be given to those municipalities identified
2453 by the applicable regional planning agencies as being most likely to prepare and adopt
2454 partnership plans and implementing regulations under chapter 40U, if provided with financial
2455 assistance; provided further, that no expenditure shall be made from this item without the prior
2456 approval of the secretary for administration and finance……$11,000,000.