

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Kevin G. Honan and Andres X. Vargas

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 adoption of the accompanying bill:

An Act relative to housing reform.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Kevin G. Honan</i>	<i>17th Suffolk</i>
<i>Andres X. Vargas</i>	<i>3rd Essex</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>

HOUSE No.

[Pin Slip]

The Commonwealth of Massachusetts

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

An Act relative to housing reform.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

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

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

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

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

14 the outside or through an entry hall or corridor shared with the principal dwelling sufficient to
15 meet the requirements of the state building code for safe egress; (ii) is not larger in floor area
16 than ½ the floor area of the principal dwelling or 900 square feet, whichever is smaller; and (iii)
17 is subject to such additional restrictions as may be imposed by a municipality, including but not
18 limited to additional size restrictions, owner-occupancy requirements, and restrictions or
19 prohibitions on short-term rental of accessory dwelling units.

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

23 “Department”, the department of housing and community development.

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

26 “Gross density”, a units-per-acre density measurement that includes in the calculation
27 land occupied by public rights-of-way, recreational, civic, commercial and other non-residential
28 uses.

29 “MBTA community,” A city or town that is enumerated in one of the following: (i) “51
30 cities and towns”, as defined in section 1 of chapter 161A of the General Laws; (ii) “Fourteen
31 cities and towns”, as defined in section 1 of chapter 161A of the General Laws; or (iii) “Other
32 served communities”, as defined in section 1 of chapter 161A of the General Laws; and such
33 other municipalities as may be added in accordance with section 6 of chapter 161A of the
34 General laws or in accordance with any special act to the area constituting the authority.

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

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

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

46 “Open space residential development”, a residential development in which the buildings
47 and accessory uses are clustered together into one or more groups separated from adjacent
48 property and other groups within the development by intervening open land. An open space
49 residential development shall be permitted only on a plot of land of such minimum size as a
50 zoning ordinance or by-law may specify which is divided into building lots with dimensional
51 control, density and use restrictions for such building lots varying from those otherwise
52 permitted by the ordinance or by-law and open land. Such open land shall either be conveyed to
53 the city or town and accepted by it for park or open space use, or be made subject to a recorded
54 use restriction enforceable by the city or town or a non-profit organization the principal purpose
55 of which is the conservation of open space, providing that such land shall be kept in an open or

56 natural state and not be built for residential use or developed for accessory uses such as parking
57 or roadway.

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

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

64 “Transfer of development rights”, the regulatory procedure whereby the owner of a
65 parcel may convey development rights, extinguishing those rights on the first parcel, and where
66 the owner of another parcel may obtain and exercise those rights in addition to the development
67 rights already existing on the second parcel.

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

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

78 (1) An amendment to a zoning ordinance or by-law to allow any of the following as of
79 right: (a) multifamily housing or mixed-use development in a location that would qualify as an
80 eligible location for a smart growth district under section 2 of chapter 40R of the general laws;
81 (b) accessory dwelling units; or (c) open-space residential development.

82 (2) An amendment to a zoning ordinance or by-law to allow by special permit: (a) multi-
83 family housing or mixed –use development in a location that would qualify as an eligible
84 location for a smart growth zoning district under section 2 of chapter 40R of the general laws; (b)
85 an increase in the permissible density of population or intensity of a particular use in a proposed
86 development pursuant to section 9 of chapter 40A of the general laws; or (c) a diminution in the
87 amount of parking required for residential or mixed-use development pursuant to section 9 of
88 chapter 40A of the general laws;

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

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

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

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

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

112 SECTION 6. Said section 9 of said chapter 40A, as so appearing, is hereby further
113 amended by striking out, in line 39, the word “cluster” and inserting in place thereof the
114 following words:--

115 open space residential.

116 SECTION 7. Said section 9 of said chapter 40A, as so appearing, is hereby further
117 amended by striking out, in line 35, the word “cluster” and inserting in place thereof the
118 following words: --

119 open space residential.

120 SECTION 8. Said section 9 of said chapter 40A, as so appearing, is hereby further
121 amended by inserting, after the word “control,” in line 43, the following words:-

122 Provided, however, that nothing herein shall prohibit a zoning ordinance or by-law from
123 allowing open space residential developments to be permitted as of right, without the need for a
124 special permit or other discretionary zoning approval.

125 SECTION 9. Said section 9 of said chapter 40A, as so appearing, is hereby further
126 amended by striking out the 7th paragraph and inserting in place thereof the following paragraph:
127 -

128 Zoning ordinances or by-laws may also provide that special permits may be granted for
129 reduced parking space to residential unit ratio requirement after a finding by the special permit
130 granting authority that the public good would be served and that the area in which the
131 development is located would not be adversely affected by such diminution in parking.

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

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

136 (a) multifamily housing that is located within .5 miles of a commuter rail station, subway
137 station, ferry terminal, or bus station, provided, not less than 10 per cent of the housing is
138 affordable to and occupied by households whose annual income is less than 80 per cent of the
139 area wide median income as determined by the United States Department of Housing and Urban

140 Development and affordability is assured for a period of not less than 30 years through the use of
141 an affordable housing restriction as defined in section 31 of chapter 184.

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

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

152 SECTION 11. Section 3 of chapter 40R of the general laws, as so appearing, is hereby
153 amended by inserting after the figure “40A,” in line 10, the following words:-

154 ; provided, however, that a smart growth zoning district or starter home district ordinance
155 or by-law shall be adopted by a simple majority vote of all members of the town council, or of
156 the city council where there is a commission form of government or a single branch, or of each
157 branch where there are two branches, or by a simple majority vote of a town meeting.

158 SECTION 12. Section 1 of chapter 40S of the general laws, as so appearing, is hereby
159 amended by striking out the word “properties” in line 51 and inserting in place thereof the
160 following words:-

161 buildings.

162 SECTION 13. Said section 1 of said chapter 40S, as so appearing, is hereby further
163 amended by inserting after the figure “40R,” in line 61, the following words:-

164 including without limitation smart growth zoning districts and starter home zoning
165 districts as defined in section 1 of said chapter 40R.

166 SECTION 14. The secretary of housing and economic development shall report annually
167 to the clerks of the house of representatives and the senate, who shall forward the report to the
168 house of representatives and the senate, the chairs of the joint committee on housing, and the
169 chairs of the senate and house committee on ways and means, on the activities and status of the
170 Housing Choice Initiative, as described by the governor in a message to the general court dated
171 December 11, 2017. The report also shall include a list of all cities and towns that qualify as
172 “housing choice” communities and a list and description of grant funds disbursed to such cities
173 and towns and a description of how the funds were used to support the production of new
174 housing.

175 The report shall also include progress made towards the goal of producing 427,000 new
176 units of housing in Massachusetts by 2040. The housing production goal shall also include a
177 goal of having 85,400 units of housing be created by 2040 that are affordable to households
178 earning less than 80% of the Area Median Income, with at least 8,500 of these units affordable to
179 households earning less than 30 percent of the Area Median Income. The report shall include a
180 breakdown of market-rate units created; units created that are accessible or adaptable for persons
181 with disabilities; units created for persons over the age of 55; and units created by deed restricted

182 affordable housing available to households earning less than 80% Area Median Income, less than
183 60% Area Median Income, and less than 30% Area Median Income.

184 SECTION 14. Said chapter 40A, as so appearing, is hereby further amended by inserting
185 after section 3 the following new section: -

186 Section 3A.

187 (a) Zoning ordinances and by-laws of a city or town that is an MBTA community, as
188 defined in this chapter, shall provide at least one district of reasonable size in which multi-family
189 housing is a permitted use as of right. For the purposes of this paragraph, a “district of reasonable
190 size” shall include: (i) multi-family housing without age restrictions which is suitable for
191 families with children; (ii) have a minimum gross density of 15 units per acre, subject to any
192 further limitations imposed by section 40 of chapter 131 and title 5 of the state environmental
193 code, established by section 13 of chapter 21A; and (iii) be in a location as described in
194 subsection (b) of this section.

195 If a city or town that is an MBTA community fails to comply with this section, that city
196 or town shall be ineligible for funds from the so-called Housing Choice Initiative as described by
197 the governor in a message to the general court dated December 11, 2017, and the Local Capital
198 Projects Fund under Section 2EEEE of Chapter 29 of the General Laws. If a city or town
199 receives funds from the Housing Choice Initiative or the Local Capital Projects Fund and fails to
200 comply with this section within three years, all funds to the city or town shall be repaid to the
201 general fund.

202 (b) Districts shall be in the following locations:

203 (i) located within .5 miles of a commuter rail station, subway station, ferry terminal, or
204 bus station.

205 (ii) located within .25 miles of a stop along a local bus route, key bus route, commuter
206 bus route, rapid transit route, commuter rail route, or boat route, as defined in the Massachusetts
207 Bay Transportation Authority Service Delivery Policy as approved by the MBTA Fiscal and
208 Management Control Board on January 23, 2017, and as it may be updated and approved from
209 time to time.

210 (c) A city or town may satisfy the requirement of subsection (a) of this section by
211 obtaining a determination from the department, acting directly or through a regional planning
212 agency as its designee, that the multi-family provisions of its zoning ordinance or bylaw are
213 consistent with the department's guidelines, or no locations as described in subsection (b) exist.
214 If a city or town obtains a determination from the department under this section, the city or town
215 may use the determination as verification of compliance with subsection (a) in order to establish
216 eligibility as a so-called housing choice community to receive funds from the Housing Choice
217 Initiative or the Local Capital Projects Fund under Section 2EAAA of Chapter 29 of the general
218 laws.

219 (d) The department, in consultation with the Massachusetts Bay Transit Authority and the
220 Massachusetts Department of Transportation, shall promulgate guidelines which shall be used to
221 determine if a city or town has satisfied the requirements established in this section.

222 SECTION 15. Section 17 of chapter 40A of the General Laws, as appearing in the 2012
223 Official Edition, is hereby amended by inserting after the second paragraph the following two
224 paragraphs:-

225 The court, in its discretion, may require non-municipal plaintiffs in an action under this
226 section to post a surety or cash bond in an amount not to exceed \$15,000 to secure the payment
227 of costs in appeals of decisions approving special permits, variances and site plans where the
228 court finds that the harm to the defendants or to the public interest resulting from the delays of
229 appeal outweighs the burden of the surety or cash bond on the plaintiffs. When making a
230 decision regarding surety or cash bond requirements, the court may consider the relative merits
231 of the appeal and the relative financial means of the appellant and the defendants.