

# COMPARISON OF MAJOR ZONING AND LAND USE REFORM BILLS – 2017-2018

## PROVISIONS THAT PROMOTE HOUSING PRODUCTION AND INCREASED DENSITY

	<b>Citizens Housing and Planning Association/Metropolitan Area Planning Council (Rep. Honan, H. 673, Sen. Forry, S. 723 – new draft reported favorably by Joint Committee on Housing as H. 3845)</b>	<b>Massachusetts Smart Growth Alliance (Rep. Kulik, H. 2420 - referred to Joint Committee on Municipalities and Regional Government, and Sen. Chandler, S. 81 - referred to Joint Committee on Community Development and Small Businesses)</b>	<b>Massachusetts Association of Realtors (Sen. Rodrigues, S. 94 -- referred to Joint Committee on Community Development and Small Businesses)</b>	<b>Comments:</b>
<b>Multifamily zoning requirement</b>	Within three years every city and town must designate one or more by-right multifamily zoning districts, in locations consistent with c.40R smart growth criteria, sufficient to accommodate a reasonable share of the regional need for multifamily housing. District(s) must allow multifamily housing that is not age-restricted and suitable for families with children. Minimum density of 15 units/acre except in rural towns.	Senate bill nearly identical to Honan/Forry bill though without 3-year phase-in. Specifically allows multifamily districts to be mixed-use. Minimum density of 14 units/acre except in rural towns. House bill only requires “reasonable and realistic opportunities” for multifamily housing, with no minimum density and no requirement that multifamily be allowed as-of-right.	Every city and town must designate one or more multifamily zoning districts that together cover not less than 1.5% of the community’s developable land area. Districts must suitable for multifamily residential development by virtue of their infrastructure, transportation access, existing underutilized facilities or location. Minimum density of 20 units/acre.	
<b>Multifamily compliance</b>	Cities and towns may elect to demonstrate compliance by obtaining determination from DHCD (or designated RPA) that multifamily zoning meets state guidelines. Allows the Attorney General or an aggrieved permit applicant to seek declaratory and injunctive relief.	DHCD to establish regulations to establish if communities have complied with requirement. No enforcement provisions in House bill. In Senate bill cities and towns may elect to demonstrate compliance by obtaining formal determination from DHCD (or designated RPA) that multifamily zoning meets state regulations. Senate bill also allows the Attorney General to seek declaratory and injunctive relief.	n/a	
<b>Multifamily waiver</b>	DHCD may waive multifamily requirement if city or town demonstrates that no 40R-eligible locations exist.	DHCD may waive multifamily requirement for rural towns that demonstrate that no 40R-eligible locations exist.	n/a	

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<b>Open space residential (cluster) zoning requirement</b>	Requires that every city and town provide cluster zoning for single-family housing as-of-right in at least some residential districts as an alternative to conventional subdivisions. Also allows increases above base density by special permit. Does not establish a minimum density for cluster developments or require a “yield plan” (see explanation at right).	Requires that every city and town provide cluster zoning for single-family housing in at least some residential districts by-right as an alternative to conventional subdivisions. Also allows increases above base density by special permit. Specifically allows cities and towns to require “yield plans”. House bill requires cluster development be allowed as-of-right for developments of five or more units in all residential districts where minimum lot size is an acre or larger.	Requires that every city and town provide cluster zoning for single-family housing in all residential districts by-right as an alternative to conventional subdivisions. Does not establish a minimum density. Specifically prohibits local requirement for “yield plans”.	“Yield plans” require that a site be laid out and engineered as a conventional subdivision to determine a maximum number of homes before a community will consider approval as a cluster subdivision. Since cluster developments have their own dimensional requirements and have to meet the same septic and wetlands regulations as conventional developments, a yield plan serves no legitimate purpose and simply imposes unnecessary cost and reduces the number of homes that can be constructed.
<b>Cluster zoning compliance</b>	DHCD to establish guidelines to determine compliance.	Same as Honan/Forry bill and also allows the Attorney General to seek declaratory and injunctive relief.	n/a	
<b>Accessory dwelling units</b>	Requires that accessory dwelling units be allowed as-of-right (subject only to dimensional rules) in all owner-occupied homes on lots greater than 5,000 square feet, until/unless such units comprise 5% of community’s housing stock.	Nearly identical to Honan/Forry bill.	Requires that accessory dwelling units be allowed as-of-right in all single-family residential districts, both within existing homes and as new detached units, and that the bylaw/ordinance not “unreasonably regulate” the location, dimension or design.	
<b>Margin of vote: adoption of multifamily and cluster zoning</b>	Reduces required margin at town meeting or other legislative body from two-thirds to simple majority	Reduces required margin at town meeting or other legislative body from two-thirds to simple majority. (Also allows the margin of vote on other zoning changes to be reduced from two-thirds to simple majority at local option.)	n/a	Reducing margin of vote to simple majority for <u>all</u> zoning changes could just as easily encourage downzoning (lower density) as upzoning (higher density and multifamily housing).

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<b>Margin of vote: adoption of Chapter 40R Smart Growth Districts</b>	Reduces required margin at town meeting or other legislative body from two-thirds to simple majority	Senate bill specifically reduces the margin on 40R district adoption to simple majority; otherwise both House and Senate bills allows the margin of vote on any zoning changes to be reduced from two-thirds to simple majority at local option.	n/a	See above.
<b>Mitigation of net school costs</b>	Makes cities and towns eligible for c. 40S net school cost reimbursement for all multifamily and cluster developments permitted pursuant to the new law provided that a portion of the new units are affordable to low- and moderate-income households.	n/a	n/a	
<b>Municipal incentive program</b>	n/a	Senate bill authorizes incentive program for communities certified to have adopted best practices. Certified communities may reduce the period of vested rights, have greater flexibility on development impact fees, have more discretion to adopt low-density natural resource protection zoning, and would be given priority in the award of state discretionary grants. No similar provisions in House bill.	n/a	

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<b>Exclusionary zoning</b>	n/a	Makes exclusionary local zoning, permitting or funding practices that discriminate against low-income persons, families with children, or other protected classes a violation of the state antidiscrimination law (c. 151B).	n/a	CHAPA developed similar language in stand-alone bills filed by Rep. Barber (HD 3116) and Sen. Chang-Diaz (SD 833)
<b>Regional collaboration</b>	Allows towns to regionalize any aspects of planning and land use regulation by vote of town meeting. Also allows interlocal development compacts without state legislative approval.	n/a	n/a	
<b>Growth cabinet</b>	Establishes an interagency growth cabinet to promote a coordinated state approach to data collection, analysis and policy related to growth and development of Commonwealth.	n/a	n/a	

## PROVISIONS THAT MAY IMPEDE NEW HOUSING PRODUCTION

	<b>Citizens Housing and Planning Association/Metropolitan Area Planning Council (Rep. Honan, H. 673, Sen. Forry, S. 723 – new draft reported favorably by Joint Committee on Housing as H. 3845)</b>	<b>Massachusetts Smart Growth Alliance (Rep. Kulik, H. 2420 - referred to Joint Committee on Municipalities and Regional Government, and Sen. Chandler, S. 81 - referred to Joint Committee on Community Development and Small Businesses)</b>	<b>Massachusetts Association of Realtors (Sen. Rodrigues, S. 94 -- referred to Joint Committee on Community Development and Small Businesses)</b>	<b>Comments:</b>
<b>Elimination of “approval not required” (ANR) lots</b>	n/a	Would eliminate ANR in communities that adopt “minor subdivision” regulations for single-family developments on 6 or fewer lots. Exemption would allow up to 2 ANR lots/year to be created from land previously protected with farm/forest tax status (c. 61A)	n/a	Developers are concerned that existing ANR provides a predictable process for small-scale development and there is no guarantee that “minor subdivision” regulations would be unburdensome or less stringent than requirements for large-scale subdivisions.
<b>Grandfathering/vested rights</b>	n/a	House bill limits zoning freeze to 8 years after filing of definitive subdivision plan, with no freeze for ANR plans, and limits vesting rights to the development proposal and not the property itself. Senate bill limits zoning freeze to 8 years for a preliminary subdivision plan if followed by a timely definitive plan.	n/a	Currently zoning is frozen for nine years in Massachusetts after filing a preliminary subdivision plan, which is the most generous grandfathering provision of any state. Vesting rights could be further limited by “certified” communities in Senate version of MSGA bill (see Municipal Incentive Program above).
<b>Development impact fees</b>	n/a	Provides a detailed statutory framework for the assessment and utilization of development impact fees similar to common practice in most other states	n/a	Developers say they have no opposition to impact fees per se but remain concerned that cities and towns would not be prevented from collecting impact fees <u>in addition</u> to requiring additional mitigation and financial contributions from developers as a condition of granting permits.

## OTHER PROVISIONS

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<b>Master planning requirements</b>	n/a	Requires development of master plan by planning board and adoption by legislative body at least every 10 years. Reduces the number of required elements in local master plans and includes detailed mandatory housing element. Requires planning boards to report whether proposed zoning changes are consistent with local master plan.	n/a	Master plans have long been required under state law but current plans are mostly stale and requirement is never enforced. MSGA bill requires that cities and towns “self-assess” whether proposed master plan is consistent with regional plan with no requirement that it actually be consistent.
<b>Explicit inclusionary zoning authorization</b>	n/a	Explicitly authorizes inclusionary zoning with restrictions including a mandatory 30-year use restriction.	n/a	MHP and other housing practitioners believe that this language needlessly constrains home rule authority that cities and towns already exercise under current law.
<b>Transfer of development rights (TDR)</b>	n/a	Provides explicit statutory authority for TDR bylaws	n/a	Several communities already have TDR bylaws under their existing home rule authority.
<b>Natural resource protection zoning</b>	n/a	Provides explicit statutory authority for low-density development in natural resource protection areas	n/a	This practice is barely constrained under current law; it would no longer raise policy concerns if all cities and towns are required to designate areas for higher-density development.

**OTHER PROVISIONS (continued)**

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<p><b>Other topics</b></p>	<p>Directs A&amp;F to report to legislature within one year on the local fiscal impacts of new housing needed to sustain the state economy and possible mechanisms to mitigate any negative impacts on cities and towns. Directs EOHEd, EOEA, MassDOT and MassDevelopment to report to legislature identifying options for redevelopment of “greyfield” sites (previously developed and currently vacant or underutilized).</p>	<p>Allows cities and towns to reduce the margin of vote on board approval of special permits from super-majority to simple majority, requires DHCD to create/support local board training program, allow “form based” zoning codes (Senate only), clarifies authorization for site plan review, requires local zoning for artist live/work spaces (House only), modifies required standards for dimensional and use variances, authorizes alternative dispute resolution process with confidentiality protection.</p>	<p>Establishes criteria for special permits, site plan review and variances. Prohibits financial exactions from developers without findings of fact demonstrating compliance with constitutional law. Expedites consideration of appeals made by non-applicants (i.e., abutters) and limits basis on which locally granted permits may be overturned.</p>	