

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

No. SJC-13580

THE ATTORNEY GENERAL,

*Plaintiffs/Counterclaim Defendant-Appellant*

v.

TOWN OF MILTON,

*Defendant/ Counterclaim Plaintiff/ Third Party Plaintiff -*

*Appellees, AND JOE ATCHUE,*

*Defendant - Appellee*

v.

THE EXECUTIVE OFFICE OF HOUSING AND LIVABLE COMMUNITIES,

*Third-Party Defendant-Appellant*

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ON A RESERVATION AND REPORT BY A JUSTICE OF  
THE SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

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**BRIEF OF THE FOLLOWING AMICI CURIAE IN SUPPORT OF  
PLAINTIFF/COUNTERCLAIM DEFENDANT-APPELLANT:**

CITIZENS' HOUSING AND PLANNING ASSOCIATION; ENGINE 6 NEWTON  
HOUSING ADVOCATES; DISABILITY POLICY CONSORTIUM, INC.;  
METROPOLITAN BOSTON HOUSING PARTNERSHIP, INC.; HOUSING MEDFORD;  
BUILDING A BETTER WELLESLEY; GREATER BOSTON REAL ESTATE BOARD;  
PRESERVATION OF AFFORDABLE HOUSING, INC.; AFFORDABLE INCLUSIVE  
MILTON; HOME BUILDERS AND REMODELERS ASSOCIATION OF  
MASSACHUSETTS, INC.; METRO WEST COLLABORATIVE DEVELOPMENT, INC.;  
GREATER BOSTON INTERFAITH ORGANIZATION, INC.; MASSACHUSETTS  
ASSOCIATION OF REALTORS; THE COMMUNITY BUILDERS, INC.; CHARLES  
RIVER REGIONAL CHAMBER, INC.; MASSACHUSETTS ASSOCIATION OF  
COMMUNITY DEVELOPMENT CORPORATIONS; WINNDEVELOPMENT COMPANY

LIMITED PARTNERSHIP; PLANNING OFFICE FOR URBAN AFFAIRS, INC.; MASSACHUSETTS HOUSING FINANCE AGENCY; EASTERN BANK; 2LIFE COMMUNITIES, INC.; REVERE HOUSING COALITION; ACTON HOUSING FOR ALL; UNITED WAY OF MASSACHUSETTS BAY, INC.; MASSACHUSETTS BUSINESS ROUNDTABLE, INC.; B'NAI B'RITH HOUSING NEW ENGLAND, INC.; BEACON COMMUNITIES, LLC; BLACK ECONOMIC COUNSEL OF MASSACHUSETTS, INC.; CAPSTONE COMMUNITIES LLC; BELMONT TOWN OF (MORE!) HOMES; REDGATE CAPITAL PARTNERS; COMMUNITY ECONOMIC DEVELOPMENT ASSISTANCE CORPORATION; B'NAI B'RITH HOUSING NEW ENGLAND; AND HARBORLIGHT COMMUNITY PARTNERS, INC. (DBA HARBORLIGHT HOMES).

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**IN SUPPORT OF PLAINTIFFS/COUNTERCLAIM DEFENDANT-APPELLANT**

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**STATEMENT OF INTEREST OF AMICI CURIAE**

Citizens' Housing and Planning Association ("CHAPA") and all the named amici curiae, which have a shared interest in this case, as stated herein, (collectively, "Amici"), submit this Amici Curiae Brief in support of Plaintiff / Counterclaim Defendant - Appellant and to address how state Zoning Act, G.L. c. 40A, § 3A, obligates all MBTA Communities to adopt at least one zoning district "of reasonable size in which multi-family housing is permitted as of right."<sup>1</sup>

CHAPA is a nonprofit organization devoted to encouraging the production and preservation of affordable housing and community development in the Commonwealth. CHAPA members include nonprofit and for-profit developers, local housing providers and advocates, municipal officials, lenders, property managers, architects, consultants, homeowners, tenants, local planners, and others.<sup>2</sup>

CHAPA was an active participant in the legislative process that led to the adoption of the

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<sup>1</sup> G.L. c. 40A, § 3A.

<sup>2</sup> See CITIZENS' HOUSING & PLANNING ASSOCIATION, *About CHAPA*, <https://www.chapa.org/about> (last visited August 23, 2024).

zoning reforms enacted as part of the "Housing Choice Legislation" included in Chapter 358 of the Acts of 2020, as well as Senator Crighton's amendment that added G.L. c. 40A, § 3A to Chapter 358. CHAPA and the other named Amici, which all have an interest in encouraging the development of safe and affordable housing in Massachusetts, submit this Amici Curiae Brief in furtherance of their mission. The primary purpose of this brief is to provide vital context and legislative history regarding the adoption of G.L. c. 40A, § 3A, which was the result of years of advocating for mandatory zoning reform.<sup>3</sup>

#### **SUMMARY OF ARGUMENT**

This appeal concerns the proper interpretation of a new provision of the state Zoning Act, G.L. c. 40A ("Chapter 40A"), § 3A, enacted to require establishment of zoning districts where multifamily zoning is required by right near transit areas in MBTA Communities across the Commonwealth.

Effective January 14, 2021, Chapter 358 of the Acts of 2020 (the "Act") was passed as "emergency

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<sup>3</sup> The Corporate Disclosure Statement Declaration of Authorship is provided at App 63.

legislation" to "promote economic opportunity."<sup>4</sup> The Act includes several amendments to Chapter 40A intended to promote housing production, including Amendment 18 of the Act that mandates zoning for multifamily housing in "MBTA Communities" as defined in G.L. c. 161A § 1.<sup>5</sup>

Amendment 18 added G.L. c. 40A § 3A ("Section 3A"), which provides in part:

(1) An MBTA community shall have a zoning ordinance or by-law that provides for at least 1 district of reasonable size in which multi-family housing is permitted as of right; provided, however, that such multi-family housing shall be without age restrictions and shall be suitable for families with children.<sup>6</sup>

Amici submit this brief to provide the Court with a unique perspective on both the history and intent of Section 3A from organizations closely associated with the legislative process involved in its passing, as well as the evolution of housing policy in Massachusetts since the adoption of the state's first major zoning reform legislation, Chapter 40B. Amici also seek to further develop the legal arguments

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<sup>4</sup> St. 2020, c. 358.

<sup>5</sup> G.L. c. 40A, § 1A.

<sup>6</sup> St. 2020, c.358, § 18 [hereinafter "Section 3A"].



advanced by the Attorney General in her briefs submitted to the Court. The plain text of Section 3A, its legislative history, and the aim of the Legislature in enacting the Act demonstrate that the provision was written and intended to mandate that MBTA Communities fully cooperate in the continued development of housing in Massachusetts.

#### **ARGUMENT**

**I. The plain text of Section 3A indicates that its provisions are mandatory and that MBTA Communities must comply with them.**

The plain text of Section 3A, which directs that an "MBTA community *shall* have" a zoning ordinance which complies with 3A, indicates a clear mandatory intent by the legislature.<sup>7</sup> See Salem Hosp. v. Rate Setting Comm'n, 26 Mass. App. Ct. 323, 325 (1988) ("the first step in understanding a statute is to read its plain words").

"In construing a statute, words are to be accorded their ordinary meaning and approved usage." Hashimi v. Kalil, 388 Mass. 607, 609 (1983). As a "general rule," "the statutory use of the word 'shall' is to be given a mandatory meaning." Uglietta v.

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<sup>7</sup> G. L. c. 40A, § 3A.

Somerville, 32 Mass. App. Ct. 742, 744 (1992). See also Johnson v. Dist. Atty. for the N. Dist., 342 Mass. 212, 215 (1961) (“[t]he word ‘shall’ in a statute is commonly a word of imperative obligation and is inconsistent with the idea of discretion.”). This is particularly true where the statute involves “directions to public officers” regarding the rights of the public. Hashimi 388 Mass. at 610 (“directions to public officers for the protection of rights are mandatory”).

Only if the context of the statute makes it clear that “shall” should be given non-mandatory effect will courts permit non-compliance. Barclay v. Deveau, 11 Mass. App. Ct. 236, 243 (1981) (“(u)nless the context otherwise indicates the use of the word ‘shall’ ... indicates a mandatory intent”) (quoting 1A Sands, Sutherland Statutory Construction § 25.04 (4th ed. 1972)). In Gaughan v. Bos. Police Dep't, for example, the court examined G.L. c. 32, § 8, a statute using the word “shall” to direct the public employee retirement administration commission to conduct evaluations related to employment. No. CIV. A. 96-3993A, 1997 Mass. Super. LEXIS 71 at \*6, \*8 (Mass. Sup. Ct. Dec. 19, 1997). While it is possible that in

certain contexts the word "'shall' [may] be given permissive qualities," id. at \*9, here, in holding that the legislature intended "shall" to have mandatory effect, the court found no language "that 'temper[ed]'" the mandatory connotation of the word 'shall.'" Id. at \*12. Compare City of Quincy v. Mass. Water Res. Auth., 421 Mass. 463, 469 (1995) ("shall" may be given permissive effect when "tempered by the succeeding words" such as "'give account to,'" rather than words such as 'include' or 'incorporate,'" which are unmistakable words of command").

Here, much like in Gaughan, there is no indication from the context of Section 3A that the statute was not meant to be mandatory. There is no "tempering" language present in the statute which would indicate permissive intent. See Quincy 421 Mass. at 469. Moreover, Section 3A is a clear directive towards public officers for the benefit of the public. Hashimi, 388 Mass. at 610; Bay State, 232 Mass. at 202 (giving mandatory meaning to "shall" where "[t]he bond is for the protection of the public"). As such, this Court should follow the general rule in Massachusetts and interpret the word "shall" as it appears in Section 3A to have mandatory effect.

**II. The evolution and context of housing policy in Massachusetts indicate that Section 3A was intended to obligate MBTA Communities to zone for as of right multi-family development.**

Section 3A was adopted almost 52 years after Governor Sargent signed Chapter 40B, into law. Chapter 40B was adopted "based on a remarkably early recognition . . . that exclusionary zoning practices . . . [drive] up housing costs" and lead to racial and economic segregation.<sup>8</sup> Chapter 40B was adopted at a time when the need to increase housing opportunity and decrease escalating home prices garnered national attention.<sup>9</sup>

Since its adoption, Chapter 40B has been the impetus for the construction of "tens of thousands of

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<sup>8</sup> Sharon Krefetz, *Symposium: The Impact and Evolution of the Massachusetts Comprehensive Permit and Zoning Appeals Act: Thirty Years of Experience with a State Legislative Effort to Overcome Exclusionary Zoning*, 22 W. New Eng. L. Rev. 381, 383 (2001). See Karla L. Dardeno, Note, *Chapter 40B Should Buy the Farm*, 42 Suffolk U. L. Rev. 129, 133-34 (2008) (finding "that municipalities abused [their zoning power] by implementing restrictive zoning practices that frustrated the construction of low-income housing").

<sup>9</sup> See The President's Committee on Urban Housing, *The Report of The President's Committee on Urban Housing: A Decent Home* (1968), <https://www.huduser.gov/portal/sites/default/files/pdf/A-Decent-Home-the-Report.pdf> (discussing approaches to increase the production of safe and affordable housing).

deed-restricted” housing units in Massachusetts.<sup>10</sup>

Chapter 40B has been successful in increasing housing production due to one essential element: limitations on a municipality’s ability to say no to new housing.

Despite the effectiveness of Chapter 40B, it is only one tool that Massachusetts will need to rectify decades of housing underproduction. In advance of Governor Healey’s filing the Affordable Homes Act, The Executive Office of Housing and Livable Communities (“EOHLC”) published housing demand projections prepared by the Metropolitan Area Planning Council (“MAPC”) in partnership with MassDOT and the University of Massachusetts Donahue Institute (“UMDI”).<sup>11</sup> An evaluation of the data led EOHLC to conclude that, “[a]ll told, Massachusetts needs at least 116,000 units to accommodate new households, 52,000 additional units for sale or rent, and 30,000 units to accommodate ‘pent up’ demand,

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<sup>10</sup> Amy Dain, *Exclusionary by Design: An Investigation of Zoning’s Use as a Tool of Race, Class, and Family Exclusion in Boston’s Suburbs, 1920 to Today*, 3 (2023), [https://www.bostonindicators.org/-/media/indicators/boston-indicators-reports/report-files/exclusionarybydesign\\_report\\_nov\\_8.pdf](https://www.bostonindicators.org/-/media/indicators/boston-indicators-reports/report-files/exclusionarybydesign_report_nov_8.pdf).

<sup>11</sup> See THE AFFORDABLE HOMES ACT – RESEARCH AND ANALYSIS, <https://www.mass.gov/info-details/the-affordable-homes-act-research-and-analysis#housing-production-target-> (last visited Sept. 11, 2024).

resulting in a total housing unit need of 200,000 units—at a minimum.”<sup>12</sup>

Additionally, obtaining a Chapter 40B comprehensive permit is a time consuming and expensive process, especially when compared to development permitted by as of right zoning. Even a 40B project facing little community opposition can take twelve to eighteen months to permit.<sup>13</sup> Chapter 40B projects also hold a higher risk of litigation than as of right projects, and such litigation can cause years of delay and cost over \$500,000 to defend.<sup>14</sup>

The “pent up demand” for housing has grown year over year despite numerous Legislative efforts to reform Chapter 40A to limit local control over zoning as well as to incentivize transit-oriented development. In the early 2000s through today, the

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<sup>12</sup> Id.

<sup>13</sup> See Affidavit of Zoe Weinrobe in Support of Amicus Curiae, Citizens’ Housing and Planning Association at ¶7, The Attorney General v. Town of Milton, cert granted, (No. SJC-13580), at App. 6. See also Affidavit of Andrew DeFranza in Support of Amicus Curiae, Citizens’ Housing and Planning Association at ¶3, The Attorney General v. Town of Milton, cert granted, (No. SJC-13580), at App. 1 (“[c]urrently the Chapter 40B process can take up to 2 years to complete”) [hereinafter Affidavit of A. DeFranza].

<sup>14</sup> See Affidavit of A. DeFranza, *supra* note 13, ¶5.

Legislature undertook several prominent efforts to enact state-level zoning reform. Starting 2014, the Legislature was formally advised through reports, proposed bills and testimony by CHAPA and others of the need to mandate that municipalities open their borders to multifamily housing. As illustrated below, the need for an as of right zoning mandate was clear during the 2019-2020 legislative session.

- a. **In the decades since Chapter 40B adoption, the Legislature has attempted to address the housing crisis through largely incentive-based policies.**

The history of zoning reform efforts in Massachusetts informs the necessity of Section 3A's mandate. Most notably, years of disappointing housing production following the adoption of Chapter 40R in 2004 illustrated that rezoning incentives or the threat of monetary penalties alone cannot overcome municipal prejudice against multifamily housing.<sup>15</sup>

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<sup>15</sup> "In 2004, 127 of the 186 municipalities in eastern Massachusetts had no land zoned for multifamily as-of-right, though some had lots zoned multifamily by special permit." Citizens' Housing and Planning Association, *The Use of Chapter 40R in Massachusetts*, 8 (2018), <https://www.chapa.org/sites/default/files/TheUseofCh40R2018.pdf>. [hereinafter CHAPA].

A series of Executive Orders and Legislative Acts, outlined below, shows the same.

**Executive Order 215:**<sup>16</sup> In 1982, Governor King issued an executive order, noting that “[i]n some cities and towns, local regulations and restrictions have the effect of excluding the development of affordable housing.”<sup>17</sup> To address the inequity caused by such restrictions, the order directed all state agencies disbursing development-related financial assistance to consider a municipality’s “housing policies and practices.”<sup>18</sup> It established a policy that state agencies should not award funds to municipalities that are “unreasonably restrictive of new housing growth.”<sup>19</sup>

**Executive Order 418:**<sup>20</sup> In 2000 Governor Cellucci issued Executive Order 418, designed to incentivize housing production.<sup>21</sup> The Order granted priority in the award

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<sup>16</sup> 304 Mass. Reg. 215 (Mar. 15, 1982) (available at <https://www.mass.gov/executive-orders/no-215-disbursement-of-state-development-assistance>).

<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> Id.

<sup>20</sup> 888 Mass. Reg. 418 (Jan. 21, 2000) (available at <https://www.mass.gov/executive-orders/no-418-assisting-communities-in-addressing-the-housing-shortage>).

<sup>21</sup> See id.



of all state discretionary funds to communities that are "taking steps to increase the supply of housing for individuals and families across a broad range of incomes."<sup>22</sup>

**The Land Use Reform Act of 2003:**<sup>23</sup> The Land Use Reform Act ("LURA") is one of the earliest and most comprehensive efforts to reform Chapter 40A. LURA was designed to clarify site plan review and special permit standards, provide mediation options for municipalities and builders to reduce litigation risk and delay, and require consistency between master plans and local zoning.<sup>24</sup> Although LURA was not adopted, many of the zoning reform measures proposed were carried through to subsequent attempts to modernize Chapter 40A.

#### **Chapter 40R, Smart Growth Zoning and Housing**

**Production Act:**<sup>25</sup> Adopted in 2004, Chapter 40R provides incentives for municipalities that zone for dense housing production by right in areas with smart growth

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<sup>22</sup> Id.

<sup>23</sup> S. 1174, 183d Gen Ct. Reg. Sess. (Mass. 2003).

<sup>24</sup> See id.; Christopher Baker, Housing in Crisis: A Call to Reform Massachusetts's Affordable Housing Law, 32 BOS. COLL. ENVI. AFF. L. R. 165, 178-179 (2004-2005).

<sup>25</sup> G. L. c. 40R.

characteristics, such as areas near transit stations.<sup>26</sup> EOHLC reports that only 38 of Massachusetts's 351 municipalities have adopted 40R districts approved by the agency.<sup>27</sup> In a 2018 report that evaluated the effectiveness of 40R, CHAPA concluded that one of the major challenges to 40R district adoption was community fear regarding loss of control with as-of-right development.<sup>28</sup> At the same time, the report and developers interviewed in its creation identified the as-of-right approval process as one of five key advantages for producing housing under the law.<sup>29</sup>

Despite the numerous incentives offered by Chapter 40R and Chapter 40S, which was adopted in 2005 to offer state funding to cover costs of educations children in 40R districts, housing units created under

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<sup>26</sup> See CHAPA, *supra* note 15, at 6.

<sup>27</sup> See Chapter 40R Districts Activity Table, <https://www.mass.gov/info-details/chapter-40r#chapter-40r-districts-activity-table->.

<sup>28</sup> See CHAPA, *supra* note 15, at 15. See also Ryan Forgione, Note, *A New Approach to Housing: Changing Massachusetts's Chapter 40R from an Incentive to a Mandate*, 53 Suffolk U. L. Rev. 199, 214 (2020) ("207 of Massachusetts's 351 cities and towns have not permitted construction of *any* multifamily housing with more than five units in over a decade. Additionally, over a third of Massachusetts's municipalities have permitted only single-family housing").

<sup>29</sup> See CHAPA, *supra* note 15, at 9.

Chapter 40R has fallen short of hoped for potential.<sup>30</sup> Between 2007 and 2017, the number of housing units created under Chapter 40R was far out stripped by the units completed via Chapter 40B.<sup>31</sup> A primary reason for this difference: “the further need for a municipality to proactively rezone for affordable housing” under Chapter 40R.<sup>32</sup> Chapter 40R therefore provided an important lesson to policy makers: while incentives may encourage some municipalities to act, local resistance to development in general poses the biggest challenge to adopting the type of zoning necessary to measurably increase housing production.<sup>33</sup>

**The Community Planning Act (CPA II) (2006):** CPA II attempted to build off of the success of the Community Preservation Act (“CPA”), which was adopted in 2000. If adopted locally, the CPA allows a community to

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<sup>30</sup> See Karla L. Chaffee, Note, *Massachusetts’s Chapter 40R: A Model for Incentive-Based Land Use Planning and Affordable Housing Development*, 10 Vt. J. Envtl. L. 181, 212 (2008) (discussing Chapter 40R’s potential).

<sup>31</sup> See CHAPA, *supra* note 15, at 21 (From 2007 to 2017, 3,505 units were created pursuant to Chapter 40R, while over 20,000 were produced with Chapter 40B comprehensive permits during the same time period).

<sup>32</sup> Id. See also id. at 5 (“the biggest challenge to adopting a 40R district appears to be getting public support for 40R zoning”).

<sup>33</sup> See id. at 5.

charge a property tax surcharge of up to 3%, which may be matched up to 100% by the state, and use such funds for affordable housing, historic preservation, open space, and recreation.<sup>34</sup> CPA II also incorporated many aspects of the LURA but did not garner widespread support from the Legislature.<sup>35</sup>

**Zoning Reform Task Force (2007-2010):** The Patrick administration established the Zoning Reform Task Force (the “Task Force”) in 2007.<sup>36</sup> The Task Force “continued an initiative initially convened by CHAPA on behalf of the Massachusetts Smart Growth Alliance to develop consensus around new zoning reform legislation.”<sup>37</sup> In 2009, the Task Force drafted and

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<sup>34</sup> See Ann Dillemoth, Report, *Massachusetts Housing Partnership, The Community Preservation Act and Affordable Housing in Massachusetts: Learning from the First Five Years*, 7 (2006) [https://www.mhp.net/assets/resources/documents/cpa\\_affordable\\_housing\\_in\\_ma.pdf](https://www.mhp.net/assets/resources/documents/cpa_affordable_housing_in_ma.pdf) (last visited Sept. 11, 2024).

<sup>35</sup> See Ridley and Associates, *Overcoming Impediments to Smart Growth on Cape Cod*, 11 (2020) <https://apcc.org/wp-content/uploads/2020/05/impediments-smart-growth.pdf> [hereinafter *Overcoming Impediments*].

<sup>36</sup> See *id.*

<sup>37</sup> CHAPA, *State Roundup DHCD Announces Availability of New Housing Vouchers and Increases Project-Based Rents* (Nov. 2, 2007), <https://www.chapa.org/housing-briefs/november-2-2007>.

filed the Land Use Partnership Act (“LUPA”).<sup>38</sup> A major element of LUPA would have allowed municipalities to “opt in” to a new chapter of the General Laws, Chapter 40U.<sup>39</sup> Communities opting into Chapter 40U would be required to create “predictable permitting of residential development within one or more residential development districts that collectively can accommodate a number of new housing units equal to a housing target number equal to five percent of the total number of year round housing units in the community.”<sup>40</sup> Unlike Section 3A, with its mandatory use of “shall,” LUPA created a clearly voluntary opt-in program.

Additional programs designed to incentivize housing production resulted from the Zoning Reform Task Force’s efforts. For instance, the MassWorks infrastructure program was launched, which consolidated six state infrastructure programs and prioritized funding for smart growth development

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<sup>38</sup> *See Overcoming Impediments, supra* note 35, at 11.

<sup>39</sup> *Commw. of Mass., Comprehensive Land Use Reform and Partnership Act - Provisions for Partnership Communities (Communities that “Opt In”)* 4 (2010), [https://www.mapc.org/wp-content/uploads/2017/11/CLURPA\\_Summary\\_5.18.10.pdf](https://www.mapc.org/wp-content/uploads/2017/11/CLURPA_Summary_5.18.10.pdf).

<sup>40</sup> *Id.*

projects that are consistent with local and regional plans.<sup>41</sup>

**b. Reports and recommendations to the Legislature by CHAPA and others stressed the need for mandatory multifamily zoning.**

The idea that requiring communities to zone for multifamily housing is essential to addressing the Commonwealth's housing crisis was not new when Amendment 18 was added to the Act. CHAPA, the Massachusetts Housing Partnership ("MHP") and others spent over five years presenting the case for mandatory multifamily zoning, both in reports to the Legislature and by advocating for numerous bills that included a multifamily zoning mandate.

Some such bills and reports included the following.

**Unlocking the Commonwealth (2014):** By 2014, the General Court had received the MHP report, "Unlocking the Commonwealth" (the "MHP Report"). The MHP Report was designed as a tool to develop new housing growth

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<sup>41</sup> See The Commw. of Mass. Exec. Off. of Hous. and Econ. Dev, *MassWorks Infrastructure Program*, METROPOLITAN AREA PLANNING COUNCIL 2-3 (2017), [https://www.mapc.org/wp-content/uploads/2017/09/MWIP\\_Presentation-2017.pdf](https://www.mapc.org/wp-content/uploads/2017/09/MWIP_Presentation-2017.pdf).

policies in the Commonwealth.<sup>42</sup> The MHP Report identified Massachusetts's increasing housing prices, emphasized the need to grow housing supply, and predicted that the housing crisis would only worsen with time.<sup>43</sup> It also explained the devastating impact that the undersupply of housing has on the Massachusetts economy:

Greater Boston is being out-built, out-priced and generally out-competed by several regions. These metro economies are becoming increasingly similar to ours, and these regions are successfully changing the flow of key workers in their favor. Our own inability to adequately supply housing in response to demand will eventually impede the growth of the innovation industries critical to our region's economic success.<sup>44</sup>

The first Legislative recommendation in the MHP report was to "**[r]equire** that every zoning ordinance and bylaw in the Commonwealth provide reasonable opportunity to construct multifamily housing."<sup>45</sup> The MHP proposed legislation included adding Section 3A to Chapter 40A that reads:

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<sup>42</sup> See Massachusetts Housing Partnership, *Unlocking the Commonwealth* (Nov. 5, 2014) <https://archives.lib.state.ma.us/bitstream/handle/2452/264116/ocn906039954.pdf?sequence=1&isAllowed=y> [hereinafter *MHP REPORT*].

<sup>43</sup> See *id.* at 4.

<sup>44</sup> *Id.* at 8.

<sup>45</sup> *Id.* at 9 (*emphasis added*).

Section 3A: All zoning ordinances and by-laws **shall** allow multifamily housing, including housing suitable for families with children, provided that allowance of multifamily housing in appropriate districts shall not preclude the establishment of zoning districts where only low-density development is permitted in order to protect natural resources.<sup>46</sup>

After reviewing the paucity of approved multifamily housing across the state during the preceding decade, the MHP Report concluded that “[i]f we continue on our current path, and do not **address local resistance to multifamily housing**, we will weaken the state economy, [and] generate less state aid.”<sup>47</sup>

Although there is variation between the MHP Report’s draft Section 3A and the Section 3A adopted in the Act,<sup>48</sup> MHP’s use of the word “shall” and the accompanying commentary made it extremely clear that adoption of multifamily zoning would not be effective were it optional. The MHP Report also explained that

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<sup>46</sup> Id. (*emphasis added*).

<sup>47</sup> Id. (*emphasis added*).

<sup>48</sup> See id. The adopted version of Section 3A applies to MBTA Communities and not every municipality. Also, the adopted version specifies 15 units per acre as a minimum gross density, while the MHP Report does not specify density. See G. L. c. 40A § 3A.



incentive-based zoning reform cannot adequately address the state's housing crisis:

An alternative might be to expand incentive payments for cities and towns to zone for multifamily housing by expanding the state's smart growth zoning law, Chapter 40R. Financial incentives alone would be prohibitively expensive, however, since Chapter 40R has produced less than 2,500 permitted multifamily units in 10 years—meeting less than 3 percent of the state's multifamily housing demand—at a cost to the Commonwealth of more than \$17 million.<sup>49</sup>

**2016 Special Senate Committee on Housing Report:** The need for multi-family zoning as of right to address the state's housing shortage was again reported to the Legislature in a March 2016 Special Senate Committee on Housing Report, "Facing Massachusetts' Housing Crisis" (the "Senate Report").<sup>50</sup> The Senate Report highlighted a staggering decrease in housing production in Massachusetts: "[o]verall housing production fell by 52% and multifamily production fell by 80% between the 1960s and 1990s."<sup>51</sup> To address the housing shortage and years of underproduction, the

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<sup>49</sup> Id.

<sup>50</sup> See SPECIAL S. COMM. ON HOUSING, FACING MASSACHUSETTS' HOUSING CRISIS: SPECIAL SENATE COMMITTEE ON HOUSING REPORT (MA 2016) [hereinafter SPECIAL SENATE COMMITTEE REPORT], at App. 19.

<sup>51</sup> Id. at 22.

report advocated for bills that require communities to permit a reasonable level of multifamily housing, including the then pending H. 1111, *An Act relative to housing production*, and H. 1107, *An Act to expedite multifamily housing construction*.<sup>52</sup> CHAPA's testimony to the Joint Committee on Housing in support of H. 1111 reiterated the need for multifamily housing and mandatory zoning, especially given that more than a third of Massachusetts municipalities permitted only single-family housing in the preceding decade.<sup>53</sup>

The Report identified the lack of multifamily zoning as "the most significant barrier to building affordable and market rate housing, and is so basic a requirement that ***no other long-term production goals can be achieved successfully without it.***"<sup>54</sup>

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<sup>52</sup> See id.

<sup>53</sup> See id. See also RACHEL HELLER, CITIZENS' HOUSING AND PLANNING ASSOCIATION, RECOMMENDATIONS TO THE SPECIAL SENATE COMMITTEE ON HOUSING 1 (June 22, 2015), at App. 58 ("[i]n the last decade, the Commonwealth had the 4th lowest rate of housing construction in the nation. Restrictive zoning in many communities further exacerbates high housing costs and presents one of the greatest challenges to meeting the Commonwealth's housing needs").

<sup>54</sup> SPECIAL SENATE COMMITTEE REPORT, *supra* note 50, at 22 (*emphasis added*).

Mandatory zoning for multifamily housing has long been a legislative priority for CHAPA, and since H. 1111 was introduced, it has been an element of multiple house and senate bills championed by CHAPA.<sup>55</sup>

- c. The Act included a comprehensive package of zoning reform measures, developed after years of advocacy and input from those invested in housing production.**

The Act included a number of zoning reform measures, many introduced as part of the Baker-Polito Administration's Housing Choice Initiative.<sup>56</sup> The Initiative included incentives, rewards, technical assistance and targeted legislative reform to encourage and empower municipalities to plan and build the diverse housing stock.<sup>57</sup> Conversely, Section 3A, Amendment 18 to the Act, was introduced by Senator Crighton and was not part of the Governor's incentive-based package. Section 3A was added to mandate

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<sup>55</sup> See, e.g., S. R. 1786, 193rd Gen. Ct. (Mass. 2023) ("[a] city, town or regional housing commission with a population of 2,500 residents or more shall designate a minimum of 5 percent of the residential zoned area as multi-family").

<sup>56</sup> See generally News Release, *Baker-Polito Administration Announces New Housing Choice Initiative* (Dec. 11, 2017), (available at <https://www.mhp.net/assets/resources/documents/Housing Choice news release2.pdf>).

<sup>57</sup> See *id.* at 1.

multifamily zoning, which was a necessary step identified in both the 2014 MHP Report and the 2016 Special Senate Committee on Housing Report as an essential tool in meeting the Commonwealth's housing production goals.<sup>58</sup>

General Court debate regarding the Act also highlighted the arguments for mandatory multifamily zoning made in each report by stressing the harms caused by the undersupply of housing.<sup>59</sup> Given this testimony, years of advocacy by CHAPA and others, and the Governor's initiative, when the Act was adopted, the General Court was laser focused on the need to increase housing supply.

Governor Baker, who was initially opposed to a zoning mandate, signed the Act despite calls to veto Amendment 18.<sup>60</sup> Before signing the Act, the

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<sup>58</sup> See MHP Report, *supra* note 42, at 9; SPECIAL SENATE COMMITTEE REPORT, *supra* note 50, at 22.

<sup>59</sup> See Hearing on S. 2842 Before the Mass. Senate, 191st Gen. Ct., (2020) (statement of Sen. Eric Lesser), at App. 11 (“[h]ousing is too expensive in Massachusetts. People cannot afford to live here”); hearing on S.2842 Before the Mass. Senate, 191st Gen. Ct., (2020), (statement of Sen. Brendan Crighton), at App. 12 (“[w]e are facing a housing crisis in Massachusetts”).

<sup>60</sup> See Letter from Geoffrey C. Beckwith, Mass. Municipal Ass'n Excec. Director & CEO, to Mass. Governor Charles D. Baker (Jan. 7, 2021) (available *(Footnote continued on next page)*)

Massachusetts Municipal Association provided its written “very strong opposition” to “Section 18 [that] would create a statewide mandate.”<sup>61</sup> After adoption of the Act, Governor Baker’s Secretary of Housing and Economic Development, explained “why legislators and the Governor supported”<sup>62</sup> Section 3A:

From 1960 to 1990, Massachusetts permitted about 900,000 new homes. From 1990 to today, it’s been about half that,” said Kennealy. “So in a single generation, while our economy has grown, our population has grown, and our workforce has grown, our level of housing production has been cut in half. We estimate today we’re short by about 200,000 housing units . . . We’re in a housing crisis.<sup>63</sup>

**d. Section 3A is ineffective without a rezoning mandate that permits multifamily housing by right.**

Given the underperformance of Chapter 40R over the last 20 years, the importance of as-of-right zoning for multifamily housing, as well as municipal

at <https://www.mma.org/advocacy/mma-asks-governor-to-veto-bill-section-that-would-impose-zoning-mandate/>).

<sup>61</sup> Id.

<sup>62</sup> Christian MilNeil, *New State Rule Would Force Suburbs to Legalize Thousands of New Apartments Near T Stops*, STREETS BLOG MASS (January 13, 2022), <https://mass.streetsblog.org/2022/01/13/new-state-rule-would-force-suburbs-to-legalize-thousands-of-new-apartments-near-t-stops>.

<sup>63</sup> Id.

reluctance to the concept has become evident. In the 1940s and 1950s, zoning regulations in Massachusetts allowed most types of uses by right, meaning that “the municipality is obliged to issue building permits for any proposed project that meets dimensional or other requirements specified for that district.”<sup>64</sup> After 1975, when the Massachusetts Zoning Enabling Act, Chapter 40A, was amended to explicitly allow regulation via special permit, there was a wave of local rezoning efforts to regulate multifamily uses by special permit.<sup>65</sup> For example, surveys of 101 municipalities near Boston showed that between 1972 and 2004, the number of communities that regulated multifamily housing by special permit increased from approximately one third to two thirds.<sup>66</sup>

A statistical review of zoning regulations in 187 municipalities in Greater Boston,<sup>67</sup> found that during

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<sup>64</sup> JENNY SCHUETZ, HARVARD UNIVERSITY JOINT CENTER FOR HOUSING STUDIES, *GUARDING THE TOWN WALLS: MECHANISMS AND MOTIVES FOR RESTRICTING MULTIFAMILY HOUSING IN MASSACHUSETTS* 5 (2006), [https://www.jchs.harvard.edu/sites/default/files/media/imp/w06-3\\_schuetz.pdf](https://www.jchs.harvard.edu/sites/default/files/media/imp/w06-3_schuetz.pdf).

<sup>65</sup> *See id.* at 6.

<sup>66</sup> *See id.*

<sup>67</sup> *See id.* at 12. (Analysis was based on the Local Housing Regulation Database, a database of land use regulations in eastern and central Massachusetts

*(Footnote continued on next page)*

the 1970s wave of rezoning, “exclusionary motives were more important; smaller, more affluent communities were more restrictive of multifamily housing.”<sup>68</sup> While many communities explicitly prohibit multifamily housing, regulation by special permit can be just as restrictive since, prior to the 2001 amendments included in the Act, every special permit required a 2/3 majority vote of a local permit granting authority.<sup>69</sup> The permit granting authority also has almost unlimited discretion to deny a special permit if it finds a development is not “in harmony with the general purpose and intent” of a local ordinance.<sup>70</sup>

Further, special permit deliberations must include a public hearing where community members are permitted to provide comments in favor or in opposition to a proposed development. A 2018 study funded by Boston University’s Initiative on Cities reviewed public comments made by citizen participants in planning board and zoning board meetings reviewing

assembled by the Pioneer Institute for Public Policy and the Rappaport Institute for Great Boston).

<sup>68</sup> Id. at 2.

<sup>69</sup> See Mass. Zoning Act, G. L. c. 40A § 9 (amended 2001).

<sup>70</sup> SCHUETZ, *supra* note 64, at 5-6; G. L. c. 40A § 9.

housing proposals between 2015-2017 in 97 cities and towns in metropolitan Boston.<sup>71</sup> Those who commented at hearings “were disproportionately white, male, older, and homeowners.”<sup>72</sup> The comments were overwhelmingly anti-new development, leading to permitting delay and obstruction.<sup>73</sup> Even it also found that “those individuals who are predisposed to support the construction of affordable housing in the abstract will [be] inclined to oppose specific housing project proposals in their communities.”<sup>74</sup>

Given the barriers the special permit process poses to housing development, the value of by-right or as of right development is unquestionable. One study that “evaluated the development timelines for all multifamily housing projects permitted in the City of Los Angeles between 2010 and 2022” found:

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<sup>71</sup> See EINSTEIN ET AL., BOSTON UNIVERSITY’S INITIATIVE ON CITIES, WHO PARTICIPATES IN LOCAL GOVERNMENT? EVIDENCE FROM MEETING MINUTES 9, [https://www.politicsofhousing.com/research/who\\_participates\\_in\\_local\\_government.pdf](https://www.politicsofhousing.com/research/who_participates_in_local_government.pdf).

<sup>72</sup> EINSTEIN ET AL., NEIGHBORHOOD DEFENDERS: PARTICIPATORY POLITICS AND AMERICA’S HOUSING CRISIS, [https://www.politicsofhousing.com/research/neighborhood\\_defenders\\_handout.pdf](https://www.politicsofhousing.com/research/neighborhood_defenders_handout.pdf) (last visited Sept. 12, 2024).

<sup>73</sup> See EINSTEIN ET AL., *supra* note 71, at 1.

<sup>74</sup> Id. at 8.



If we also account for the role of approval times in incentivizing new development, **we estimate that the 25% reduction in approval time would increase the rate of housing production by a full 33.0%.** Both the expected value and the uncertainty in approval times are salient to incentivizing new development. The results provide new evidence that local approval processes are a significant driver of housing supply and reinforce the notion that **municipal regulatory reform is an important component of housing reform.**<sup>75</sup>

A developer of affordable housing has compared the experience of developing a by right project to projects requiring a special permit or Chapter 40B comprehensive permit and has stated that it saved at least a year in permitting time and \$200,000 in permitting costs when by right zoning was available.<sup>76</sup>

Another affordable housing developer anticipates that as of right zoning would cut the total development time for a multifamily project by at least half when compared to a discretionary or Chapter 40B process.<sup>77</sup> The lack of as of right zoning also creates less tangible barriers to the development of

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<sup>75</sup> Stuart Gabriel & Edward King, DEVELOPMENT APPROVAL TIMELINES, APPROVAL UNCERTAINTY, AND NEW HOUSING SUPPLY: EVIDENCE FROM LOS ANGELES, p. 1 (Dec. 14, 2023) (*emphasis added*), available at <https://www.anderson.ucla.edu/sites/default/files/document/2024-06/2024-10wp-sg-ec.pdf>.

<sup>76</sup> See id.

<sup>77</sup> See Affidavit of A. DeFranza, *supra* note 15, at ¶7.

affordable housing: “[d]iscretionary zoning processes create an invisible barrier that increases the risks of both time and cost to build affordable housing such that developers are forced to either avoid building affordable housing altogether, or to propose larger projects with a higher risk and a higher potential reward (if they are successful).”<sup>78</sup> A discretionary zoning process can also block a potential developer’s willingness to invest in a community.<sup>79</sup>

**e. The Senate and the House rejected efforts to weaken 3A.**

Deliberations in both the Senate and House during the 2023-2024 Legislative Session reflect the Legislature’s intent that all MBTA Communities must comply with Section 3A. Any attempt to delay implementation or provide exemptions to Section 3A were robustly defeated. Of the 15 proposed amendments to section 3A, 10 were defeated without debate.<sup>80</sup>

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<sup>78</sup> Id. at ¶8.

<sup>79</sup> See id. at ¶9.

<sup>80</sup> See MBTA Communities Act - Zoning Appeal, H. R. 4707, 193rd Gen. Ct. (Mass. 2024) (Amendments 38, 41, 120 rejected June 5, 2024 <https://malegislature.gov/Bills/193/H4707>); S. R. 2834, 193rd Gen. Ct. (Mass. 2024) (Amendments 26, 27 rejected June 27, 2024, <https://malegislature.gov/Bills/193/S2834/BillHistory?pageNumber=3>)); H. R. 4600, 193rd Gen. Ct. (Mass. (Footnote continued on next page)

Debate on the floor further emphasizes the Legislature's intent to confirm the mandatory nature of 3A compliance. In rejecting Amendment 129 to the Bond Bill, which would have allowed MBTA Communities to appeal from application of Section 3A,<sup>81</sup> members of the House robustly rejected the amendment:

"Adding these restrictions, exemptions, and other obstacles in an attempt to circumnavigate the MBTA Communities Law may, in fact, lead to a situation where we go against the very spirit of why that law was passed."<sup>82</sup>

In 2021, we passed the MBTA Communities Act. We said, let's allow a little more multifamily housing near transit. So, how is that going to help us? That's going to help a whole lot of

2024) (Amendments 732, 734, 735 filed but rejected without debate, April 24-26, 2024, <https://malegislature.gov/Bills/GetAmendmentContent/193/H4600/732/House/Preview>; <https://malegislature.gov/Bills/GetAmendmentContent/193/H4600/734/House/Preview>; <https://malegislature.gov/Bills/GetAmendmentContent/193/H4600/735/House/Preview> ); FY2025-S4-178, 193rd Gen. Ct. (Mass. 2024); FY2025-S4-181, 193rd Gen. Ct. (Mass. 2024).

<sup>81</sup> See MBTA Communities Act - Zoning Appeal, H. R. 4707, 193rd Gen. Ct. (Mass. 2024) (Amendment 129 rejected Jun. 5, 2024, <https://malegislature.gov/Bills/GetAmendmentContent/193/H4707/129/House/Preview>).

<sup>82</sup> H. R. 1438, 193rd Gen. Ct. (Mass. 2024) (Amendment 129 rejected June 5, 2024) (comment by Rep. Meghan K. Kilcoyne).

people live where they want to live. It's going to enrich our communities. It's going to allow for equity, for diversity. It's going to allow our communities to thrive. I think we need to give the MBTA Communities Act some time to work. The gentleman also said, where is the flexibility? I know in the district I represent, and I represent two different municipalities, each had a very vigorous public process and debate about how to implement the MBTA Communities Act, and both of those communities found ways that worked in those communities to comply.<sup>83</sup>

Senate debate on Amendment 176 to the fiscal year 2025 Operating Budget included a robust discussion of a Section 3A amendment introduced by Senator Bruce Tarr that requested a one-year delay in implementation of Section 3A.<sup>84</sup>

Senator Crighton, who introduced Amendment 18 to the Act and Section 3A, discussed how the Baker Administration developed Section 3A and recognized that with Section 3A, the administration "went bold. And I think they went bold because they recognized the urgency of the situation."<sup>85</sup>

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<sup>83</sup> H. R. 1438, 193rd Gen. Ct. (Mass. 2024) (Amendment 129 rejected June 5, 2024) (comment by Rep. Ruth B. Balser).

<sup>84</sup> See FY2025-S4-176 H. R. 1438, 193rd Gen. Ct. (Mass. 2024).

<sup>85</sup> Id.

The most recent Legislative session also emphasized the General Court's intention to increase housing production through a state-zoning mandate. The Affordable Homes Act, H. 4977, mandates that, subject to reasonable regulation, accessory dwelling units (ADUs) be permitted in each single family zoning district.<sup>86</sup> The Act also mandated that municipalities remove permitting and occupancy restrictions on ADUs, further facilitating the development of such units as moderately priced housing options. The preamble to the act, which addressed efforts to defer passing of the act, states,

*Whereas, The deferred operation of this act would tend to defeat its purpose, which is to authorize forthwith the financing of the production and preservation of housing for low and moderate income citizens of the commonwealth and to make related changes in certain laws, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.*<sup>87</sup>

The passing of the Affordable Homes Act, and the urgency at which the legislature acted to ratify it, further displays the Legislature's

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<sup>86</sup> See The Affordable Homes Act, H. R. 4977, 193rd Gen. Ct. (Mass. 2024).

<sup>87</sup> Id.

intent to mandate immediate compliance with  
Section 3A.

**III. The guidelines promulgated by the Executive  
Office of Housing and Livable Communities should  
be given substantial deference by the Court.**

Based on the intent of the legislature to  
delegate interpretation of Section 3A to state  
agencies, the guidelines promulgated by the EOHLIC are  
entitled to substantial deference and should be  
followed.

Where a statutory scheme such as Section 3A  
contains gaps which prevent courts from easily and  
accurately determining compliance with the statute,  
"regulatory agencies are entitled to fill such gaps"  
by issuing guidelines for interpreting the statute.  
Zoning Bd. of Appeals of Milton v. HD/MW Randolph  
Ave., LLC, 490 Mass. 257, 266 (2022). Such guidelines  
issued by regulatory agencies are "entitled to  
substantial deference," Glob. NAPs, Inc. v. Awiszus,  
457 Mass. 489, 497 (2010), and in some cases may have  
mandatory effect. See Fairhaven Hous. Auth. v. Commw.,  
493 Mass. 27, 32 (2023) (regulatory guidelines may be  
mandatory). See also Dahill v. Police Dep't of Bos.,  
434 Mass. 233, 239 (2001) (citing Berrios v. Dep't of  
Pub. Welfare, 411 Mass. 587, 595 (1992) (stating

"administrative agency 'has considerable leeway in interpreting a statute it is charged with enforcing'").

In analyzing whether to give guidelines binding force of law, the court's "primary duty in interpreting a statute is 'to effectuate the intent of the Legislature in enacting it.'" Glob. NAPs, 457 Mass. at 496 (quoting Int'l Org. of Masters v. Woods Hole, Martha's Vineyard & Nantucket S.S. Auth., 392 Mass. 811, 813, (1984)). For example, in Dahill, 434 Mass. at 239, the SJC followed guidelines promulgated by the Massachusetts Commission Against Discrimination on the issue of the definition of "handicap." The Court found that the legislature's intent was to "delegate[] to the MCAD the authority to 'formulate policies to effectuate the purposes'" of the statute, and that the MCAD's guidelines on the issue should be followed. Id. at 239. Similarly, in Flagg v. AliMed, Inc., 466 Mass. 23, 32-33 (2013), the SJC found that the legislature had intended to entrust interpretation of G.L. c. 151B to the agency, and thus followed the agency's guidelines and interpretations of its scope.

Here, because the Guidelines are formulated to effectuate the purposes of 30A, and because the

legislature intended to delegate interpretation of the statute to the EOHLC, this Court should give the guidelines the full force of law. The fact that the legislature intended to delegate such authority to the EOHLC is contained in § 3A(c), which states that the EOHLC, as well as several other state agencies, "shall promulgate guidelines to determine if an MBTA community is in compliance with this section."<sup>88</sup> As such, EOHLC's finding that Milton is not in compliance with Section 3A compels a finding that Milton is in violation of Section 3A. See Zoning Bd. of Appeals of Milton, 490 Mass. at 264, (citing Alves's Case, 452 Mass. 171, 177 (2008)) ("we will not substitute our judgment for that of an administrative agency if its interpretation of a statute is reasonable)."

#### **CONCLUSION**

Based on the plain language of Section 3A and the history and context of its adoption, CHAPA respectfully requests this Court issue a decision in favor of the Attorney General on all counts.

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<sup>88</sup> G. L. c. 40A § 3C.

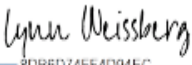


Respectfully submitted,  
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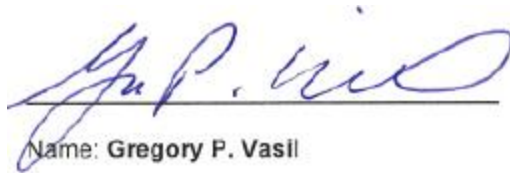
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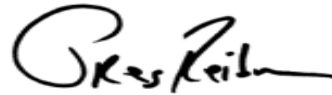
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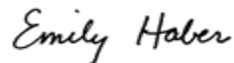
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MACDC

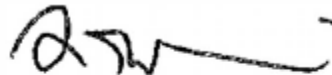
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Sept. 11, 2024

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WinnDevelopment Company Limited Partnership

By: WDP Manager Corp, its manager

By: Gilbert J. Winn, President

Date: 09/11/2024

**Eastern Bank,**



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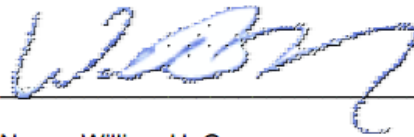
Name: Robert F. Rivers

Title: Executive Chair, Eastern Bank

Date: September 12, 2024

**Planning Office for Urban Affairs, Inc.**

Planning Office for Urban Affairs, Inc.



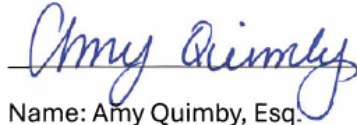
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Date: 9/11/24

**Massachusetts Housing Finance Agency,**

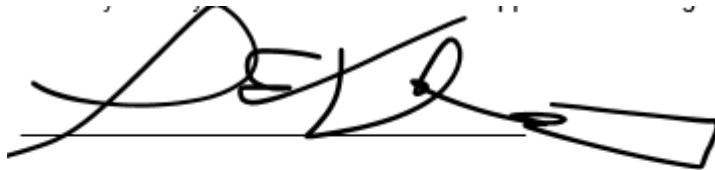


Name: Amy Quimby, Esq.  
Title: General Counsel  
BBO# 680745  
aquimby@masshousing.com

Massachusetts Housing Finance Agency  
One Beacon Street  
Boston, MA 02108  
617.584.1000

Date: September 12, 2024

**Revere Housing Coalition,**



Name: Lor Holmes  
Title: Community Lead  
Date: 9/13/2024

**Metro West Collaborative Development,  
Inc.,**



Name: Caitlin Madden  
Title: Executive Director, Metro West Collaborative Development, Inc.  
Date: 9/11/2024

**2Life Communities, Inc.,**





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Name: Amy Schectman

Title: Chief Executive Officer

Date: September 12, 2024

**Acton Housing for All,**



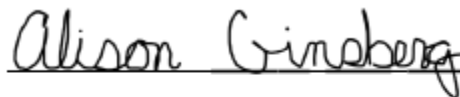
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Name: Bob Van Meter

Title: Chair, Acton Housing for All

Date: September 11, 2024

**United Way of Massachusetts Bay, Inc.**



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Name: Alison Ginsberg

Title: Chief Financial Officer

Date: 09/13/2024

**Massachusetts Business Roundtable,**



---

Name: Jondavid Chesloff

Title:

President & CEO

Massachusetts Business Roundtable

40 Court Street, 11th Floor

Boston, MA 02108

(617) 728-0881 (o)

Date: September 11, 2024

**Beacon Communities, LLC,**

Beacon Communities LLC



---

Name: Dara Kovel

Title: Authorized Officer, Chief Executive

Officer Date: September 11, 2024

**Black Economic Counsel of Massachusetts,  
Inc.,**



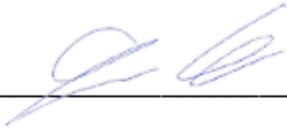
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Name: Nicole Obi

Title: President & CEO

Date: September 11, 2024

**Capstone Communities, LLC,**




---

Name: Jason Korb

Title: managing member

Date: 9/12/24

**Belmont Town of (More!) Homes,**



---

 On behalf of Belmont Town of (More!) Homes

Name: Joe Wright, MD

Title: Steering Committee Member, Belmont Town of (More!) Homes

Date: 9/11/2024

**Redgate Capital Partners,**



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Name: Gregory Bialecki

Title: Principal

Date: September 11, 2024

Harborlight Community Partners, Inc.  
(dba Harborlight Homes),



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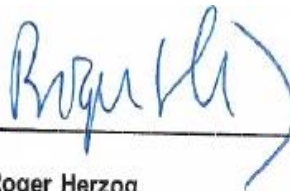
Name: Andrew DeFranza

Title: Executive Director

Date: September 10, 2024

Community Economic Development  
Assistance Corporation,

By: \_\_\_\_\_




9/16/24

Name: Roger Herzog

Title: Executive Director

**B'nai B'rith Housing New England, Inc.,**

B'nai B'rith Housing New England, Inc.  
BY: Susan Gittelman, its Executive Director

BY: , its Executive Director

---

Date: September 12, 2024

**CERTIFICATION OF COMPLIANCE PURSUANT TO RULE 17(c) (9)**  
**OF THE MASSACHUSETTS RULES OF APPELLATE PROCEDURE**

In accordance with Massachusetts Rules of Appellate Procedure 17(c) (9), I, Karla L. Chaffee, hereby certify that the foregoing brief complies with the requirements of Massachusetts Rules of Appellate Procedure 17 and 20. Compliance with Rule 20(a) (3) (E) was ascertained by use of 12-point Courier New (monospaced) font, with 10 characters per inch, and the brief is less than 35 non-excluded pages.

/s/ Karla L. Chaffee  
Karla L. Chaffee (BBO#675699)  
kchaffee@nixonpeabody.com  
NIXON PEABODY LLP  
Exchange Place  
53 State Street  
Boston, MA 02109-2835  
(617) 345-1000  
(833) 655-1825 (facsimile)

**CERTIFICATE OF SERVICE**

I, Karla L. Chaffee, hereby certify that on September 16, 2024 copies of the foregoing document was served via Fedex on all counsel of record.

/s/ Karla L. Chaffee  
Karla L. Chaffee

**ADDENDUM**

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COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

No. SJC-13580

THE ATTORNEY GENERAL,

*Plaintiffs/Counterclaim Defendant-Appellant*

v.

TOWN OF MILTON,

*Defendant/ Counterclaim Plaintiff/ Third Party*

*Plaintiff -Appellees, AND JOE ATCHUE,*

*Defendant - Appellee*

v.

THE EXECUTIVE OFFICE OF HOUSING AND LIVABLE COMMUNITIES,

*Third-Party Defendant-Appellant*

---

ON A RESERVATION AND REPORT BY A JUSTICE OF THE  
SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

---

**AFFIDAVIT OF ANDREW DEFRANZA IN SUPPORT OF AMICUS  
CURIAE, CITIZENS' HOUSING AND PLANNING ASSOCIATION**

I, Andrew DeFranza, being first duly sworn,  
depose and state that:

1. I am the Executive Director of Harborlight  
Community Partners ("Harborlight"). I am also a Board

Member of the Citizens' Housing and Planning Association ("CHAPA").

2. At Harborlight, we collaborate with communities to cultivate just, equitable and sustainable housing opportunities vital to the health and strength of the individuals and communities of our entire region on the North Shore of Massachusetts.

3. Currently the Chapter 40B process can take up to 2 years to complete, including time for due diligence and early design, filing and receipt of ~~Project Eligibility Letters with the Commonwealth of~~ Massachusetts, and going through local Zoning Board processes.

4. Diligence, site control, and planning for such projects can cost anywhere between \$250,000 and \$500,000.

5. On top of those costs, the legal costs for a Chapter 40B project can range anywhere from \$25,000 to \$500,000.

6. A project applicant, therefore, may spend up to one million dollars to secure approval for an affordable housing project as Chapter 40B currently stands.

7. Mandatory as of right zoning would significantly reduce the total amount of time (by at least half) and remove the variable of potential litigation costs (by about \$450,000) to develop an affordable housing project.

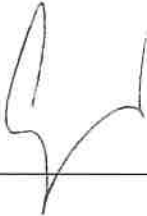
8. Discretionary zoning processes create an invisible barrier that increases the risks of both time and cost to build affordable housing such that developers are forced to either avoid building affordable housing altogether, or to propose larger projects with a higher risk and a higher potential reward (if they are successful).

9. Discretionary permitting for affordable housing projects is harmful to the development of such projects in that it can block a potential developer's attempt or willingness to invest in a community and undertake the due diligence process; reduce the chances that a landowner is willing to sell their property to a developer for affordable housing, therefore making it hard to find suitable land for such projects; and increase the cost of the project dramatically through the escalation of time and money required, ultimately damaging the project's chances of success.

10. To make it through a discretionary approval process, a project developer must be prepared to spend up to two years and half a million dollars without expecting a return for seven to ten years. This cost can be much higher depending on holding costs for land.

11. The discretionary permitting process is detrimental to the Commonwealth's goals of increasing the amount of affordable housing available to its residents by creating massive organizational and resource related pressures, blocking projects, and ultimately preventing much-needed affordable housing from being built.

I, Andrew DeFranza, being duly sworn, deposes and says that I have read the foregoing affidavit, and believe that it is true and accurate to the best of my knowledge, information and belief.



---

Andrew DeFranza

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

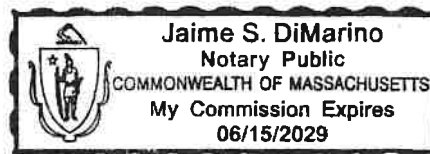
On this 12<sup>th</sup> day of September, 2024 before me, the undersigned notary public, personally appeared Andrew DeFranza, proved to me through satisfactory evidence of identification, which was personally known, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose, as Executive Director of Harborlight Community Partners.

Jaime S. DiMarino

Print Name:

Notary Public

My Commission Expires: 6/15/2029



COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

No. SJC-13580

THE ATTORNEY GENERAL,

*Plaintiffs/Counterclaim Defendant-Appellant*

v.

TOWN OF MILTON,

*Defendant/ Counterclaim Plaintiff/ Third Party*

*Plaintiff -Appellees, AND JOE ATCHUE,*

*Defendant - Appellee*

v.

THE EXECUTIVE OFFICE OF HOUSING AND LIVABLE COMMUNITIES,

*Third-Party Defendant-Appellant*

---

ON A RESERVATION AND REPORT BY A JUSTICE OF THE  
SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

---

**AFFIDAVIT OF ZOE WEINROBE IN SUPPORT OF AMICUS CURIAE,  
CITIZENS' HOUSING AND PLANNING ASSOCIATION**

I, Zoe Weinrobe, being first duly sworn, depose  
and state that:

1. I am the Chief of Real Estate at 2Life  
Communities ("2Life"). 2Life is a non-profit  
development corporation specializing in the

development of affordable senior living communities in Massachusetts.

2. 2Life has completed the Chapter 40B permitting process for three projects in the last six years, and completed one project that required a special permit (the "Special Permit Project").

3. The only options to permit the aforementioned projects were to either go through Chapter 40B or to acquire a special permit due to the specific forms of relief required for each project. As of right multifamily zoning was not available in the municipalities where 2Life identified a need to develop.

4. 2Life's most recent Chapter 40B project, which is uncontested and non-controversial, has already incurred over \$100,000 to date in legal-related permitting costs alone since its initiation in the spring of 2021.

5. The Special Permit Project, which is similarly uncontested and non-controversial, has incurred over \$215,000 to date in legal-related permitting costs alone since its initiation in early 2021.

6. Costs for architecture and engineering tasks that are often required by communities negotiating a

40B project or discretionary relief (such as design review, the completion of necessary studies, and board and commission submissions) are not included in the amounts already spent on each project. More costs will be incurred as each project moves forward towards completion.

7. Even for supposedly simple, non-controversial projects that do not face significant opposition from abutters or the surrounding community, like the four affordable senior housing developments sponsored by 2Life described above, the permitting and entitlement processes take between 12 and 18 months to complete.

8. The steps necessary to complete a 2Life project in a municipality without as of right zoning vary based on the municipality's specific requirements for design review and municipal services. The uncertainty that results with each new project in each new municipality is unnecessarily time- and resource-consuming.

9. As of right zoning allows developers certainty when it comes to project planning, which results in significant savings of time and money.

10. These savings are evident in 2Life's recent project in the City of Lynn. The City of Lynn has as

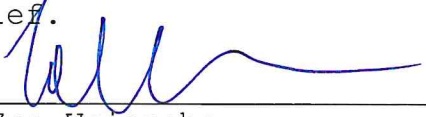


of right zoning for multifamily projects. Because of this, the project in Lynn has saved over \$200,000 in costs compared to other 2Life projects in municipalities with discretionary permitting. This project has also taken about 1 year less to develop than other similar projects.

11. Discretionary permitting harms developers like 2Life Communities in their efforts to provide affordable housing in Massachusetts. As of right zoning, on the other hand, allows 2Life and other affordable housing developers to provide the most cost-effective living option to current and future residents.

12. As of right zoning for multifamily housing projects would improve the development process and result in more affordable housing becoming available in Massachusetts.

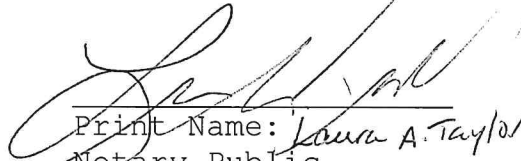
I, Zoe Weinrobe, being duly sworn, deposes and says that I have read the foregoing affidavit, and believe that it is true and accurate to the best of my knowledge, information and belief.

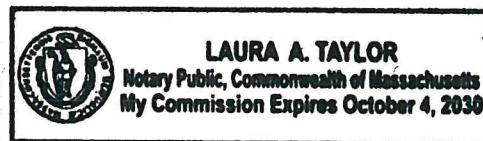
  
\_\_\_\_\_  
Zoe Weinrobe

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this 12<sup>th</sup> day of September, 2024 before me, the undersigned notary public, personally appeared Zoe Weinrobe, proved to me through satisfactory evidence of identification, which was MA Driver's License, to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it voluntarily for its stated purpose, as Chief of Real Estate of 2Life Communities.

  
\_\_\_\_\_  
Print Name: Laura A. Taylor  
Notary Public  
My Commission Expires:



# SB2842 - An Act enabling partnerships for growth

Note: this bill is from the 2019-2020 session

**Sponsor:** [Sen. Michael J. Rodrigues](#)  
**Progress:**   
**Status:** Filed in the Senate (FILE/S)  
**Last Action:** 2020-07-31 - Printed-as-amended version - see [SB2874](#)  
[View comparison to prior version](#)

<b>History (74)</b>
<b>Text (4)</b>
<b>Amendments (361)</b>
<b>Comments (0)</b>
<b>Citations (437)</b>
<b>Reports (3)</b>
<b>Co-sponsors (0)</b>
<b>Categories (115)</b>
<b>News (9)</b>
<b>Press Releases (1)</b>
<b>Floor Votes (9)</b>
<b>Files (0)</b>
<b>Testimony (0)</b>
<b>Transcripts</b>
<b>Refiles (0)</b>
<b>Related Bills (2)</b>
<b>Floor Debate (54)</b>

## FLOOR DEBATE FOR SB2842

07/29/2020

[State Senator Eric Lesser \(D\)](#)  
[07/29/2020 Full Formal Session](#)

The COVID-19 outbreak is far from over. Though our transmission rate is among the lowest in the country, we know a resurgence is likely. Alongside the public health crisis, we are facing an economic catastrophe unlike anything we have seen since the Great Depression. In June, 640,000 people in our Commonwealth were out of work. Our economy was put into a coma to stop the coronavirus. And we know who is bearing the greatest burden. While Main Street was asked to shut down, Home Depot and Lowe's posted record profits. Small business revenue plummeted 42% while Amazon's stock price rose by 60%. Many professionals can work from home, but so many in our gateway communities have lost their jobs, and those jobs may never return. This virus will be remembered for many things, but its longest lasting legacy will be hyper-charging the greatest concentration of wealth in American history. There were unfair trends in our economy before COVID-19, and the virus made them all the more clear. We need bold solutions to meet this moment and chart a path toward a better future.

I want to...

[GENERATE A REPORT](#)

[Change Bill Tracking](#)

1 Track [Hold Alerts](#)

[Change My Position](#)

No position selected.

[Change Bill Priority](#)

No priority selected.

[Assign a Task](#)

No task selected.

[Collaborate: Whip Count](#)

Start a Whip Count on this bill.

[Collaborate: Bill Text](#)

Start a new collaboration on this bill.

[Compare Bill Text](#)

NEW

Compare this bill to any other bill.

## Summary for SB2842

Submits the Senate version of the Economic Development bill, allocating \$375 million in capital authorizations across housing, community development, manufacturing, entrepreneurship, tourism, broadband expansion, the nonprofit sector, neighborhood revitalization, climate resilience, vocational and career training, the restaurant industry, and more; requires state authorities to establish affirmative marketing programs to ensure the fair participation of minority-owned and women-owned businesses in capital facility projects; establishes a licensing system for student loan issuers, a student loan ombudsman within the Attorney General's office, as well as a student loan assistance trust fund; prohibits bad faith assertions of patent infringement; establishes a special commission to study the impact of automation, artificial intelligence, and global trade on the workforce, businesses and the economy.

For more information, please view our [section-by-section summary](#) and [line-item comparison](#).

We authorize grants for our community development financial institutions and ensure that federal PPP loans do not face state income tax. We make significant investments to close the

homework gap, including \$5 million for the broadband incentive fund. We authorize \$50 million for the Mass. Tech Collaborative to build out regional centers of excellence in several areas. We authorize \$20 million for microbusinesses, especially those from disproportionately affected groups. We also modernize our licensure laws, such as removing the requirement for hair braiders to have cosmetology licenses. We know it is not yet safe to encourage interstate travel, but we encourage safe, socially distant intrastate travel. We authorize \$10 million for a competitive grant program to encourage that tourism. We also authorize \$20 million in grants to the Mass. Cultural Council and \$10 million for climate resilient improvements and affordable housing projects.

**[State Senator Brendan Crighton \(D\)](#)**

[07/29/2020 Full Formal Session](#)

**Amendment #1**

We are facing a housing crisis in Massachusetts. We produce half of the housing that was produced annually in the 1960s and 1970s. Rents have increased more than 75% since 2000. Single family home prices have increased more than any other state since 1980. 25% of tenants pay more than half of their income on rent. Unfortunately, we handcuff our local elected officials by requiring a 2/3 majority vote for zoning changes, presenting an obstacle to affordable housing development. This amendment would allow those decisions to be made by a simple majority for affordable housing near public transit, accessory dwellings, and more. We must provide our municipalities with the tools they need to produce affordable housing. The amendment also creates a commission to keep track of our progress and provide recommendations to meet our goals. Our housing crisis was not created overnight, and it will not be solved by one piece of legislation. But this amendment is a start.

**[State Senator Eric Lesser \(D\)](#)**

[07/29/2020 Full Formal Session](#)

**Amendment #1**

Housing is too expensive in Massachusetts. People cannot afford to live here. This measure will reduce the price of housing by increasing the supply, and it will create thousands of construction jobs in the process. One of the contributing factors to the spread of COVID-19 is unsafe housing and crowded conditions. The history of zoning in our Commonwealth is linked to the struggle for social justice, and this amendment begins to shift the needle.

**[State Senator Bruce E. Tarr \(R\)](#)**

[07/29/2020 Full Formal Session](#)

**Amendment #20**

This amendment strikes at one of the many economic sectors of our Commonwealth that has been particularly hard-hit by the pandemic, and that is live theater performances. The performing arts are important to our quality of life and our economy. Theater performances create jobs and draw people to businesses in the immediate area of the performance. This amendment is analogous to the tax credit in our Commonwealth for the production of film.

**[State Senator Joanne Comerford \(D\)](#)**

[07/29/2020 Full Formal Session](#)

**Amendment #17**

This amendment creates a healthy soil program to support farmers who wish to use healthy soil farming practices. This issue is a priority of the Food Systems Caucus. Healthy soils sequester carbon dioxide from our atmosphere.

**[State Senator Joseph Boncore \(D\)](#)**

[07/29/2020 Full Formal Session](#)

**Amendment #52**

The New England Aquarium is a vital resource for science, research and advocacy for vibrant oceans. Its mission is focused primarily on the environment. The aquarium is a great place to visit to be inspired by and learn more about our oceans. It is home to the world's longest running whale research program. Its current facility is over 50 years old and has only seen incremental improvements since its creation in 1969. Yet it is one of the most visited cultural institutions in New England. It has lost out on a lot of revenue due to the pandemic. Boston is expected to see three feet of sea level rise by 2050. So this bond authorization will go a long way to protect this beautiful cultural institution for generations to come.

**[State Senator Joseph Boncore \(D\)](#)**

[07/29/2020 Full Formal Session](#)

**Amendment #53**

The Boch Center is still unable to open until Phase 4. As they prepare for reopening, they are facing significant hurdles in outfitting their facilities for social distancing. This funding will provide them the opportunity to make safety improvements in the interest of public health.

**[State Senator Joseph Boncore \(D\)](#)**

[07/29/2020 Full Formal Session](#)

**Amendment #54**

This amendment will provide additional support for municipal and regional planning authorities across the Commonwealth. As we work toward recovery, cities and towns will need further funding for planning through state and federal investments. With this amendment, we will ensure that our communities are set up for success. The vast majority of our municipalities do not have a planner on staff. This means that most communities cannot do the kind of planning work that is needed for housing, workforce development, and climate mitigation and adaptation.

[State Senator Bruce E. Tarr \(R\)](#)  
[07/29/2020 Full Formal Session](#)

**Amendment #58**

This amendment includes seasonal restaurants in the list of entities to be prioritized for grants. I hope it will be adopted.

[State Senator Jason M. Lewis \(D\)](#)  
[07/29/2020 Full Formal Session](#)

**Amendment #63**

This amendment relates to Zoo New England. The land and property, i.e. the animals, of our zoos are state property. So it is our responsibility to look out for the care and the future of these institutions. Franklin Park Zoo and the Stone Zoo are operated on behalf of the state by a nonprofit organization, Zoo New England. This amendment will provide \$5 million in capital funds for Zoo New England, and it will require a 1 to 1 match between public dollars and private dollars that Zoo New England will raise. Our zoos provide significant benefits to our communities. They are a significant summer employer for at-risk youth. Zoo New England has faced numerous challenges over the past 10 or 15 years, but with our help, they have risen to the challenge and gotten stronger.

[State Senator Rebecca Rausch \(D\)](#)  
[07/29/2020 Full Formal Session](#)

**Amendment #84**

Discriminations based on weight are found at every step of the employment process. As we continue to dig deep to dismantle systemic injustice, we must look to our history in Massachusetts. We were first in the nation to enact broad spectrum public accommodation laws and to legalize same sex marriage. We have shown time and again that we strive to protect individuality. We must now be a leader again by enacting this law to prevent discrimination based on height and weight. This amendment adds height and weight to our current protected classes law. But I ask to withdraw this amendment.

[State Senator Walter F. Timilty \(D\)](#)  
[07/29/2020 Full Formal Session](#)

**Amendment #94**

This amendment authorizes a \$3 million bond for restoration of the State Theater in Stoughton. This funding will contribute to the community by enriching the lives of residents and visitors.

[State Senator Joan B. Lovely \(D\)](#)  
[07/29/2020 Full Formal Session](#)

**Amendment #99**

This amendment would bring the Commonwealth in line with the Federal Cider Act tax structure by changing the maximum allowable alcohol content for cider to 8.5% by volume. The DOR estimates that this change would cost the Commonwealth only \$300,000. I hope this amendment passes in the interest of fairness.

[State Senator Joan B. Lovely \(D\)](#)  
[07/29/2020 Full Formal Session](#)

**Amendment #100**

We each represent areas with diverse tourism attractions. The hospitality industry has been devastated by the pandemic. Our regional tourism councils need to receive the funds we've appropriated by September 1 to implement marketing plans and keep their communities thriving. Making minor investments in this industry pays off in major ways.

[State Senator Eric Lesser \(D\)](#)  
[07/29/2020 Full Formal Session](#)

**Amendment #100**

Our regional tourism councils do vital work to promote regions. The tourism economy is the third largest sector in our Commonwealth in terms of employment and it has been decimated.

[State Senator Marc R. Pacheco \(D\)](#)  
[07/29/2020 Full Formal Session](#)

**Amendment #139**

This amendment would create thousands of clean energy technology jobs in the Commonwealth. We can lead New England in offshore wind jobs. Climate change is, in my opinion, the biggest issue that we face. We need to do everything we can to fix this situation, bringing greenhouse gas emissions down while saving jobs and creating new ones. I urge my colleagues to support this legislation.

[State Senator Adam G. Hinds \(D\)](#)  
[07/29/2020 Full Formal Session](#)

**Amendment #154**

The rural growth fund is a strategic effort to attract capital to rural businesses in order to create new jobs and support rural economies. The imbalance of investments between cities and rural areas is symptomatic of inequities across the commonwealth. We have seen this passed twice now in the House, and I think it is time for us to take it up in the Senate. I hope we will follow this through the conference process. But I ask to withdraw this amendment.

[State Senator Adam G. Hinds \(D\)](#)  
[07/29/2020 Full Formal Session](#)

**Amendment #162**

We have to make sure our economic recovery is spread across our Commonwealth. This is an

effort to double the amount we have put aside for rural and small town grants. I hope it is

adopted.

[State Senator Walter F. Timilty \(D\)](#)

[07/29/2020 Full Formal Session](#)

**Amendment #232**

This amendment establishes a special commission to evaluate and study the impact of telecommuting on our employees. Our frontline healthcare workers have put their lives on the line every day in order to save the lives of others. Here in this legislature, we have acted swiftly and efficiently as our offices and staff have adapted to working remotely. And we've held the first remote formal sessions in the history of this body. Across the world, we've seen a positive impact on our environment as people have stayed home. Studies have illustrated that telecommuting boosts employee morale and promotes a better work-life balance.

[State Senator Sal N. DiDomenico \(D\)](#)

[07/29/2020 Full Formal Session](#)

**Amendment #182**

This amendment will help organizations that run after school programs. Our public schools teach over 700,000 youths. School districts have been forced to reallocate funding for after school programs due to budget cuts, but 1/3 of the workforce requires childcare.

[State Senator Patrick O'Connor \(R\)](#)

[07/29/2020 Full Formal Session](#)

**Amendment #85**

Right now, only 21 states require students to take a course on finance education. Studies show that over 35% of our households would not be able to remain financially solvent for three months if their income was lost. The average age of first-time home buyers is rising across the country, and young people are being placed at a disadvantage in navigating the home buying market. This task force would bring together the brightest financial minds to examine our current financial literacy teaching methods and suggest improvements. Research has shown that as little as 6.9% of students in our country can be called financially literate.

[State Senator Patrick O'Connor \(R\)](#)

[07/29/2020 Full Formal Session](#)

**Amendment #142**

This is a pilot program that would create a grant program for new business ventures aiming to meet a marketplace need currently existing in the Commonwealth. We hope to give \$500,000 to ten recipients in the first round of grants. This is a unique way to invest in a modern, homegrown economy that harnesses the ingenuity of Massachusetts residents.

[State Senator Anne Gobi \(D\)](#)

[07/29/2020 Full Formal Session](#)

**Amendment #64**

What is pyrrhotite? It's a naturally occurring iron sulfite mineral, and according to a survey by the USGS, there is a vein of pyrrhotite that goes right through Massachusetts. What has happened is that pyrrhotite has seeped into the foundation of people's homes, where it reacts with water and air and creates a new material that expands and cracks the foundations, eventually making the house uninhabitable. The only way to fix the problem is to raise the house, remove the foundation and lay a new one. Homeowner's insurance does not cover this. So this amendment will create a fund so that people can get reimbursed for the testing required to determine if pyrrhotite is indeed entering their foundation.

[State Senator Eric Lesser \(D\)](#)

[07/29/2020 Full Formal Session](#)

**Amendment #64**

We have discussed this issue in this chamber in the past. Imagine you save and work for years, and you put your life savings into a house. And one day, you notice cracks in your foundation. You check the foundation and it turns out that the quarry where that concrete came from contained pyrrhotite. Now, you have to put the house on stilts, excavate the foundation, lay a new one, and lower the house again. At a minimum, this will cost \$250,000. But homeowner's insurance won't cover that process unless the house actually collapses.

[State Senator Anne Gobi \(D\)](#)

[07/29/2020 Full Formal Session](#)

**Amendment #68**

This amendment is a great collaboration between the Department of Veterans' Services and MDAR. MDAR will offer a grant program to veteran farmers and veterans interested in entering the agriculture industry.

[State Senator Harriette L. Chandler \(D\)](#)

[07/29/2020 Full Formal Session](#)

**Amendment #36**

This amendment would ensure that students in public institutions of higher education have access to their transcripts. It is now a common practice for universities to withhold transcripts from students due to an unpaid balance to the school. Students are often forced to drop out due to costs, leaving them with an outstanding debt to their former schools. Without a transcript, students can find it difficult to find an alternative means to complete their education at a different institution.

[State Senator James B. Eldridge \(D\)](#)

[07/29/2020 Full Formal Session](#)

#### **Amendment #129**

This amendment updates and strengthens existing consumer protections around debt collection. It limits wage garnishment to a reasonable amount and lowers the interest paid to debt collectors to six percent, bringing Massachusetts in line with other states. Debt buyers and collectors have filed hundreds of lawsuits since March 1st, even while the pandemic rages on. There are so many people who are now behind on their debts because they are out of work.

[State Senator Adam G. Hinds \(D\)](#)

[07/29/2020 Full Formal Session](#)

#### **Amendment #167**

This amendment is an effort to raise the cap on funding from \$10 to \$15 million for gateway city housing developments. Developers currently have to pay the same cost for construction prices in downtowns such as Pittsfield as they would in downtown Boston, but the rents they could collect from each location are much different.

[State Senator Cynthia Stone Creem \(D\)](#)

[07/29/2020 Full Formal Session](#)

#### **Amendment #303**

Our state has been a leader in technology. However, in our increasingly digital world, your personal data is ripe for businesses to harvest for their own interests. This amendment expands the scope of the commission to address these concerns.

[State Senator Bruce E. Tarr \(R\)](#)

[07/29/2020 Full Formal Session](#)

#### **Amendment #3**

This amendment calls a particular problem to our attention. During the pandemic, we have tried to ensure that no one is evicted through moratoriums. But we have only considered half of the equation, because we have not addressed the needs of those who own these properties and depend on income from rental payments to support themselves. This amendment seeks to call attention to that glaring omission and suggest that we must find a way to remember the plight of those who provide housing and are struggling without payment of rent. If we don't begin to address this soon, we will destabilize the housing stock in a way we may not fully understand. This amendment directs the Department of Housing and Economic Development to look at this problem and suggest a cause of action not later than November 1st of this year. We cannot see the collapse of affordable rental housing in our Commonwealth.

[State Senator Michael D. Brady \(D\)](#)

[07/29/2020 Full Formal Session](#)

#### **Amendment #3**

We need to protect the owners of these properties as well as the tenants who live in them. If tenants cannot afford to pay their rents, landlords are often not able to pay the mortgage to the banks. There are many concerned constituents in my district and across the Commonwealth who are worried about this very issue.

[State Senator Harriette L. Chandler \(D\)](#)

[07/29/2020 Full Formal Session](#)

#### **Amendment #269**

Apart from the pandemic, there is no issue in my district that comes close to the cost of housing. This amendment was intended to ensure that a housing choice program require 20% of housing in a new development be affordable to people at 60% of the area's median income. Our housing crisis is not in production of luxury housing. The crisis is in housing for working people. I am disappointed that the housing choice program is a false promise that will produce nothing for working people. The gentleman from Lynn's amendment makes some helpful changes, including lowering the threshold required to approve zoning changes. But we are facing an enormous crisis that requires solutions bolder than those we are offering. Fair and adequate pay is a big part of the housing affordability crisis. There are more progressive portions of this bill, but they are far from enough to solve the housing crisis.

[State Senator Bruce E. Tarr \(R\)](#)

[07/29/2020 Full Formal Session](#)

#### **Amendment #16**

I have been honored to lead the Senate Working Group on Supply Chain and Price Gouging Issues during the pandemic. The pandemic has revealed the dependence we have on agricultural products that come from other places. I am pleased to report that we have great opportunity to strengthen our own agricultural producers, particularly in meat and poultry processing. There are also significant opportunities for carbon sequestration through our soils and energy generation as a byproduct of our agriculture. The commission proposed by this amendment will help us identify the action steps necessary to begin taking advantage of these opportunities. I hope this amendment is adopted because it will set the state for tremendous growth in agriculture.

[State Senator Bruce E. Tarr \(R\)](#)

[07/29/2020 Full Formal Session](#)

#### **Amendment #41**

It is imperative that, when we see the level of economic damage being done by the pandemic, we explore every possible opportunity to mitigate that harm. One of the challenges facing small businesses is a constant: the cost of health insurance for employees. This amendment seeks to engage the Commonwealth Connector to develop a plan to provide premium assistance so that small businesses can continue to provide health insurance.

[State Senator Bruce E. Tarr \(R\)](#)

[07/29/2020 Full Formal Session](#)

**Amendment #4**

We have not discussed many opportunities to increase revenues in order to fulfill our spending priorities. This amendment would legalize sports wagering, which carries with it an estimate of approximately \$35 million in annual revenue for the Commonwealth. This is not a new issue. It has had the benefit of significant research and discussion. We must realize that it presents us with an opportunity to capture dollars that are being lost to other states and the illegal market. It is unfortunate that we have not yet been able to do so.

[State Senator Julian A. Cyr \(D\)](#)

[07/29/2020 Full Formal Session](#)

**Amendment #57**

The Cape and Islands are the most unaffordable regions in our Commonwealth. A number of people who own multiple homes in this district have come to the region to ride out the pandemic. The founder of Google and head coach of the Patriots are both on Nantucket. Many more are clamoring to buy a home in our region to escape the cities. We are, of course, fortunate to have these residents who drive economic engagement. But we are not doing enough to ask these seasonal residents, the ultra-rich, to pay a little bit more forward in order to maintain a year-round community. The median home price on Nantucket is \$2 million. Our region has become profoundly unaffordable, and that is because the market is primarily driven by second homes. Updating zoning without empowering communities like mine to raise revenue will simply lead to more luxury condos without housing for those who need it most. This gives communities the tool to fund affordable and workforce housing, and it leaves it up to them to decide what luxury fee to place on the most expensive homes, with a cap at 2%. The amendment only applies to home sales over \$2 million, so it targets only the most fortunate. The first \$2 million of that home would be exempt from the transfer fee, and municipalities would have the option to raise that threshold even higher. So I look forward to working on this in the weeks to come but I ask to withdraw this amendment.

[State Senator Bruce E. Tarr \(R\)](#)

[07/29/2020 Full Formal Session](#)

**Amendment #14**

We have heard many dire predictions about the predicament that restaurants currently face. For several years, we've recognized the importance of the sales tax holiday for retailers in our Commonwealth. This amendment applies the same method to restaurants with a meals tax holiday.

[State Senator Diana DiZoglio \(D\)](#)

[07/29/2020 Full Formal Session](#)

**Amendment #213**

Hundreds of thousands of restaurants have closed across the country. Delivery companies charge restaurants a minimum of 25-30% for their service. When delivery orders accounted for 5-10% of sales, delivery companies took about 2-3% of restaurant revenues. They are now taking close to 20% of restaurant revenues. This is not sustainable. Yet there is little choice for small restaurants that cannot provide their own delivery services given the current circumstances. This would cap the fee that delivery services can charge restaurants at 15% of an online order.

[State Senator Diana DiZoglio \(D\)](#)

[07/29/2020 Full Formal Session](#)

**Amendment #228**

I have engaged with small business owners for this entire session in order to generate proposals to truly assist them. During the pandemic, these proposals are even more important. The Supply Mass., Buy Mass. Program is one of the important tools we can use to help our small businesses. As we've witnessed with the shortages of PPE, having online accessibility to producers before need outpaced supply would have put us in a better position than we now find ourselves in.

[State Senator Diana DiZoglio \(D\)](#)

[07/29/2020 Full Formal Session](#)

**Amendment #230**

There are a number of Main Streets organizations operating independently throughout the Commonwealth. We need to find a way to maximize our resources. This amendment seeks to establish a statewide Main Streets office to maintain and revitalize our downtown commercial districts.

[State Senator Diana DiZoglio \(D\)](#)

[07/29/2020 Full Formal Session](#)

**Amendment #231**

This amendment provides for the proclamation by the Governor of the weekend after Thanksgiving as Small Business Saturday and Sunday. Small businesses need lower costs and higher sales. The convenience of online shopping has put our local stores at a serious disadvantage. A focused promotion to encourage shoppers to keep their dollars closer to home is a simple way to help our small businesses.

[State Senator Diana DiZoglio \(D\)](#)

[07/29/2020 Full Formal Session](#)

**Amendment #234**

We have been putting band aids on broken bones. Before the pandemic changed everything, I worked consistently with the Black Economic Council of Massachusetts on this proposal. This amendment would incorporate diversity, equity and inclusion provisions in the bill before us today. This amendment re-empowers the Supplier Diversity Office as its own agency.



[State Senator Bruce E. Tarr \(R\)](#)  
[07/29/2020 Full Formal Session](#)

**Amendment #241**

Ensuring that price gouging does not occur during a pandemic is very important. This amendment reflects a bill that would provide statutory protections against price gouging. That bill has been reported favorably to the Committee on Ways and Means, so I ask to withdraw the amendment.

[State Senator Diana DiZoglio \(D\)](#)  
[07/29/2020 Full Formal Session](#)

**Amendment #265**

Less than 40% of small businesses survive past 10 years. That's without a pandemic. Yet the law in Massachusetts only requires a review of laws pertaining to small businesses every 12 years. The average small business doesn't survive long enough to know whether the rules and regulations that apply to it contributed to its demise. Our small businesses have never been more vulnerable to overregulation and resulting additional costs than they are now.

[State Senator Diana DiZoglio \(D\)](#)  
[07/29/2020 Full Formal Session](#)

**Amendment #281**

Restaurants are shuttering across the Commonwealth. 2/3 of Massachusetts restaurants are more than 50% off of their usual revenues. A mid-size restaurant can expect to pay \$7-10,000 per month in rent. I am grateful that this bill, there is \$20 million to provide relief to struggling restaurants. But when you look at these numbers, it is clear that \$20 million is not enough. This amendment increases that line item to \$50 million, which is a better start for our restaurants.

[State Senator Diana DiZoglio \(D\)](#)  
[07/29/2020 Full Formal Session](#)

**Amendment #316**

Nondisclosure agreements were originally intended to protect intellectual properties or trade secrets. But they are now often used to silence the victims of sexual misconduct and abuse. We have all heard of the high-profile cases – Harvey Weinstein, Roger Ailes, and many more. NDAs allow these people to cover up their misdeeds and seek out new targets. When the Catholic Church covered up assaults on children, the tool they used was the nondisclosure agreement. These same agreements continue to be used in our state government, using taxpayer dollars. It is unacceptable that the Speaker and the Governor continue to use NDAs to purchase the silence of employees in this building who may have been harassed or abused based on sex, gender, skin color, sexual orientation or for any other reason. We associate NDAs with sexual harassment because it's easier to pigeonhole issues to a particular type of person. It allows us to distance ourselves from difficult issues. But that perspective leads to the problem we confront today. There is a glaring inequality in the balance of power in this building and across the nation. We need to shift the balance in the favor equity and fairness, and in order to do so, we must have transparency about what is actually going on. Banning the use of NDAs in all state agencies is a significant step forward.

[State Senator James B. Eldridge \(D\)](#)  
[07/29/2020 Full Formal Session](#)

**Amendment #316**

This issue was before the Judiciary Committee, which sent a similar version of amendment to study. I will be voting no on this amendment, and I want to explain why. Section B prohibits NDAs from being a condition of employment at state agencies. But there are some cases where employees may request NDAs, and this language may prohibit such a situation.

[State Senator Diana DiZoglio \(D\)](#)  
[07/29/2020 Full Formal Session](#)

**Amendment #316**

The provisions before us allow for the victim to have their name redacted from settlement agreements, providing for confidentiality. If you've never been in a situation where you've had to sign an NDA, let me explain what happens. Someone more powerful than you offers you a settlement. You want to move on. But they say you won't get the settlement until you sign away your right to ever speak about what happened. If you're broke, is that a real choice? It breaks my heart that my colleagues would oppose legislation like this that would help survivors. We cannot end the silence by perpetuating the silence. We cannot restrict victims' freedom of speech.

[State Senator Michael D. Brady \(D\)](#)  
[07/29/2020 Full Formal Session](#)

**Amendment #349**

People are suffering, and they are looking to us to help them out. We need revenue in order to do that. This amendment is a small step to move things in the right direction. Sports betting can bring significant revenue to our Commonwealth and create thousands of jobs. Many people enjoy sports betting for recreation. Professional sports teams and leagues are looking to get involved with this.

[State Senator Michael J. Rodrigues \(D\)](#)  
[07/29/2020 Full Formal Session](#)

**Amendment #349**

The time to tackle this issue is close, but it is not now. The regulation and control of gaming is something that we pride ourselves on. This is not the vehicle for online gaming and sports betting. I ask that this amendment is not adopted, but I ask my colleagues to work throughout

...being. I wish that this amendment is not adopted, but I certainly encourage to work throughout the remainder of this session to put together a bill that will benefit the citizens of our

Commonwealth.

[State Senator Bruce E. Tarr \(R\)](#)  
[07/29/2020 Full Formal Session](#)

**Amendment #349**

I believe this is an economic opportunity that we cannot afford to forego. We certainly need to focus on that which is happening around us, and we cannot continue to miss the opportunity to capture dollars that are currently going elsewhere. It is my hope that we will continue to focus on this issue in order to find the best way to address this issue.

[State Senator Eric Lesser \(D\)](#)  
[07/29/2020 Full Formal Session](#)

**Amendment #349**

We have been engaged in a robust review of the options before us relative to sports betting. We've received testimony from dozens of stakeholders, and we have every intention to continue our engagement on this topic. But this particular bill is not the proper vehicle.

[State Senator Michael D. Brady \(D\)](#)  
[07/29/2020 Full Formal Session](#)

**Amendment #349**

There are some things to work out with this amendment. I appreciate the commitment to this issue that has been expressed by the other members of this body. Our lottery needs to be part of this equation as well. I will withdraw this amendment so we can continue this discussion.

[State Senator Joseph Boncore \(D\)](#)  
[07/29/2020 Full Formal Session](#)

**Amendment #47**

We need to make our housing system more equitable. The pandemic is only exacerbating our housing crisis. For many Massachusetts residents, though, the conditions that made housing unattainable were present long before the onset of the pandemic. That's why, at the beginning of this session, I filed the HOMES act. An eviction leaves an indelible mark on one's record. We have heard about the dire effects a criminal record can have on one's ability to find a job. By sealing eviction records, we will provide new opportunities for housing for our most vulnerable residents. This amendment would allow minors to not be named on a summary process eviction complaint. Their names can be expunged and their records dismissed if they are

**Lobbying (128)**

# Facing Massachusetts'



## Housing Crisis

Special Senate Committee on Housing Report  
March 2016

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# ACKNOWLEDGEMENTS

## **Executive/Legislative Branch:**

- Executive Office of Housing and Economic Development (EOHED) – Secretary Jay Ash, Aimee Ward
  - Department of Housing and Community Development (DHCD) – Undersecretary Chrystal Kornegay, Michael Benezra, Rose Evans, Charley Francis
  - Office of Senate President Stanley C. Rosenberg – Anna Freedman, Stephen Maher
  - Office of Senator Linda Dorcea Forry, Chair – Janice Blemur
  - Office of Majority Leader Harriette Chandler, Vice Chair – Bryan Barash
  - Office of Representative Kevin Honan, Joint Committee on Housing Chair
- 

## **Participating Organizations:**

- Boston Tenant Coalition – Kathy Brown
- Citizens’ Housing and Planning Association (CHAPA) – Rachel Heller, Carole Marine, Eric Shupin
- Coalition for Occupied Homes in Foreclosures (COHIF) – Dana McQuillin Dalke, Maureen Flynn
- Community Economic Development Assistance Corporation (CEDAC) – Bill Brauner
- Commercial Real Estate Development Association (NAIOP) – Tamara Small
- Concord Square Planning & Development – Ted Carman
- Crittenton Women’s Union – Ruthie Liberman
- Dukakis Center for Urban and Regional Policy – Barry Bluestone
- Greater Boston Real Estate Board (GBREB) – Patricia Baumer, Greg Vasil
- Greenfield Housing Authority – Keleigh Pereira
- Harvard Legal Aid Bureau – Eloise Lawrence
- Home Builder and Remodelers Association (HBRAM) – Benjamin Fierro, Mark Kablack
- Home Funders – Soni Gupta
- Homes for Families – Libby Hayes
- Housing Advocate – Davida Andelman
- Housing Consultant – Tom Santry
- Housing Partners Inc. – Eleanor White
- MassDevelopment – Tony Fracasso
- MassHousing – Tom Gleason, Nancy McDonald
- MassLandlords – Doug Quattrochi
- Massachusetts Association of Community Development Corporation (MACDC) – David Bryant, Joe Kriesberg
- Massachusetts Association of REALTORS (MAR) – Justin Davidson, Michael McDonagh

- Massachusetts Chapter National Association of Housing and Redevelopment Officials (MASSNAHRO) – Tom Connelly
- Massachusetts Coalition for the Homeless – Kelly Turley
- Metropolitan Boston Housing Partnership (MBHP) – Chris Norris
- Massachusetts Housing Partnership (MHP) – Susan Connelly
- Massachusetts Law Reform Institute – Annette R. Duke
- Mass Senior Action Coalition – Carolyn Villers
- Massachusetts Smart Growth Alliance – Larry Field, Andre Leroux
- Massachusetts Statewide Independent Living Council – Sadie Simone
- Massachusetts Union of Public Housing Tenants – Susan Bonner, Jack Cooper
- Metropolitan Area Planning Council (MAPC) – Marc Draisen, Jenny Raitt, Ralph Willmer, Elizabeth Weyant
- Preservation of Affordable Housing (POAH) – Aaron Gornstein,
- Real Estate Bar Association for Massachusetts (REBA) – Greg Peterson
- Seven Hills Foundation – Robin Foley
- Small Property Owner – Peter Shapiro
- Tufts Department of Urban and Environmental Policy and Planning – Penn Loh, Joel Wool
- Worcester Housing Authority – Ray Mariano

# INTRODUCTION & EXECUTIVE SUMMARY

Every generation of Americans has faced a unique set of challenges in the area of housing. Today is no different. Massachusetts is currently dealing with a severe housing crisis due in large part to a low rate of housing production which has not kept pace with population growth and needs, soaring rents that have outpaced wages, and the lingering effects of the foreclosure crisis. As a result, there is a shortage of suitable and affordable units for young workers, growing families, and the increasing senior population. Overcoming these barriers will require addressing a variety of causes, including high development costs and exclusionary and restrictive zoning, which have made it difficult to keep up with the housing demand, among other factors.

As our population grows older, our world class educational institutions and thriving technology companies continue to attract young professionals while simultaneously leaving the state ill prepared to meet the housing needs of a rapidly changing demographic. Baby Boomers (those born between 1946 and 1964) made up 50% of the state's labor force in 2010. In coming decades, 1.4 million boomers are expected to retire or move away by 2030, depleting the supply of our most critical asset: a skilled, well-educated workforce. Thus, housing production is an economic imperative for the Commonwealth. In order to retain our competitive edge, Massachusetts needs to attract and retain enough workers to fill positions vacated by the Baby Boomers and drive economic growth. Metropolitan Area Planning Council projects that the state will need close to 500,000 new housing units by 2040 to accommodate the existing population and projected growth. Furthermore, the resurgent interest in urban living has resulted in increased demand for homes in Boston and many surrounding cities, threatening to drive up prices and displace lower-income residents. Meanwhile, many Gateway Cities are struggling to revitalize their downtowns and surrounding neighborhoods as weak markets make it difficult to attract private capital for the construction of middle income housing. And in many suburban communities, antiquated zoning laws and large-lot single family homes make it difficult for young workers to find suitable units.

Faced with these challenges, Senate President Stan Rosenberg created the Special Senate Committee on Housing, Chaired by Senator Linda Dorcea Forry with Vice Chair Majority Leader Harriette Chandler, to recommend a series of policy changes to address this crisis. The Committee decided to form an advisory group with experts in the field of housing, including: representatives of real estate business groups, non-profit housing organizations, tenants and landlords' organizations, academia, and staff at the Department of Housing and Urban Development.

The group was divided into sub-committees to address specific issues including: foreclosures; gentrification; homelessness; preservation and rehabilitation; production; public housing; support services; and zoning. They were tasked with drafting recommendations for solutions to help move our Commonwealth forward. These subcommittees spent a significant amount of time discussing and researching possible proposals which were presented to the Committee and refined by Senate

staff. This report contains 19 proposals, which will make meaningful progress in several areas of housing while setting the stage for longer term reforms.

## PROPOSALS:

- **Foreclosure:**
  - **Mortgage Debt Relief:** Allow forgiven mortgage debt to not be counted as part of gross income to minimize hardships for households already in distress.
- **Gentrification:**
  - **Community Land Trust:** Create a seed grant and technical assistance program for Community Land Trusts, to promote permanently affordable housing and sustainable homeownership.
  - **Property Tax Relief and Municipal Right of First Refusal:** Create a property tax relief program that allows distressed homeowners to stay in their homes in exchange for a right of first refusal that the municipality can utilize in creative ways, such as to create affordable housing or prevent teardowns.
  - **State Surplus Properties:** Allow the State to dispose of surplus land with easy access to transportation below market value to create affordable housing.
- **Homelessness:**
  - **Tenant-Landlord Guarantee Pilot Program:** Create the Tenant-Landlord Guarantee pilot program to reduce the time families spend in motels by encouraging landlords to adjust their screening criteria and rent to families facing housing barriers.
  - **RAFT Expansion:** Broaden the eligibility for RAFT and allocate additional funding to allow all household types to access the benefits of this proven homelessness prevention program by creating an inclusive definition of family, including elders, unaccompanied youth, and persons with disabilities who do not have children in the household.



○ **Preservation/Rehabilitation:**

- **13A Preservation:** Allocate \$15 million in additional state low income housing tax credits to ensure housing that could lose affordability restrictions remains affordable.
- **Distressed and Abandoned Property Fund:** Provide funding to the Attorney General's Abandoned Housing Initiative (AHI) Revolving Loan Fund to repair distressed and abandoned property to turn around these properties and make them suitable for new tenants.
- **MA Donation Tax Credit:** Add authority to allow a portion of the State Low Income Housing Tax Credit (SLIHTC) to be used as a Donation Tax Credit, which would leverage the federal charitable deduction and stretch the State's limited SLIHTC dollars.

○ **Production:**

- **Multi-family Zoning:** Allow multi-family zoning as of right to address the housing shortage but also provide for suitable housing for families.
- **Smart Growth Housing Trust Fund:** Create a funding mechanism for the Smart Growth Housing Trust Fund to ensure a revenue source is available to fund incentive and school cost payments to communities that welcome smart growth as promised by Chapter 40R by capturing existing revenues and setting them aside temporarily.

○ **Public Housing:**

- **Offline Vacant Units:** Create and implement a resident apprenticeship program that puts low income residents back to work and allows smaller housing authorities to get vacant units back online.
- **Surplus Public Housing Authority Owned Land:** Allow for the development of local housing authorities (LHA) surplus land to be used for mixed income housing.

- **Support Services:**
  - **Family Self-sufficiency Programs:** Increase support for asset building and financial stability programs that coordinate with stable housing and help low-income citizens of the Commonwealth achieve economic self-sufficiency.
  - **Interagency Coordination:** Empower the Interagency Task Force to coordinate government agencies to ensure consistency and reliability for people who need access to government assistance services.
- **Zoning:**
  - **Accessory Dwelling Zoning:** Allow Accessory Dwelling Units zoning “as of right”.
  - **Local Planning Boards Training:** Appropriate funds to expand training for Planning Boards and Zoning Boards of Appeals to ensure that our communities have planning and zoning board members who are well trained and understand their roles and responsibilities under state zoning and subdivision law.
- **New Housing Models:**
  - **Millennial Villages:** A plan to develop a substantial amount of appropriate-sized and priced housing for 20 -34 year olds, or millennials, to help free up housing stock for working families.  
  
**Housing Production Program:** A plan to increase the state’s housing stock by renovating industrial buildings in certain districts in gateway cities and similarly situated towns through state assistance. Over time, this plan is expected to return double the investment put into these projects.

Although no single proposal will be a panacea for our housing woes, by the end of this process the goal is to create a road map for housing production in Massachusetts so residents can continue to live, work and raise a family and so that the Commonwealth’s economic development is not placed in jeopardy.

# FORECLOSURE

The effects of the foreclosure crisis that ripped through Massachusetts over the past decade have lingered longer than many expected. We are still dealing with the consequences of poor lending practices from a decade ago, with many families still living in housing that is threatened with foreclosure, that have already been foreclosed upon, or that are currently fighting against a foreclosure action. We have to do more to facilitate loan modifications and provide other assistance to help keep people in their homes. This is particularly important in light of recent reports that foreclosures in 2015 rose by as much as 50% over 2014, suggesting we may be entering another period of high foreclosure rates.

## MORTGAGE DEBT RELIEF

It is an unfortunate aspect of our system of real estate financing that some small percentage of mortgages will end in foreclosure. The state's response to recent rising rates of foreclosures must be to ensure that our laws encourage equitable resolutions to mortgage disputes in order to minimize the number that end in foreclosure.

Fortunately, some lenders have been proactive in working with their mortgagees to restructure mortgages and allow more people to keep their homes by preventing foreclosures. This should be lauded and encouraged. However, the general state tax rule that applies to debt forgiveness treats such debt forgiveness as though it were a windfall, requiring the amount forgiven, sometimes referred to as "phantom income", to be taxed by the state as income.

**For these reasons, we recommend supporting S.1464/ H. 2607, *An Act relative to the relief of mortgage debt*.<sup>1</sup>** This legislation would allow homeowners to complete loan modifications, short sales, and foreclosures for which they have debt forgiven without making them liable to pay state taxes on that debt. This would mirror a federal law, the Mortgage Debt Relief Act of 2007, to allow taxpayers to apply for this exclusion on their state tax returns as well. The Joint committee on Revenue has given this bill a favorable report. It is currently pending before the House Committee on Ways & Means.

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<sup>1</sup> On September 28, 2105 S.1464 and H.2607, *An act relative to the relief of mortgage debt*, were reported out of the Joint Committee on Revenue, accompanied by S1521, and sent to House Ways and Means as H.3770.

# GENTRIFICATION

The cost of living in Massachusetts is among the highest in the country. Property values and rents continue to increase despite the fact that income growth has remained relatively stagnant. According to the Center for Housing Policy, “in Massachusetts 16% of households spend at least half of their incomes on housing cost. Renters are more likely to be severely housing cost burdened than owners, with 24% of renters spending at least half of their income on housing”.<sup>2</sup> Families who pay more than 30% of their income for housing are considered cost burdened. In Greater Boston alone, “more than half of renters are now paying in excess of 30%, up from less than 40% in 2000, while 38% of homeowners are paying more than 30% of their gross income in mortgages and taxes, up from 27% in 2000.”<sup>3</sup> As a result of this widening gap between housing costs and wages and increased property values, long-term residents—particularly low- and moderate-income families—are being priced out due to limited affordable housing options. Although revitalization can bring in waves of improvement to a neighborhood, it often leads to displacement. With effective tools, we can work to ensure that access to housing that is affordable is preserved so current low and moderate-income families are able remain in their community.

## COMMUNITY LAND TRUSTS

A Community Land Trust (CLT) is a non-profit community-based organization that owns land in perpetuity for public benefit. CLTs are flexible and adaptable tools with a proven record of sustaining permanently affordable housing. The first CLT was established in 1968 in rural Georgia and since then the CLT model has been used by non-profit organizations in 46 of the 50 states with over 240 CLTs nationwide. There are at least 17 CLTs in Massachusetts, including Dudley Neighbors Inc. (Roxbury), Chinatown CLT (Boston), Worcester Common Ground, Arise (Springfield), Berkshire CLT, Amherst CLT, Holyoke CLT, Andover CLT, Bread & Roses Housing (Lawrence) and Valley Land Trust (Greenfield).

The non-profit that owns the land provides use of the land through a long term lease agreement with affordability restrictions to prospective private homeowners (or businesses, farms or other uses). This ownership arrangement effectively separates the value of land from that of the homes/structure, thus protecting against real estate pressures and displacement and allowing for affordable homeownership. Moreover, the owner of the house is placed within a community-based support system which can help mitigate the risks of homeownership and stabilize neighborhoods against foreclosures. A study by the Lincoln Institute of Land policy found that by the close of 2010, “conventional homeowners were 10 times more likely to be in foreclosure proceedings and

<sup>2</sup> Center for Housing Policy. Housing Landscape 2015

<http://www.housingpolicy.org/pdfs/Landscape2015state/Massachusetts.pdf>

<sup>3</sup> The Greater Boston Housing Report Card 2014-2015. Pgs. 43-44

4.3 times more likely to be seriously delinquent than CLT homeowners.”<sup>4</sup> CLT home ownership has proven to be a more sustainable avenue for low income households compared to conventional housing,

According to a 2011 survey conducted by the Vanderbilt University Housing Fund, “more than 9,500 housing units have been created by CLTs. Of this 79% of residents are first-time homebuyers. 82% of resident have incomes less than 50% of the area median income”.<sup>5</sup> Dudley Neighbors Inc., alone, has created 95 units of permanently affordable housing, 77 affordable cooperative housing units and 53 affordable rental units in Boston, MA. “50% of the homeowners on the land trust earn between \$20-40k a year while 80% of families earn less than \$70k a year.”<sup>6</sup>

Although CLTs have gained popularity over the last 40 years, they remain an underutilized tool, as an affordable housing tool, due in large part to the difficulties of accessing adequate capital. CLTs need funding to pay for a variety of functions related to land acquisition, construction and subsidies. **Therefore we recommend a new budget initiative to develop a seed grant and technical assistance program for CLTs** in order to promote permanently affordable housing and sustainable homeownership throughout the Commonwealth.

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<sup>4</sup> Emily Thaden & Greg Rosenberg (2010). *“Outperforming the Market: Delinquency and Foreclosure”*. Lincoln Institute of Land Policy. Pg. 4.

<sup>5</sup> Emily Thaden (2011). *“2011 Comprehensive CLT Survey”*. Vanderbilt University Housing Fund.

<sup>6</sup> For history of the Dudley Neighbors Incorporated Community Land Trust and to see how it is working see online at <http://www.dudleyneighbors.org/land-trust-101.html>.

## PROPERTY TAX RELIEF & MUNICIPAL RIGHT OF FIRST REFUSAL

Development pressures can raise assessed values and property taxes in “hot” neighborhoods, making it more difficult for elderly and/or low or moderate income homeowners to stay in their homes. At the same time, municipalities that wish to create affordable housing often find that non-profit developers are challenged by rising land prices. For example, a recent case study by the Metropolitan Area Planning Council (MAPC) found that one in six Somerville residents have lived in Somerville for less a year, while one in twelve of the city’s designated affordable housing units are at risk of losing their affordability restrictions by 2020.

**We propose new legislation that would allow municipalities to address both issues at the same time. Under this approach, any municipality would have the option to create a “Homes Preservation Plan” that offers property tax deferral of up to 100% for eligible homeowners.** The municipality would have latitude to define homeowner eligibility so long as they are: 1) over 65 years old, and 2) earning less than 100 percent of area median income. The property covered would be the owner’s primary residence and, at the municipality’s option, could include up to two units in the same building that the owner rented out to others.

To participate, eligible homeowners would sign an agreement with the municipality. The agreement would set forth the property tax relief as well as the municipality’s right of first refusal. This right would be triggered when the owner signs a purchase and sale contract, or decides to market the home. The municipality would have a specified time period to exercise its right or assign it to a non-profit developer for the creation of affordable housing. The purchase price would be set by the sales contract or through an appraisal process, with a credit for the deferred property taxes.

Alternatively, the municipality could let a third party sale proceed. When the home is sold, the municipality will recoup the deferred property taxes because taxes are municipal lien charges. If the municipality chooses to include two or three-unit buildings with an owner occupant, the agreement would also include provisions limiting the owner’s ability to raise rents while receiving property tax relief.

## STATE SURPLUS PROPERTY

Surplus public land is a valuable resource and has been vital in helping address the pressing need for housing around the nation. In an effort to maximize the benefit of State owned property in the Commonwealth, Governor Charlie Baker, announced in 2015, his plan to repurpose unused state property. In accordance with this, the State should also look for uses that optimize these properties' potential for affordable and workforce residential housing where feasible. The most direct way to promote affordable housing production is to allow the State to dispose of surplus land below market value to affordable housing developers; however, due to provisions in state law, most state agencies are unable to sell surplus property below market value, even in cases where agencies would like to do so.

Developments that have accessed State-owned land include Parcel 24 in Chinatown, 225 Centre Street in Jamaica Plain, Bartlett Yard in Roxbury, and Parcel 25 in Mission Hill. These state parcels, however, were acquired at market rate and required a great deal of additional subsidy from both the State and City to ensure financial feasibility for the affordable housing proposals. To the extent those state agencies could have discounted the price of the land more, or could have streamlined the acquisition process, it might have resulted in lower subsidy needs and/or more affordability. Furthermore, the additional units would offer opportunity to preserve the diversity of these neighborhoods and keep existing residents in the community even as they become more costly.

**For these reasons, we recommend supporting S.1649/H.2756, An Act to Facilitate Disposition of Surplus Property for the Development of Affordable and Workforce Housing.**<sup>7</sup>

This bill offers to develop transit oriented developments (TODs) with the help of the Department of Housing and Community Development (DHCD) and state transportation authorities. It would allow municipalities to: (1) petition the Commonwealth to designate certain State-owned properties as surplus; and (2) further petition the Commonwealth to dispose of surplus properties below fair market rate when there are re-use restrictions placed on the property. Re-use restrictions include affordable and workforce housing restrictions that are consistent with municipal planning purposes. In addition we recommend that the State actively seek to implement reuse restrictions whenever possible and that the Administration adopt this as a management policy.

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<sup>7</sup> As of March 1, 2016, S.1649 and H.2756 were still in the Joint Committee on State Administration and Regulatory Oversight.

# HOMELESSNESS

Massachusetts residents face high levels of homelessness and housing instability. High costs of housing and low wages have led to an increase in the number of Massachusetts residents experiencing homelessness or at risk of becoming homeless. “Massachusetts saw the 5th highest increase in homelessness among all states for the 2015 count. According to the U.S. Department of Housing and Urban Development’s [2015 Annual Homeless Assessment Report](#) to Congress, there were 21,135 people in Massachusetts experiencing homelessness during the January 2014 point-in-time (PIT) counts.”<sup>8</sup> These numbers only account for one night, and only for individuals and families who were identified. Individuals and families who were doubled up, living in unsafe conditions, or sleeping in cars or other places not meant for human habitation were not captured, nor those people who experienced homelessness at other times during the year. Furthermore, it is particularly concerning that so many of our veterans and unaccompanied youth experience homelessness, which the Senate has addressed and will continue to address in future reports. As housing is vital to the success of our families and communities, it is crucial that we provide access to safe and stable housing for all residents.

## EXPANDING THE ELIGIBILITY OF RAFT

To address the homelessness crisis, the Commonwealth began providing homelessness prevention resources in FY 2005 to families with children under the age of 21 that are at risk or experiencing homelessness, through the Residential Assistance for Families in Transition (RAFT) program.<sup>9</sup> RAFT is a program of the Department of Housing and Community Development (DHCD) that is administered by regional agencies across the Commonwealth. It provides eligible households with incomes at or below 50% of the area median income with funding of up to \$4,000/year to cover first month’s rent, last month’s rent, security deposits, rental arrearages, utility arrearages, the costs of basic furnishing, and other needs, so as to help families successfully avoid homelessness. RAFT was funded at \$12.5 million for the FY16 budget, an increase of \$1.5 million from FY15.

Massachusetts provides limited homelessness prevention and rapid rehousing resources to very low-income and extremely low-income households without minor children. This means that more households composed of elders, unaccompanied youth, persons with disabilities, and unaccompanied adults needlessly fall into homelessness. When an individual or household enters

<sup>8</sup> U.S. Department of Housing and Urban Development. 2015 Annual Homeless Assessment Report. December 2014.

<sup>9</sup> *At the time of the program’s inception, households with two or more members who met the other basic criteria could access RAFT if at least one household member was living with a disability. The program was restricted soon after to match the family definition used in the state’s Emergency Assistance family shelter and services program.*



homelessness, additional resources and time are needed before exiting homelessness. Extended homelessness often leads to increased trauma and instability, negative health consequences, and greater costs. **Therefore it is recommended that the state budget include language broadening eligibility for RAFT by adopting the more inclusive definition of family often used in housing programs so that it can serve all household types, including elders, unaccompanied youth, persons with disabilities who do not have children in the household, et al. and appropriating funds in line item 7004 – 9316 to support the updated language.** This change will allow other household types to access homelessness prevention funds, because there are few options at the state-level for households without children in spite of the demonstrated need for a broader homelessness prevention resource.

To serve a wider base of eligible households, we also recommend a \$6 million increase in RAFT funding--(line item 7004-9316)--for FY17 to bring the funding level to \$18.5 million. This would allow DHCD and partner agencies to accommodate additional populations and to be better able to meet the needs of the current target population of household with children under the age of 21, while increasing the likelihood that RAFT funding would be available throughout the full fiscal year.

During FY15, the average RAFT expenditure was \$2,915/family (\$2,415 in benefits + \$500 in administrative fees). With a \$6 million increase in RAFT funding in FY17, the state would be able to help an estimated 6346 households, both families with minor children and households without children avoid or exit homelessness.

We further recommend system-wide data collection and evaluation of the expanded RAFT program to track the outcomes and housing stability status of households receiving RAFT under current and expanded definitions of family. Such data will help to inform continued expansion/improvement for subsequent fiscal years.

## LANDLORD/TENANT PILOT PROGRAM

Family homelessness in Massachusetts has reached record levels with an average of 4,658 families sleeping in shelter each night during the first eleven months of FY15, a 245% increase since 2006. As the number of families experiencing homelessness has grown, and the number of families eligible for the Emergency Assistance (EA) family shelter remains high, the EA system has expanded to meet the ongoing need. Motels are being used as an overflow system for congregate family shelter and scattered site housing units. To address the spike in homelessness and spending on shelter, the Commonwealth introduced its HomeBASE program starting in 2012.<sup>10</sup>

Although the HomeBASE rental assistance (two-year mobile subsidies) is no longer offered, short-term HomeBASE Household Assistance (up to \$8,000 in FY16) continues to be used to divert families from entering shelter and to help other families to exit shelter. The availability of state-funded resources such as the Massachusetts Rental Voucher Program (MRVP), Residential Assistance for Families in Transition (RAFT), the Housing Consumer Education Centers, and other homelessness prevention resources have also allowed the state to increase its success in responding to the Commonwealth's homelessness prevention and rapid rehousing challenges.

Families participating in the EA program with only limited personal income and limited state resources face steep challenges to entering into new tenancies and maintaining them over time. Decreasing vacancy rates and rising market rents across Massachusetts cities coupled in some instances with discrimination, have made it even more difficult for many of these families to access affordable housing, even for those approved for MRVP vouchers, other forms of permanent housing assistance, and/or the HomeBASE Household Assistance program. For many, the housing search is further challenged by "housing barriers," including but not limited to: multiple evictions in recent years, bad credit, CORIs that indicate criminal activity even if minor, etc.

Even for those families whose stability has increased due to more stable income, educational achievements or other reasons, these housing barriers make it more likely that landlords will screen these families out as prospective tenants. Many families find it incredibly difficult to secure housing quickly and end up staying in state funded shelter much longer than necessary, despite having resources to exit shelter with a reasonable prospect of becoming housed long term.

**To reduce the time it takes families to successfully exit shelter and to encourage landlords to adjust their screening criteria and rent to families with housing barriers, we propose new legislation to create the Tenant-Landlord Guarantee pilot program for up to 200 families participating in the HomeBASE program who have received housing subsidies through the MRVP program.** The program's primary goal will be to help families exit EA motel

<sup>10</sup>A summary of the HomeBASE program is in "Safe at Home: The Families of HomeBASE" (May 2013) and "Two Years of HomeBASE" (Oct. 2014) published by Metropolitan Boston Housing Partnership and available at [www.mbhp.org](http://www.mbhp.org).

placements in half of the time it currently takes (45 days vs. the estimated current 90 days). Based on the most common communities of origin for families in the EA program, we recommend that the program be piloted in the Boston, Springfield, and Worcester regions. Once a family is placed in housing, landlords who incur nonpayment, tenant-caused property damage, and/or legal expenses associated with eviction will have access to up to \$5,000 as compensation for properly documented expenses. On the tenant side, a family will receive their security deposit from the owner within 30 days of termination of tenancy at end of lease, unless a valid claim to the deposit is being made by the owner. If the family is in good standing at the end of the twelve months, and no claim is filed by the owner, the family will receive \$2,500, in addition to the returned security deposit if the families leave that apartment in good standing. .

Participating families will receive 12-months of stabilization services paid for by HomeBASE. In coordination with HomeBASE stabilization services provided by select Regional Nonprofit Housing Agencies, tenants and landlords will also have access to an intervention service that will respond rapidly to resolve issues over alleged lease violations or other matters threatening eviction. Similar to successful programs across the country, we expect a very low rate of granted claims by landlords for compensation. For instance, in Seattle's Landlord Liaison Project, the program paid out to landlords for less than 5% of tenants. Partnerships will be built with these landlords, particularly those who have not previously rented to subsidized families with housing barriers, so that these landlords will continue renting over time to subsidized families with housing barriers.

The three goals of this program are to reduce average EA length of stay per family, to increase long-term tenancies for these families by reducing tenancy terminations, and to reduce landlord issues associated with lease violations, thus allowing more families to further their independence goals and increase their long-term housing stability.

# PRESERVATION & REHABILITATION:

As we work to address the housing crisis in our Commonwealth, we will need to also focus our efforts on preserving existing units. Foreclosures, expiring use restrictions and affordability controls, and natural physical deterioration have all caused significant loss to our affordable housing stock. According to the Community Economic Development Assistance Corporation (CEDAC) nearly 20,000 privately owned affordable apartments alone could go market rate by the end of this decade<sup>11</sup> Furthermore, the high cost of development, has made it cost-prohibitive to build affordable housing. Therefore, preventing the loss of existing affordable units is even more critical to assist with our already limited housing supply.

## 13A PRESERVATION

In the 1970's the Commonwealth of Massachusetts invested in developing 8,600 units of affordable housing using the State's Section 13A expiring use program. Modeled after the federal Section 236 Program, private owners received subsidized mortgage rates of 1% in exchange for providing tenants with below market rents. The subsidy from the state then made up the difference between the 1% interest rate and the market interest rate at the time that the loan was originated. MassHousing, then the Massachusetts Housing Finance Agency, were the organizations directed to administer these mortgages on behalf of the Commonwealth.

From 1994 to 2003, the program was fully funded at \$8 million a year by the State; however, starting in 2004, the State began reducing its funding and completely stopped in 2009. At that time, MassHousing stepped in to make up the funding gap and has committed to do so until the mortgages mature. Until 2013, The United States Department of Housing and Urban Development (HUD) provided 13A tenants access to federal tenant protections known as "enhanced section 8 vouchers." With the assistance of these federal vouchers, the long-term affordability of these developments was preserved. Nevertheless due to a policy change in the last two years, HUD notified MassHousing they would no longer provide enhanced vouchers for this purpose.

Now, these 13A developments face the expiration of affordability for the remainder of the portfolio. Mortgages for the remaining developments which serve a mixed-income population including more than 4,000 low income households between 30-50%AMI will mature over the next five years. This will most likely result in the eliminations of affordability protections outside of those provided under Chapter 40T leaving this vulnerable population with few alternatives<sup>12</sup>. In most instances, residents will face significant rent increases and will be displaced. It is critical that

<sup>11</sup> Database of Expiring Use Properties in Massachusetts 2015. Published by Community Economic Development Assistance Corporation (July 2015) and available at <http://cedac.org/housing/preservation.html>.

<sup>12</sup> This law limits rent increases for a period of three years after existing restrictions mature

the Commonwealth identify a source of funding which can be used to provide financing to preserve these expiring use 13A properties over the long-term and maintain this critical affordable housing resource.

**For these reasons, we recommend supporting H.2540 An Act Relative to Low-Income Housing Tax Credits.**<sup>13</sup> This bill would amend Chapter 62 and Chapter 63 of the M.G.L. relating to the Massachusetts low-income housing tax credit to allow for the authorization of up to \$15 million in additional state low income housing tax credits over four years. This additional authorization would be for the specific purpose of preserving affordability in 13A developments.

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<sup>13</sup> As of March 1, 2016, H.2540, *An act relative to low-income housing tax credits*, was still in the Joint Committee on Revenue.

## DISTRESSED AND ABANDONED PROPERTY

Many municipalities – in particular those outside Greater Boston – are faced with an inventory of distressed properties due to a variety of reasons including a weak housing market, homeowners lacking funds for vital repairs, and absentee landlords. They have several legal tools at their disposal such as receivership and tax title takings, but they are underutilized because of high upfront costs and lack of staffing resources to engage in these complex processes. Springfield, for example, was able to successfully use Federal funding sources (Neighborhood Stabilization Program [NSP] and Community Development Block Grants [CDBG]) to redevelop foreclosed properties that might have otherwise become blight within the community; however, these funds either no longer exist or have been decreased for housing rehabilitation.

**Therefore it is recommended the State support a new budget initiative that would provide increased funding to the Attorney General’s Abandoned Housing Initiative (AHI) revolving loan fund.** This would permit the Attorney General’s office to expand their ability to work with municipalities to place properties into receivership and then either provide a revolving loan or a grant, which would allow receivers to make the necessary repairs to a property.

The Attorney General’s Office has discretion to determine if the money should be a revolving loan or a grant, dependent upon the economic viability of recouping the investment and the importance to the community and surrounding area of revitalizing the property. This fund is currently capitalized using existing settlement funds; however, a small investment to allow the program to expand would allow the program to reach more communities in need of help. One of the best elements of this program is that the vast majority of properties where the Attorney General’s Office intervenes are brought into a state of good repair by the current owner. The threat of action by the Attorney General is often enough to compel compliance.

## MA DONATION TAX CREDIT

Massachusetts needs thousands of additional affordable housing units to meet the needs of its current residents. “In recent years the affordable rental housing supply has been growing about 1,600 units per year compared to the late 1970s when units funded by the US Department of Housing and Urban Development grew by 15,000 per year.”<sup>14</sup> Fewer affordable housing units are being built and the Community Economic Development Assistance Corporation (CEDAC), which maintains the state’s expiring use inventory, “estimates nearly 20,000 units at risk of leaving the stock in the next four years (2016 – 2019)”. The state must continue to expand the stock of affordable housing to meet residential needs and a critical first step is preserving and adding to the existing stock.

The State Low Income Housing Tax Credit (SLIHTC) has been a critical financing tool in developing affordable housing for low-income families. According to the Department of Housing and Community Development’ (DHCD) “during 2015, in its capacity as the Massachusetts allocating agency for Low-income Housing Tax Credit, [DHCD] had awarded federal and state tax credits in support of more than 1,400 total multi-family rental units.”<sup>15</sup> Because of its success, **we recommend; expanding the existing State Low Income Housing Tax Credit and adding authority to allow a portion of SLIHTC to be deployed as Donation Tax Credit (DTC)**, which would leverage the federal charitable deduction on qualifying transactions and stretch the state’s limited SLIHTC dollars further.

The DTC would promote the creation or preservation of affordable housing by providing a credit equal to 50% against Massachusetts income tax liability for housing owners who donate existing housing properties – or other structures for conversion to housing - to qualified nonprofits who commit to long-term affordability. The DTC, in combination with the federal charitable deduction, can make donation economically competitive with a cash sale, from the perspective of existing owners evaluating exit options. Preservation of “13A” properties, could be promoted with a 'credit boost' (an increase in the amount of credit per dollar of donated value) to enhance the DTC’s power as a targeted preservation tool. As part of the SLIHTC, the DTC would be a 'certificated credit' that can be used by donors with sufficient Mass tax liability – or sold to a third party that has MA tax liability.

Both Illinois and Missouri have successful, longstanding DTC programs. The Illinois program, alone, has made possible the creation or preservation of nearly 18,000 housing units since 2001,

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<sup>14</sup> CHAPA (December 2015). *On Solid Ground: Building Opportunity. Preventing Homelessness*. p. 8.

<sup>15</sup> Department of Housing and Community Development (2016). LIHTC Qualified Action Plan. For more information see <http://www.mass.gov/hed/docs/dhcd/hd/lihtc/2016draftqap.pdf>

catalyzing development activity worth nearly \$3.3 billion. Massachusetts's DTC program would be an enhanced and more targeted variant of the SLIHTC.



# PRODUCTION

Massachusetts has a significant housing shortage that impedes the Commonwealth's economic growth. According to the Metropolitan Area Planning Council, 17,000 new homes are needed each year through 2040 to maintain our current job base. Overall housing production fell by 52% and multifamily production fell by 80% between the 1960s and 1990s. Although housing production is picking up and more than 14,000 units were produced in the last year, our housing shortage is impacting people across all income levels, particularly those with the lowest incomes, as referenced elsewhere in the report, and is stifling economic growth.

Massachusetts needs a revolution in housing production to keep up with the demand for new housing statewide. Prices in the Boston area, especially the most convenient suburban and urban locations, are growing exponentially while the Gateway Cities are struggling to attract private capital to expand housing. Those communities who do choose to utilize smart growth strategies and expand their stock of multifamily housing to expand housing production should be encouraged.

## MULTI-FAMILY ZONING

With significant multifamily housing in great demand, 207 of our 351 cities and towns have permitted no multifamily housing with more than 5 units in over a decade and over a third of our communities have permitted only single family housing. The lack of multifamily zoning is the most significant barrier to building affordable and market rate housing, and is so basic a requirement that no other long-term production goals can be achieved successfully without it. According to the Metropolitan Area Planning Council, of the 435,000 homes projected to be needed by 2040, according to the most of the demand is for multifamily housing<sup>16</sup>.

**For these reasons, we recommend supporting H. 1111, *An Act relative to housing production*, H. 1107, *An Act to expedite multifamily housing construction*<sup>17</sup>, or other legislation that requires all communities to permit a reasonable, minimum level of multifamily housing for increased housing production.**

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<sup>16</sup> Metropolitan Area Planning Council, *To Keep Economy on Track, Metro Boston will need up to 435,000 new housing units by 2040*. For more information see [http://www.mapc.org/sites/default/files/PR\\_HousingForecast\\_011614.pdf](http://www.mapc.org/sites/default/files/PR_HousingForecast_011614.pdf).

<sup>17</sup> As of March 1, 2016, H.1111, *An act relative to housing production*, and H.1107, *An act relative to expedite multifamily housing production*, were in the Joint Committee on Housing.

## SMART GROWTH HOUSING TRUST FUND

Chapter 40R has resulted in over 12,000 units zoned and built since the first approvals in 2006. We expect that there will be a continuing increase in the number of units approved. **Currently there is no mechanism to assure annual funding for the State's obligations under Chapter 40R and 40S.** This lack of certainty for funding provides a reason for communities to be hesitant about pursuing 40R.

At this time, the Smart Growth Housing Trust Fund contains only \$1,300,000, calling into question whether these funds will be exhausted by new projects and payments for housing units that will be under construction before the fiscal year ends. As a result, it is not possible at this time to assure communities that they will receive the funds called for under the program. This substantially reduces the incentives for the local communities to participate in the program. It dramatically increases the risk for a prospective housing developer to undertake needed zoning using Chapter 40R.

So far only three communities have turned down Ch. 40R proposals – a total of 31 out of 34 proposals have received a two-thirds vote from either Town Meeting or the City Council. The housing is in smart growth locations. This approach to providing for new housing construction throughout the commonwealth is one in which divisiveness and contention has been replaced with consensus. This is a major step forward.

This amount of zoning for new housing units – over 12,000 to date – represents real success towards the goal of producing a surplus of zoned land for multifamily housing. Creating such a surplus of zoned land is an integral part of a strategy to moderate the price of housing over the next decade.

**For these reasons, we recommend supporting S. 109, An Act relative to Smart Growth Housing Trust Fund<sup>18</sup>. This bill will provide a high degree of certainty that the financial incentives promised from the State to local communities under Chapter 40R will in fact be met, even in fiscally difficult times.** This bill annually captures income tax payments from those living in 40R smart growth districts, and directs that the money be deposited temporarily in the Smart Growth Housing Trust Fund. The Trust Fund will then make the required payments to communities under Ch. 40R and 40S. Annually, after reserves are retained, any balance will be returned to the General Fund.

This mechanism will provide, on an ongoing basis, without specific legislative or administrative action each year, for the funds needed to fund Chapters 40R and 40S and thus will result in their

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<sup>18</sup> As of November 23, 2015, S.109, *An act relative to smart growth housing trust fund*, was referred to the Senate Committee on Ways and Means.

becoming self-sustaining. It is important to note that this bill will not increase the costs of 40R or 40S. It will simply assure that funds will be available to make the payments when the payments are due, as required by statute.

# Public Housing

Over the years, public housing has served the needs of our lowest earning families, providing them with decent and stable housing. In Massachusetts, there are approximately 90,000 state and federally funded public housing units, managed more than 240 local housing authorities; however, with the rising cost of housing, dwindling supply, and extensive demand there has been little turnover of units causing longer waiting lists for families looking for a unit.

In 2014, the State passed an “Act Relative to Local Housing Authorities”, making the most comprehensive changes to the state public housing program in forty years. This law provides critical tools to improve state-aided public housing programs while creating greater transparency and accountability. As the need for affordable housing continues to rise, it is important that we maintain our efforts to preserve and expand this critical tool which has helped create upward mobility for many of our low-income families.

## OFFLINE VACANT UNITS

Over the years, public housing has served the needs of our lowest earning families. As the need for affordable housing continues to rise, it is important that we preserve this critical tool which has helped create upward mobility for our low-income families.

In Massachusetts, there are currently 45,600 state public housing apartments for extremely low-income seniors, people with disabilities, and families. As of July 6, 2015, according to the Department of Housing and Community Development (DHCD), there were 850 state public housing apartments off line, meaning they are not being leased out. Of that number, 170 of these units were offline because of modernization efforts, while the remaining 680 units (or 1.4% of the total) were offline because of routine turnover or chronic vacancy<sup>19</sup>. Since 2011 when the Legislature, under Chairman Honan’s leadership, included language in the operating budget line item directing DHCD to use funding to bring units back online, DHCD has made funds available to bring chronically vacant units back online. Since 2011, over 550 chronically vacant apartments have been re-occupied.

DHCD has done effective work to bring back these units. However, a remaining barrier facing some of our Local Housing Authorities (LHAs) is the lack of capacity at the local level (person power) to get its units turned around. For example, if a small housing authority has only one maintenance person and there are multiple units vacant at the same time, it takes longer to get these units back online. In addition, there is an increasing need to build employment opportunities

<sup>19</sup> A more specific breakdown is currently unavailable because DHCD’s vacancy reporting system is being retooled. The new system is currently in the last testing phase and is scheduled for full launch by 2016.

for public housing residents that provide them with access to good-paying jobs and have a career ladder. The work needed to bring vacant units back online, offers a real opportunity for the state to train public housing residents to prep and paint apartments.

Furthermore, in August of 2014 the Local Housing Authority Act, Chapter 235, was signed into law. In addition to many other provisions, it created a regional capital assistance program to provide technical assistance to LHAs with less than 500 state units to assist with capital and maintenance planning, capital project management, and vacant unit turnover. Several months ago, DHCD issued a Request for Responses for the formation of three Regional Capital Assistance Teams (RCATs)—the deadline was August 31, 2015. A public housing apprenticeship program would allow these trained workers to be deployed through RCATs to smaller housing authorities in order to get vacant units back online. In addition, voluntary management and collaboration agreements currently exist at 64 housing authorities. DHCD and MassNAHRO are advocating for their adoption by LHAs with capacity issues, and providing them with guidance on management agreement best practices.

**For these reasons, we recommend supporting H. 3696, An Act to Establish an Apprenticeship Program to Ready Vacant Public Housing Apartments for Occupancy.**<sup>20</sup> This program would provide families living in public housing with access to training for jobs that lead to sustainable living wages. In addition it would increase the capacity of LHAs to turn vacant units around quicker.

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<sup>20</sup> On July 30, 2015, the Joint Committee on Housing reported H. 3696 favorably to the Committee on House Ways and Means.

## SURPLUS PUBLIC HOUSING AUTHORITY OWNED LAND

Public Housing Authority (PHA) owned vacant and surplus property could be a valuable public resource – especially at a time when public housing waiting lists are long and affordable housing is needed.

In 2006, the State Auditor released the Comprehensive Report on the Physical Condition and Resources Allocated for the Operation and Upkeep of State-aided Public Housing in the Commonwealth. The report included a list of local housing authority (LHA) land available to build affordable housing and stated that “building housing on land already owned by the LHAs would be less costly since there would be no acquisition and related costs. Moreover, such construction would alleviate the shortage of affordable housing throughout the Commonwealth”.<sup>21</sup>

The report recommended: Identifying all LHAs owning land with development potential and determining the number of dwelling units that could be constructed. Moreover, it stated DHCD should develop cost estimates for the construction of LHA housing and create a bond fund dedicated to additional LHA housing. ... In doing so, consideration needs to be given to the total cost to the Commonwealth of responding to the overall housing crisis, including the cost of providing for the homeless across the Commonwealth.<sup>22</sup>

Eight years later, in 2014, the Legislature passed an “Act Relative to Local Housing Authorities” which requires the new Regional Capital Assistance Teams (RCATs) to “complete a survey of all departments or housing authority owned surplus land.”<sup>23</sup> Under the new law, “[t]he capital assistance teams shall use the results of the survey to coordinate communication and resources between local housing authorities and the department to encourage development of the land for new units of affordable housing. Although the survey was to be completed by August 6, 2015 (within 1 year of the effective date of the Act), DHCD is in the process of establishing the RCAT program and identifying a PHA to host the RCATs in the Northeast Region—they have already done so for the Central-West and Southeast regions.

Governor Charlie Baker announced in 2015 his plan to repurpose unused state property by leasing it to private investors, businesses, and developers. Furthermore, a number of bills have been filed this legislative session that seek to do the same. These bills, in particular, focus on using this surplus land to create affordable and workforce housing.<sup>24</sup> While each of these bills have

<sup>21</sup> Independent State Auditor’s Comprehensive Report on the Physical Condition and Resources Allocated for the Operation and Upkeep of State-Aided Public Housing in the Commonwealth of Massachusetts (October 5, 2006). p iii.

<sup>22</sup> *Independent State Auditor’s Comprehensive Report*, Page 24.

<sup>23</sup> Section 13 of the [Acts of 2014 Chapter 235](#) amended M.G.L. Chapter 121B, Section 1.

<sup>24</sup> S. 1649 and H. 2756, *An Act to facilitate disposition of surplus property for the development of affordable and workforce housing* (Senator Dorcea Forry and Rep Holmes); S. 1719 and H. 2815, *An Act providing for disposition of*

important requirements including affordability housing restrictions none of them currently focus on PHA surplus property.

In November of 2015, DHCD issued a Notice of Funding Availability for a State-Aided Housing Mixed-Income Community Demonstration.<sup>25</sup> The NOFA states that the purpose of the demonstration is to leverage resources to repair and preserve existing state public housing by developing on existing and surplus PHA owned property. The demonstration will fund planning and pre-development costs. Our hope is that PHAs submit proposals that set aside housing that is also affordable to extremely low income families for whom public housing is intended. Also, that the demonstration leads to developing clear protections for PHA owned land so that land is just not disposed of but that the structure of any new development can in fact support the operation of existing state public housing in perpetuity.

**For these reasons we recommend any development on PHA land provide ongoing revenue to the LHA through long-term leases or other agreements made through the sale or lease of property. Development on LHA land shall prioritize mixed income housing that includes, the creation of additional public or private housing units serving households eligible for public housing, where feasible.** This would not prohibit the development of market rate units but ensure that LHAs will have ongoing revenue to support LHA operating and capital needs while increasing the number of housing units.

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*surplus state real property based on smart growth land use policies* (Senator Spilka and Rep Sanchez; H. 1111, *An Act relative to housing production* (Senator Eldridge and Rep Honan).

<sup>25</sup> Department of Housing and Community Development (2015). Public Notice: *State-aided Public Housing Mixed-Income Community Demonstration* for more information see <http://www.mass.gov/hed/docs/dhcd/ph/publicnotices/2015-29-mixed-income-nofa.pdf>

# Support Services

It is imperative that housing for those with low incomes be accompanied by services so they can maintain their housing stability and create pathways to economic mobility. Despite the Commonwealth's efforts to help households afford housing, the culmination of low wages, high housing costs, and a shortage of supports have caused housing instability for thousands of households, preventing them from increasing their economic mobility. For example, help with childcare, which makes it possible for parents to look for and maintain work and to participate in job training, education, and other programs necessary to resolving housing instability<sup>26</sup>, is out of reach for thousands of families. Still other families face challenges including mental health and substance abuse. By combining affordable housing and supporting services, individuals and families are able to address these barriers and maintain stable housing. Thus, investing and providing services that support people in increasing their housing stability and economic mobility is critical in addressing the need for housing that people can afford.

## FAMILY SELF-SUFFICIENCY PROGRAMS

Many programs have been created at the local, state, and federal level to help families increase their incomes and build assets. These antipoverty programs provide income support to help low-income families become financially secure, in hopes of reducing their reliance on public subsidies. There are a number of programs in place throughout the Commonwealth including the three mentioned in this report: FSS, Mass LEAP and "A Better Life", which have been helpful in providing families with the opportunities and resources necessary to move from poverty to economic self-sufficiency.

The Family Self-Sufficiency (FSS) program is federal program through the U.S. Department of Housing and Urban Development established in 1990 (HUD) which enables families to increase their incomes while reducing their use of welfare, rental assistance and other financial support systems. This is a voluntary program for families assisted through the Housing Choice Voucher program (Section 8) and public housing. The head of family enters into a 5- year FSS contract of participation that states the responsibilities of both parties and the goals and services available to the family. The program focuses on increased engagement in the workforce resulting in increased earned income. The family works with a FSS coordinator to complete their goals and as their earned income increases, the difference in rental assistance payment is saved in an escrow saving account. Massachusetts's Learning, Employment and Asset Program (Mass Leap) was developed and created to build off the success of the FSS program.

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<sup>26</sup> CHAPA (December 2015). *On Solid Ground: Building Opportunity. Preventing Homelessness*. p 15,



Established in 2014 in response to recommendations from the Governor’s Commission on Public Housing and Sustainability and Reform, Mass Leap creates a 5 year partnership between local housing authorities and service providers. The program closely aligns with the FSS program with the establishment of the rent saving escrow account; however these funds must be used for asset development purposes. Mass LEAP provides eligible tenants of state-aided public housing developments and/or Massachusetts Rental Voucher Program (MRVP) with support services including employment and career development and planning; financial literacy and asset development; and post-secondary education.

“A Better Life” (ABL) is a unique program, offered by the Worcester Housing Authority that requires able-bodied adults under the age of 55 to go to work, do community service, or attend school 24-30 hours per week depending on which phase of the program they are participating in. The implementation of the program in state properties is underway, having been authorized in the state’s welfare reform legislation in 2014. The program model is built around intensive case management which provides advice, guidance and support to all participants. Participation in the program starts with a series of five comprehensive assessments (financial, employment, education, health, personal) performed in collaboration with community partners which serve as the basis for a path to move the family toward self-sufficiency.

**For these reasons, we recommend supporting asset building and financial stability programs that help low-income citizens of the Commonwealth increase their economic self-sufficiency.** All of these programs acknowledge that for many, it is a long road to self-sufficiency, and seek to assist participants to move forward, increase their economic stability, and build a path for ongoing growth. We further recommend an advisory group to study the data related to self-sufficiency programs, the different program components and the feedback of participants and those who chose not to participate in programs, in order to shape an economic mobility and financial stability program for all households that can be scaled across the Commonwealth.

## INTERAGENCY COORDINATION

Massachusetts has demonstrated a long-held commitment to helping families afford homes. However, due to a culmination of low wages, high housing costs, and cuts to services, supports, and opportunities, there are currently 4,300 Massachusetts families living in shelters and motels each night. In addition, an estimated 4,200 more families that live in unstable, doubled up situations, move multiple times per year, or are behind on rent may experience the same harms as homeless families, even though they avoid shelter entry. These 8,000+ families represent just a fraction of the 63,000 extremely low-income renter families at risk of homelessness.

It is time to address poverty and develop a new approach to preventing family homelessness. By focusing on housing and economic stability, instead of the short-term goal of reducing shelter numbers, thousands of families will avoid the need for shelter, and families in shelter will be less likely to re-enter in the future. Progress is possible.

**We propose that the interagency council develop and execute a Memorandum of Understanding between the Executive Offices of Housing and Economic Development, Health and Human Services, Labor and Workforce Development, and Education.** The MOU would establish monthly meetings of the secretaries of each executive office, require regular reporting on programs serving households below 30% of the area median income, and include the creation of cross-agency teams of staff of each department. The MOU would include a mechanism for ongoing stakeholder involvement, including consumers, service providers, and advocates.

Within six months of the MOU being signed and every six months following, the agencies should submit a joint report including:

- Total number of housing units affordable to extremely low income households needed in the Commonwealth and the net increase of units towards that benchmark;
- Programs administered through each state agency that serve households below 30% of the area median income;
- The total dollar amount administered by each agency relative to homelessness prevention, services, and activities;
- Programs that can be supplemented with federal funding; Differences and gaps in program eligibility between identified programs and strategies for ensuring families receive and maintain services and benefits for which they are eligible;
- And, a plan with set timelines for coordination across agencies to provide access to

programs, services, and benefits for households with incomes below 30% of the area median income along with recommendations for legislative and regulatory changes needed to implement the plan.

# Zoning

The challenges of production and zoning are intertwined. Without a significant increase in housing production, our economy and state finances will suffer. To facilitate such an increase in production of new units, more communities must embrace modern zoning schemes that allow for more diverse housing stock that fits the needs and innovations of our 21<sup>st</sup> century housing market. There are a number of bills that have been filed during the 2015-2016 legislative session, including S.122, s.708, S.119, H.1111, among many others, which seek to make meaningful changes to our zoning laws and equip our cities with tools to encourage sensible growth. S.122, *An Act Promoting the Planning and Development of Sustainable Communities*, in particular, warrants further exploration in addressing this issue.

## ACCESSORY-DWELLING UNIT ZONING

In many communities, there is high demand for the option of creating an accessory dwelling unit in areas that are zoned primarily for single family units. The residents who seek such accommodation are varied, from elders looking to downsize while staying in their home and bringing in some supplemental income, to families hoping to make space for their elderly parents, to parents looking to provide affordable accommodations for their children as they begin their careers.

This is a particularly pressing issue for those who have a family member that is ill or living with a disability. By providing for this flexibility to create accessory units, our residents will be able to make sure their housing fits their needs, whether they're hoping to age in place or take care of their loved ones.

**For these reasons, we propose new legislation allowing Accessory Dwelling Units “as of right”** and support provisions that allow such in S.119 and H.1107<sup>27</sup>.

The new legislation should allow property owners to construct one accessory dwelling unit as of right in existing single-family residential zoning districts on lots above a reasonable minimum size. Communities would be able to impose reasonable dimensional setbacks and reasonable bulk and height limits, but would not be able to use special permit mechanisms to frustrate or discourage the development and rental of these units.

This would clear away unreasonable, existing barriers while giving both communities and property owner's flexibility. Applicable provisions of the building, fire, and sanitary codes, and of state and local wetlands requirements, would continue to apply. It is also worth noting that due to

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<sup>27</sup> As of March 1, 2016, S.119, *An Act improving housing opportunities and the Massachusetts economy*, was in the Joint Committee on Community Development and Small Business. H.1107, *An act to expedite multifamily housing construction*, was in the Joint Committee on Housing.

their unique zoning statute, Boston would not be impacted.

## LOCAL PLANNING BOARDS TRAINING

Planning is a continuing process in which goals and objective for the future of a city, town or village are developed and evaluated. Real estate development is driven in large part through decisions made by these citizen boards and committees; however, more often than not these local decision-makers are unfamiliar with the basic of the local planning and zoning process. In order to make informed decisions, Planning Boards and Zoning Boards of Appeals (ZBAs) need training and education about planning issues and the regulatory environment.

Although training opportunities exist in Massachusetts, they are often poorly utilized, and many board members have no formal training associated with their important role as regulators. Other states have mandatory training for board members; for example, New York requires four hours of training per year. The Massachusetts Interlocal Insurance Association (MIIA) provides insurance discounts for completion of specified training programs. This adds a fiscal reason for communities to ensure that all pertinent board members have completed training, as it will lower the municipality's insurance rates. In addition, training and education would equip and empower these boards with knowledge to make better informed decisions regarding land use and planning.

The Citizen Planner Training Collaborative (CPTC) is a critical resource for local planning and zoning officials in Massachusetts. CPTC provides workshops and trainings, including two levels of certification for Planning Board and ZBA members. In the fall of 2015, CPTC will offer 27 programs around the state in conjunction with Regional Planning Agencies. Additionally, CPTC puts together training sessions upon request, and hosts a one-day conference in Worcester in mid-March. The programs are inexpensive, which is made possible by the many pro bono trainers who teach the sessions. CPTC does not have any staff, but has a contractor for approximately \$20,000 per year handling program logistics and providing administrative support to the Board. Although CPTC is getting a lot done on a shoestring, it is not a sustainable model and certainly does not provide the consistent, statewide coverage that is needed.

**We recommend a state appropriation of \$200,000 for CPTC to develop an updated curriculum, expand the program across the state, develop on-line training and testing materials, add administrative capacity, track certification for qualified PB and ZBA members, and recruit and train new instructors.** It is further recommend that there be a requirement for members of Planning Boards and ZBAs to take and pass a brief test within two years of a member's appointment.

# NEW HOUSING MODELS

Throughout the course of the Committee meetings, the Chairs met with housing experts to discuss efforts underway that would address or help alleviate the current housing pressures. Two models stood out that the Chairs thought warranted further exploration: Millennial Villages and the Housing Production Plan. Both plans seek to address different aspects of the housing problem—building housing for certain demographics or substantially renovating existing buildings for the development of new housing—and provide innovative solutions to housing production in Massachusetts.

## MILLENNIAL VILLAGES

Greater Boston has become more successful at retaining and attracting young professionals – graduate students, medical interns and residents, and young professionals from tech savvy entrepreneurs and financial wizards to line-chefs in our restaurants. Although, this has helped keep our region vital and prosperous it has caused a major housing problem for the families with whom they compete for housing.

Between 2000 and 2008-2012, 20-34 year olds were responsible for 73.9% of the population growth in the inner core region of Boston, Cambridge, and Somerville – more than 24,000 additional young residents. Within this group, there are more than 120,000 graduate and post-doctoral students at area universities of which more than 90 percent live off-campus. In addition, the area’s teaching hospitals offer positions to thousands of medical interns and medical residents each year.

To afford housing, many of these “Millennials” share rented apartment units in what has been the region’s traditional workforce housing stock – “triple-deckers”, duplexes, and garden apartments. Not only has this driven up the price of triple decker units by 95 percent between 2009 and 2015, rents continue to rise sharply under this demand pressure. As a result, families in Greater Boston are being priced out of the rental market and cannot afford to buy into the condominium market in the older housing stock. By 2011, more than half of all Greater Boston renter households were paying more than 30 percent of their gross income on rent and more than a quarter of all such households were paying more than half their income in rent. At the same time, the cost of building new “family-size” housing in the region has risen so quickly that a 1,600 square foot home now costs nearly \$440,000 – a price that working families cannot afford to buy or rent.

While we continue to find ways of building housing that is affordable to families, we must also find ways to develop appropriately-sized and priced housing for the 20-34 year olds. This will draw the “millennials” out of the older housing stock, thus freeing up the 3-4 bedroom Triple-Decker and Duplex housing for working families at more reasonable rents and prices.

To create this type of housing, will require collaboration between developers, architects, builders, the construction trades, universities, teaching hospitals, and state and local government officials. These new developments will need to contain a **range of units** from small/"micro" apartment to studios and multi-bedroom units for graduate students, medical students, and other millennials. They would vary in affordability to accommodate all students, from the low income graduate student to the more well-heeled student and young professional.

## HOUSING PRODUCTION PROGRAM

Despite many imaginative and robust housing programs, the Commonwealth continues to suffer from a shortage of housing that is increasingly acute—especially in the category of units to serve middle-income workforce households.

Downtown Boston and parts of Cambridge are seeing substantial amounts of new construction. However, in other parts of the state, the combination of (a) restrictive zoning and (b) lack of economic feasibility – the “Feasibility Shortfall” –and (c) resistance to more low income housing have resulted in limited new construction. The Feasibility Shortfall means that the rental income from proposed new developments is not sufficient to support the debt and equity required to pay for the cost of site acquisition, construction, and ongoing operations.

This plan seeks to address the issues of zoning and economic feasibility by making modifications to the Housing Development Incentive Program (HDIP). The concept focuses on the production of market rate housing in historic buildings at a large volume of production. The proposed changes and funding would only be available in Gateway Cities and in smaller communities with Gateway City characteristics (industrial history, available underutilized properties, blight and deterioration in the area). It is believed that these communities will be highly receptive to the zoning changes necessary to allow market rate housing to be built in existing buildings pursuant to substantial renovations.

To be eligible to participate in this program, each community must adopt or enact overlapping districts that will: i.) meet the program requirements established by MassDevelopment for its Transformative Development Program, be in a state- or locally-identified growth zone, or be in a Chapter 40R district; ii) have an eligible Historic District in the same area; and iii) be eligible for the Housing Development Incentive Program (HDIP).

A detailed Cost Benefit Analysis has been developed that demonstrates that for each dollar of State Costs, the Commonwealth and local communities will receive approximately two dollars of increased tax revenues. This could allow the program to be funded through bonds sold and guaranteed by the Commonwealth, and such bonds, similar to the I-Cubed program, may not count under the State Bond Cap. This would also remove the costs from the annual budget.



This program would make it economically feasible to renovate dozens of historic buildings in older industrial communities. Coupled with permissive zoning and the current availability of financing, it is anticipated that a number of new housing units could be built in a relatively short period of time.



Recommendations to the Special Senate Committee on Housing  
Submitted by  
Rachel Heller, Director of Public Policy  
June 22, 2015

Massachusetts does not have enough housing to meet demand, resulting in some of the highest housing costs in the nation. In 2013, Massachusetts had the 7<sup>th</sup> highest rental costs in the nation and the 4<sup>th</sup> highest median home values. In 2014, the National Low Income Housing Coalition ranks Massachusetts as the 6<sup>th</sup> least affordable state for renters. According to the Metropolitan Area Planning Council, approximately **17,000 new homes are needed each year in Massachusetts** (500,000 total new homes by 2040) to support the current base of employment, with approximately two-thirds of the demand for multifamily housing. Although production is increasing, new housing construction levels have been inadequate since the 1980s. In the last decade, the Commonwealth had the 4<sup>th</sup> lowest rate of housing construction in the nation. Restrictive zoning in many communities further exacerbates high housing costs and presents one of the greatest challenges to meeting the Commonwealth's housing needs<sup>1</sup>.

To meet the Commonwealth's housing needs, housing production legislation and zoning reform are needed. *An Act Relative to Housing Production* (H.1111), filed by Chairman Honan and Senator Eldridge, provides the tools necessary to meet the Commonwealth's housing needs (see below for bill summary). The legislation includes a critical provision requiring communities to zone for multifamily housing. The bill also provides financial incentives, removes administrative barriers for communities, and offers new tools to help communities develop the housing needed to sustain and grow our economy. *An Act Promoting the Planning and Development of Sustainable Communities* (S.122), filed by Senator Wolf and Representative Kulik, updates the Commonwealth's antiquated planning and zoning laws to encourage new jobs and housing, strong community planning and public health, and natural resource protection (see attached). In addition to these vital pieces of legislation, CHAPA recommends the following more immediate actions.

#### **Production and Preservation Across Income Levels**

- **Production Goal:** Set production goal of 17,000 units per year and require municipalities to report to the State annually on building permits, supplementing census bureau reports with information on units created by adaptive re-use and distinguishing between single-family detached, single-family attached, and multifamily units.
- **Community-based Rental Projects:** Set a goal for state-assisted affordable small-scale community-based rental projects that fit the local community context and can address blighted properties and/or vacant land, and help stabilize or revitalize neighborhoods.
- **Brownfields Redevelopment Fund:** Establish line items in the operating and capital budgets to provide stable funding for the Brownfields Redevelopment Fund. Over the last six years, the Fund supported the creation of 4,000 homes and 2,600 construction jobs. Due to full deployment of funds in 2013, MassDevelopment was unable to accept new applications after April 2013, which

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<sup>1</sup> *On Solid Ground: Building Opportunity, Preventing Homelessness*, February 2015, p. 7.

resulted in fewer projects receiving support in FY14. The \$15 million recapitalization last year allowed MassDevelopment to once again accept applications and make awards through the end of this year. Consistent and reliable funding is needed for communities and developers to prepare projects going forward and create new housing, employment opportunities, and other community benefits on formerly polluted sites.

- **Historic Tax Credit:** Work with Secretary of State to align Historic Tax Credits with DHCD rental rounds and award full 20% of qualified rehab costs to projects. While the federal credit is equal to 20% of qualified rehabilitation expenses (QRE), the Massachusetts credit is “up to “ 20 of QRE. Applications submitted in the three funding rounds per year exceed the amount available under the \$50 million cap. Rather than prioritizing developments and allocating the full credit amount, projects tend to receive partial credits over a number of years. This method is unpredictable for developers, delays projects, and in some cases awards go unused. Requiring the full 20% of QRE to be awarded would provide a more effective production tool.
- **Greyfields:** Identify ways to redevelop underutilized or former commercial sites, known as greyfields, across the Commonwealth. These are sites with infrastructure in place and are likely to be areas where communities would like to see development.
- **Support Communities Helping the Commonwealth to Grow:** Measure the fiscal impacts of the new housing needed to support the state’s existing job base and identify ways to mitigate any potential negative net impacts on communities, including any net school costs not covered by additional local revenue and state aid.
- **School Building Assistance:** Prioritize assistance for cities and towns that experience above-average housing growth (there is already statutory authority to do so in M.G.L. c.70B, section 6, but it could also be strengthened with a legislative mandate).
- **State-Owned Land Disposition:** Work with DCAM to notify agencies, departments, and community stakeholders when state owned land is being disposed of so that other agencies can look at using it for housing and other community needs. S.1719, filed by Senator Spilka, includes many reforms for the disposition process to empower local communities and stakeholders.
- **Rental Subsidies:** Increase funding for all rental subsidy programs – Massachusetts Rental Voucher Program (MRVP, 7004-9024), Alternative Housing Voucher Program (AHVP, 7004-9030), and DMH rental subsidies (7004-9033). Rental assistance is a vital tool that makes housing affordable for households with extremely low incomes. Currently, just over 153,000 households in Massachusetts use federal or state rental assistance<sup>2</sup> while over 158,000 additional households have extremely low incomes and are severely rent burdened, paying more than 50% of their income to housing<sup>3</sup>. Rental assistance has been subject to tumultuous funding, resulting in almost no growth since the early 1990s. The average wait for a Section 8 is about 8 years and despite recent growth of MRVP, the number of households receiving MRVP assistance has fallen by about 13,000 since the mid-1990’s<sup>4</sup>. AHVP, a rental subsidy program that serves 400 individuals with disabilities, has had stagnant funding. The Senate included a \$1.2 million increase in its budget, which will add approximately 120 vouchers. Additional growth is needed to eventually allow for DHCD to award project based vouchers. This would help produce accessible, affordable units.
- **Community Preservation Act:** Increase funding for CPA to increase the match to communities. CPA has helped produce or rehabilitate over 8,500 units of locally initiated affordable housing<sup>5</sup>. The CPA Trust Fund, which provides matching funds to CPA communities, is a powerful incentive to retain

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<sup>2</sup> *On Solid Ground: Building Opportunity, Preventing Homelessness*, February 2015, p. 9.

<sup>3</sup> *On Solid Ground: Building Opportunity, Preventing Homelessness*, February 2015, p.8.

<sup>4</sup> *On Solid Ground: Building Opportunity, Preventing Homelessness*, February 2015, p. 9.

<sup>5</sup> Community Preservation Coalition, *CPA: An Overview*, (last accessed June 6, 2015),

<http://communitypreservationcoalition.org/content/cpa-overview>.

CPA. In recent years, the base CPA Trust Fund distribution for most communities has declined from 100% to a projected record-low of 18% this year. \$10 million from the end of year surplus was included in the House budget. More funding is needed. There is also legislation (H.2587/S1459) that would provide a higher match.

- **Housing Production Plans:** Provide increased outreach and technical assistance to help communities complete and make progress on Housing Production Plans.
- **Community-based foreclosure counseling and advocacy:** Provide stable funding for and expand the community based foreclosure counseling and advocacy program CHAPA has run in partnership with the AGO. This counseling and advocacy model empowers community groups to advocate on behalf of homeowners in foreclosure. Advocates have assisted over 1,400 clients since the program's start in 2014. With nearly half of the cases still open, almost 20% have stabilized their housing. The grant for this program was funded for one year and will end on July 31, 2015. The AGO will keep funding individual organizations through part of next year. Funding this program by allowing the Division of Banks to keep more of the retained revenue they are authorized to use for foreclosure counseling, would allow this program to expand to fund 24 Homeowner Advocates at 12-17 community-based non-profit organizations. This comprehensive approach to foreclosure counseling will ensure fair reviews of homeowner requests for loan modifications and help households have the best possible outcomes when facing foreclosure.
- **Gateway Cities Transformative Development Initiative:** Establish a line item for the Transformative Development Initiative, created through economic development legislation in 2014, to support redevelopment in Gateway Cities. The MassDevelopment program is an integrated systems approach to investment and urban redevelopment.
- **Capital Budget:** Increase the bond cap to fulfill the Legislature's \$1.4 billion authorization. The FY2014, FY2015, and FY2016 capital budgets hold spending at only two-thirds of the level authorized in 2013. A midyear increase in capital dollars would help address the backlog of public housing capital needs, enable investments in energy improvements, increase the number of units built and preserved, and increase the number of home modifications made for elders individuals with disabilities, and families of children with disabilities.
- **40R:** Provide smart growth housing development incentives through continued implementation of Chapter 40R, the state's smart growth zoning law.
- **Preserve 40B:** Preserve the Affordable Housing Law, Chapter 40B, which plays a critical role in housing development. To date, over 62,000 homes have been built or are currently under construction.

#### **Housing Opportunities for Households with Extremely Low Incomes**

- **Housing Preservation and Stabilization Trust Fund (HPSTF):** Fund HPSTF with a direct appropriation. DHCD has used this program to accelerate the production of supportive housing for extremely low-income households. This is a vital tool in helping families to avoid or exit the shelter system. The House budget includes \$11.5 million for HPSTF. The Senate budget does not include a direct appropriation, but allows for a transfer of remaining funds within the MRVP account to fund HPSTF. Keeping MRVP dollars within MRVP and funding HPSTF separately will have a greater impact on the creation of housing opportunities for extremely low-income households.
- **Public Housing:** Increase the state operating subsidy (7004-9005) to maintain the state's public housing stock. Fund and implement public housing reforms included in the public housing reform legislation signed into law in August 2014 that ensures housing authorities are working together to maximize economies of scale, provide strong resident services, and increase our public housing stock.
- **Early Education:** Increase funding for the Early Education and Out of School Time capital program at the Department of Early Education and Care and provide immediate access to high-quality early

education for families facing housing instability and homelessness. There are more than 23,000 children on the state's waiting list. Childcare subsidies make it possible for parents to look for and maintain work and to participate in job training, education, and other programs necessary for resolving housing instability<sup>6</sup>, while simultaneously helping to improve educational outcomes for young children.

- **Interagency Coordination:** Bring DHCD, EOHHS, Department of Labor, and Department of Education together to align eligibility and work together to help families obtain housing stability and economic mobility. Develop a multi-agency approach to ensure households have streamlined access to supports that will help them to obtain housing stability.
- **Eligibility Gaps and Reducing Cliff Effects:** Identify eligibility gaps between programs, and if criterion cannot be adjusted, develop strategies for filling gaps. Taper program assistance as people increase their incomes rather than cutting off assistance once families reach the income limits for program eligibility.
- **Preserve Tenancies:** Restore funding for the Housing Consumer Education Centers (7004-3036), increase funding for Tenancy Preservation Program (7004-3045), sustain, increase Residential Assistance for Families in Transition (RAFT, 7004-9316) and work with affordable housing developers to make every attempt to preserve tenancies for households at risk of eviction by working with nonprofit intermediaries. Develop a system for owners, property management companies, and local housing authorities to report data on evictions to the state in order to understand the effectiveness of interventions.
- **Deepen affordability of affordable units to assist those with extremely low incomes:** In high-cost areas, attach MRVPs to a percentage of tax credit units to help families in the shelter system quickly move into housing.
- **Housing Search:** Fund intensive housing search assistance for homeless households who receive rental subsidies to help people quickly find homes.
- **MRVP Regulations:** Decouple MRVP from Public Housing regulations to allow for more efficient distribution of vouchers.
- **13A:** Work with MassHousing and DHCD to develop a strategy for preserving privately owned affordable housing across the state, known as 13A developments.
- **Universal Housing Application:** Support efforts of MassHousing and private developers to create a universal housing application for privately owned, publicly subsidized housing in partnership with private property owners.
- **Technology:** Invest in technology that allows for intake data collected at one state agency to be shared with all relevant programs. The state's complex service delivery system makes it difficult for families to access assistance across state agencies and difficult for the Commonwealth to track progress across programs.

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<sup>6</sup> Institute for Children, Poverty & Homelessness. "Meeting the Child Care Needs of Homeless Families – How do States Stack Up", New York, NY July 2014, p 1, [http://www.icphusa.org/PDF/reports/ICPH\\_policyreport\\_MeetingtheChildCareNeedsofHomelessFamilies.pdf](http://www.icphusa.org/PDF/reports/ICPH_policyreport_MeetingtheChildCareNeedsofHomelessFamilies.pdf).

**H.1111: AN ACT RELATIVE TO HOUSING PRODUCTION**  
Sponsors: Representative Kevin Honan and Senator Jamie Eldridge

Massachusetts needs 17,000 new homes per year to meet housing demand and sustain our economy. As increasing numbers of residents seek out multifamily housing options within walking distance to neighborhood amenities, Massachusetts continues to offer more single-family options. New tools are needed to help the Commonwealth meet housing demand, grow our economy, and provide a range of housing options in communities across the state.

The bill provides the tools necessary to meet the Commonwealth's housing needs. The legislation includes financial incentives and the removal of administrative barriers for communities as well as mandatory measures and new tools to build the housing Massachusetts needs.

**Zoning:**

- Require that all Massachusetts zoning ordinances and bylaws provide for the reasonable opportunity to build multifamily housing developments.
- Require cluster development be allowed as-of-right in all zoning districts that allow construction of detached single-family homes.
- Allow cities and towns to regionalize land use regulation and engage in inter-local development compacts at a local option.

**Financial Incentives:**

- Study impacts of housing and identify ways to mitigate any potential negative net impacts on communities.
- Expand Chapter 40S to reimburse communities for demonstrated increased school costs resulting from the production of multifamily and cluster developments.
- Codify housing priority within MassWorks.

**Removing Administrative Barriers:**

- Streamline the disposition of state-owned land for the development of housing for low and moderate-income families.
- Changes to the Housing Development Incentive Program for Gateway Cities.
  - Change the definition of “market rate residential unit.” The current definition requires units to be priced for households above 110% of the area median income.
  - Change the definition of Housing development project so that 50% of the units are market rate rather than 80%.
  - Change the definition of “substantial rehabilitation” to “reuse” in order to give municipalities and developers more flexibility in transforming neighborhoods.

**New and Sharpened Tools:**

- Set a goal for state-assisted affordable small-scale community-based rental projects that fit the local community context and can address blighted properties and/or vacant land, and help stabilize or revitalize neighborhoods.
- A study to identify ways to redevelop underutilized or former commercial sites, known as greyfields, across the Commonwealth.
- Restore the Office of State Planning/Coordinate data collection, analysis and policy relating to the orderly growth and development of the Commonwealth.

## **CORPORATE DISCLOSURE STATEMENT**

Home Builders and Remodelers Association of Massachusetts, Inc.; Preservation of Affordable Housing, Inc.; The Community Builders, Inc.; Charles River Regional Chamber, Inc.; Metropolitan Boston Housing Partnership, Inc; Greater Boston Real Estate Board; Massachusetts Association of Realtors; The Community Builders, Inc.; Massachusetts Association of Community Development Corporations; Planning Office for Urban Affairs, Inc.; Greater Boston Interfaith Organization Sponsoring Committee; Disability Policy Consortium, Inc.; United Way of Massachusetts Bay, Inc.; Metro West Collaborative Development, Inc.; Massachusetts Housing Finance Agency; Revere Housing Coalition; Acton Housing for All; Black Economic Counsel of Massachusetts, Inc.; Community Economic Development Assistance Corporation; Massachusetts Business Roundtable, Inc.; and 2Life Communities, Inc. hereby state that each such entity is a Massachusetts not-for-profit or for-profit organization that has no parent corporation and no publicly traded corporation owns 10% or more of its stock.

Eastern Bank is a corporation that is 100% owned by Eastern Bancshares, Inc. (Nasdaq: EBC). Harborlight Community Partners, Inc. (dba Harborlight Homes) is a nonprofit corporation with First Baptist Church of Beverly, Inc. as its sole corporate member.

**DECLARATION OF AUTHORSHIP AND CONTRIBUTIONS**

Neither any party nor any party's counsel authored this brief in whole or in part. Likewise, neither any party nor any party's counsel contributed money that was intended to fund the preparation or submission of this brief. None of the Amici nor their counsel represents or has represented any of the parties to the present appeal in any other proceeding involving similar issues, proceedings, or transactions.