



**Production & Preservation Committee Meeting
January 16th, 2019
2:00 – 3:30 p.m.**

Agenda

- I. Welcome & Introductions
- II. Presentation by Disability Policy Consortium
- III. Update on CHAPA's Policy Priorities
- IV. Other Updates
- V. Next Meeting – March 20th, **1 pm – 2:30 pm**

An Act Relative to the Architectural Access Board

Access is a civil right. In 1990, the Americans with Disabilities Act enshrined the right to equal access in federal law. However, **a discrepancy between the ADA and Massachusetts building code creates barriers to access for people with disabilities in housing and employment.**

Housing:

- Massachusetts code does not require heavily renovated housing developments of 50+ units include units adaptable to a wheelchair user's needs.
- This includes former commercial buildings like mills that are refurbished into housing.
- People with disabilities are **more than twice as likely to be homeless** as non-disabled people.
- Adaptability allows people to age in place, increases the housing options for people with disabilities and elders, and decreases costly institutionalization in skilled nursing facilities.

Employment:

- Massachusetts code does not require employee areas be accessible, even in new or extensively renovated buildings.
- Making and keeping employee areas inaccessible creates **structural barriers to employment**, and enables **discriminatory hiring practices**.
- **The unemployment rate for people with disabilities is twice that of non-disable people.**
- This contributes to **higher rates of poverty and homelessness**, and prevents people with disabilities from fully participating in our communities.

Align Massachusetts code with the Federal ADA.

This will:

- Create more job opportunities for people with disabilities.
- Create more housing for people with disabilities and more security for an aging population.
- Simplify the code-book, empowering architects and developers to create accessible designs, and reducing ADA lawsuits by guaranteeing all access issues are worked out in the blue-print stage.

This will not:

- Force all existing businesses to become accessible immediately.
- Hurt small businesses or require unreasonable access modifications. The AAB has a very reasonable variance process that allows businesses and property owners to apply for an exemption to state access requirements that are physically impossible, cost-prohibitive, or otherwise unreasonable. In 2017, **93% of variance applications were granted**. Only 5 small businesses were denied a variance, none of whom completed the variance process.

For more information, please contact David Correia at dcorreia@mw cil.org

Language Change & Intent for Section 6 of the AAB bill

CURRENT SECTION 6 of AAB Bill: Said section 13A of said chapter 22, as so appearing, is hereby further amended by striking out, in lines 52 and 53, the words “; provided, however, that the dwelling is constructed for first occupancy after March thirteenth, nineteen hundred and ninety-one” and inserting in place thereof the following words:- and (3) all public use and common use portions of such multiple dwellings.

We would like to add:

“provided, in the case of buildings built before March 13, 1991, the building is unoccupied when renovations occur or is being renovated as part of a change of use into such a multiple dwelling facility.”

So that in the case of the older buildings (before the 1991 date) being renovated, they do not have to meet the AAB standards for making their housing units adaptable for people with disabilities UNLESS the buildings are not occupied, or they are being changed from non-residential to residential. i.e. if they ARE occupied, or if they are already residential, they do not have to comply.

Below is what was sent to Representative Moran’s office as the stated intent of this change to section 6. If the language we are proposing would not accomplish the intent, we would like to find language that would and adopt that instead. This was not written by someone with a law degree, and is mostly a statement of intent on behalf of the coalition, and for use in guiding how to evaluate any other proposed changes to section 6 of the bill that might be made.

The intent of section 6 of H2498, An Act Relative to the Architectural Access Board, is as follows.

Currently, chapter 22, section 13a of the general laws states: “The rules and regulations of the board shall also establish standards and procedures designed to make adaptable for physically handicapped persons [...] provided, however, that the dwelling is constructed for first occupancy after March thirteenth, nineteen hundred and ninety-one.”

The purpose of section 6 of H2498 is to extend the jurisdiction of the board to establish standards and procedures designed to make dwelling units in developments of 50 units or more adaptable to persons with disabilities while ensuring said standards and procedures do not contribute to eviction or interfere in the preservation of affordable housing.

To this end, section 6 removes the cutoff date of March 13, 1991, for jurisdiction of the AAB and inserts a requirement that adaptability requirements only be enforced on unoccupied buildings if the building was built prior to 1991.

The Architectural Access Board will have jurisdiction over, and the ability to create and enforce regulations for, all multi-family developments, regardless of the original construction date of the building itself. Their current regulations do not cover multi-family developments of less than 25 units in the same building, and contain no requirement to add an elevator if one is not already included in the building plan.

All re-adaptive conversions of commercial buildings built prior to 1991 into multi-family residential developments will be required to meet the same adaptability and accessibility standards as re-adaptive conversions of commercial buildings built after 1991 into residential developments of 50 units or more. They shall be required either to make 95% of their dwelling units adaptable, according to the standards set by the Architectural Access Board, or to receive a variance from the Architectural Access Board in accordance with the board's standards.

All renovations on residential developments of 50 or more units that necessitate the temporary or permanent displacement of all residents (not including commercial tenants), would abide by the requirement that 95% of their dwelling units be made adaptable, according to the standards set by the Architectural Access Board, or receive a variance from the Architectural Access Board in accordance with the board's standards. The intent of this section is not that 95% of units should always be made adaptable, but that developers under such circumstances should go before the Architectural Access Board. The board may then enforce adaptability requirements in the manner that they would with new construction, grant full or partial waivers on said requirements, and advise developers on the best way to increase accessibility of their building in a reasonable and cost-effective manner.

If general renovations (not including adaptability-related renovations) equal or exceed 30% of the assessed value of a residential development, **but do not necessitate the temporary or permanent displacement of residents** to complete, then **the adaptability standards should not be applied. It is not the intent of this bill ever to result in the displacement of residents from their homes.** In the case of affordable housing preservation projects which involve renovations greater than or equal to 30% of the assessed value of the building that are being completed while tenants are still residing in the building, the adaptability requirements ought **not** to be enforced. If enforcing adaptability requirements would make a preservation or necessary renovation (ie removing lead) of existing affordable housing impossible, the adaptability requirements should **not** be enforced.

Adaptability should be enforced to the fullest extent reasonable on all market-rate re-adaptive conversions of commercial buildings built before 1991, all substantial renovations of market rate developments, and **all renovations necessitating the displacement of tenants, and preventing the continuous use of the dwelling units therein.** If general renovations (replacing windows, repainting, etc) can be completed without displacing tenants, or if the enforcement of adaptability requirements would cause displacement, adaptability should **not** be enforced.

Section 13A: Architectural access board; members; terms; rules and regulations; penalties; review; definitions

Section 13A. There shall be in the department of public safety a board to be known as the architectural access board, which shall consist of the director of the Massachusetts office on disability or his designee, the secretary of the executive office of elder affairs or his designee, the secretary of the executive office of public safety or his designee, and six members to be appointed by the governor, in consultation with the secretary of the executive office of public safety from lists submitted by the director of the Massachusetts office on disability. ~~Two of the appointive members shall be architects licensed to practice in the commonwealth. One of the appointive members shall be a licensed building inspector. Three of the appointive members shall be selected after consultation with advocacy groups on behalf of persons with disabilities. Three of the appointive members shall be selected after consultation with advocacy groups in behalf of the physically handicapped. The governor, the secretary, and the director shall exercise their best efforts to ensure that at least two of the appointive members shall be registered architects licensed to practice in the commonwealth.~~ The board shall elect a chairman from among its members who shall serve for one year or until his successor is elected.

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Each appointive member shall be appointed for a term of three years, with the members initially appointed serving staggered terms. Persons appointed to fill vacancies shall serve for the unexpired term. Any member shall be eligible for reappointment. Each appointive member shall be paid for each day while in the actual performance of official functions at such rate as shall be approved by the commissioner of

administration and shall also receive from the commonwealth all expenses necessarily incurred in connection with such official duties. Any board member appointed by said governor absent from three consecutive board meetings, which absence is not for reasons of health, may be removed from membership by said governor upon request of a majority of the members of the board.

The board shall employ an executive director, who shall appoint, with the board's approval, such other personnel as may be required in the performance of the board's duties. The executive director shall be responsible for the administrative operation of the board, including development of an annual appropriation request for the operation of the board, and shall perform such other tasks as the board shall determine. Employees of the board shall not be subject to the provisions of chapter thirty-one.

The board shall make and from time to time alter, amend, and repeal, in accordance with the provisions of chapter thirty A, rules and regulations designed to make

~~buildings including areas that are not generally in public use under the Department of Justice's Americans with Disabilities Act Standards for Accessible Design, accessible to, functional for and safe for use by persons with disabilities, public buildings accessible to, functional for, and safe for use by physically handicapped persons.~~ The board shall

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also make rules and regulations requiring that any person who has lawful control of improved or enclosed private property used as off-street parking areas ~~for businesses, auditoriums, sporting or recreational facilities, or cultural centers~~ where the public has a right of access as invitees or licensees, shall reserve parking spaces in said off-street

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parking areas for vehicles ~~authorized to display handicapped plates or placards under section 2 of chapter 90; provided, that the parking requirements shall be consistent with~~

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~~the Americans with Disabilities Act Standards for Accessible Design of handicapped persons or for vehicles used to transport such handicapped persons if the number of parking spaces in any such area is fifteen or more. The parking spaces reserved for vehicles of such handicapped persons shall be clearly marked as such. The rules and regulations of the board shall also establish standards and procedures designed to make adaptable and accessible for physically handicapped persons (1) all dwelling units in multiple dwellings equipped with an elevator and (2) all ground floor dwelling units in multiple dwellings not equipped with an elevator; and (3) all public use and common use portions of such multiple dwellings provided, in the case of buildings built before March 13, 1991, the building is unoccupied when renovations occur or is being renovated as part of a change of use into such a multiple dwelling facility provided, however, that the dwelling is constructed for first occupancy after March thirteenth, nineteen hundred and ninety one. Said rules and regulations shall include, but not be limited to, detailed architectural standards further defining adaptable dwelling units, and such other provisions necessary to provide rights and remedies substantially equivalent to or greater than the rights and remedies provided by the federal Fair Housing Act the Department of Justice's Americans with Disabilities Act Standards for Accessible Design and regulations thereunder as they pertain to such multiple dwellings.~~

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The provisions of this section and all rules and regulations made hereunder shall be enforced by the inspector of buildings and facilities, building commissioner, local inspector and inspector, as defined in chapter one hundred and forty-three, as to buildings and facilities under their respective jurisdictions. Said rules and regulations shall be deemed to be a specialized code as referred to in section ninety-six of chapter

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one hundred and forty-three, the violation of which shall constitute gross negligence for the purposes of clause (d) of section sixty G of chapter one hundred and twelve.

The board shall have the power of local and state inspectors in the enforcement of its rules and regulations, including but not limited to, the right to enter all public buildings as defined by this section. The board shall use all reasonable methods to cause the dissemination of the provisions of this section and all rules and regulations made hereunder to architects, engineers, contractors, state and local building inspectors, local building commissioners, state and local public works officials, the chief executive of each city and town, ~~persons with a disability~~ ~~handicapped persons~~, and any other person

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requesting such information. The board shall take such other actions as may be necessary and appropriate to encourage and assist all state and local building inspectors to enforce the provisions of this section, all rules and regulations made hereunder and decisions of the board, including but not limited to, providing training and technical assistance to said inspectors. The board shall also provide technical assistance and training to professional groups, public officials and state agencies. All public newspaper ~~forms~~ of solicitation for bids on projects regulated by this section shall state the requirement of conformity to rules and regulations of the board.

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There shall be no construction, reconstruction, alteration or remodeling of a public building ~~or facility~~ except in conformity with said rules and regulations, nor shall the use of any building ~~or facility~~ be changed to a ~~residential use or~~ use in which the building ~~or facility~~ is open to and used by the public as defined in this section until such building ~~or facility~~ so conforms, and a copy of the plans and specifications have been approved as provided in this section and in section three W of chapter one hundred and

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forty-three, showing compliance with said rules and regulations; provided, however, that if the board determines that compliance with said rules and regulations is not feasible technologically, or would result in excessive and unreasonable costs without any substantial benefit to physically handicapped persons ~~persons with a disability~~ in a particular case, it may provide for modification of, or substitution for, such rule or regulation. In all petitions for variance, the burden of proof shall be on the party requesting a variance to justify its allowance.

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~~Unless otherwise specified, five percent of the units in lodging or residential facilities for hire, rent or lease, containing twenty or more units, shall be fully adaptable and safe for physically handicapped persons; provided, however, that said adaptable units shall allow five feet of turning radius for a wheelchair in the kitchens and bathrooms. In the event that the board determines that the need, in certain areas of the commonwealth, for such units either exceeds or does not require said five percent, the board may require that, in said areas a percentage of units less than five percent or not greater than ten percent be fully adaptable and safe for physically handicapped persons; provided, however, that said adaptable units shall allow five feet of turning radius for a wheelchair in the kitchens and bathrooms. The board may make such determination only if there is sufficient factual basis, using data from the central registry of the Massachusetts Rehabilitation Commission and other sources, to establish with a reasonable degree of certainty the present and future needs for said adaptable units in certain areas of the commonwealth. A percentage of less than five percent shall not be established unless such adaptable units, which are not needed by physically handicapped persons, cannot be readily hired, rented, or leased to other persons.~~

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The board shall receive complaints of noncompliance with this section or any rule or regulation promulgated hereunder from any person or may receive complaints initiated by its own staff. If the board finds, after notice and opportunity for a hearing, that any person ~~building, or portion thereof~~ is not in compliance with this section or with any rule or regulation promulgated hereunder, it may issue an order to compel such compliance. Such order may specify the date and the manner by which such person shall cure the noncompliance found by the board, and may require that pending the cure of such noncompliance a performance bond be furnished, payable to the commonwealth, in such penal sum as the board finds reasonable. The board shall have the authority to issue subpoenas.

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In the event that a person fails to cure such noncompliance by the date specified in the board's order, the board shall be empowered, after further hearing, to impose a fine payable to the commonwealth not to exceed one thousand dollars per day for each violation for each day of noncompliance as to which the board finds that such noncompliance was without justification. The board shall also have the power, if it determines that such failure to cure noncompliance is willful and deliberate, to bring a complaint before any appropriate licensing or permit granting authority against the license or permit of such person. The board shall maintain a record of all state and local building inspectors who issued a building permit for a building later found by the board to be in violation of this section or any rule or regulation promulgated thereunder.

The board may, when necessary, seek to enforce its order by filing an action in superior court. In any such proceedings, the board or any member thereof may appear *pro se* or be represented by the attorney general or by counsel employed or

designated by it for such purpose. The board shall not be required to pay any entry fee in connection with the institution of any such proceedings.

Any decision the board makes pursuant to this section shall be subject to review in superior court upon petition of any aggrieved person within thirty days after the decision for which review is sought. The court shall enter an order enforcing, modifying, or setting aside the order of the board, or it may remand the proceeding to the board for such further action as the court may direct.

Prior to the board's resolution of any complaint, request for a variance or other matter involving the accessibility of a building, ~~facility~~ or site, the board shall conduct an on-site inspection unless said inspection is waived by the board. The board shall conduct said inspection either itself or through an agent of the board. Said inspection shall, however, be conducted by an architect at any time deemed necessary by a majority of the board.

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The following words, as used in this section, shall have the following meanings:--

"Accessible", the state of a site, building, facility or portion thereof that complies with this section and any rules or regulations promulgated hereunder and that can be approached, entered and used by ~~physically handicapped persons~~ persons with a disability.

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"Adaptable", can readily be made accessible to, functional for, and safe for use by ~~physically handicapped persons~~ persons with a disability without structural change and without imposing an undue hardship on the owner or other person having the right of ownership pursuant to subsection seven A of section four of chapter one hundred and

fifty-one B. With respect to dwelling units, an adaptable kitchen or bathroom need not include additional floor space to meet otherwise applicable accessibility standards, so long as there is sufficient clear floor space so that all elements of the kitchen and bathroom are functional and safe for use by ~~physically handicapped persons~~persons with a disability.

“Alteration”, external or internal rehabilitation or renovation for which a building permit is needed or for which the cost of such rehabilitation or renovation equals or exceeds five per cent of the full and fair cash value of the building ~~or facility~~, or any work determined to be alteration by a state or local building inspector.

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“Board”, the architectural access board established by this section.

“Construction”, work for which a building permit is required, work determined to be construction by a state or local building inspector, or work for which a certificate of occupancy is necessary upon completion.

~~“Facility”, all or any portion of a building, structure, site improvement, complex, equipment, road, walk, passageway, parking lot or other real or personal property, including the site where the building, property, structure or equipment is located.~~

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“Multiple dwelling”, a lodging or residential facility for hire, rent, lease or sale, containing three or more dwelling units.

“Physically handicapped person”, any person who has a disability that substantially limits one or more major life activities, including, but not limited to, such functions as performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working. ~~Physically handicapped persons~~Persons with a disability shall

include, but not be limited to, persons who have the inability to walk, difficulty walking, hearing disabilities, lack of coordination, reaching and manipulation disabilities, lack of stamina, difficulty interpreting and reacting to sensory information and extremes in physical size.

“Public building”, buildings constructed by the commonwealth or any political subdivision thereof with public funds and open to public use, including, but not limited to, those constructed by public housing authorities, the Massachusetts Port Authority, ~~the Massachusetts Convention Center Authority, the Massachusetts Parking Authority,~~ the Massachusetts Department of Transportation, the Massachusetts Bay Transportation Authority, or building authorities of any public educational institution, or their successors; and privately financed buildings that are open to and used by the public.

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Buildings that are open to and used by the public shall include, but not be limited to, ~~the following buildings:~~ transportation terminals, institutional buildings, commercial buildings, buildings having places of assembly with a capacity of more than one hundred and fifty persons, hotels, motels, dormitories, public parking garages or lots with a capacity of fifteen or more automobiles, funeral homes, shopping centers, restaurants, public parking garages or lots, public sidewalks and ways, and public and common use areas of apartment buildings and condominiums, containing twelve or more units and of funeral homes, and rest rooms and public areas of shopping centers and restaurants.

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“Reconstruction”, the tearing down, removal, demolition or replacement of a public building or part of a public building.

“Remodeling”, modification beyond an interior decoration or involving any structural change, or the refurbishing, updating or redecorating of a public building for which the cost of such refurbishing, updating or redecorating equals or exceeds five per cent of the full and fair cash value of the building.



DRAFT CHAPA 2019–2020 Policy Agenda

As the 2019–2020 legislative session approaches, CHAPA is developing and refining its list of policy priorities. The following items are suggested policy priorities for CHAPA to include on its agenda.

Housing Production Legislation: Legislation that uses the Governor’s Housing Choice bill as a foundation and includes additional provisions to create more housing, reduce barriers to production, and set affordable housing production goals.

Public Housing Reforms

- **Leveraging New Resources:** Legislation to provide housing authorities with additional resources to preserve public housing. The legislation will allow housing authorities to borrow against capital funds; enter into redevelopment agreements with private developers; and to retain proceeds from disposition of its property. CHAPA supported similar provisions during the last legislative session.
- **Tenant Board Members in Towns:** Legislation to create a process for appointing tenant members to housing authority boards in towns. CHAPA helped develop language for the legislation that was proposed at the end of the last legislative session.

Fair Housing

- **Exclusionary Zoning:** Legislation to prohibit cities and towns from making land use decisions based on a development having affordable housing or housing that is suitable for families with children. Similar legislation was supported by CHAPA during the last legislative session.
- **Barriers & Discrimination:** CHAPA could support efforts to highlight barriers and discrimination tenants may face when applying for a home, such as discrimination based on source of income, disability, familial status, or criminal records. This could involve supporting existing efforts to address these barriers as well as convening stakeholders and educating the public on these practices.

Anti-Displacement

These proposed policies are aimed at curbing displacement. CHAPA is currently looking into these policies.

- **Right to Counsel:** Legislation would provide low-income tenants facing eviction with a right to counsel. Legislation was filed last legislative session and may be filed again.
- **Real Estate Transfer Fees:** Legislation create a transfer fee on real estate sales, with certain exemptions, to fund affordable housing programs. The legislation would allow municipalities the local option to create this fee.
- **Tenant Right of First Refusal:** In order to prevent displacement that occurs when certain properties are sold, the bill would give tenants in these properties a right to purchase the property or assign their right to purchase to a non-profit developer.

- **Landlord Tax Credit:** This bill would give a \$1,500 tax credit to small residential property owners who maintain their rents at or below market rent

Homeownership

CHAPA could support more resources for creating additional affordable homeownership opportunities, particularly as a way to prevent displacement and increase homeownership rates for minority groups and low- and moderate-income residents in Massachusetts. This could include allocating capital funding for promoting homeownership opportunities as well as addressing issues of access to capital and fair lending practices.

MRVP Reforms

Legislation to be proposed to make programmatic fixes to the Massachusetts Rental Voucher Program, potentially including: raising the fair market rent standard for rental vouchers; increasing administrative fees; requiring inspections; and improving data collection.

Community Preservation Act

CHAPA will continue to work with the Community Preservation Coalition (CPC) on its efforts to infuse new funds into the Community Preservation Trust Fund in order to provide an increased state-match to CPA communities. The CPC is expected to file legislation again to increase the deeds recording fee. CHAPA can also support efforts to have more CPA funds be spent on affordable housing.

Lead Paint

Legislation would reduce the measure of blood lead levels in children required to trigger intervention by the Department of Public Health. Similar legislation was filed last session. CHAPA could also support additional state funding to recapitalize the “Get the Lead Out” program.

On Solid Ground: Economic Mobility & Memorandum of Understanding

Last session, CHAPA supported efforts of the On Solid Ground Coalition to study economic mobility programs; examine and address the impacts of cliff effects; and call for increased collaboration across state agencies to better serve low-income households. We will continue to support these efforts of the On Solid Ground Coalition.

Opportunity Zones

As investment starts to flow into Opportunity Zones, current residents in these communities may become at risk of displacement. CHAPA can develop policies or strategies to support equitable investment and development in these opportunity zones.

CHAPA Housing Production and Housing Choices

1. Includes the Housing Choices legislation, as reported by the Joint Committee on Housing in 2017-18 session.
2. Adds new sections to:
 - a. Mandate multifamily housing near transit;
 - b. Address frivolous abutter appeals;
 - c. Set a new statewide housing production goal, including a goal for producing affordable and ELI housing

a) MBTA Mandate:

Every municipality that is an “MBTA Community” (as defined in the MBTA statute c.161A) shall have at least one district in which multifamily housing is permitted as-of-right.

The mandate only would apply to municipalities that can provide districts in these locations:

1. Within .5 miles of commuter rail station, subway station, ferry terminal or bus station.
2. Within .25 miles of a stop along a local bus route, key bus route, commuter bus route, rapid transit route, commuter rail route, or boat route.

These categories and routes are listed in the “MBTA Service Delivery Policy” and the legislation would cite to this policy.

Exemptions:

1. MBTA communities that do not have a location that meets the transit proximity requirement.
2. DHCD makes a determination that a zoning ordinance or by-law is consistent with the requirements of the mandate.

Enforcement through the Housing Choice Initiative:

1. If an MBTA community fails to comply with the mandate, they will be ineligible for Housing Choice grants and ineligible for the Local Capital Projects Fund (capitalized by casino revenue).
2. A municipality would also be required to repay Housing Choice grants or payments from the fund if the municipality fails to comply with the mandate.

b) Abutter Appeals

Allows the court, in its discretion, to require non-municipal plaintiffs to post a surety or cash bond (not more than 15,000) for an abutter appeal. Plaintiffs lose payment if the court finds that the harm to the defendant or public interest resulting from delays of appeal outweighs the burden of the cash bond.

This is language that was included in the Massachusetts Smart Growth Alliance Bill from the 2017-2018 legislative session.

c) Housing Production Goals

Sets a housing production goal of 427,000 new units by 2040.

This goal is based on projections from MAPC, which estimates that households will grow from 2.51 million in 2010 to 3.12 million in 2040 - an increase of 610,000 households.

Between 2010 and 2040, this would mean an annual production of 20,333 new units per year. From now until 2040, this would mean 427,000 new units.

The bill also sets a goal of have 20% of that housing be affordable housing with a sub-goal of having 10% of that affordable housing for extremely low income households.

New Households Added between 2010-2040	610,000
New Housing Production Goal (yearly)	20,333
From 2019 through 2040	427,000
20% Affordable (Total)	85,400
20% Affordable (yearly)	4,067
10% of Affordable Units for ELI (total)	8,540
10% of Affordable Units for ELI (yearly)	407
<i>25% Affordable (Total)</i>	<i>106,750</i>
<i>25% Affordable (yearly)</i>	<i>5,083</i>
<i>15% of Affordable Units for ELI (total)</i>	<i>16,013</i>
<i>15% of Affordable Units for ELI (yearly)</i>	<i>763</i>

The figures in italics represent an alternative, stronger affordable housing production goal that could be suggested.

CHAPA Housing Production Bill – An Act relative to housing production

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

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

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

“Accessory dwelling unit”, a self-contained housing unit, inclusive of sleeping, cooking and sanitary facilities on the same lot as the principal dwelling, subject to otherwise applicable dimensional and parking requirements, that (i) maintains a separate entrance, either directly from the outside or through an entry hall or corridor shared with the principal dwelling sufficient to meet the requirements of the state building code for safe egress; (ii) is not larger in floor area than ½ the floor area of the principal dwelling or 900 square feet, whichever is smaller; and (iii) is subject to such additional restrictions as may be imposed by a municipality, including but not limited to additional size restrictions, owner-occupancy requirements, and restrictions or prohibitions on short-term rental of accessory dwelling units.

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

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

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

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

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

Commented [ES1]: Sections 1–13 contain the Housing Choice Bill, as reported out in the previous legislative session by the Joint Committee on Housing

Commented [ES2]: In addition to the definitions added by the Housing Choice Bill, new definitions are included for:

- **Department** – to specify it as DHCD
- **Gross Density** – to define the term for housing density required in multifamily districts around public transportation
- **MBTA Community** – to designate those communities served by the MBTA that will need to create as-of-right multifamily zoning districts

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

open space residential.

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

open space residential.

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

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

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

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

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

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

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

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

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

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

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

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

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

buildings.

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

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

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

Commented [ES3]: Reporting Requirement on the Housing Choice Initiative.

[The report shall also include progress made towards the goal of producing 427,000 new units of housing in Massachusetts by 2040. [The housing production goal shall also include a goal of having 85,400 units of housing be created by 2040 that are affordable to households earning less than 80% of the Area Median Income, with at least 8,500 of these units affordable to households earning less than 30 percent of the Area Median Income. The report shall include a breakdown of market-rate units created; units created that are accessible or adaptable for persons with disabilities; units created for persons over the age of 55; and units created by deed restricted affordable housing available to households earning less than 80% Area Median Income, less than 60% Area Median Income, and less than 30% Area Median Income.

Commented [E54]: Increasing Housing Production Goal & Setting Affordable Housing Production Goal: This section sets a new statewide housing production goal of creating 610,000 new units of housing by 2040. This is the amount of housing the Metropolitan Area Planning Council projects the state needs to keep pace with household growth, with MAPC estimating we need to add a total of 427,000 new units by 2040 (or about 20,000 units per year).

The production goal includes a sub-goal of having at least 20% of new housing affordable to low-income households – this would mean 85,400 units by 2040. It also includes an additional sub-goal of having at least 10% of those affordable units affordable to extremely low income (ELI) households (30% AMI) – this would be 8,500 ELI units by 2040.

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

Section 3A.

Commented [E55]: Multifamily Mandate Around Public Transit – requires that communities served by the MBTA allow multifamily zoning as-of-right around the public transportation.

Multifamily zoning districts would be required within a half mile of commuter rail, subway, ferry terminals, or bus stations.

Multifamily zoning districts would be required within a quarter mile of a stop along a local bus route, key bus route, commuter bus route, rapid transit route, commuter rail route, or boat route.

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

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

(b) Districts shall be in the following locations:

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

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

Commented [E56]: For a link to the MBTA Service Delivery Policy, please [click here](#).

(c) A city or town may satisfy the requirement of subsection (a) of this section by obtaining a determination from the department, acting directly or through a regional planning agency as its designee, that the multi-family provisions of its zoning ordinance

or bylaw are consistent with the department's guidelines, or no locations as described in subsection (b) exist. If a city or town obtains a determination from the department under this section, the city or town may use the determination as verification of compliance with subsection (a) in order to establish eligibility as a so-called housing choice community to receive funds from the Housing Choice Initiative or the Local Capital Projects Fund under Section 2EEEE of Chapter 29 of the general laws.

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

SECTION 15. Section 17 of chapter 40A of the General Laws, as so appearing, is hereby amended by inserting after the second paragraph the following paragraph:-

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

Commented [E57]: Abutter Appeals Reform: Discretionary enforcement by the court (Mass. Smart Growth Alliance language)

