HOUSE BILL NO. 5250, *AN ACT ENABLING PARTNERSHIPS FOR GROWTH*
Signed into law by Gov. Baker on January 14, 2020 as *CHAPTER 358 OF THE ACTS OF 2020*

Key Sections of Interest to HBRAMA

SECTION 16. Section 1A of chapter 40A of the General Laws, as so appearing, is hereby amended by inserting after the introductory paragraph the following 10 definitions:-

"Accessory dwelling unit", a self-contained housing unit, inclusive of sleeping, cooking and sanitary facilities on the same lot as a 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 1/2 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 that 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.

"Eligible locations", areas that by virtue of their infrastructure, transportation access, existing underutilized facilities or location make highly suitable locations for residential or mixed use smart growth zoning districts or starter home zoning districts, including without limitation: (i) areas near transit stations, including rapid transit, commuter rail and bus and ferry terminals; or (ii) areas of concentrated development, including town and city centers, other existing commercial districts in cities and towns and existing rural village districts.

"Gross density", a units-per-acre density measurement that includes land occupied by public rights-of-way and any recreational, civic, commercial and other nonresidential uses.

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

"MBTA community", a city or town that is: (i) one of the 51 cities and towns as defined in section 1 of chapter 161A; (ii) one of the 14 cities and towns as defined in said section 1 of said chapter 161A; (iii) other served communities as defined in said section 1 of said chapter 161A; or (iv) a municipality that has been added to the Massachusetts Bay Transportation Authority under section 6 of chapter 161A or in accordance with any special law relative to the area constituting the authority.

"Mixed-use development", development containing a mix of residential uses and non-

residential uses, including, without limitation, commercial, institutional, industrial or other uses;

"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 1 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. The open land may be situated to promote and protect maximum solar access within the development. The open land shall either be conveyed to the city or town and accepted by said city or town for park or open space use, or be made subject to a recorded use restriction enforceable by said 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 17. Said section 1A of said chapter 40A, as so appearing, is hereby further amended by striking out the definition of "Transfer of development rights" and inserting in place thereof the following definition:-

"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 that second parcel.

SECTION 18. Said chapter 40A is hereby further amended by inserting after section 3 the following section:-

Section 3A. (a)(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. For the purposes of this section, a district of reasonable size shall: (i) 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 pursuant to section 13 of chapter 21A; and (ii) be located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable.

(b) An MBTA community that fails to comply with this section shall not be eligible for funds from: (i) the Housing Choice Initiative as described by the governor in a message to the general court dated December 11, 2017; (ii) the Local Capital Projects Fund established in section 2EEEE of chapter 29; or (iii) the MassWorks infrastructure program established in section 63 of chapter 23A.

(c) The department, in consultation with the Massachusetts Bay Transportation Authority and the Massachusetts Department of Transportation, shall promulgate guidelines to determine if an MBTA community is in compliance with this section.

SECTION 19. 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 2 branches, or by a two-thirds vote of a town meeting; provided, however, that the following shall be adopted by a vote of a simple majority 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 2 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 an eligible location; (b) accessory dwelling units, whether within the principal dwelling or a detached structure on the same lot; 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 an eligible location; (b) an increase in the permissible density of population or intensity of a particular use in a proposed multi-family or mixed use development pursuant to section 9; (c) accessory dwelling units in a detached structure on the same lot; or (d) a diminution in the amount of parking required for residential or mixed-use development pursuant to section 9;

(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

zoning ordinance or by-law; and

(4) the adoption of a smart growth zoning district or starter home zoning district in accordance with section 3 of chapter 40R. Any amendment that requires a simple majority vote shall not be combined with an amendment that requires a two-thirds majority vote. If, in a city or town with a council of fewer than 25 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 50 per cent or more of the area of the land proposed to be included in such change or of the area of the land immediately adjacent extending 300 feet therefrom, no change of any such ordinance shall be adopted except by a two-thirds vote of all members.

SECTION 20. 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 zoning approval.

SECTION 21. Said section 9 of said chapter 40A, as so appearing, is hereby further amended by striking out, in lines 39 and 43, the word "cluster" each time it appears and inserting in place thereof in each instance the following words:- open space residential.

SECTION 22. Said section 9 of said chapter 40A, as so appearing, is hereby further amended by inserting, after the word "control,", in line 47, 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 23. Said section 9 of said chapter 40A, as so appearing, is hereby further amended by striking out the seventh 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 requirements 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 suffer a substantial adverse effect from such diminution in parking.

SECTION 24. Said section 9 of said chapter 40A, as so appearing, is hereby further amended by inserting after the twelfth paragraph the following paragraph:-

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 1/2 mile of a commuter rail station, subway station, ferry terminal or bus station; provided, that not less than 10 per cent of the housing shall be 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, that not less than 10 per cent of the housing shall be 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; or (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 25. Section 17 of said chapter 40A, as so appearing, is hereby amended by inserting after the second paragraph the following paragraph:-

The court, in its discretion, may require a plaintiff in an action under this section appealing a decision to approve a special permit, variance or site plan to post a surety or cash bond in an amount of not more than $50,000 to secure the payment of costs if the court finds that the harm to the defendant or to the public interest resulting from delays caused by the appeal outweighs the financial burden of the surety or cash bond on the plaintiffs. The court shall consider the relative merits of the appeal and the relative financial means of the plaintiff and the defendant.

SECTION 27. Said section 3 of said chapter 40R, as so appearing, is hereby further amended by inserting after the word "use", in line 19, the following words:-

; provided, however, that a smart growth zoning district or starter home zoning district ordinance or by-law shall be adopted by a simple majority 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 2 branches, or by a simple majority vote of a town meeting.

SECTION 28. Section 2 of chapter 40R of the General Laws, as amended by section 12 of chapter 5 of the acts of 2019, is hereby amended by inserting after the word "is", in line 4, the following words:- equal to or.

SECTION 29. Said section 2 of said chapter 40R, as so amended, is hereby further amended by striking out the definition of "Approving authority".

SECTION 30. Said section 2 of said chapter 40R, as so amended, is hereby further amended by inserting after the definition of "Open space" the following definition:-

"Plan approval authority", a unit of municipal government designated by the city or town to review projects and issue approvals under section 11.

SECTION 31. Section 3 of said chapter 40R, as so appearing, is hereby amended by inserting after the word "have", in line 4, the following word:- safe.

SECTION 32. Said section 3 of said chapter 40R, as so appearing, is hereby further amended by inserting after the word "frequent", in line 5, the following word:- pedestrian.

SECTION 33. Said section 3 of said chapter 40R, as so appearing, is hereby further amended by striking out, in line 14, the words "by a city or town".

SECTION 34. Section 6 of said chapter 40R, as so appearing, is hereby amended by striking out, in lines 55 to 56, the words "the comprehensive housing plan, housing production plan or housing production summary submitted as part of".

SECTION 35. Subsection (a) of said section 6 of said chapter 40R, as so appearing, is hereby amended by striking out clause (8) and inserting in place thereof the following clause:-

(8) A proposed smart growth zoning district or starter home zoning district shall not impose restrictions on age or any other occupancy restrictions on the district as a whole or any portion thereof or project therein. Applicants may pursue the development of specific projects within a smart growth zoning district that are exclusively for the elderly, the disabled or for assisted living; provided, that the department shall adopt regulations limiting the percentage of units in the district that qualify the city or town for density bonus payments under section 9 that may be subject to such restrictions that limit occupancy exclusively for the elderly, the disabled or for assisted living. Not less than 25 per cent of the housing units in a project that limits occupancy exclusively for the elderly, the disabled or for assisted living within a smart growth zoning district shall be affordable housing, as defined in section 2.

SECTION 36. Said section 6 of said chapter 40R, as so appearing, is hereby further amended by striking out, in line 86, the word "approving" and inserting in place thereof the following words:- plan approval.

SECTION 37. Said section 6 of said chapter 40R, as so appearing, is hereby further amended by striking out subsection (c) and inserting in place thereof the following subsection:-

(c) The zoning for a proposed smart growth zoning district or starter home zoning district may provide for mixed use development subject to any limitations that may be imposed by regulations of the department. In a starter home zoning district, mixed use development shall only be permitted if the proposed density achieves a minimum of 4 units per acre.

SECTION 38. Said section 6 of said chapter 40R, as so appearing, is hereby further

amended by striking out subsection (g) and inserting in place thereof the following subsection:-

(g) Any amendment or repeal of a zoning ordinance or by-law affecting an approved smart growth zoning district or starter home zoning district shall not be effective without the written approval by the department. No such amendment or repeal shall be effective until the city or town has made the payment required under subsection (b) of section 14. Each amendment or repeal shall be submitted to the department with an evaluation of the effect on the number of projected units that will remain developable, if any, in relation to the number of units that have been built and the number of units that determined any corresponding zoning incentive payment paid to the city or town. Amendments shall be approved only to the extent that the district remains in compliance with this chapter. If the department does not respond to a complete request for approval of an amendment or repeal within 60 days of receipt, the request shall be deemed approved.

SECTION 39. Section 7 of said chapter 40R, as so appearing, is hereby amended by striking out, in line 14, the word "approving" and inserting in place thereof the following words:- plan approval.

SECTION 40. Said section 7 of said chapter 40R, as so appearing, is hereby further amended by striking out, in lines 17 through 20, inclusive, the words "the city or town's comprehensive housing plan, housing production plan, or the housing production summary submitted with the city or town's initial application for approval by the department, as applicable,".

SECTION 41. Section 9 of said chapter 40R, as amended by section 13 of chapter 5 of the acts of 2019, is hereby further amended by striking out, in lines 18 through 21, inclusive, the words ", and consistent with either the city or town's comprehensive housing plan or housing production plan, if any, or the housing production summary submitted in accordance with section 8".

SECTION 42. Section 10 of said chapter 40R, as appearing in the 2018 Official Edition, is hereby amended by striking out, in line 3, the words "approving" and inserting in place thereof the following words:- plan approval.

SECTION 43. Said section 10 of said chapter 40R, as so appearing, is hereby further amended by striking out, in lines 6 through 8, inclusive, the words "and is consistent with the city or town's comprehensive housing plan or housing production plan, if any, and any applicable master plan or plans for the city or town".

SECTION 44. Said chapter 40R, as so appearing, is hereby amended by striking out section 11 and inserting in place thereof the following section:-

Section 11. (a)A city or town may incorporate provisions within the smart growth zoning district or starter home zoning district ordinance or by-law that prescribe contents of an

application for approval of a project. The ordinance or by-law may require the applicant to pay for reasonable consulting fees to provide peer review of the applications for the benefit of the plan approval authority. Such fees shall be held by the municipality in a separate account and used only for expenses associated with the review of the development application by outside consultants and any surplus remaining after the completion of such review, including any interest accrued, shall be returned to the applicant forthwith. The smart growth zoning district or starter home zoning district ordinance or by-law may provide for the referral of the plan to municipal officers, agencies or boards other than the plan approval authority for comment. Any such board, agency or officer shall provide any comments within 60 days of its receipt of a copy of the plan and application for approval.

(b) An application to a plan approval authority for approval under a smart growth zoning district or starter home zoning district ordinance or by-law shall be governed by the applicable zoning provisions in effect at the time of the submission, while the plan is being processed, during the pendency of any appeal and for 3 years after approval. If an application is denied, the zoning provisions in effect at the time of the application shall continue in effect with respect to any further application filed within 2 years after the date of the denial except as the applicant may otherwise choose.

(c) An application for approval under this section shall be filed by the applicant with the city or town clerk and a copy of the application including the date of filing certified by the town clerk shall be filed forthwith with the plan approval authority. The plan approval authority shall hold a public hearing for which notice has been given as provided in section 11 of chapter 40A. The decision of the plan approval authority shall be made, and a written notice of the decision filed with the city or town clerk, within 120 days of the receipt of the application by the city or town clerk. The required time limits for such action may be extended by written agreement between the applicant and the plan approval authority, with a copy of such agreement being filed in the office of the city or town clerk. Failure of the plan approval authority to take action within said 120 days or extended time, if applicable, shall be deemed to be an approval of the plan. The applicant who seeks approval of a plan by reason of the failure of the plan approval authority to act within such time prescribed, shall notify the city or town clerk, in writing within 14 days from the expiration of said 120 days or extended time, if applicable, of such approval and that notice has been sent by the applicant to parties in interest. The applicant shall send such notice to parties in interest by mail and each such notice shall specify that appeals, if any, shall be made pursuant to this section and shall be filed within 20 days after the date the city or town clerk received such written notice from the applicant that the plan approval authority failed to act within the time prescribed.

(d) The plan approval authority shall issue to the applicant a copy of its decision containing the name and address of the owner, identifying the land affected, and the plans that were the subject of the decision, and certifying that a copy of the decision has been filed with the city or town clerk and that all plans referred to in the decision are on file with the plan approval authority. If 20 days have elapsed after the decision has been filed in the office of the city or town clerk without an appeal having been filed or if such

appeal, having been filed, is dismissed or denied, the city or town clerk shall so certify on a copy of the decision. If the plan is approved by reason of the failure of the plan approval authority to timely act, the clerk shall make such certification on a copy of the application. A copy of the decision or application bearing such certification shall be recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or recorded and noted on the owner's certificate of title. The fee for recording or registering shall be paid by the owner or applicant.

(e) The project shall be approved by the plan approval authority subject only to those conditions that are necessary: (1) to ensure substantial compliance of the proposed project with the requirements of the smart growth zoning district or starter home zoning district ordinance or by-law; or (2) to mitigate any extraordinary adverse impacts of the project on nearby properties. An application may be denied only on the grounds that: (i) the project does not meet the conditions and requirements set forth in the smart growth zoning district or starter home zoning district ordinance or by-law; (ii) the applicant failed to submit information and fees required by the ordinance or by-law and necessary for an adequate and timely review of the design of the project or potential project impacts; or (iii) it is not possible to adequately mitigate extraordinary adverse project impacts on nearby properties by means of suitable conditions.

(f) Any court authorized to hear appeals under section 17 of chapter 40A shall be authorized to hear an appeal from a decision under this section by a party who is aggrieved by such decision. Such appeal may be brought within 20 days after the decision has been filed in the office of the city or town clerk. Notice of the appeal, with a copy of the complaint shall be given to such city or town clerk so as to be received within such 20 days. Review shall be based on the record of information and plans presented to the plan approval authority. To avoid delay in the proceedings, instead of the usual service of process, the plaintiff shall within 14 days after the filing of the complaint, send written notice thereof, with a copy of the complaint, by delivery or certified mail to all defendants, including the members of the plan approval authority, and shall within 21 days after the entry of the complaint file with the clerk of the court an affidavit that such notice has been given. If no such affidavit is filed within such time, the complaint shall be dismissed.

(g) A complaint by a plaintiff challenging the approval of a project under this section shall allege the specific reasons why the project fails to satisfy the requirements of this chapter or other applicable law and allege specific facts establishing how the plaintiff is aggrieved by such decision. The plan approval authority's decision in such a case shall be affirmed unless the court concludes the plan approval authority abused its discretion under subsection (e) in approving the project. The applicant and all members of the plan approval authority shall be named as defendant parties.

(h) A plaintiff seeking to reverse approval of a project under this section shall post a bond in an amount to be set by the court that is sufficient to cover twice the estimated: (i) annual carrying costs of the property owner, or a person or entity carrying such costs

on behalf of the owner for the property, as may be established by affidavit; plus (ii) an amount sufficient to cover the defendant's attorneys fees, all of which shall be computed over the estimated period of time during which the appeal is expected to delay the start of construction. The bond shall be forfeited to the property owner in an amount sufficient to cover the property owner's carrying costs and legal fees less any net income received by the plaintiff from the property during the pendency of the court case in the event a plaintiff does not substantially prevail on its appeal.

(i) An applicant for plan approval who appeals from a project denial or conditional approval shall identify in its complaint the specific reasons why the plan approval authority's decision fails to satisfy requirements of this chapter or other applicable law. The plan approval authority shall have the burden of justifying its decision by substantial evidence in the record.

(j) The land court department, the superior court department and the housing court department shall have jurisdiction over an appeal under this section and shall give priority to such an appeal.

(k) The first paragraph of section 16 of chapter 40A shall not apply to applications for projects within a smart growth zoning district or starter home zoning district.

(l) A project approval shall remain valid and shall run with the land indefinitely provided that construction has commenced within 2 years after the decision is issued, which time shall be extended by the time required to adjudicate any appeal from such approval and which time shall also be extended if the project proponent is actively pursuing other required permits for the project or there is other good cause for the failure to commence construction, or as may be provided in an approval for a multi-phase project.

SECTION 45. Chapter 40R is hereby amended by striking out section 14, as amended by section 14 of chapter 5 of the acts of 2019, and inserting in place thereof the following section:-

Section 14. (a) If, within 3 years, no construction of an approved project has been started within the smart growth zoning district or starter home zoning district, the department shall require the cities and towns to repay to the department all monies paid to the city or town under this chapter for said smart growth zoning district or starter home zoning district. Said 3 years shall commence on the date of the payment of the zoning incentive payment for said smart growth zoning district or starter home zoning district and may be extended by the department for good cause in accordance with the department's regulations. All monies repaid to the department under this section shall be credited to the funding source from which the payment originated.

(b) Within 60 days of receiving written approval by the department of an amendment of a zoning ordinance or by-law affecting an approved smart growth zoning district or starter home zoning district in accordance with subsection (g) of section 6, the city or town shall repay to the department any portion of the zoning incentive payment received

in excess of the zoning incentive payment that would have been payable based on the sum of (i) the number of units that have been built and (ii) the number of units, if any, that will remain developable under the smart growth zoning or starter home zoning. The department may include under clause (ii) in the preceding sentence any units that are developable in 1 or more adopted smart growth zoning district or starter home zoning district for which no zoning incentive payment has been paid but for which the city or town is nonetheless eligible if the associated units would have the effect of replacing some or all of the units that will no longer be developable as a result of the proposed amendment or repeal. All monies repaid to the department under this section shall be credited to the funding source from which the payment originated.

SECTION 46. Section 1 of chapter 40S of the General Laws, as so appearing, is hereby amended by striking out, in line 51, the word "properties" and inserting in place thereof the following word:- buildings.

SECTION 47. Said section 1 of said chapter 40S, as so appearing, is hereby further amended by inserting, in line 61, after the figure "40R," the following words:-Â including without limitation smart growth zoning districts and starter home zoning districts as defined in section 1 of said chapter 40R.

VETOED_SECTION 83. Chapter 184 of the General Laws is hereby amended by adding the following section:-

Section 36. (a) For the purposes of this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

"Affiliate", an entity owned or controlled by an owner or under common control with the owner.

"Auction" or "public auction", the sale of a housing accommodation under power of sale in a mortgage loan by public bidding.

"Borrower", a mortgagor of a mortgage loan.

"Deed in lieu," a deed for the collateral property or the housing accommodation that the mortgagee accepts from the borrower in exchange for the release of the borrower's obligation under the mortgage loan.

"Designee", a nonprofit organization, established pursuant to chapter 180, which is selected by members of a tenant association.

"Department", the department of housing and community development.

"Elderly tenant household", a tenant household in which 1 or more of the residents are age 65 or older.

"Foreclosure," a legal proceeding to terminate a borrower's interest in property instituted by the mortgagee and regulated under chapter 244.

"Housing accommodation," a building, structure or part thereof, rented or offered for rent for living or dwelling purposes, including, without limitation, houses, apartments, condominium units, cooperative units and other multi-family residential dwellings; provided, however, that a housing accommodation shall not include a group residence, homeless shelter, lodging house, orphanage, temporary dwelling structure or transitional housing; and provided, further that a housing accommodation shall not include a borrower-occupied housing accommodation if the borrower is domiciled in the housing accommodation at the initiation of the short-sale, deed in lieu or foreclosure process.

"Member", a natural person who is a member of a tenant association.

"Minimum tenant participation percentage", the minimum percentage of tenants who must participate as members of the tenant association as defined by the city or town in a municipal ordinance; provided, that the minimum tenant participation percentage shall be not less than 51 per cent of the tenant-occupied housing units. The percentage shall be calculated based on the number of tenant-occupied housing units in a property. If more than 1 person is a lessee in a unit, all of the tenants who are lessees for that unit shall participate as members of the tenant association if the unit is counted towards the participating percentage of units.

"Mortgage loan," a loan secured wholly or partially by a mortgage on a housing accommodation.

"Mortgagee," an entity to whom property is mortgaged, the mortgage creditor or lender including, but not limited to, mortgage servicers, lenders in a mortgage agreement and any agent, servant or employee of the mortgagee or any successor in interest or assignee of the mortgagee's rights, interests or obligations under the mortgage agreement.

"Owner", a person, firm, partnership, corporation, trust, organization, limited liability company or other entity, or its successors or assigns that holds title to real property.

"Purchaser", a party who has entered into a purchase contract with an owner and who will, upon performance of the purchase contract, become the new owner of the property.

"Purchase contract", a binding written agreement whereby an owner agrees to sell property including, without limitation, a purchase and sale agreement, contract of sale, purchase option or other similar instrument.

"Sale", an act by which an owner conveys, transfers or disposes of property by deed or otherwise, whether through a single transaction or a series of transactions; provided, that a disposition of housing by an owner to an affiliate of such owner shall not

constitute a sale.

"Short-sale," sale approved by the mortgagee to a bona fide purchaser at a price that is less than borrower's existing debt on the housing accommodation.

"Successor", the entity through which the tenant association will take title to the property, which may be a corporation, with the sole stockholder being the tenant association; a housing cooperative organized under chapter 157B, a limited liability company in which the tenant association is the member; a limited partnership in which the tenant association is a general partner or when permitted by the municipality's ordinance, a joint venture between any of such entities and another party with: (i) the requisite experience in acquiring, developing and owning residential property and (ii) the financial capacity to guaranty financing of the purchase transaction.

"Tenant", a natural person who has: (i) entered into an express written lease or rental agreement with the owner for exclusive possession of the premises for at least 6 months or (ii) paid rent to the owner and the owner has accepted said rent for at least 6 months.

"Tenant association", an organization with a membership limited to present tenants of a property that is: (i) registered with the municipality that has adopted an ordinance consistent with this section or (ii) a non-profit organization incorporated under chapter 180.

"Third-party offer", an offer to purchase the mortgaged property for valuable consideration by an arm's length purchaser; provided, that a third-party offer shall not include an offer by the borrower or tenants.

"Third-party purchaser", a purchaser who is not a tenant association, a designee or an affiliate.

(b) A city or town may adopt this section in the manner provided in section 4 of chapter 4. The acceptance of this local option by a municipality shall take effect no later than 180 days after such acceptance. A city or town may at any time revoke the acceptance of this section in the manner provided in said section 4 of said chapter 4. The revocation shall not affect agreements relative to a tenants' right to purchase that have already been asserted prior to the revocation. In addition, the ordinance or bylaw accepting this section may contain provisions that establish:

(i) tenancy protections for non-elderly tenant households that do not participate in the tenant association; and

(ii) exclusion of applicability to properties with fewer than a designated number of units; different exclusion numbers may be adopted for owner-occupied propertiesÂ and properties with no owner occupancy; and

(iii) criteria for qualified designee; and

(iv) the tenant association's ability to exercise rights hereunder through a joint venture or partnership with another entity with requisite experience in developing, owning or operating residential real estate or an entity that has the financial capacity to guaranty the financing of the purchase transaction; and

(v) exclusion of classes of properties not enumerated in subsection (k).

(c) In any city or town that votes to adopt the provisions of this section, an owner of a residential building shall:

(i) notify the municipality and each tenant household, in writing by hand delivery and United States' mail, of the owner's intention to sell the property, with copy of the municipality's prepared summary of the ordinance adopted hereunder; and

(2) provide a tenant association with the minimum tenant participation percentage, an opportunity to make an offer to purchase the property prior to entering into an agreement to sell such property pursuant to the time periods contained in this section, but no owner shall be under any obligation to enter into an agreement to sell such property to the tenants.

(d) a tenant association with the minimum tenant participation percentage may select a successor entity or a designee to act on its behalf as purchaser of the property and shall give the owner and the municipality notice of its selection.

(e) A tenant association with the minimum tenant participation percentage, or its successor or designee, may, within 15 days after receipt of the owner's intention to sell, submit an offer to the owner to purchase the property. Failure to submit a timely offer shall constitute an irrevocable waiver of the tenants' rights under subsection (e) and the owner may enter into a contract sell the property to a third party, subject to subsections (f) to (i), inclusive. If the owner and the tenant association, or its successor, or its designee, have not entered into an agreement within 15 days after receipt of the notice of the owner's intent to sell, the owner may enter into an agreement to sell the property to a third party, subject to subsections (f) to (i), inclusive.

(f) Upon execution of any purchase contract with a third party, the owner shall, within 7 days, submit a copy of the contract along with a proposed purchase contract for execution by tenant association or its successor, or designee. If the tenant association, or its successor or, its designee, elect to purchase the property, the tenant association, or its successor, or its designee, shall within 30 days after the receipt of the third party purchase contract and the proposed purchase contract, execute the proposed purchase contract or such other agreement as is acceptable to both parties. The time periods set forth in this subsection may be extended by agreement between the owner and the tenant association, its successor or its designee. Except as otherwise specified in subsection (h), the terms and conditions of the proposed purchase contract offered to

the tenant association, successor, or its designee, shall be the same as those of the executed third party purchase contract.

(g) After receipt of the third party purchase contract provided for in subsection (f), the tenant association or its successor or designee may, within the 15 day time period prescribed in said subsection (f), make a counteroffer by executing and submitting to the owner an amended proposed purchase contract. Failure by the tenant association, successor or its designee, to execute the purchase contract or submit a counteroffer within the 15 day period referenced in subsection (f) shall constitute a waiver of the tenants' right to purchase under these subsections. If the tenant association, successor or its designee, submits a counteroffer, the owner shall have 15 days from the date it receives the amended proposed purchase contract to execute the amended proposed purchase contract or reject, in writing, the counteroffer. However, if the owner rejects a counteroffer, it may not subsequently enter into any purchase contract with a third party on terms that are the same as, or materially more favorable to the proposed third party purchaser, than the economic terms and conditions in the counteroffer proposed by the tenant association, successor, or its designee, unless the owner first provides a copy of such new third party purchase contract, along with a new proposed purchase contract for execution by the tenant association, successor, or its designee, which shall contain the same terms and conditions as the newly executed third party purchase contract, except as otherwise specified by subsection (h), and the tenant association, successor, or its designee, shall have 30 days from the date they receive the third party purchase contract and the proposed purchase contract to execute the proposed purchase contract or such other agreement as is acceptable to the owner and the tenant association, successor, or its designee.

(h) Any purchase contract offered to, or proposed by, the tenant association, its successor or its designee shall provide at least the following terms:

(i) the earnest money deposit shall not exceed the lesser of:

(1) the deposit in the third party purchase contract;

(2) 5 per cent of the sale price; or

(3) $250,000; provided, however, that the owner and the tenant association, or its successor, or its designee, may agree to modify the terms of the earnest money deposit; provided, further, that the earnest money deposit shall be held under commercially-reasonable terms by an escrow agent selected jointly by the owner and the tenant association, its successor or its designee;

(ii) the earnest money deposit shall be refundable for not less than 90 days from the date of execution of the purchase contract or such greater period as provided for in the third party purchase contract; provided, however, that if the owner unreasonably delays the buyer's ability to conduct due diligence during the 90 day period, the earnest money deposit shall continue to be refundable for a period greater than 90 days. After the

expiration of the specified time period, the earnest money deposit shall be forfeited and the right to purchase of the tenant association, its successor or designee shall be irrevocably waived.

(i) The tenant association or its successor, or designee, shall have 160 days from execution of the purchase and sale agreement to perform all due diligence, secure financing for and close on the purchase of the building. Failure to exercise the purchase option within 160 days shall constitute a waiver of the purchase option by the tenant association, its successor or, or its designee.

(j) Any notice required by this section shall be deemed to have been provided when delivered in person or mailed by certified or registered mail, return receipt requested, to the party to whom notice is required. Notice shall be deemed to have been provided when either: (i) the notice is delivered in hand to the tenant or an adult member of the tenant's household; or (ii) the notice is sent by first class mail and a copy is left in or under the door of the tenant's dwelling unit. A notice to the affected municipality shall be sent to the chief executive officer.

(k) This section shall not apply to the following:

(i) property that is the subject of a government taking by eminent domain or a negotiated purchase in lieu of eminent domain;

(ii) a proposed sale to a purchaser pursuant to terms and conditions that preserve affordability, as determined by the department;

(iii) any sale of publicly-assisted housing, as defined in section 1 of chapter 40T;

(iv) rental units in any hospital, skilled nursing facility, or health facility;

(v) rental units in a nonprofit facility that has the primary purpose of providing short term treatment, assistance or therapy for alcohol, drug or other substance abuse; provided, that such housing is incident to the recovery program, and where the client has been informed in writing of the temporary or transitional nature of the housing;

(vi) rental units in a nonprofit facility that provides a structured living environment that has the primary purpose of helping homeless persons obtain the skills necessary for independent living in a permanent housing and where occupancy is restricted to a limited and specific period of time of not more than 24 months and where the client has been informed in writing of the temporary or transitional nature of the housing at its inception;

(vii) public housing units managed by the local housing authority;

(viii) federal public housing units that are subsidized and regulated under federal laws, to the extent such applicable federal laws expressly preempt the provisions of this

section;

(ix) any residential property where the owner is a natural person who owns 6 or fewer residential rental units in the municipality and who resides in the commonwealth;

(x) any unit that is held in trust on behalf of a disabled individual who permanently occupies the unit, or a unit that is permanently occupied by a disabled parent, sibling, child or grandparent of the owner of that unit; or

(xi) any rental unit that is owned or managed by a college or university for the express purpose of housing students.

(l) The tenant association, successor or its designee shall ensure that their purchase of the property will not result in the displacement of any elderly tenant households that choose not to participate in the purchase of the property.

(m)(1) An owner shall give notice to each tenant household of a housing accommodation of the intention to sell the housing accommodation by way of short-sale to avoid foreclosure. Such notice shall be mailed by regular and certified mail, with a simultaneous copy to the attorney general, the director of housing and community development and to the municipality adopting this section within 2 business days of the owner's submission of a request or application to the mortgagee for permission to sell the housing accommodation by way of short-sale or to accept a deed in lieu. This notice shall also include a notice of the rights provided by this section.

(2) No mortgagee may accept any third party offers or deem the owner's application for short-sale submitted for review unless and until the mortgagee receives documentation in a form approved by the attorney general demonstrating that the tenants of the housing accommodation have been informed of the owner's intent to seek a short-sale or deed in lieu and the tenants have expressed their interest in exercising a right of first refusal within 60 days, assigning that right of first refusal, or the tenants have waived those rights. If tenants have not affirmatively expressed their interest in exercising a right of first refusal or in assigning that right within 60 days, or have not affirmatively waived that right within 60 days, the tenants' rights are deemed waived.

(3) Before a housing accommodation may be transferred by short-sale or deed-in-lieu, the owner shall notify each tenant household, with a simultaneous copy to the attorney general and the director of housing and community development, and the municipality adopting this section, by regular and certified mail, of any bona fide offer that the mortgagee intends to accept. Before any short-sale or transfer by deed-in-lieu, the owner shall give each tenant household such a notice of the offer only if households constituting at least 51 per cent of the households occupying the housing accommodation notify the owner, in writing, that they collectively desire to receive information relating to the proposed sale. Tenants may indicate this desire within the same notice described in paragraph (2). Any notice of the offer required to be given under this subsection shall include the price, calculated as a single lump sum amount

and of any promissory notes offered in lieu of cash payment.

(4) A group of tenants representing at least 51 per cent of the households occupying the housing accommodation that are entitled to notice under paragraph (3) shall have the collective right to purchase, in the case of a third party offer that the mortgagee intends to accept, provided that the group of tenants:

(i) submits to the owner reasonable evidence that the tenants of at least 51 per cent of the occupied units in the housing accommodation have approved the purchase of the housing accommodation;

(ii) submits to the owner a proposed purchase and sale agreement on substantially equivalent terms and conditions within 60 days of receipt of notice of the offer made under paragraph (3);

(iii) obtains a binding commitment for any necessary financing or guarantees within an additional 90 days after execution of the purchase and sale agreement; and

(iv) closes on such purchase within an additional 90 days after the end of the 90-day period described in clause (iii).

No owner shall unreasonably refuse to enter into, or unreasonably delay the execution or closing on a purchase and sale with tenants who have made a bona fide offer to meet the price and substantially equivalent terms and conditions of an offer for which notice is required to be given pursuant to paragraph (3). Failure of the tenants to submit such a purchase and sale agreement within the first 60-day period, to obtain a binding commitment for financing within the additional 90-day period or to close on the purchase within the second 90-day period, shall serve to terminate the rights of such tenants to purchase. The time periods provided in this paragraph may be extended by agreement. Nothing herein shall be construed to require an owner to provide financing to such tenants. A group or association of tenants that has the right to purchase pursuant to this subsection, at its election, may assign its purchase right pursuant to this subsection to the city or town in which the housing accommodation is located, or the housing authority of the city or town in which the housing accommodation is located, or an agency of the commonwealth, nonprofit, community development corporation, affordable housing developer, or land trust, for the purpose of permanently continuing the use of the housing accommodation as affordable rental housing.

(5) The right of first refusal created in this subsection shall inure to the tenants for the time periods provided in paragraph (4), beginning on the date of notice to the tenants under paragraph (1). The effective period for such right of first refusal shall begin anew for each different offer to purchase that the mortgagee intends to accept. The right of first refusal shall not apply with respect to any offer received by the owner for which a notice is not required pursuant to paragraph (3).

(6) In any instance where the tenants are not the successful purchaser of the housing

accommodation, the mortgagee shall provide evidence of compliance with this section by filing an affidavit of compliance with the attorney general, the director of housing and community development and the registry of deeds for the county and district where the property is located within 7 days of the sale.

(7) It is illegal for the owner to evict a tenant or tenants in order to avoid application of this subsection.

(8) Aggrieved tenants may seek damages under chapter 93A and may file a complaint with the attorney general. Tenants may seek damages including compensatory relief in the form of a percentage of the sales price, injunctive relief in the form of specific performance to compel transfer of the property or both compensatory and injunctive relief. Nothing in this subsection shall be construed to limit or constrain the rights tenants currently have under applicable laws, including but not limited to chapters 186 and 186A. At all times, all parties shall negotiate in good faith.

(9) The attorney general shall enforce this section and shall promulgate rules and regulations necessary for enforcement. The attorney general may seek injunctive, declaratory, and compensatory relief on behalf of tenants and the commonwealth in a court of competent jurisdiction. The attorney general shall post a sample intent to sell notice, sample proof of notice to tenants, sample notice of offer, and other necessary documents.

(n)(1) When a mortgagee seeks judicial determination of the right to foreclose, then the mortgagee shall provide a copy of the complaint by regular and certified mail to the tenants of the housing accommodation and to the municipality adopting this section. The mortgagee shall also provide tenants and the municipality, by regular and certified mail, with a copy of any order of notice issued by the land court, if applicable, within 5 days of issuance.

(2) The mortgagee shall provide each tenant household and the municipality adopting this section, by regular and certified mail, a copy of any and all notices of sale published pursuant to section 14 of chapter 244. A copy shall be provided simultaneously with the successive publication notices.

(3) No later than 5 business days before the auction of a housing accommodation, the tenants shall inform the mortgagee, in writing, if a group of tenants representing at least 51 per cent of the households occupying the housing accommodation or an entity to which they have assigned their right of first refusal intend to exercise their right of first refusal at auction and desire to receive information relating to the proposed auction.

(4) A group of tenants representing at least 51 per cent of the households occupying the housing accommodation or an entity to which they have assigned their right of first refusalÂ may exercise their collective right to purchase the housing accommodation, in the event of a third party offer at auction that the mortgagee receives, provided that the group of tenants:

(i) submits to the mortgagee reasonable evidence that the tenants of at least 51 per cent of the occupied homes in the housing accommodation have approved the purchase of the housing accommodation;

(ii) submits to the mortgagee a proposed purchase and sale agreement on substantially equivalent terms and conditions to that received by the mortgagee in the third party offer within 60 days of receipt of notice of the bid made under paragraph (3) of this subsection;

(iii) obtains a binding commitment for any necessary financing or guarantees within an additional 90 days after execution of the purchase and sale agreement; and

(iv) closes on such purchase within an additional 90 days after the end of the 90-day period under clause (iii).

No mortgagee shall unreasonably refuse to enter into, or unreasonably delay the execution or closing on a purchase and sale with tenants who have made a bona fide offer to meet the price and substantially equivalent terms and conditions of a bid received at auction. Failure of the tenants to submit such a purchase and sale agreement within the first 60-day period, to obtain a binding commitment for financing within the additional 90-day period or to close on the purchase within the second 90-day period, shall serve to terminate the rights of such tenants to purchase. The time periods provided in this paragraph may be extended by agreement.

Nothing herein shall be construed to require a mortgagee to provide financing to such tenants. A group or association of tenants that has the right to purchase hereunder, at its election, may assign its purchase right hereunder to the city, town, housing authority, or agency of the commonwealth, nonprofit, community development corporation, affordable housing developer, or land trust for the purpose of permanently continuing the use of the housing accommodation as affordable rental housing.

If there are no third party bids at auction for the housing accommodation, the tenants shall have a right of first refusal whenever the mortgagee seeks to sell the housing accommodation. The tenants shall be notified of any offers the mortgagee intends to accept and shall be given an opportunity to meet the price and substantially the terms of a third-party offer based on the same time line described in paragraph (4).

(5) The right of first refusal created herein shall inure to the tenants for the time periods herein before provided, beginning on the date of notice to the tenants under paragraph (1).

(6) In any instance where the tenants are not the successful purchaser of the housing accommodation, the seller of such unit shall provide evidence of compliance with this section by filing an affidavit of compliance with the attorney general, the director of housing and community development, and the registry of deeds for the county and

district where the property is located within seven days of the sale.

(7) It is illegal for the owner to evict a tenant or tenants in order to avoid application of this law.

(8) Aggrieved tenants may seek damages under chapter 93A and may file a complaint with the attorney general. Tenants may seek damages including a percentage of the sales price or injunctive relief in the form of specific performance to compel transfer of property. Nothing in this act shall be construed to limit or constrain in any way the rights tenants currently have under applicable laws, including but not limited to chapters 186 and 186A. At all times, all parties must negotiate in good faith.

(9) The attorney general shall enforce this section and shall promulgate rules and regulations necessary for enforcement. The attorney general may seek injunctive, declaratory, and compensatory relief on behalf of tenants and the commonwealth in a court of competent jurisdiction. The attorney general shall post a sample intent to sell notice, sample proof of notice to tenants, sample notice of offer, and other necessary documents.

VETOED_SECTION 102. Sections 15 to 24, inclusive, sections 27 46 and 47, and sections 97 and 98, shall take effect 90 days after enactment.