



SMART GROWTH AND REGIONAL COLLABORATION

## MAPC Response to MMA Action Alert on Zoning Reform Legislation (Senate 2311)

June 6, 2016

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The Metropolitan Area Planning Council strongly supports *An act promoting housing and sustainable development (S. 2311)*, which is likely to be voted on in the Senate on Thursday. This historic legislation will give cities and towns the tools they need to plan for and manage growth more effectively. It will also facilitate increased housing production, so we can stabilize the price of homes. It will help cities and town to create more affordable units, and to steer growth to more appropriate locations. This is critical for our Commonwealth's economic competitiveness, as well as for helping to protect our natural and working landscapes.

We have worked with the Massachusetts Municipal Association on many of the provisions in S.2311 and share their conviction that many of these planning and zoning tools are desperately needed. Some of the provisions that will greatly benefit municipalities include:

**Development Impact Fees:** Impact fees are commonly used in most states and ensure that impacts of new development are borne by those responsible.

**Minor Subdivisions:** Allows municipalities to end the Approval Not Required process that prevents effective municipal review of roadside lot creation. It will allow municipalities – at their option – to replace this broken process with a minor subdivision ordinance or bylaw.

**Master Plans:** Updates and streamlines the master planning statute, making planning more effective and less expensive.

**Site Plan Review:** Standardizes the process used to review site design and layouts.

**Appeals Reforms:** Provides for land use dispute resolution, limits frivolous appeals, and streamlines court appeals.

**Variances:** For the first time in the Commonwealth, the bill creates a legally defensible and orderly system for granting variances.

**Transfer of Development Rights:** Again commonly used in other states, but current law requires that a special permit be used in transferring development rights, limiting their use in Massachusetts.

These benefits alone would make S. 2311 a critical bill for cities and towns, but the Senate Committee on Ways & Means has strengthened the bill – and increased the likelihood of its passage in the House – by adding further measures to encourage housing production in the Commonwealth. We respectfully disagree with the MMA on the impact that these measures will have on local control and would like to correct the record on some inaccuracies contained in their action alert from Thursday, June 2, 2016.

**Multi-Family Housing:** This section asks that municipalities plan and zone “at least one district of reasonable size” where multi-family housing may be built by-right. It is up to city or town to identify an appropriate location for the district. The district must also comply with the Wetlands Protection Act and Title 5, and the requirement may be waived or modified by DHCD for rural communities and communities where no eligible locations exist. Contrary to MMA’s assertion, a municipality may require that a certain percentage of housing units remain affordable in these districts. In fact, by establishing inclusionary zoning in statute, the bill provides a specific mechanism for doing so. Communities would also be allowed to employ site plan review in these districts.

This is an important opportunity for communities to meet Chapter 40B housing goals by taking charge of their own destiny, deciding where and how they want to grow, rather than waiting for developers to dictate that from the outside.

**Accessory Dwelling Units (ADUs):** This is a common, straight-forward way to expand housing types and affordable (though, usually not deed-restricted) homes. This measure would apply to parcels in single family districts that are 5,000 square feet or greater. This section includes a number of protections for cities and towns, including the ability to regulate the setbacks, bulk, and height of these apartments. It also allows municipalities to require that the owner of the home, occupy either the home or the apartment. As the MMA points out, cities and towns could cap the total number of accessory apartments at 5% of the year-round total housing units. Finally, the apartments would have to meet all building, health, and environmental codes, bylaws, and ordinances.

Without these provisions, many communities already have ADU’s that are illegal. This standardized system would assure that ADU’s are legal, tracked, regulated, and built according to reasonable municipal specifications.

**Open Space Residential Developments (OSRD):** Such developments marry housing production with the preservation of open space, whether it be natural resource habitat, forests, or farmland. Contrary to the MMA post, this section would not require an increase in the number of units allowed in a project. Cities and towns may include a density bonus and may do so using a special permit. This section also grants municipalities the flexibility to use a yield plan or a formula to deduct land for roads, wetlands, and other site constraints.

**Inclusionary Zoning:** Inclusionary zoning is a valuable technique for including affordable homes as a part of new developments. It can help maintain a community’s percentage of affordable homes, which count toward their Chapter 40B goal. Inclusionary zoning could certainly be applied to the by-right multi-family and OSRD districts and we would encourage communities to take this approach. We agree with the MMA on the desire to allow municipalities to decide whether or not to require concessions as part of their Inclusionary Zoning ordinance or bylaw. We are supporting an amendment that Senator William Brownsberger has filed to this effect.

We are working hard to see Senate 2311 pass because its provisions will encourage better planning, development, and resource protection in all communities of the Commonwealth. This bill is good for cities and towns. We are continuing to work to make it even better. We urge you to support it, and to indicate your support to your members of the Legislature.