
A BRIEF OVERVIEW OF THE ZONING REFORMS IN THE ECONOMIC DEVELOPMENT LEGISLATION HOUSING CHOICE & MBTA COMMUNITIES

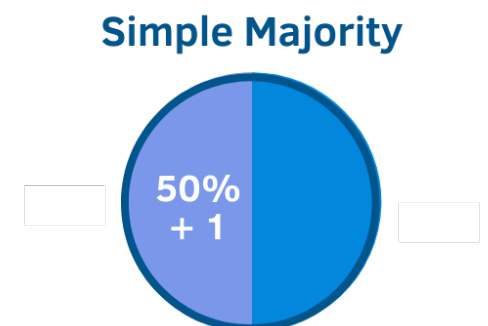
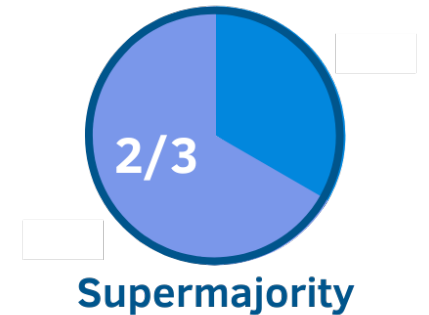
495 METROWEST PARTNERSHIP, HOUSING COMMITTEE

MARCH 25, 2021



OVERVIEW OF HOUSING CHOICE

- Targeted changes to M.G.L c. 40A to reduce the threshold of votes needed to adopt certain zoning measures that promote housing production from 2/3 to simple majority.
 - These changes apply to all cities and towns in Massachusetts, except the City of Boston (which has its own zoning enabling act).
 - This change applies to all cities and towns in Massachusetts (except Boston). **There is no “opt in”.**
- The goal is to make it easier for local governments to approve housing supportive zoning and development.
- The new law outlines a series of housing best practices that can be enacted by simple majority vote (e.g. reducing residential dimensional requirements, adopting 40R “Smart Growth” or “Starter Home” zoning, allowing accessory dwelling units or “in-law” units by right, etc.)



HOUSING CHOICE: QUALIFYING AMENDMENTS

Zoning that allows for certain kinds of housing developments “as of right”

- Multi-family (3 or more units) and Mixed Use in an Eligible Location
- Accessory Dwelling Units
- Open Space and Residential Development (OSRD)

Zoning that allows for certain kinds of housing developments by Special Permit

- Multi-family and Mixed Use in an Eligible Location
- Accessory Dwelling Units that are not attached to the primary home
- Allows an increase in the number of units on property if the Special Permit is approved in accordance with c40A Section 9
- Reduction of parking requirements for residential or mixed-use development

HOUSING CHOICE: QUALIFYING AMENDMENTS

Zoning that allows for:

- Changes to dimensional standards that allow for additional units (e.g., FAR, height, lot area, setbacks, open space, parking).
- Amendments that adopt Smart Growth or Starter home districts per c. 40R
- Natural resource protection zoning (similar to Open Space Residential Development)
- Transfer of development rights

HOUSING CHOICE: SPECIAL PERMIT DECISIONS

The 2/3 supermajority threshold of vote is reduced to a simple majority **for the special permit board** when:

- a special permit would enable a project to reduce parking spaces to allow for the creation of additional units;
- OR
- in a city or town that allows for multi-family by special permit within ½ mile of a transit station OR mixed use development within centers of commercial activity; the special permit application is for a multi-family or mixed-use project that meets these parameters includes at least 10% affordable units (80% area median income)

HOUSING CHOICE: SPECIAL PERMITS DECISIONS

One example of how this works. A Town allows for multi-family projects to be approved by Special Permit in its Town Center District which has a commuter rail station. Such projects require a Special Permit review by the 5-member Planning Board.

A developer submits a project located $\frac{1}{4}$ mile from the commuter rail station for a 100 unit building with 12 affordable units. **Instead of requiring 4 affirmative votes from the Planning Board, the project only needs 3 affirmative votes.**

HOUSING CHOICE: ZONING “PROTESTS”

- Housing Choice modifications to c. 40A § 5 **make it more difficult for affected landowners to stop zoning amendments** that are eligible to be enacted with a simple majority.
- Prior to the enactment of the Housing Choice legislation:
 - a written protest made by the owners of **20%** of the affected land area or abutting land, would increase the required voting threshold to change the zoning, and
 - The threshold **increased from a 2/3 super majority to an even larger ¾ super majority.**
- Under the law as amended:
 - a protest will only change the voting threshold if it is made by owners of **50%** of the affected land area or abutting land, and
 - A successful protest **changes the voting threshold from a simple majority to a 2/3 super majority.**
- This provision applies **only in a city or a town with a town council of fewer than 25 members.**

DETERMINING THE VOTING THRESHOLD

- The new law does not specify who determines whether a proposed zoning ordinance or bylaw is the kind that can be approved by a simple majority vote.
- We recommend that proponents, planning boards, and legislative bodies clarify the voting threshold that applies to any zoning proposal:
 - The proponent of a zoning ordinance or bylaw should include in the petition a statement explaining how it meets any of the criteria for being approved by a simple majority vote.
 - After holding the public hearing required under the Zoning Act, and after consultation with municipal legal counsel, the planning board should include in its report a determination on the voting threshold for the zoning proposal.
 - The legislative body's vote consistent with that recommendation will affirm the voting threshold.
- All zoning bylaws adopted by towns must be submitted to the Attorney General for review and approval. If the Attorney General finds an inconsistency between the proposed bylaw and state law, the bylaw or portions of it may be disapproved.

MBTA COMMUNITIES

- New section 3A of the Zoning Act provides that an MBTA community shall have at least one zoning district of reasonable size in which multi-family housing is permitted as of right and meets other criteria set forth in the statute:
 - Minimum gross density of 15 units per acre
 - Not more than ½ miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable.
 - No age restrictions
 - Suitable for families with children.
- The statute requires DHCD to issue guidelines that define compliance with this new section of the Zoning Act.
- DHCD issued preliminary guidance on January 29th.

NEXT STEPS ON MBTA COMMUNITIES

- The Baker-Polito Administration wants to work with stakeholders, including towns and cities, to develop thoughtful compliance criteria and timelines so that the end result is good policy.
- We believe that stakeholder engagement is essential in order to implement this section effectively.
- To that end, municipalities (i.e. MBTA Communities) will be deemed to be in compliance with this new section until more detailed compliance criteria is established.
 - Communities seeking to pursue MassWorks or the Housing Choice Capital Grants Program in the upcoming 2021 grant cycle will remain fully eligible to apply to these programs.
- We will have more information on the stakeholder process in the coming weeks.

GUIDANCE AND SUPPLEMENTAL INFORMATION

- Guidance & supplemental information can be found via:
 - [Mass.gov/housingchoice](https://www.mass.gov/housingchoice)
- Contact Information:
 - housingchoice@mass.gov

APPENDIX

ELIGIBLE LOCATION (1/2)

- The proponent of a zoning ordinance or bylaw should explain in the petition if the land area affected meets any of the criteria for an eligible location.
- Planning board should make a determination about eligible location during the public hearing process when applicable.
- Additional guidance for determining eligible locations:
 - Regulations implementing Chapter 40R (760 CMR 59) set forth detailed criteria that DHCD applies when it determines if a land area is an eligible location under that statute may be useful as guidance.
 - Locations should be deemed eligible if within 0.5 miles of the kind of transit station listed in the statutory definition.
 - The Planning Board can make **other** eligible location determinations during its hearing process.
 - If there is uncertainty, the municipality can request an **advisory opinion** from EOHED.

ELIGIBLE LOCATION (2/2)

- If there is uncertainty about whether a zoning proposal affects an eligible location, the municipality may request an **advisory opinion** from EOHEd.
 - Such a request must be made by the mayor, city council, board of aldermen, or planning board (when the zoning amendment is proposed in a city); or by the select board or planning board (when the zoning amendment is proposed in a town).
 - The request should be made by completing the application at the following website: <https://www.mass.gov/forms/request-an-advisory-opinion-on-ch40a-eligible-locations>
 - EOHEd will endeavor to provide a written advisory opinion within 30 days of receipt of a complete request.