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

CHAPA 40 B CONFERENCE JANUARY 28, 2021



HOUSING CHOICE: OVERVIEW

- **Primary goal** – make it easier to approve “housing supportive” zoning.
- Provides that certain zoning ordinances or bylaws may be enacted by simple majority vote, instead of 2/3 super majority.
- This change applies to all cities and towns in Massachusetts (except Boston). **There is no “opt in”.**

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: COMPOSITE ZONING PROPOSALS

What happens if the proposed zoning includes a mixture of measures that would qualify and would not qualify for the simple majority?

To qualify for the simple majority, the proposed amendment must not be blended with a proposal that operates under the 2/3 rule.

Hint: when crafting new zoning proposals for the simple majority vote, do not comingle the amendment with non-qualifying zoning. If this happens, then the amendment requires a 2/3 majority.

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.

MBTA COMMUNITIES

- New section 3A of the Zoning Act states 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.

MBTA COMMUNITIES

- Compliance criteria will be developed in consultation with affected MBTA communities and other stakeholders.
- For purposes of EOHED and DHCD grant programs, MBTA communities will be deemed to be in compliance with this new section until more detailed compliance criteria have been established.
- **All communities are eligible to apply for MassWorks or the Housing Choice Capital Grants Program in the upcoming 2021 grant cycle.**

CONTACTS

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Web resources: [Housing Choice Initiative | Mass.gov](#) (in
development)