

Housing Choice at a Glance



Housing Choice refers to a number of changes to the state's zoning law, MGL Ch. 40A that were enacted at the end of the recent legislative session through the [Economic Development Bond Bill \(H.5250\)](#). The governor originally filed many of the Housing Choice provisions and the Legislature made some modifications and introduced new concepts into the version of the bill that is now law.

The law makes major changes to zoning statuses in **three** categories:

1. Elimination of the 2/3 majority vote for certain zoning changes related to housing production;
2. Multifamily zoning requirement for MBTA municipalities; and
3. Other changes to streamline permitting and discourage meritless legal challenges including the voting majority for certain special permits.

The changes to the voting majority are not a local option. If an eligible zoning amendment or special permit is proposed, it will be enacted if a simple majority votes in favor. But the law also does not require any of the zoning provisions to be locally adopted, with the exception of a multifamily district for MBTA communities.

DHCD is required to issue guidance for these changes to Ch. 40A. The changes are effective immediately and apply to all municipalities except Boston. We anticipate that DHCD will allow municipalities affected some reasonable amount of time to plan for and zone for new multifamily districts if they are required to make changes to be in compliance with the new law. [Preliminary guidance](#) issued on January 29 indicates that DHCD will presume all municipalities are in compliance until more detailed guidance is issued.

ZONING APPROVAL MAJORITY CHANGES

Housing Choice lowers the required vote from a two-thirds majority to a simple majority for adopting or amending any of the following zoning ordinances or bylaws:

- **By-right** multifamily housing¹ or mixed-use development that includes residential in an eligible location²
- **By-right** accessory dwelling units, whether within a home or in a detached structure on the same lot;
- **By-right** Open Space Residential Development;
- Chapter 40R smart growth zoning districts or starter home zoning districts;
- Transfer of Development Rights or natural resource protection bylaws that do not reduce the overall number of housing units that can be built; and
- Modifications to bulk, height, yard size, setbacks, open space, parking, and building coverage regulations that would allow for additional housing units to be built.

Zoning amendments that would allow the following by **special permit** will now be adopted with a simple majority vote:

- Multifamily housing or mixed-use development in an eligible smart-growth location;
- An increase to the permissible density or population or intensity of a particular use in multifamily or mixed-use development;
- Accessory dwelling units in a detached structure on the same lot; and
- A reduction in the amount of parking required for a residential or mixed-use development.

¹ Multifamily is defined as "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."

² "Eligible Location" is defined as 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.

MULTIFAMILY ZONING REQUIREMENT FOR MBTA COMMUNITIES

Another major change is in **Section 18** of the law, which establishes a new requirement for all “MBTA communities” (175 cities and towns,³ as defined in statute and listed below) to have a zoning district of “reasonable size” that allows for multifamily residential development “by right”. This district must be located within a half mile of a transit station, if one is present, but communities without transit stations are still required to have such a multifamily district.

The statute requires the district to:

- Have a minimum density of 15 units per acre, subject to any further limitations imposed by the Wetlands Protections Act and state wastewater regulations;
- Be located within a 1/2 mile from a commuter rail station, subway station, ferry terminal or bus station, if applicable; and
- Not be age-restricted and be suitable for families with children.

“Reasonable size” and “if applicable” are not defined and we expect the guidance will provide clarity on these terms

If a municipality does not comply with this requirement, the municipality will be ineligible to receive funds from the:

- [Housing Choice Initiative](#) (note: must be a Housing Choice community to be eligible, as well);
- Local Capital Projects Funds; and
- [MassWorks Infrastructure Development Program](#)

OTHER CHANGES

Special Permit Votes. The law changes the vote requirement for certain special permits, reducing it from a super-majority to a simple majority for the following:

- Multifamily housing within 1/2 mile of a commuter rail station, subway station, ferry terminal or bus station with at least 10% of the housing affordable to households whose income is less than 80% of area median income (AMI) and deed restricted for at least 30 years;
- Mixed-use developments in centers of commercial activity with at least 10% of the housing affordable to 80% AMI; and
- Reducing parking ratio requirements if the reduction will produce additional housing units

Protesting Zoning Changes. In a municipality with a council of less than 25 members, if the owners of more than half of the land impacted by the zoning amendment or abutting neighbors within 300 feet of the affected land protest a zoning change, the required vote to adopt an ordinance will be by a two-thirds majority. This change applies to the protest of any zoning amendment, not just Housing Choice provisions. We anticipate that DCHD will help clarify this provision through guidance.

Abutter Appeals Reform. The law also made a change in appeals to land use decisions. Under the changes to Ch. 40A, a judge has the option to require a party appealing a decision to approve a special permit, variance, or site plan to post up to a \$50,000 bond 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 is directed to consider the relative merits of the appeal and the relative financial means of the plaintiff and the defendant.

Special Permit Parking Reductions. Another change permits zoning ordinances/bylaws to allow special permits to be granted for reduced parking-space to residential-unit-ratio requirements. The special permit granting authority may grant this relief after finding 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 the reduction in parking.

Regional Development Agreements. The law also allows contiguous municipalities to enter into agreements 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. Agreements must be authorized by a majority vote of their legislative bodies, and with the approval of the mayor, board of selectmen, or other chief executive officer. Agreements must be approved by the Department of Revenue.

³ The following municipalities are subject to this provision: Abington, Acton, Amesbury, Andover, Arlington, Ashburnham, Ashby, Ashland, Attleboro, Auburn, Ayer, Bedford, Bellingham, Belmont, Berkley, Beverly, Billerica, Bourne, Boxborough, Boxford, Braintree, Bridgewater, Brookline, Brockton, Burlington, Cambridge, Canton, Carlisle, Carver, Chelmsford, Chelsea, Cohasset, Concord, Danvers, Dedham, Dover, Dracut, Duxbury, East Bridgewater, Easton, Essex, Everett, Fitchburg, Foxborough, Framingham, Franklin, Freetown, Georgetown, Gloucester, Grafton, Groton, Groveland, Halifax, Hamilton, Hanover, Hanson, Haverhill, Harvard, Hingham, Holbrook, Holden, Holliston, Hopkinton, Hull, Ipswich, Kingston, Lakeville, Lancaster, Lawrence, Leicester, Leominster, Lexington, Lincoln, Lynn, Lynnfield, Littleton, Lowell, Lunenburg, Malden, Manchester-by-the-Sea, Mansfield, Marlborough, Marblehead, Marshfield, Maynard, Medfield, Medford, Medway, Melrose, Middleton, Merrimac, Methuen, Middleborough, Milton, Millbury, Millis, Nahant, Natick, Needham, Newbury, Newburyport, Newton, Norfolk, North Andover, North Attleborough, Northborough, Northbridge, Norton, North Reading, Norwell, Norwood, Paxton, Peabody, Pembroke, Plymouth, Plympton, Princeton, Quincy, Randolph, Raynham, Reading, Rehoboth, Revere, Rochester, Rockland, Rockport, Rowley, Salem, Salisbury, Saugus, Scituate, Seekonk, Sharon, Somerville, Sherborn, Shirley, Shrewsbury, Southborough, Sterling, Stoneham, Stoughton, Stow, Sudbury, Sutton, Swampscott, Taunton, Tewksbury, Townsend, Topsfield, Tyngsborough, Upton, Wakefield, Walpole, Waltham, Wareham, Watertown, Wayland, Wellesley, Wenham, West Boylston, West Bridgewater, West Newbury, Westborough, Westford, Westminster, Weston, Westwood, Weymouth, Whitman, Wilmington, Winchester, Winthrop, Woburn, Worcester, and Wrentham.