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

OCTOBER 20, 2021 – A DISCUSSION AT MAPC'S INNER CORE COMMUNITIES SUB REGION



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

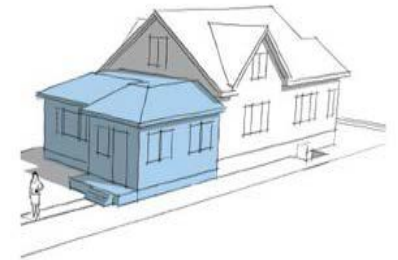
Zoning that allows for:

- 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

EXAMPLES OF ZONING QUALIFYING FOR SIMPLE MAJORITY (1/2)

- Allowing for Accessory Dwelling Units (ADUs) to be approved as of right:
 - A municipality proposes zoning to allow only owner occupied ADUs up to 800 square feet as of right. This qualifies for a simple majority because the zoning meets the statutory criteria as being no larger than ½ the size of the main home or 900 square feet.
 - A zoning proposal to allow 1,200 square foot ADUs as of right would **NOT** qualify for a simple majority vote.
- Reducing minimum lot area needed per dwelling, such as:
 - reducing the minimum lot area per dwelling unit from 10,000 square feet per dwelling unit (4.5 units/acre) to 5,000 square feet per dwelling unit (9 units/acre).
- A city wants to adopt a 40R district allowing multi-family residential units in its downtown near a commuter rail station. This 40R district would be a new Zoning Overlay and would require a housing density of 20 units per acre.
 - Instead of needing 8 of 11 votes from the city council under the current law, only 6 of 11 votes would be required.

Attached ADU



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.**



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.

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. **Please note that an area that is an “eligible location” under Chapter 40A may not be an eligible location under Chapter 40R.**
 - 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, select board, 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.

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.**