



Housing Choice

March 2021

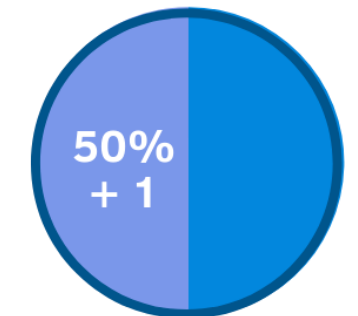
Overview of Housing Choice



- 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).
- 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.)
 - More detail on this in later slides...



Simple Majority



Other Notable Zoning Changes in the 2020 Economic Development Bill



- **Revenue Sharing Agreements:**
 - Allows municipalities to enter into revenue sharing agreements for sites affecting more than one local government by a simple majority vote.
- **Bonding Provision:**
 - Provides that a court, in its discretion, may require a plaintiff appealing a decision to approve a special permit, variance or site plan to post a surety or cash bond in an amount *up to* \$50,000 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.
- **MBTA Communities:**
 - Provides that each MBTA community “shall have a zoning ordinance or by-law that provides for at least 1 district of reasonable size in which multi-family housing is permitted as of right.”
 - DHCD issued preliminary guidance on January 29th.
 - The Administration plans to work with stakeholders, including towns and cities, to develop thoughtful compliance criteria and timelines so that the end result is good policy.
 - We will have more information on the stakeholder process in the coming weeks.



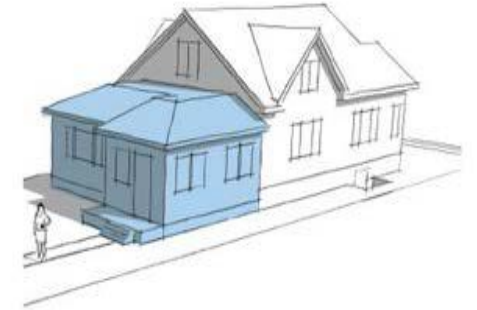
Qualifying Amendments for Simple Majority Vote

- Zoning that allows for certain kinds of housing developments “as of right”:
 - Multi-family (3+ units) and Mixed-Use Development in an Eligible Location
 - Accessory Dwelling Units
 - Open Space and Residential Development (OSRD)
- Zoning that allows for certain kinds of housing development by special permit:
 - Multi-family and Mixed-Use Development in an Eligible Location
 - Accessory Dwelling Units that are not attached to the primary home
 - Allowing for increased density through a Special Permit process
 - Reduction of parking requirements for residential or Mixed-Use Development
- 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 M.G.L. 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 $\frac{1}{2}$ 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:
 - changing the requirement from “one-acre zoning” to $\frac{1}{2}$ acre for single family homes,
 - changing a minimum 10,000 square foot lot size to 7,500 square feet, or
 - 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).

Attached ADU



Examples of Zoning Qualifying for Simple Majority (2/2)

- A town wants to allow duplexes in its central residential district where only single family dwellings are allowed in order to encourage development of housing that better meets the needs of its seniors.
 - They have 60 voters for town meeting (quorum = 50) and such a zoning article would require 31 votes instead of 41.
- 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.



Examples of zoning changes that would **NOT** qualify for the simple majority vote (i.e. would continue to require a 2/3 vote):

- Zoning change that would change a zoning map from Limited Business to Heavy Industrial.
- Zoning change that would increase the minimum lot size for a residential zoning district as such change decreases the overall density.

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)
- Special Permit Granting Authority Board—Simple Majority Vote Example:
 - 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 ¼ 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 modifications to M.G.L. c. 40A § 5 make it more difficult for affected owners and abutters to deter zoning amendments.
- 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 3/4 super majority.
- Under the new law, no zoning change will trigger a supermajority greater than 2/3:
 - 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
 - To affirm a zoning amendment under protest, the city council or town council must approve the protested zoning amendment with a 2/3 majority
- Note, 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.



- 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.



- 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.



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