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Zoning Voting Thresholds—Frequently Asked Questions

This FAQ serves to supplement the *Guidance of Local Officials on Determining Voting Thresholds for Zoning Ordinances and Bylaws*, issued on February 26, 2021. Cities and towns may rely on this FAQ to the same extent as the earlier Guidance. The FAQ will be updated regularly.

Q: My board is considering a zoning amendment that would qualify for the majority threshold set forth in amended section 5 and was filed and had a public hearing before the effective date of the recent changes to Chapter 40A. Does the new threshold apply to zoning proposals that were initiated before the Zoning Act was amended?

A: Yes. The amendments to section 5 of Chapter 40A became effective immediately on the date the Governor signed chapter 358 of the Acts of 2020 (January 14, 2021). The new voting thresholds apply to any zoning amendment that comes before a city council or town meeting for a vote after that date, regardless of when the petition was filed or when the public hearing was opened.

(Posted March 15, 2021)

Q: Does the new voting threshold for certain special permits likewise apply to projects that filed a special permit application prior to January 14, 2021? What if the initial hearing was opened prior to January 14, 2021, but a vote has not yet been taken?

A: Yes. If a project qualifies for a special permit by majority vote, that threshold applies to any vote by a special permit granting authority taken after January 14, 2021, regardless of when the application was filed or the hearing opened.

(Posted March 15, 2021)

Q: Does a municipality need to change its zoning ordinances or by-laws in order for the new voting threshold to apply?

A: No. A town or city does not have to take any action for the amendments to Chapter 40A to take effect. There is no “opt in” provision. The changes apply automatically to all cities and towns except Boston (which has its own zoning statute).

(Posted March 15, 2021)

Q: Should a city or town in the process of updating its zoning code make changes to conform to the statutory changes?

A: A city or town may decide to review its zoning ordinances or by-laws and consider making changes to be consistent with the statute, but such conforming changes are not required for the new thresholds to apply.

(Posted March 15, 2021)

Q: My town is considering a zoning change that would allow a mixed-use project in a particular zoning district. Does the amendment qualify for the majority threshold if the zoning amendment will permit projects that are primarily commercial rather than residential?

A: Chapter 40A was amended to define “mixed-use development” as “development containing a mix of residential uses and non-residential uses, including, without limitation, commercial, institutional, industrial or other uses.” There is no requirement that the mix of uses be in any particular ratio or configuration. A zoning amendment will qualify for the majority threshold as long as it will allow for projects that include a mix of housing and other uses, either as-of-right or by special permit, in an eligible location.

(Posted March 15, 2021)