



Zoning & Planning Committee Report

City of Newton

In City Council

Monday, March 22, 2021

Present: Councilors Crossley (Chair), Danberg, Downs, Albright, Bowman, Baker, Leary, Humphrey Oliver, Greenberg, Krintzman, Wright, Kelley, Markiewicz, Ryan, Malakie, Lucas, Lipof and Noel

City Staff Present: Director of Planning and Development Barney Heath, CPA Program Manager Lara Kritzer, Associate City Solicitor Andrew Lee

#438-20 **Request to create Newton Housing Trust to help support affordable housing development**
COUNCILORS ALBRIGHT, CROSSLEY, HUMPHREY, DANBERG, MALAKIE, KELLEY, BOWMAN, KALIS, GREENBERG, DOWNS, WRIGHT, RYAN, NOEL, LEARY, LIPOF AND NORTON
requesting the Planning Department analyze mechanisms already in use in other cities and towns, identify funding sources, and create a Housing Trust in Newton to facilitate and foster the development of affordable housing in Newton.

Action: **Zoning & Planning Held 8-0**

Note: The Committee was joined by members of the Planning Department, Planning Board, Fair Housing Committee, the Community Preservation Committee, Newton Housing Partnership (MHP) to discuss details of creating a housing trust in Newton to support the development of affordable housing. Mass Housing Partnership Senior Program Manager Shelley Goehring presented an overview of how a municipality can establish and regulate a housing trust. A copy of her presentation is attached to the end of this report. Ms. Goehring provided an overview of the services provided by the MHP in support of affordable housing, including the MHP community assistance team, the One Mortgage program, the Center for Housing data. The Community Assistance Team provides training and technical assistance for municipalities, housing authorities and non-profits trying to develop affordable housing or dispose of public land for the creation of affordable housing. Their mission is to help communities create Trusts and provide ongoing support for communities that have Trusts.

Affordable Housing Trusts are governed by MGL C 44 Section 55 C. Ms. Goehring noted that there are currently 120 Housing Trusts operating in Massachusetts. A municipal affordable housing trust is a public body created by majority vote of the legislative body. The Trust is given a degree of authority to act to create and preserve affordable housing. Ms. Goehring explained that it is key to the establishment of a Housing Trust that the community define what affordable housing means in its community, in terms of the levels of affordability the city seeks to achieve. The Housing Trust is led by a local group of appointed trustees, who must observe procurement, designer selection and Open Meeting laws. Creation of a Housing Trust enables municipalities to address local affordable housing needs and support local housing

initiatives. Once created, the Trusts actions are not subject to further legislative approval, enabling quicker real estate transactions as the market dictates.

Ms. Goehring explained that the statute is flexible on the appointment of Trustees, but requires a minimum of 5 member Trustees for 2-year terms. Membership must include the Chief Executive Officer/Mayor and the rest to be appointed by the Mayor in collaboration with the legislative body. Municipalities may appoint more members. The average ranges between 7-9 members. While some communities require specific skill sets, MHP cautions that additional requirements may make it difficult to fill vacancies. Ms. Goehring noted that MHP recommends that vacancies are filled by members not on other Boards and/or Commissions as there can be a significant time commitment and these individuals may not have expendable time. She explained that each community has an opportunity to create controls/restrictions on powers. For example, some require a 2/3 vote of the trustees to purchase property, a review process when the Trust is considering borrowing funds and restrictions on spending in excess of \$50,000.

Ms. Goehring explained that trusts may receive funds from different sources. She reviewed case studies from Beverly, Amherst, Somerville and Brewster. In Beverly, the Trust has been funded using Inclusionary Zoning payments. That City completed a housing plan to allow their Trust to start with current data and identify which residents in the community are cost burdened. Ms. Goehring emphasized the importance of data collection and a needs analysis for the development of a Housing Production plan to guide the Trust. She noted that using real time data is critical to addressing a municipality's needs. Other communities have used CPC funding, Inclusionary Zoning funds, marijuana tax funds, funds from free cash, tax title sales, short-term rental fees, private donations and bonding to fund their Trusts. As the statute for affordable housing trusts was revised to align with the requirements prescribed for CPA funds, any CPA dollars appropriated may be used by the Housing Trust. Ms. Goehring noted that some communities have hired a consultant to develop a strategic plan. She noted that trusts should have support for funding, purpose, vision/mission, leadership and transparent/open operations in the community. Typically, Housing Trusts are supported by paid part-time administrative staff.

Ms. Goehring noted that Housing Trusts have different roles in different communities. These include: review of funds, administrative project? reviews and determinations, rental assistance programs and property management. Ms. Goehring explained that each municipality must consider existing resources and gaps of service and decide how a Housing Trust might be a way to collaborate to fill the gaps, rather than duplicate existing services.

Director of Planning and Development Barney Heath confirmed that the City of Newton has a *Housing Strategy* but not a Housing Production Plan. The Housing Strategy was created in 2016 in concert with RKG Housing Consultants. They reviewed issues related to affordability in Newton and laid out strategies for creating affordable housing. The Housing Strategy includes detailed, site specific information and has been used as a guide by the Planning Department.

A Councilor asked for clarification on the process for determining whether or not to use a Trust and what the benefits are for the City. Ms. Goehring repeated that deciding whether or not to create a Trust is by a majority vote of the Council. She stated that one major reason communities create a Housing Trust is to achieve the ability to act nimbly in the real estate market.

In response to a question, Mr. Heath explained that the City currently has approximately \$600,000 in the Inclusionary Zoning fund. He noted that this payment was made by one developer and additional large quantities of funds are not anticipated. He stated that the City more typically receives IZ funds from leftover units in developments.

Ms. Goehring responded to questions from the Committee regarding lessons learned. She noted that the use of prescriptive language for the trustee positions has created challenges for filling vacancies and that lack of clarity in the role of the Trust has been problematic in other communities. She also explained that the community must be committed to creating distinct funding sources.

It was noted that one community bonded funds for their Trust. Councilors noted that earmarking funds from different taxes are still using dollars from the general fund. The Chair asked that Ms. Goehring provide examples of success based on structures that have been adopted in different communities. Ms. Goehring noted that while there is limited data at this time on the types of projects that Trusts have funded, the use of CPA funds requires additional reporting and data collection.

Chair of the Newton Housing Partnership, Lizbeth Heyer, noted that MHP has presented information and had conversations with NHP and the CPC. While NHP is not ready to provide a recommendation at this time, they recognize the benefit of the opportunities for flexibility and creativity. Ms. Heyer noted that if structured right, the creation of a Trust could send a strong message of support to the affordable housing community. She noted that the NHP is looking forward to discussions relative to structure and the creation of clear guidelines. She reiterated that the time associated with the various City review processes can be a barrier for some organizations (especially non-profits) that work within a subsidized housing role. She suggested that streamlining the process by using a Trust can be beneficial.

Josephine McNeil, also a member of NHP, expressed support for the creation of an affordable Housing Trust. She suggested that the City will find success in having a housing trust by finding a balance in control and flexibility. She urged Councilors to conduct a housing needs assessment with a focus on equity and inclusion and noted that there is high demand for housing residents earning below 50% AMI.

The Chair and committee members expressed great appreciation to Ms. Goehring for her clear and informative presentation. It was generally agreed that an assessment of city entities that provide affordable housing and supportive service organizations, such as NHP, the Newton Housing Authority, CAN-DO, NHCD, etc. should be assembled for a next discussion on how a Housing Trust could best work in Newton.

With that, Councilor Danberg motioned to hold the item which carried unanimously.

Chairs note: Law and Planning staff will provide an update on regulations governing compliance with the Housing Choice element of the recently adopted Economic Development legislation.

Note: Director of Planning and Development Barney Heath and Associate City Solicitor Andrew Lee joined the Committee to provide an update on regulations governing compliance with the Housing Choice element of the recently adopted Economic Development legislation.

Mr. Heath explained that the state issued materials which provide some information about conditions under which the voting threshold must be lowered to a simple majority. He noted that the state's guidance however, remains somewhat unclear. Atty. Lee explained that the Department of Housing and Community Development (DHCD) are still working to develop complete guidance. He noted that there are two components; a.) voting thresholds for special permitting and b.) voting thresholds for zoning amendments. It was explained that the Planning and Development Board makes a recommendation to the Council on whether approval of a project can be satisfied by a simple majority or requires a 2/3 vote. The Law department issued its most up to date guidance on the matter in its Memorandum of March 17, 2021 (attached).

Councilors noted that where a project or zoning ordinance creates new housing opportunities according to the Housing Choice rules, a simple majority is now required. Where a project or zoning ordinance is unrelated to housing development does not fit into the housing choice category, it still requires a 2/3 vote. A Committee member questioned how the legislation contemplates a comprehensive zoning redesign project, where there are non-housing and housing elements. It was noted that that statute is silent on this situation, so it is possible that changes to the zoning would have to be voted separately. Atty. Lee explained that the ultimate decision with respect to the voting threshold is made by the City Council but noted that there may be some discussion on what vote the Council must take to determine the threshold.

The Committee asked Atty. Lee to provide clarification on whether the proposed amendments to the MU-3/TOD zone for the Riverside development will require a majority or 2/3 vote.

The Housing Choice element also requires that MBTA communities, like Newton, must create a district "of reasonable size" that allows multi-family dwellings (3 or more units) by right, at a minimum density of 15 units per acre, within a half mile radius of public transit. In response to a question from a Committee member, he explained that the guidance at this stage is very limited, but the district must be within ½ mile radius to satisfy the rule.

Seeing no other Committee member who wished to speak, the Committee agreed to resume discussion on the topic at a later date.

#96-21 Requesting to honor The Fair Housing Committee with a resolution
COUNCILORS ALBRIGHT, BOWMAN, CROSSLEY, DANBERG, HUMPHREY, NOEL, RYAN, DOWNS, KALIS, KRINTZMAN, GREENBERG AND GROSSMAN requesting to honor The Fair Housing Committee with a resolution recognizing their important work in fair access to housing and providing equal opportunity for all.

Action: Zoning & Planning Approved 6-0-2 (Councilors Baker and Wright abstaining)

Note: Councilor Bowman presented the request to honor the Fair Housing Committee with a Resolution. She explained that April is Fair Housing month and the proposed resolution was drafted in

recognition of the FHC's work as well as with the understanding that Fair Housing continues to be an issue in this country, state and within the community. A copy of the Resolution is attached to the end of this report.

Councilor Baker complimented Councilor Bowman for her advocacy and commitment. He expressed concern relative to one provision in the resolution as shown below:

"...Whereas, the Fair Housing Committee's expertise and focus will be important in addressing other action items from the AI including the review of restrictive zoning policies that limit the amount of multi-family and affordable housing as well as compliance with recently passed state legislation that requires the creation of at least one by-right multi-family zone close to transit and..."

He said that this aspect of the draft resolution relates to zoning policy which is different from housing discrimination. He expressed support for celebrating the work of the Fair Housing Committee but stated that he felt that it is inappropriate to tie in policies that are still under deliberation by the Council. Councilor Bowman noted, however, that the Analysis of Impediments to Fair Housing (AI) is a five-year plan to "affirmatively further fair housing" – a requirement of the Law - in Newton. The AI has been signed by the West Metro Home Consortium, of which Newton is a member and coordinator. She noted that the Analysis of Impediments to Fair Housing (AI) identified key strategies and actions that need to be taken to improve Fair Housing in Newton and stated that the language in the resolution is taken directly from the AI which the City has already committed to. She suggested that the City cannot affirmatively further fair housing (AFFH) without creating more, and specifically multi-family, housing.

Councilor Baker motioned to strike the language in the resolution. Councilors were not supportive of the motion to strike the language from the resolution, noting that it is a critical component to furthering fair housing and speaks to the creation of new housing opportunities. The Chair noted that although the language speaks to a goal, it does not create a rule. Councilors noted that certain aspects of the zoning code have been identified as obstacles to low-income housing development in Newton.

Chair of the Fair Housing Committee Ted Hess-Mahan noted that under the Fair Housing Act the City has an obligation to promote equality, diversity and inclusion. He noted that restrictive zoning in the suburbs was specifically intended to segregate people of color.

On Councilor Baker's motion to strike the language from the resolution, The Committee voted 2 in favor (Councilors Baker and Wright) and 6 opposed. Councilor Leary motioned to approve the resolution which carried 6-0-2 (Councilors Baker and Wright abstaining).

#92-21 Reappointment of John Wyman to the Chestnut Hill Historic District Commission
HER HONOR THE MAYOR reappointing John Wyman, 47 Old Orchard Road, Newton, as a full member of the CHESTNUT HILL HISTORIC DISTRICT COMMISSION for a term to expire on November 15, 2023. (60 days: 05/14/21)

Action: Zoning & Planning Approved 8-0

#93-21 Reappointment of Matthew Montgomery to the Chestnut Hill Historic District Commission

HER HONOR THE MAYOR reappointing Matthew Montgomery, 57 Bowen Street, Newton, as a full member of the CHESTNUT HILL HISTORIC DISTRICT COMMISSION for a term to expire on November 15, 2023. (60 days: 05/14/21)

Action: Zoning & Planning Approved 8-0

#94-21 Reappointment of Robert Imperato to the Chestnut Hill Historic District Commission

HER HONOR THE MAYOR reappointing Robert Imperato, 145 Washington Street, Newton, as a full member of the CHESTNUT HILL HISTORIC DISTRICT COMMISSION for a term to expire on November 15, 2022. (60 days: 05/14/21)

Action: Zoning & Planning Approved 8-0

#95-21 Reappointment of Samuel Perry to the Chestnut Hill Historic District Commission

HER HONOR THE MAYOR reappointing Samuel Perry, 26 Old Orchard Road, Chestnut Hill, as an alternate member of the CHESTNUT HILL HISTORIC DISTRICT COMMISSION for a term to expire on November 15, 2021. (60 days: 05/14/21)

Action: Zoning & Planning Approved 8-0

Note: The Committee expressed no concerns relative to the reappointments of John Wyman (#92-21), Matthew Montgomery (#93-21), Robert Imperato (#94-21) and Samuel Perry (#95-21). Councilor Baker moved approval of the items which carried unanimously.

With that, the Committee adjourned at 10:00 pm.

Respectfully Submitted,

Deborah J. Crossley

**CITY OF NEWTON
LAW DEPARTMENT MEMORANDUM**

DATE: March 17, 2021
TO: All Members, City Council
FROM: Andrew S. Lee, Assistant City Solicitor
RE: Housing Choice Zoning Amendments – Update

The law department issued a memorandum dated February 4, 2021 outlining the key changes made by the Housing Choice legislation to the Massachusetts Zoning Act, G.L. c. 40A. A copy of the February 4, 2021 memo is attached as Attachment A. As stated in the prior memo, the Executive Office of Housing and Development was working on additional guidance to assist municipalities in determining voting thresholds for various zoning amendments. On February 26, 2021, the Executive Office of Housing and Development issued such additional guidance. A copy of the guidance is attached as Attachment B.

The following is a summary of the highlights from the updated guidance.

As more fully set forth in both the prior memorandum and additional guidance, the Housing Choice legislation changed the voting requirement for certain types of zoning amendments from 2/3 to a simple majority. However, the legislation itself does not identify how a municipality should determine which voting threshold applies to a particular zoning proposal. The guidance recommends the following process to decide which voting threshold applies:

1. The proponent of the proposed zoning amendment should include in their petition a statement explaining if the proposal meets any of the criteria for being approved by a simple majority vote, including whether the land area affected meets the definition of an eligible location.
2. The Planning and Development Board, after consultation with the law department, should include in its report and recommendations to the full city council a determination of which voting threshold applies to the zoning proposal.
3. The City Council may affirm the voting threshold determined by the Planning and Development Board.

The Executive Office of Housing and Economic Development has also created an application by which the Mayor, City Council or Planning and Development Board may request an advisory opinion from the Executive Office on whether a particular zoning proposal affects an eligible location. The request may not be made by an individual member of the City Council or Planning and Development Board.

The law department will continue to monitor updates from the state, including the anticipated guidelines from DHCD regarding the requirements for MBTA Communities.

ATTACHMENT A

CITY OF NEWTON
LAW DEPARTMENT
INTEROFFICE MEMORANDUM

DATE: February 5, 2021
TO: All Members, City Council
FROM: Jonah Temple, Assistant City Solicitor
RE: Housing Choice Zoning Amendments

On January 14, 2021, Governor Charlie Baker signed into law *An Act Enabling Partnerships for Growth* (the “Act”), a comprehensive economic bill that provides Covid-19 economic relief to various sectors. The Act included the long-awaited Housing Choice legislation that was previously proposed by Governor Baker in an effort to increase housing development. This memorandum summarizes the key changes to Massachusetts zoning law, G.L. c. 40A, that are most relevant to the City Council.

1. Simple Majority Vote for Certain Zoning Amendments and Special Permits

Prior to the Act, all changes to local zoning ordinances and all special permits required a $\frac{2}{3}$ vote to be approved. The Act changes that required vote from $\frac{2}{3}$ to a simple majority for certain types of zoning amendments and special permits.

The following types of zoning amendments are now subject to simple majority vote:

- Amendments that allow as of right or by special permit accessory dwelling units.
- Amendments that allow as of right or by special permit multi-family or mixed-use developments at an “eligible location,” which is defined as an area that by virtue of its infrastructure, transportation access, existing underutilized facilities, or location is a highly suitable location for residential or mixed-use smart growth zoning districts or starter home districts, including areas near transit stations such as rapid transit, commuter rail, bus or ferry terminals, or areas of concentrated development such as town and city centers and other existing commercial districts in cities and towns and existing rural village districts.
- Amendments that allow as of right open space residential developments.
- Amendments that allow by special permit an increase in the permissible density or intensity of use in a multi-family or mixed-use development.
- Amendments that allow by special permit a reduction in the amount of parking required for residential or mixed-use developments.

- Amendments that provide for TDR (Transfer of Development Rights) zoning or natural resource protection zoning in instances where the adoption of such zoning promotes concentration of development where a municipality deems it most appropriate, but will not result in a reduction in the maximum number of housing units that could be developed within the municipality.
- Amendments that modify local regulations concerning the bulk and height of structures, yard sizes, lot area, setbacks, open space, parking, and building coverage requirements to allow for additional housing units beyond what would otherwise be permitted the existing zoning ordinance.
- Adoption of a smart growth zoning district or starter home zoning district in accordance with state law Chapter 40R.

The Act also provides a mechanism, known as a protest petition, to return the voting threshold for the above types of amendments back to $\frac{2}{3}$ in very limited circumstances where the owners of fifty percent or more of the area of the land proposed to be included in the zone change or of the area of the land immediately adjacent extending 300 feet therefrom file a protest to the zoning change.

The following types of special permits are now subject to a simple majority vote:

- Multi-family housing located within $\frac{1}{2}$ mile of a commuter rail station, subway station, ferry terminal, or bus station with not less than 10% of the housing affordable to households with annual income less than 80% of Area Median Income and whose affordability is assured by a minimum 30-year affordable housing restriction.
- Mixed-use development in centers of commercial activity within a municipality, subject to the same affordability requirements referenced above for multi-family housing.
- A reduced parking space to residential unit ratio requirement if the reduction results in the production of additional housing units.

These new voting requirements are *currently in effect* and will apply to all future City Council action on special permits and zoning amendments.

2. Multi-Family Zoning by Right in MBTA Communities

The Act imposes new by right multi-family zoning requirements for all “MBTA Communities,” which includes nearly all communities within the Greater Boston area and eastern Massachusetts, including Newton. All “MBTA Communities” must now have at least one zoning district of reasonable size in which multi-family housing is allowed by right, with no age restrictions and that is suitable for families with children. The Act also requires each such zoning district to have a minimum gross density of 15 units per acre and be no more than $\frac{1}{2}$ mile from a transit station.

If an MBTA Community fails to comply with this new zoning requirement, the Act imposes significant state funding penalties. Communities not in compliance will forfeit their eligibility to receive funding from sources such as the Governor's Housing Choice Initiative, the Local Capital Projects Fund, and the MassWorks infrastructure program.

Newton does not currently have a zoning district that satisfies the above requirements. Therefore the City will need to adopt such a district through formal amendment of the zoning ordinance. Given that the minimum criteria for this required district appear to also satisfy the requirements for being an "eligible location" for multi-family housing or mixed-use development, it is likely that adoption of such a zoning district will only require a majority vote.

The state Department of Housing and Community Development (DHCD) recently issued preliminary guidance regarding compliance with this by right multi-family zoning requirement. The guidance states that MBTA Communities will be deemed in compliance with the requirement until more specific guidance is developed and made available to affected communities. This means the City will have some period of time to implement the planning process necessary to adopt the mandatory zoning before it becomes ineligible for state grant programs.

3. Special Permit Standard for Reduced Parking for Residential Developments

The Act also allows municipalities to adopt a different special permit standard for reduction in parking if they choose. A zoning ordinance may provide that special permits can be granted for reduced parking spaces for a residential development after a finding by the special permit granting authority 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 such diminution in parking.

4. Looking Ahead

The changes to a simple majority vote for certain zoning amendments and special permits are effective immediately and now apply to all future City Council action that triggers a majority vote. Moving forward, the Law Department will notify the City Council, through its Land Use and Zoning and Planning Committees, whenever a docket item triggers a simple majority voting requirement. In contrast, the new requirement that Newton adopt a by right multi-family zoning district is not immediate. The City will have time to create the required compliant zoning district and will not forgo any grant opportunities until additional guidance is provided and likely for some period of time thereafter.

DHCD intends to issue more detailed guidelines to MBTA Communities on compliance criteria and timelines for the Act's provisions requiring a by right multi-family zoning district. It is also expected that the Executive Office of Housing and Economic Development will issue guidance to assist municipalities in determining voting thresholds for various zoning amendments.

The Law Department is closely monitoring these significant changes and will keep you up to date when further guidance is released. Additional information and advice will also likely be forthcoming from the City's Planning and Development Department on the planning process for adoption of a by right multi-family zoning district.

**GUIDANCE FOR LOCAL OFFICIALS ON
DETERMINING VOTING THRESHOLDS FOR
ZONING ORDINANCES AND BYLAWS**

Chapter 358 of the Acts of 2020 (sometimes referred to as the economic development legislation of 2020) made several amendments to Chapter 40A of the General Laws, commonly known as the Zoning Act. Among these amendments are (1) changes to section 5 of the Zoning Act, which reduce the number of votes required to enact certain kinds of zoning ordinances and bylaws from a $\frac{2}{3}$ supermajority to a simple majority; and (2) changes to section 9 of the Zoning Act, making similar changes to the voting thresholds for the issuance of certain kinds of special permits.

Section 100 of said chapter 358 directs “[t]he executive office of housing and economic development [to] issue guidance to assist local officials in determining the voting thresholds for various zoning amendments. Such guidance shall be assembled in consultation with the department of housing and community development, the Massachusetts attorney general’s municipal law unit, and Massachusetts Housing Partnership.” This guidance is intended to comply with that directive.

Where does the Zoning Act apply?

The Zoning Act applies to all cities and towns in Massachusetts except the City of Boston, which has its own zoning enabling act.

What kinds of zoning ordinance or bylaw can be enacted with a simple majority vote?

Under the newly amended section 5 of the Zoning Act, a zoning ordinance or bylaw can be enacted by a simple majority vote, rather than the $\frac{2}{3}$ supermajority that applies to other zoning amendments, if that ordinance or bylaw does any of the following:

1. Allows for multi-family housing or mixed-use developments “as of right” in an eligible location.
2. Allows for open space residential development as of right.
3. Allows accessory dwelling units, either within the principal dwelling or within a detached structure on the same lot, as-of-right.
4. Allows by special permit accessory dwelling units in a detached structure on the same lot.
5. Reduces the parking requirements for residential or mixed-use development under a special permit.

6. Permits an increase in the permissible density of population or intensity of a particular use in a proposed multi-family or mixed-use development that requires a special permit.
7. Changes dimensional standards such as lot coverage or floor area ratio, height, setbacks, minimum open space coverage, parking, building coverage to allow for the construction of additional residential units on a particular parcel or parcels of land.
8. Provides for transfer of development rights zoning or natural resource protection zoning in instances where the adoption of such zoning promotes concentration of development in areas that the municipality deems most appropriate for such development, but will not result in a diminution in the maximum number of housing units that could be developed within the municipality.
9. Adopts a smart growth or starter home district in accordance with section 3 of Chapter 40R of the General Laws.

Key terms such as “multi-family housing,” “mixed-use development,” “accessory dwelling unit,” “transfer of development rights zoning,” “natural resource protection zoning,” and “eligible location” are now defined in section 1A of the Zoning Act.

Who decides which voting threshold applies to a particular zoning proposal?

Section 5 does not specify who determines whether a proposed zoning ordinance or bylaw is the kind that can be approved by a simple majority vote. The proponent of a zoning ordinance or bylaw that allows or facilitates the development of new housing should include in the petition a statement explaining if it meets any of the criteria for being approved by a simple majority vote. The Zoning Act provides that no vote on a proposed zoning amendment may occur until after the planning board in a city or town, and the city council (or a committee designated or appointed by the council) each has held a public hearing on the proposal. Additionally, no vote to adopt a zoning ordinance or bylaw may be taken until the planning board has submitted a report and recommendations to the town meeting or city council, or 21 days have elapsed after the hearing without submission of such report. It is recommended that the planning board, after consultation with municipal legal counsel, include in this report a determination of which voting threshold applies to the zoning proposal. The legislative body’s vote consistent with that recommendation will affirm the voting threshold.

Under section 32 of chapter 40 of the General Laws, all zoning bylaws adopted by a town must be submitted to the Attorney General for review and approval. A request for approval must include adequate proof that the town has complied with all of the procedural requirements for the adoption of the bylaw. If the Attorney General finds an inconsistency between the proposed bylaw and state law, the bylaw or portions of it may be disapproved.

How do I know if a particular land area qualifies as an eligible location?

Section 1A of the Zoning Act defines “eligible locations” 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.

Section 5 does not specify who determines whether the land area subject to a proposed zoning ordinance or bylaw is an eligible location. The proponent of a zoning ordinance or bylaw that allows or facilitates the development of new housing should include in the petition explaining if the land area affected meets any of the criteria for an eligible location. As noted above, no vote to adopt a zoning ordinance or bylaw may be taken until the proposal has received a public hearing and the planning board has submitted a report with recommendations to the town meeting or city council, or 21 days have elapsed after the hearing without submission of such report. It is recommended that the planning board, after consultation with municipal counsel, include in this report a determination of whether the affected land area is an eligible location, when such a determination is relevant to the voting threshold.

Is there any additional guidance for determining eligible locations?

The same definition of “eligible location” that appears in section 1A of Chapter 40A also appears in section 2 of Chapter 40R. The regulations implementing Chapter 40R (760 CMR 59) set forth detailed criteria that the Department of Housing and Community Development (DHCD) applies when it determines if a land area is an eligible location under that statute. Although 760 CMR 59 does not apply to Chapter 40A, municipalities may reasonably look to those regulations for additional guidance on what areas should be deemed eligible locations under Chapter 40A.

Under the statutory definition, a land area qualifies as an eligible location if it is located “near” a transit station, including rapid transit, commuter rail or bus or ferry terminals. Any parcel that is at least partially within 0.5 miles of the kind of transit station listed should be deemed to be an eligible location.

In addition, the statute includes within the definition of “eligible location” parcels that are within “an area of concentrated development, including a town or city center, or other existing commercial districts, or existing rural village district.”

All other land areas may be determined to be “eligible locations” if, in the judgment of the planning board, the land area is a highly suitable location for residential or mixed-use development based on its infrastructure, transportation access, or existing underutilized facilities.

If there is uncertainty about whether a zoning proposal affects an eligible location, the municipality may request an advisory opinion from the Executive Office of Housing and Economic Development. 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). A request may not be made by an individual member of the council or board. Communities are encouraged to submit their request for an advisory opinion as early as possible in the zoning amendment process. The request should be made by completing the application at the following website: 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.

What happens if a proposed zoning ordinance or bylaw includes some changes that can be adopted with simple majority vote, and other changes that require a $\frac{2}{3}$ supermajority?

Section 5 as amended provides that “any amendment that requires a simple majority vote shall not be combined with amendments that require a two-thirds majority vote.” A proposed zoning amendment cannot be adopted by a simple majority vote if it is combined into a single proposal with changes that require a $\frac{2}{3}$ supermajority. Drafters of new zoning proposals should take care not to combine provisions that require different voting thresholds, so that proposals that will encourage new housing production will get the benefit of the simple majority threshold. If a municipality desires to combine proposals with different voting thresholds, the municipality should first confer with the municipal law unit of the Attorney General’s Office.

What is a special permit and what are the required thresholds for special permit votes?

Section 9 of the Zoning Act provides that zoning ordinances or bylaws can provide for specific types of uses which shall only be permitted in specified districts upon the issuance of a special permit. Zoning ordinances or bylaws may also provide for special permits authorizing increases in density or intensity of a particular use in a proposed development if the petitioner or applicant agrees to conditions that serve the public interest. Special permits may also issue for other purposes set forth in section 9.

A special permit can be granted a $\frac{2}{3}$ vote of boards with more than 5 members, a vote of at least 4 members of a 5-member board, and a unanimous vote of a 3-member board. But, the recent amendments to section 9 provide that a special permit may be issued by a simple majority vote if the special permit does any of the following:

- Permits multi-family housing that is located within $\frac{1}{2}$ mile of a commuter rail station, subway station, ferry terminal or bus station; provided that not less than 10% of the housing is affordable to and occupied by households whose annual income is less than 80% of the area median income and affordability is assured for a period of not less than 30 years through the use of an affordable housing restriction as defined in section 31 of chapter 184.
- Permits mixed-use development in centers of commercial activity within a municipality, including town and city centers, other commercial districts in cities and towns and rural village districts; provided, that not less than 10% of the housing meets the same standard of affordability as noted above.

- Permits a reduced parking space to residential unit ratio requirement, provided such reduction in the parking requirement will result in the production of additional housing units.

Where can I find additional guidance about the voting thresholds for zoning ordinances and bylaws?

Answers to frequently asked questions (FAQs) will be posted at www.mass.gov/info-details/housing-choice-and-mbta-communities-legislation. Questions about zoning thresholds that are not answered in the FAQs can be directed to the Executive Office of Housing and Economic Development at housingchoice@mass.gov.

Issue date: February 26, 2021



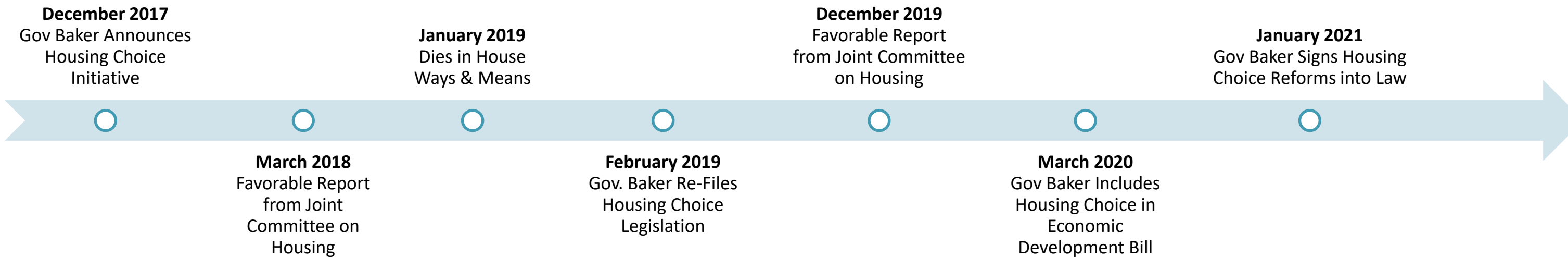
Housing Choice

March 2021

Massachusetts Municipal Association (MMA)

03.02.2021

Housing Choice

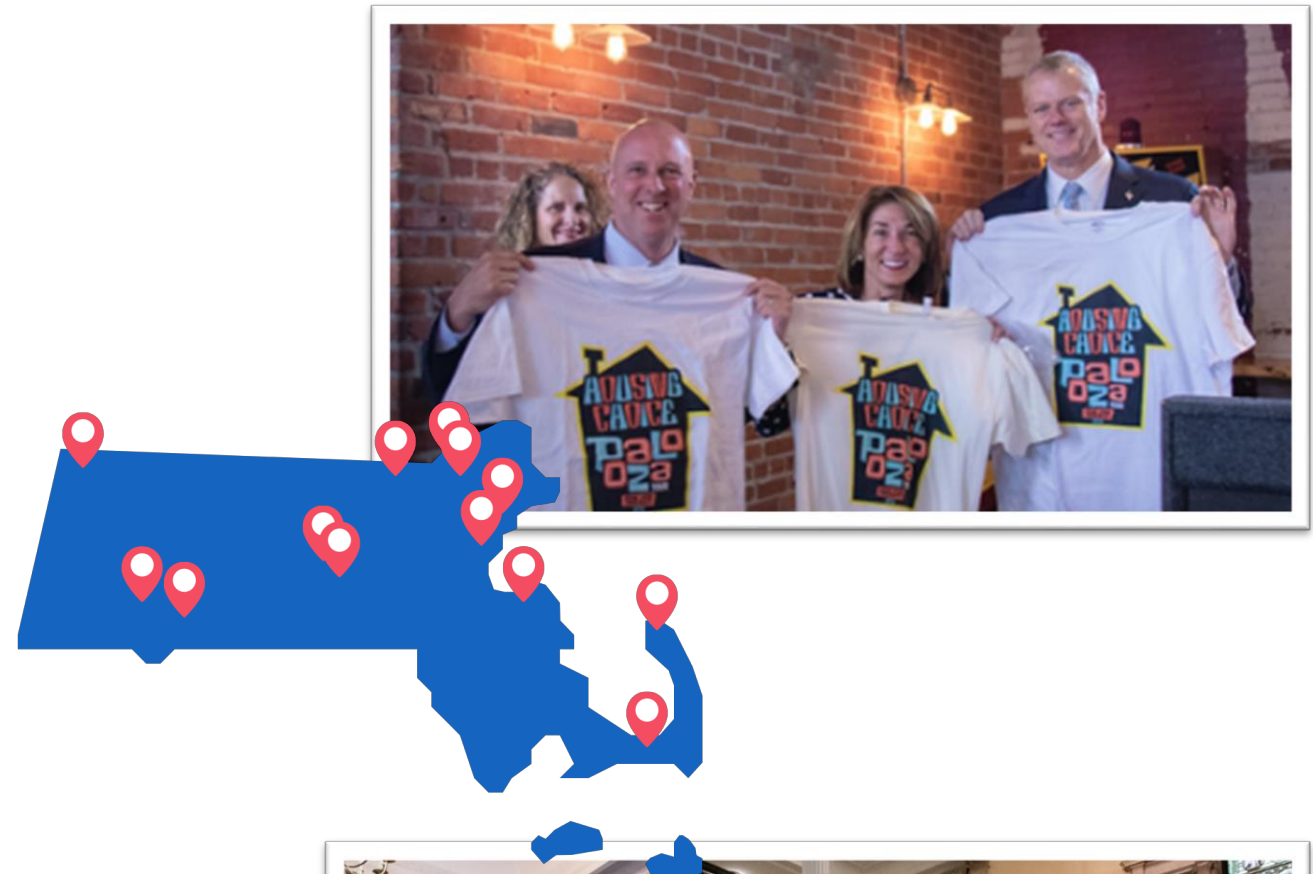


- Multi-year effort to better enable municipalities to adopt the zoning measures needed to meet the state’s housing needs.
- The Baker-Polito Administration understands that not all cities and towns are the same.
- Where there is majority consensus in communities around increasing housing production, a minority of voters should not be able to block zoning reform.
- Through targeted amendments to MGL c. 40A, the state can create a more predictable and fair process for zoning, and ultimately housing production.

The Housing Choice Campaign



- An expansive coalition of elected officials, housing advocates, planners, builders, citizens, and countless others worked to push this reform forward.
- **Spotlight Series:** 13 Spotlight Events held statewide throughout 2019 and early 2020 with dozens of endorsements spanning state and local officials, businesses, developers, non-profits, and housing advocates.
 - Dubbed a “Housing Choice Palooza” (April 25, 2019) by the Boston Globe’s Jon Chesto, the tour stopped in 13 communities.
- An energized **public hearing** on the bill in May 2019 that filled most of Gardner Auditorium.
- Countless meetings, discussions, speeches, panels, articles, editorials and policy papers...
 - E.g. Met with over 100 legislators



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The Boston Globe
Business

THE BOSTON GLOBE TUESDAY, FEBRUARY 9, 2021 | BOSTONGLOBE.COM/BUSINESS

Housing Choice brings big zoning law changes

JON CHESTO
CHESTO MEANS BUSINESS



Housing Choice became the law of the land only a month ago. But some municipal officials aren't wasting any time putting it to use. The Legislature went into overtime to finish an economic development bill that included Housing Choice. At stake: the biggest reform to state zoning laws in five decades. Housing Choice started with Governor Charlie Baker's push to lower the threshold for a variety of local land-use votes, and evolved to include some related reforms and affordable-housing funds added by lawmakers along the way. Here's what it means in Arlington. A proposal to allow accessory apartments in one- and two-family homes will only need support from a simple majority of the 252-member Town Meeting this spring, instead of two-thirds of those voters. Another change would accommodate larger buildings, possibly some mixed-use with housing, in the town's industrial zones — if more than half of Town Meeting members agree. Then there's the multifamily overlay district that town officials are discussing near the Alewife MBTA station, because the new law requires them to do so. Baker and his housing secretary, Mike Kennedy, must be hoping this sort of activity soon plays out across the state. Baker and Kennedy will assuredly address the law's potential ramifications for badly needed housing production during a virtual bill-signing scheduled for Tuesday. Before the snowy forecast prompted a switch, the event was supposed to happen in Salem. There's a good reason for that: Salem has been Baker's go-to city to show how the two-thirds majority requirement stymied local housing votes. Mayor Kim Driscoll of Salem said she is testing up a new accessory apartment ordinance after the old one failed, twice, in separate 7-6 votes at

64 Municipalities out of 98 in the Boston metro area that have land within a half-mile of a transit station.

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DAVID L. RYAN/GLOBE STAFF (FEB. 20 2021)

Governor Charlie Baker has prodded lawmakers over Housing Choice for three years.

HOUSING, Page D4

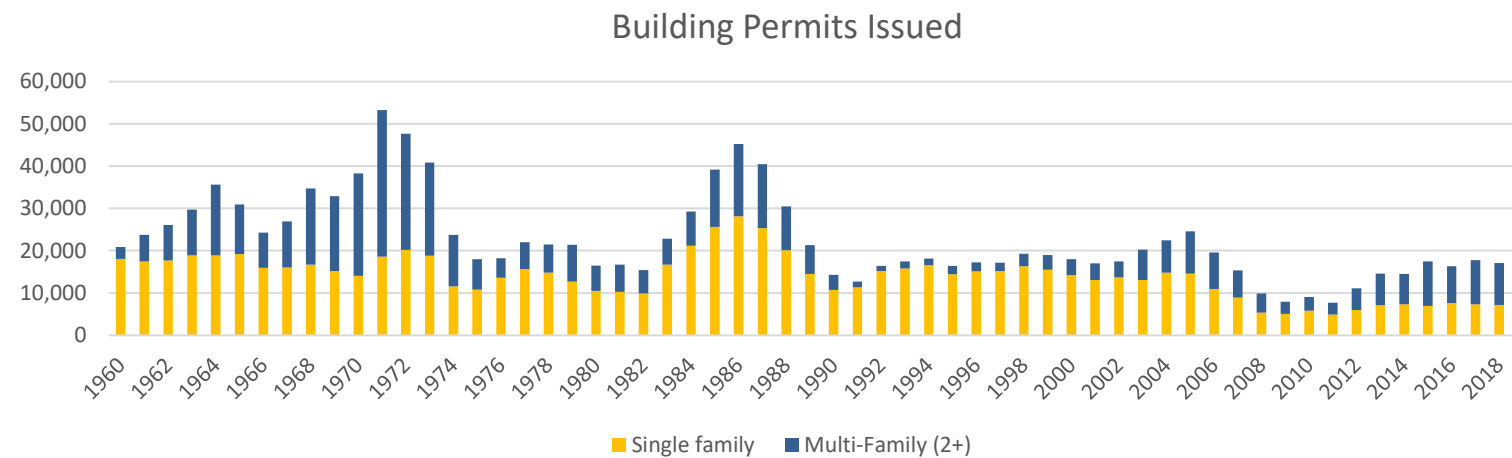
@MassEOHED



The Housing Crisis



- Massachusetts faces a core challenge to create adequate housing to support our economy and families.
- Between 1960 and 1990, Massachusetts communities permitted almost 900,000 housing units. Since 1990, communities have permitted less than 470,000 new units.
 - In 1971, 53,272 housing units were permitted in Massachusetts. From 2017-2019, the total combined amount of permitted units is just 52,137.

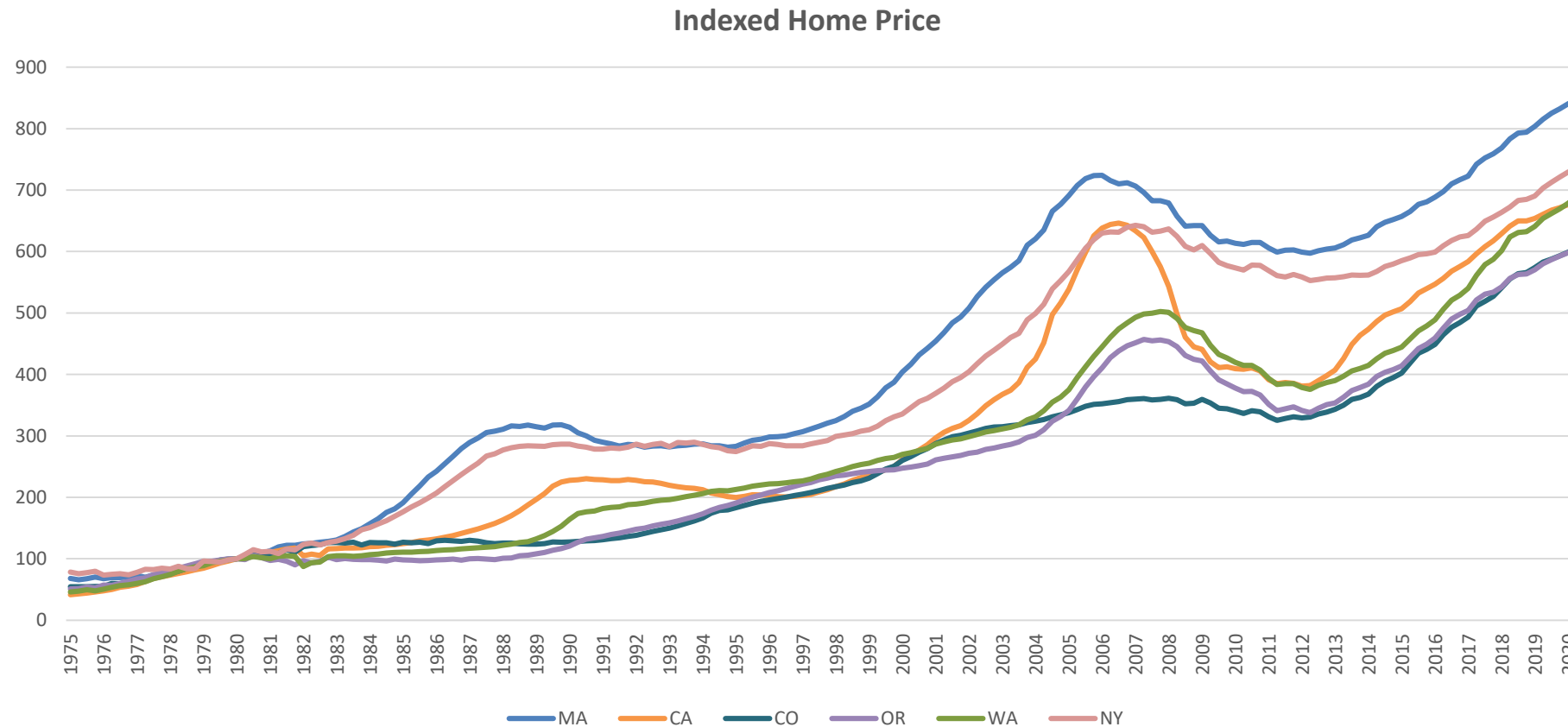


- Rents have risen dramatically across the state, and in the inner core. Statewide, rents have increased by 75% since 2000, while inner core communities have seen rents almost – or more than – double over the same period.
- Home prices have increased faster than any other state since 1980.
- As a result of increasing housing costs, the number of homeowners and renters who are cost burdened has increased significantly:
 - **Homeowners:** In 2000, less than 30% of households making less than \$100,000 were cost burdened (i.e. paying more than 30% of their income on housing). In 2017, approximately 50% of households were.
 - **Renters:** In 2017, 1 in 4 renters paid more than 50% of their income towards rent.
- Municipalities play a key role on whether or not housing is built because of their role in zoning and permitting. Cities and towns are necessary partners if the Commonwealth is to confront these housing challenges.

Home Prices



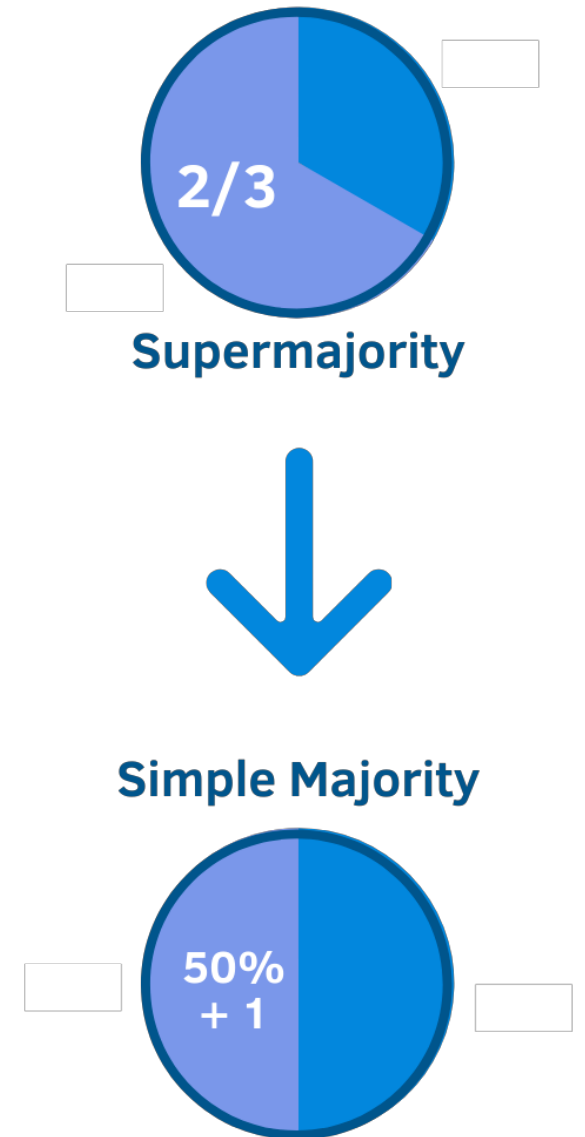
- Massachusetts single-family home prices were at the national average in 1980 and since then have increased more than any other state.
 - In 2020, the median single-family sale price reached \$445,500 – an 11.4% increase over 2019.



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...





- **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.”
 - More information on this topic later in the presentation...

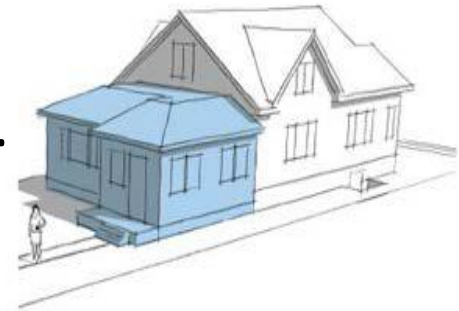


Qualifying Amendments for Simple Majority Vote

- 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)

Attached ADU



- 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).
- 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.

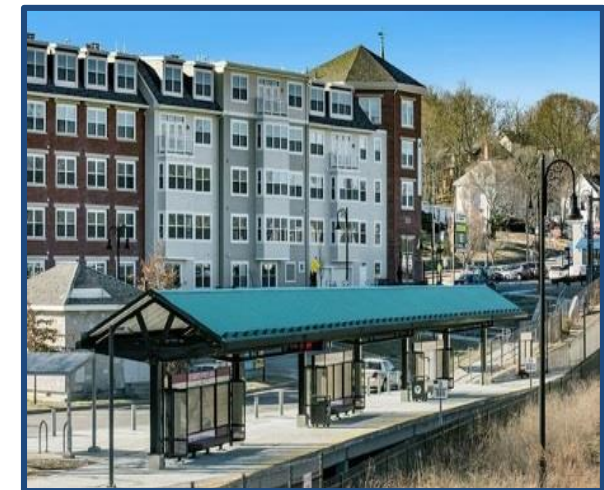
Examples of Zoning Qualifying for Simple Majority (2/2)

- 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.



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 Granting Authority Board—Simple Majority Vote:
 - 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.





- **What happens if the proposed zoning includes a mixture of measures that would qualify and would not qualify for the simple majority?**
 - Any amendment that requires a simple majority vote shall not be combined with an amendment that requires a 2/3 majority vote.



- 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.**



- 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.



- New section 3A of the Zoning Act provides 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.
- DHCD issued preliminary guidance on January 29th.



- The Baker-Polito Administration wants to work with stakeholders, including towns and cities, to develop thoughtful compliance criteria and timelines so that the end result is good policy.
- We believe that stakeholder engagement is essential in order to implement this section effectively.
- To that end, municipalities (i.e. MBTA Communities) will be deemed to be in compliance with this new section until more detailed compliance criteria is established.
 - Communities seeking to pursue MassWorks or the Housing Choice Capital Grants Program in the upcoming 2021 grant cycle will remain fully eligible to apply to these programs.
- We will have more information on the stakeholder process in the coming weeks.



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



QUESTIONS?



APPENDIX



- 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.

Testimonial Commendation

Honoring

The Newton Fair Housing Committee

Recognizing their important work in fair access to housing and providing equal opportunity for all

Whereas, diverse, inclusive communities with access to good jobs, schools, health care, transportation, and housing are crucial to our region and nation's prosperity in the 21st century and

Whereas, persistent racial segregation in housing is the legacy of explicit federal, state, and local policies that defined where black and white Americans could live prior to the Fair Housing Act¹ and

Whereas, discrimination in housing continues to be a critical issue for many people, on the basis not only of skin color but also of religious creed, national origin, sex, age, familial status, disability, ancestry, sexual orientation, and gender identity or expression, and

Whereas, housing discrimination has a long-term effect on the wealth, health and education opportunities for these people and their families and

Whereas, in the early 1960s, a committee was organized by a group of Newton citizens to combat housing discrimination based on race, in response to the taking of homes of African-Americans in West Newton for the Massachusetts Turnpike, who were denied alternate housing in Newton because of racial discrimination and

Whereas, efforts to address fair housing had failed in two congressional terms, the dramatic aftermath of Rev. Dr. Martin Luther King Jr.'s assassination on April 4, 1968, pushed legislators into taking healing and swift action, and President Lyndon B. Johnson signed the Fair Housing Act into law just a week later, on April 11, 1968, and

Whereas, the Fair Housing Act prohibits discrimination concerning the sale, rental, and financing of housing based on race, religion, national origin, sex, disability, and family status and

Whereas, on January 20 of this year President Biden signed an executive order further extending protections by prohibiting discrimination in housing because of gender identity or sexual orientation and

Whereas, in 2005, the Newton Housing Partnership created the Fair Housing Task Force, in order to investigate and address housing discrimination in Newton, and the task force found disparate treatment within the city and undertook fair housing education and outreach programs for realtors, housing owners and managers, housing agencies, city staff, and the general public and

Whereas, in 2008, Mayor David Cohen formally established the Newton Fair Housing Committee (NFHC), a citizen advisory board, to promote and support the city's efforts to be a diverse and welcoming community with fair housing choices and opportunities for all, free from discrimination, and this agenda has been carried forward actively by the NFHC since its inception and

Whereas, in 2015, Newton entered into a settlement to resolve a complaint filed with the U.S. Department of Housing and Urban Development (HUD) by the Engine 6 advocacy group, alleging that the city violated fair housing laws by obstructing a proposal to create supportive housing for the chronically homeless and

Whereas, a recent study from Suffolk University Law School and the Boston Foundation as detailed in the report “Qualified Renters Need Not Apply”² showed that housing discrimination in the rental market continues to be an issue in Boston-area communities including Newton and

Whereas, Newton receives funds from HUD and is required to create a five-year action plan to affirmatively further fair housing, and the WestMetro HOME Consortium Analysis of Impediments to Fair Housing Choice for 2021-2025³ lists several key strategies and actions and

Whereas, the NFHC is already undertaking some of the recommended actions including:

education programs on fair housing for realtors, housing owners and managers, housing agencies, city staff, and the general public;

review of major residential development proposals to determine whether they meet or exceed regulatory fair housing requirements and sharing its findings with the relevant permit granting authority; and

evaluation of the use of the local preference option in affordable housing lotteries to determine its impact on the goal of affirmatively furthering fair housing; and

Whereas, the NFHC’s expertise and focus will be important in addressing other action items from the Analysis of Impediments, including the review of restrictive zoning policies that limit the amount of multifamily and affordable housing as well as compliance with recently-passed state legislation that requires the creation of at least one by-right multifamily zone close to transit and

Whereas, and in summary, we embrace the definition of fair housing put forward in the Analysis of Impediments to Fair Housing Choice (p. 9): *Fair housing exists when people can find safe, suitable housing within their economic means wherever they choose to live, and they do not face discrimination based on their membership in a protected class.*

Now therefore be it known,

That the Honorable City Council representing the entire City of Newton, in celebration of Fair Housing Month, recognizes the important work of the Newton Fair Housing Committee and its critical role in helping Newton become a more diverse, inclusive and just community. We especially support its members, who volunteer their time and expertise to such a worthwhile goal. The NFHC’s work to end housing discrimination and to affirmatively further fair housing embodies our strongly-held American values of fair access and equal opportunity.

Commendation offered on this 5th Day of April, 2021, by Council President Susan Albright, Vice-President Rick Lipof, Councilors Bowman, Crossley, Danberg, Downs, Greenberg, Grossman, Humphrey, Kalis, Kelley, Krintzman, Noel and Ryan, on behalf of the entire City Council

(1) April is Fair Housing Month, Ted Hess-Mahan <https://newton.wickedlocal.com/news/20200417/newton-column-april-is-fair-housing-month>

(2) Qualified Renters Need Not Apply <https://www.tbf.org/-/media/tbf/reports-and-covers/2020/housing-voucher-report-20200701.pdf?la=en>

(3) WestMetro HOME Consortium Analysis of Impediments to Fair Housing Choice <https://www.newtonma.gov/home/showpublisheddocument?id=47557>