

## Memorandum

To: Planning Director Barney Heath  
From: Councilors Lisle Baker, Pam Wright, Julia Malakie, Marc Laredo, Christopher Markiewicz, John Oliver, and Tarik Lucas  
Cc: Councilor Deb Crossley, Chair, Zoning and Planning Committee; City Council; Council Clerk Carol Moore  
Re: Questions regarding Housing Choice  
Date: January 21, 2022

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We are grateful for the time spent by the Planning Department in helping members of the Council understand the scope of the recently enacted amendments to G. L. c. 40A, Sec. 3A, relating to Housing Choice. Two of the authors of this memorandum – Councilors Baker and Wright – are members of the Zoning and Planning Committee. We have been joined, however, by other Councilors who had questions themselves. These are in response to the briefing at the Zoning and Planning Committee meeting on January 10, 2022 regarding the new law and the Draft Compliance Guidelines issued for public comment by the Department of Housing and Community Development.

We appreciate that the new statute and Guidelines are complex and there are a number of open issues where further state guidance is expected. With that in mind, we thought it would be useful to provide you with the following questions in advance of the next Zoning and Planning Committee discussion on Housing Choice. So as to provide time for the Department to frame responses, but also not duplicate similar questions from other Councilors, we are also providing copies to colleagues through Ms. Moore so that they can be posted for public information as part of the Friday packet consistent with the Open Meeting Law as clarified by the Massachusetts Supreme Judicial Court.

As you will see from the questions, we understand that there are two basic aspects of housing choice: a target for Newton of over 8,330 new housing units and a requirement that certain minimum land areas in specified locations near transit be rezoned for multi-family housing of at least three units to be constructed as of right in sufficient density but no less than 15 units an acre to meet that target. But what goes into determining what is a qualifying unit, what counts as a qualifying area to be rezoned, and at a qualifying density within those zones are not yet clear. We hope that you will be able to help in that regard.

For greater clarity, as the matter is complex, our questions below are organized into subtopics, and are not necessarily in order of importance.

*The possible location and size of the multi-family zones*

1. **Transit locations for qualifying zones?** Please confirm that these are the eleven transit stations around which a qualifying as-of-right zone (or zones) can be created: eight stations on the T (Boston College, Chestnut Hill, Newton Centre, Newton Highlands, Eliot, Waban, Woodland, and Riverside) and three on the commuter rail (Auburndale, West Newton, and Newtonville) and that there are no “bus stations” in Newton.
2. **What zone sizes need to be near transit?** Can you confirm that when calculating the new zones(s) that might be adopted within half a mile of such stations, that they contain in total minimum of 50 acres; there must be one zone among them that is at least 25 acres; any zone must at least five acres (the minimum amount that has been deemed to be a “reasonable size”); and all zones must have a minimum density of 15 units per acre?
3. **Calculating zone sizes?** In calculating the size of a qualifying zone, can you clarify what land counts toward the minimum acreage? Specifically, are streets, sidewalks, parking lots, parks or other public spaces included or excluded and how does that affect the density determination? (Mayor Fuller’s recent newsletter referenced a house on Willow Street, but did not clarify the status of the adjacent streets and sidewalks.) Are nonprofit religious or educational uses excluded? Existing commercial buildings or parking lots?
4. **How is existing housing accounted for?** We understand that qualifying zones must contain a minimum of 15 housing units per acre. Can existing housing within a qualifying multi-family zone be counted so long as it meets that minimum density, or must it be redeveloped as new housing to qualify?
5. **How much land near transit is available for development or redevelopment?** Independent of what can count toward a qualifying multi-family zone, what percent of land that is within 1/2 mile of the above transit stations is actually available for development or redevelopment (i.e., excluding streets, sidewalks, parks, public use and permanently protected conservation land)? Once that is calculated, what is the average amount of such land available for development or redevelopment?
6. **Effect on concurrent work on Village Center Zoning Redesign?** The Zoning and Planning Committee, and the Planning Department and its outside consultants, have been spending much time on community engagement and designing responses to reshape zoning in our Village commercial centers that is specific to the Newton context. Will this work be affected by these statewide rules regarding Housing Choice, and if so, how?

*The continued use of special permits*

7. **What conditions on special permits could be required on as of right projects in qualifying zones?** Of the many environmental measures that we routinely expect in our special permit projects – such as electric charging stations, solar roof panels, all electric buildings, preservation of existing trees, reduced parking, and meeting passive house

standards – which ones, if any, could Newton continue to require for as of right multi-family projects in the new qualifying zones?

8. **What special permits would remain possible for housing in qualifying zones?** We recall that during the course of your presentation at the Zoning and Planning Committee meeting on January 10, 2022, it was stated that Newton could still have special permits required for certain projects in the new zones. Can you explain for what types of projects that would be?
9. **What counts toward fulfilling the housing target of 8,330 new units?** Must all such units come from new construction in land near transit built as of right? Or might qualifying new units be built under special permit?
10. **Durability of previously granted special permits?** Do special permit conditions on a pre-existing project (such as maintaining landscaping, measuring and mitigating traffic impacts) remain in effect if the parcel is rezoned for its density by-right?

*The level of density within each zone*

11. **Minimum density?** Can zoning for the new multi-family housing require a minimum density for any new construction to avoid having developers choose to do fewer, larger units?
12. **Maximum density?** Can by-right unit density be capped (as long as the district average by-right density is over 15)?
13. **What is counted in determining average density?** If a parcel containing a pre-existing multi-family building falls within a new multi-family zoning district, how is the district's zoning density determined?
14. **Does new special permit housing in process count toward the required density within a zone?** If a project is approved under special permit, but not yet built when a new as of right multi-family zoning district is created, would the special permit still apply and, if so, would the project count towards the requisite number of potential units?

*Affordable housing*

15. **How are G.L. c. 40B affordable housing projects counted?** Because c. 40B projects are in effect as of right, can new ones completed after the new zoning district is created count towards the 8,330 requirement or does the lot need to be rezoned too?
16. **Can qualifying multi-family housing be required to include affordable housing?** If so, how may we ensure that a percent of the new units built in a multi-family zone will be “affordable” (meaning eligible to be counted as “affordable” housing by the state)?

*Historic and Conservation Review*

17. **Newton’s historic resources?** What impact will these new zones have on the rules for historic districts or landmarked properties? Or demolition delay under Newton’s historic ordinance?
18. **Conservation issues?** How will conservation land or land near wetlands be considered if within a new zoning district?

*Planning for the future and complementary public spending*

19. **Durability of the housing target?** Can these state regulations (including capacity targets and minimum district sizes) be counted on to remain the same for any length of time, or may they be revised by DHCD at any time? For example, if Newton complies to create the requisite qualifying zones, in ten years can DHCD revisit its requirement and require more additional capacity than the original 8,330?
20. **Complementary public spending?** How do communities ensure that infrastructure projects, including municipal and school services, keep pace with the growth anticipated by this legislation?
21. **Effects of the Pandemic on eligible housing targets and locations?** Because of the Pandemic, work and living arrangements are changing, as are associated public transportation needs. Can we determine if, and how, DHCD has made these density decisions in the light of the Pandemic?
22. **Complementary transit spending?** What specific commitments has the state made to significantly improve the quality and quantity of T and commuter rail service upon which this plan for increased growth is based?
23. **Recommendations for modifying the draft Guidelines?** DHCD has indicated it will be accepting comments on its draft Guidelines. What modifications in those Guidelines should the Zoning and Planning Committee ask be made to adjust them to fit better the Newton context and our ongoing Zoning Redesign?

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We understand that answers may take time to obtain, and that they may in turn prompt other questions, but we hope that the foregoing list provides a start for thinking through the implications of Housing Choice and specific legislative decisions that the Zoning and Planning Committee, and ultimately the Council, will need to consider. Thank you in advance for assisting us in understanding this new and complex statute and its draft implementing Guidelines.