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

CHAPA 40 B CONFERENCE JANUARY 28, 2021
HOUSING CHOICE: OVERVIEW

- **Primary goal** – make it easier to approve “housing supportive” zoning.

- Provides that certain zoning ordinances or bylaws may be enacted by simple majority vote, instead of 2/3 super majority.

- This change applies to all cities and towns in Massachusetts (except Boston). **There is no “opt in”**.
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
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;
- 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).
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 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?

To qualify for the simple majority, the proposed amendment must not be blended with a proposal that operates under the 2/3 rule.

Hint: when crafting new zoning proposals for the simple majority vote, do not comingle the amendment with non-qualifying zoning. If this happens, then the amendment requires a 2/3 majority.
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.
New section 3A of the Zoning Act states 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.
• Compliance criteria will be developed in consultation with affected MBTA communities and other stakeholders.

• For purposes of EOHED and DHCD grant programs, MBTA communities will be deemed to be in compliance with this new section until more detailed compliance criteria have been established.

• All communities are eligible to apply for MassWorks or the Housing Choice Capital Grants Program in the upcoming 2021 grant cycle.
CONTACTS

Roberta Rubin, Chief Counsel, DHCD  roberta.rubin@mass.gov

Chris Kluchman, Deputy Director, Community Services Division, DHCD  chris.kluchman@mass.gov

Web resources:  Housing Choice Initiative | Mass.gov  (in development)