

Housing Choice (Chapter 358 of the Acts of 2020): Application to Municipalities

Mead, Talerman & Costa
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Chapter 358 of the Acts of 2020

- Summary

- Effective: January 14, 2021
- Purpose: Make housing more available to inhabitants of the Commonwealth.

- How?

- Changes G.L. c. 40A (the Zoning Act) and G.L. c. 40R (Smart Growth Districts)
- Adds new definitions
- Amends G.L. c. 40A § 3 by adding a new § 3A governing the newly created “MBTA Community”
- Amends G.L. c. 40A § 5 to lower vote threshold needed for municipal approval of certain bylaws (from 2/3 to simple majority)
- Amends G.L. c. 40A § 9 to lower vote threshold needed for permit granting authorities to grant certain types of permits (from 2/3 to simple majority)



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- Additional guidance issued on substance

- January 29, 2021 – Department of Housing and Community Development guidance on MBTA Communities.
 - February 26, 2021 – Executive Office of Housing and Economic Development guidance on reduced voting thresholds.

- More guidance is forthcoming.



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- New Definitions – G.L. c. 40A § 1A
 - Accessory Dwelling Unit
 - As of right
 - Eligible locations
 - Gross Density
 - Lot
 - MBTA Community
 - Mixed-use Development
 - Multi-Family Housing
 - Natural resource protection zoning
 - Open space residential development
 - Transfer of Development Rights



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- G.L. c. 40A § 3 amended to apply to MBTA Communities
- MBTA Community
 - A city or town that is:
 - (i) one of the 51 cities and towns as defined in section 1 of chapter 161A;
 - (ii) one of the 14 cities and towns as defined in said section 1 of chapter 161A;
 - (iii) other served communities as defined in said section 1 of chapter 161A; or
 - (iv) a municipality that has been added to the Massachusetts Bay Transportation Authority under section 6 of chapter 161A or in accordance with any special law relative to the area constituting the authority.



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- MBTA Communities include, but are not limited to:

Abington, Acton, Amesbury, Andover, Arlington, Ashburnham, Ashby, Ashland, Attleboro, Auburn, Ayer, Bedford, Bellingham, Belmont, Berkley, Beverly, Billerica, Boston, Boxborough, Boxford, Braintree, Bridgewater, Brockton, Brookline, Burlington, Cambridge, Canton, Carlisle, Carver, Chelmsford, Chelsea, Cohasset, Concord, Danvers, Dedham, Dover, Dracut, Duxbury, East Bridgewater, Easton, Essex, Everett, Fitchburg, Foxborough, Framingham, Franklin, Freetown, Georgetown, Gloucester, Grafton, Groton, Groveland, Halifax, Hamilton, Hanover, Hanson, Haverhill, Harvard, Hingham, Holbrook, Holden, Holliston, Hopkinton, Hull, Ipswich, Kingston, Lakeville, Lancaster, Lawrence, Leicester, Leominster, Lexington, Lincoln, Littleton, Lowell, Lunenburg, Lynn, Lynnfield, Malden, Manchester-by-the-Sea, Mansfield, Marblehead, Marlborough, Marshfield, Maynard, Medfield, Medford, Medway, Melrose, Merrimac, Methuen, Middleborough, Middleton, Millbury, Millis, Milton, Nahant, Natick, Needham, Newbury, Newburyport, Newton, Norfolk, North Andover, North Attleborough, Northborough, Northbridge, North Reading, Norton, Norwell, Norwood, Paxton, Peabody, Pembroke, Plymouth, Plympton, Princeton, Quincy, Randolph, Raynham, Reading, Rehoboth, Revere, Rochester, Rockland, Rockport, Rowley, Salem, Salisbury, Saugus, Scituate, Seekonk, Sharon, Sherborn, Shirley, Shrewsbury, Somerville, Southborough, Sterling, Stoneham, Stoughton, Stow, Sudbury, Sutton, Swampscott, Taunton, Tewksbury, Topsfield, Townsend, Tyngsborough, Upton, Wakefield, Walpole, Waltham, Wareham, Watertown, Wayland, Wellesley, Wenham, West Boylston, Westborough, West Bridgewater, Westford, Westminster, West Newbury, Weston, Westwood, Weymouth, Whitman, Wilmington, Winchester, Winthrop, Woburn, Worcester, and Wrentham.



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- G.L. c. 40A § 3 amended to apply to MBTA Communities, requiring:
 - MBTA Communities to have a zoning ordinance or bylaw that provides for at least one district of “reasonable size” in which multi-family housing is permitted by right.
 - Multi-family housing must have no age restrictions, be suitable for families with children.
 - “reasonable size” means the district must:
 - Have a minimum gross density of 15 units per at, subject to limitations set by G.L. c. 131 § 40 and title 5; and
 - Be located no more than .5 miles from a commuter rail station, subway station, ferry terminal or bus station
- If not, the community becomes ineligible for certain grant programs.



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- BUT – Additional Guidance is Forthcoming
- Until it is released, the Department of Housing and Community Development determined that:
 - *“All MBTA Communities will be deemed to be in compliance with section 3A until more specific guidance is developed and made available to MBTA communities.”*



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- G.L. c. 40A § 5 amended to reduce votes for passing or amending certain bylaws and ordinances
 - Only needs simple majority to pass, instead of 2/3
- Who decides the voting threshold is reduced?
 - February 26, 2021 Guidance provides process.
 - Proponent of new bylaw/ordinance explain in petition whether proposed bylaw meets the criteria;
 - Planning Board then reviews the petition, and consults with counsel to make a recommendation to the Town Meeting or City Council on whether the vote should be reduced.
- When does the reduction apply?
 - Only when the ENTIRE amendment contains qualifying provisions.



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- Now, simple majority vote to pass or amend a bylaw/ordinance to allow AS OF RIGHT:
 - Multi-family housing or mixed-use within an eligible location
 - Accessory dwelling units, whether within the principal development or detached on the same lot
 - Open space residential development



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- Now, simple majority vote to pass or amend a bylaw/ordinance to allow **BY SPECIAL PERMIT**:
 - Multi-family housing or mixed-use within an eligible location
 - An increase in the permissible density of population on intensity of a particular use in a proposed multi-family or mixed-use development pursuant to G.L. c. 40A § 9
 - Accessory dwelling units in a detached structure on the same lot,
 - A reduction in the required parking for residential or mixed-use development under G.L. c. 40A § 9



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- Multi-family housing or mixed-use within an eligible location
 - “eligible location” is a new definition in G.L. c. 40A § 1A
 - Definition fails to say who decides what locations are “eligible”
- February 26, 2021 Guidance:
 - Proponent of new bylaw/ordinance explain in petition whether affected land meets the criteria;
 - Planning Board then reviews the petition, and consults with counsel to make a recommendation to the Town Meeting or City Council on whether the affected land qualifies as an “eligible location.”



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- Now, simple majority to vote to pass or amend a bylaw/ordinance that:
 - Provides for “Transfer of Development Rights” zoning or natural resource protection zoning where the adoption promotes concentration of development where the 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;
 - Modifies dimensional requirements to allow for additional housing units beyond what would otherwise be allowed under the existing ordinance or bylaw.



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- Now, simple majority to vote:
 - Adopt a smart growth district or starter home zoning district in accordance with G.L. c. 40R § 3
- BUT for all previous circumstances, vote can return to 2/3 requirement:
 - In a city or town with a council of fewer than 25 members, a written protest against the zoning change is filed with the clerk before any action by the council. The protest must state the reasons for the protest and be signed by the owners of 50% or more of the land to be included in the zoning change or within 300 feet of it.



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- G.L. c. 40A § 9 amended, changing standard to issuing a Special Permit for Reduced Residential Parking
 - Allows zoning ordinance or bylaws to provide that “special permits may be granted for reduced parking space to residential unit ratio requirements”
 - Finding requirement: “the public good would be served” and the area would not suffer a substantial adverse effect from the reduction in parking.



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- G.L. c. 40A § 9 amended to reduce votes for issuing certain special permits
 - Only needs simple majority to pass, instead of 2/3
- Now, simple majority vote to grant a Special Permit for:
 - Multifamily housing located within ½ mile of a commuter rail station, subway station, ferry terminal, or bus station—but only if 10% or more of the housing is “affordable”;
 - Mixed-use development in centers of commercial activity—but only if 10% or more of the housing is “affordable”; or
 - A reduced parking space to residential unit ratio requirement, but only if the reduction in parking will result in the production of additional housing units .



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- G.L. c. 40A § 17 amended to allow a judge to require a bond.
 - Judge's can require up to \$50,000 in bonds from a plaintiff appealing a zoning decision.
 - Appropriate where “the harm to the defendant or public interest resulting from delays caused by the appeal outweighs the financial burden of the surety or cash bond on the plaintiffs.”



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Takeaways

- New law makes it easier for zoning bylaws/ordinances promoting housing to pass.
- Voting Reductions effective now.
- MBTA Community provisions not effective yet.



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Questions?



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