

Housing Choice Act of 2020 Update

February 1, 2021

On January 14, 2021, Governor Charlie Baker signed into law House Bill 5250 – “An Act Enabling Partnerships of Growth”, the so-called “Housing Choice Law”. The stated purpose of this legislation is to: “finance improvements to the commonwealth’s economic infrastructure and promote economic opportunity.” To that end, the legislation includes more than \$682,000,000 in capital authorizations. However, the Act also makes a number of substantial changes to housing and development statutes, including G.L. c.40R (Smart Growth Districts), G.L. c.40V (Housing Development Initiative Programs) and G.L. c.40A (the Zoning Act). The purpose of this Memorandum is to alert you to several important amendments to G.L. c.40A that took effect immediately upon the signing of the bill into law. Future updates will address other important provisions of the new legislation.

Among the important changes to the Zoning Act are: (1) amendments to Section 5 reducing from 2/3 to simple majority the quantum of vote required for the legislative body to approve specified categories of local zoning; (2) amendments to Section 9 reducing the quantum of vote required for issuance of specified categories of special permits; (3) the addition of a new Section 3A that mandates “as of right” multi-family housing districts in communities serviced by public transportation; and (4) the insertion in Section 1A of several new definitions. We have addressed these changes below, in turn.

As you will see, there may be value in reviewing existing zoning bylaws or ordinances to determine whether amendments will need to be made to address these revisions to state law.

Quantum of Vote Requirements Lowered for Certain Zoning Amendments

As of January 14, 2021, only a majority vote of the legislative body is required to enact the following types of local zoning:

1. A by-law or ordinance to allow any of the following as of right:
 - a. Multifamily housing or mixed-use development in an eligible location;
 - b. Accessory dwelling units, whether within the principal dwelling or a detached structure on the same lot; or
 - c. Open-space residential developments.
2. A by-law or ordinance to allow by special permit:
 - a. Multi-family housing or mixed-use development in an eligible location;
 - b. An increase in the permissible density of population or intensity of a particular use in a proposed multi-family or mixed use development;

- c. Accessory dwelling units in a detached structure on the same lot; or
 - d. A diminution in the amount of parking required for residential or mixed-use development.
3. A by-law or ordinance that:
- a. Provides for Transfer of Development Rights (TDR) zoning or natural resource protection zoning where adoption of such zoning promotes concentration of development in areas the municipality deems “most appropriate” for such development but which will not result in a diminution in the maximum number of housing units that could be developed within the municipality; or
 - b. Modifies zoning regulations beyond what would otherwise be permitted under the existing zoning with respect to bulk and height of structures, yard sizes, lot area, setbacks, open space, parking and building coverage requirements to allow for additional housing units.
4. The adoption of a “smart growth” or “starter home” zoning district in accordance with G.L. c.40R, §3, subject to specific requirements.

For cities and towns with councils of fewer than 25 members, the new law creates a process to increase the quantum of vote to 2/3. If the owners of 80% or more of the land area included in the zoning change, extending 300 feet therefrom, file a written protest prior to final action, then a 2/3 vote will be required to enact that particular change.

Finally, as will be addressed in more detail below, the Act amends G.L. c.40A, §1A to define the categories of zoning amendments requiring only a majority vote, including: “accessory dwelling unit”; “as of right”; “open space development”; “multi-family housing”; “mixed-use development”; “eligible location”; and “lot”.

Quantum of Vote Reduced for Certain Special Permits

Also immediately effective are amendments to the special permit provisions of G.L. c.40A, § 9, reducing the quantum of vote required for the grant of specified types of special permits. Specifically, instead of requiring approval by a supermajority vote of all of the members of the special permit granting authority, only a simple majority vote is now required to grant a special permit allowing any of the following:

- 1. Multifamily housing located within 1/2 mile of a commuter rail station, subway station, ferry terminal or bus station; provided, that not less than 10 per cent of the housing shall be affordable to and occupied by households whose annual income is less than 80% of the area-wide median income as determined by the United States Department of Housing and Urban Development and affordability is assured for a period of not less than 30 years through the use of an affordable housing restriction;
- 2. 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 shall be affordable to and occupied by households whose annual income is less than 80% of the area-wide median income as determined by the United States Department of Housing and Urban Development and affordability is assured for a period of not less than 30 years through the use of an affordable housing restriction; or

3. A reduced parking space to residential unit ratio requirement; provided, that a reduction in the parking requirement will result in the production of additional housing units.

As noted above, the terms “multifamily housing” and “mixed-use development” are now defined terms in G.L. c.40A, §1A.

New Zoning Requirements for “MBTA Communities”

The new Housing Choice Law amends the Zoning Act, G.L. c.40A, by inserting a new section 3A. Chapter 40A, §3A requires each “MBTA Community” to “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” An MBTA Community is now broadly defined in G.L. c.40A, §1A. A preliminary list of the MBTA Communities subject to the application of this law appears at the end of this document.

General Laws c.40A, § 3A mandates that a multi-family housing zoning district must exist in each MBTA Community and that (1) such zoning district shall not be subject to age restrictions and must be suitable for families with children; (2) such zoning district shall have a minimum gross density of at least 15 units per acre; and (3), if applicable, that such district be located not more than ½ mile from a commuter rail station, subway station, ferry terminal, or bus station.

Section 3A also creates a penalty for failure to ensure the existence or creation of such a district. MBTA Communities that fail to create a zoning district in which multi-family housing is permitted as of right will be ineligible for funds from the Housing Choice Initiative Program, the Local Capital Projects Fund, and the MassWorks Infrastructure Program. The Massachusetts Bay Transportation Authority and the Massachusetts Department of Transportation are charged with promulgating guidelines to determine if an MBTA Community is in compliance with this new section. When additional information is available concerning these regulations, we will update you.

Certain Zoning Terms Expressly Defined

Several of the amendments to G.L. c.40A introduced by this new legislation employ terms that were previously undefined. Now, the following 10 terms are specifically defined in 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; and
- Open space residential development.

Also of note, the new legislation replaces the definition of “Transfer of development rights” in G.L. c.40A, §1A, and substitutes the term “open space residential” for the word “cluster” in G.L. c.40A, § 9.

Conclusion

The above summary is intended to highlight the changes to the Zoning Act that have the most immediate and consequential impacts on the Commonwealth’s cities and towns. Notably, many of the terms now defined in G.L. c.40A, §1A have long been used and variously defined in local zoning by-laws and ordinances. While amendments to municipal zoning definitions may not be necessary immediately, municipalities should anticipate that differences between the new definitions in G.L. c.40A and those already employed in municipal zoning by-laws and ordinances may eventually lead to problems. This may be particularly important when determining the applicable quantum of vote requirements for certain zoning changes and special permits. For that reason, it will be useful to review the municipality’s current zoning bylaw or ordinance to determine if any immediate revisions are needed. In many towns, there may still be time to address these issues at the Annual or Special Town Meeting.

Should you have any questions regarding these changes or any other aspects of the new legislation, please contact your KP Law Attorney.

Preliminary List

MBTA COMMUNITIES (G.L. c. 40A, § 3A)

Abington	Acton	Amesbury	Andover	Arlington	Ashburnham
Ashby	Ashland	Attleboro	Auburn	Ayer	Bedford
Bellingham	Belmont	Berkley	Beverly	Billerica	Boston
Boxford	Boxborough	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	Harvard	Haverhill	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	Millbury	Middleton	Millis	Milton
Nahant	Natick	Needham	Newbury	Newburyport	Newton
Norfolk	North Andover	North Attleborough	North Reading	Northborough	Northbridge
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	West Bridgewater	West Newbury
Westborough	Westford	Westminster	Weston	Westwood	Weymouth
Whitman	Wilmington	Winchester	Winthrop	Woburn	Worcester
Wrentham					

**Please note that this list is preliminary, and not exhaustive. Communities may be subject to MBTA Community requirements as a result of special legislation.*

Disclaimer: This information is provided as a service by KP Law, P.C. This information is general in nature and does not, and is not intended to, constitute legal advice. Neither the provision nor receipt of this information creates an attorney-client relationship with KP Law, P.C. Whether to take any action based upon the information contained herein should be determined only after consultation with legal counsel.

THE LEADER IN PUBLIC SECTOR LAW

617.556.0007 | 1.800.548.3522 | www.k-plaw.com | ©2021 KP Law, P.C.

DHCD Issues Draft Compliance Guidelines for “MBTA Communities” and Multi-Family Zoning Requirements

January 5, 2022

As you know, on January 14, 2021, Governor Charlie Baker signed into law House Bill 5250 – “An Act Enabling Partnerships of Growth.” Commonly referred to as the “Housing Choice Act,” this legislation made significant changes to the Zoning Act, G.L. c. 40A, and encourages municipalities to adopt “best practices” and zoning that supports sustainable housing production.

Of particular note, the Housing Choice Act amended the Zoning Act by inserting a new “Section 3A,” which regulates “MBTA Communities.” The new G.L. c. 40A, § 3A requires an MBTA Community to “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 . . .” The required multi-family housing district may not be subject to age restrictions, must be suitable for families with children, have a minimum gross density of 15 units per acre, and, if applicable, be located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal, or bus station.

Communities that fail to create a zoning district in which multi-family housing is allowed as of right will not be eligible for funds from the Housing Choice Initiative Program, the Local Capital Projects Fund, or the MassWorks Infrastructure Program.

To that end, on December 15, 2021, the Department of Housing and Community Development (“DHCD”) issued draft compliance guidelines applicable to MBTA Communities. The draft regulations can be accessed at: <http://www.mass.gov/mbtacomunities>. MBTA communities, interested stakeholders, and the public are invited to submit comment to DHCD by **March 31, 2022**. Final compliance guidelines will be issued in summer 2022.

To remain in compliance while DHCD is collecting public comment on the draft guidelines, MBTA communities must:

- Submit the [MBTA Community Information Form](#) by 5:00 p.m. on **May 2, 2022**.
- Hold a briefing of your City Council, Town Council or Select Board on the Draft Compliance Guidance no later than **May 2, 2022**, and attest to that on the MBTA Community Information Form.

Going forward, MBTA Communities that do not have a multi-family district of reasonable size that complies with all of the requirements set out in G.L. c. 40A, § 3A, should take time to review Section 9.b of the draft regulations (“Action plans and interim compliance – New or amended district”). “Rapid Transit Communities” and “Bus Service Communities” must obtain DHCD approval of an action plan no later than

March 31, 2023. “Commuter Rail Communities” and “Adjacent Communities” must obtain DHCD approval of an action plan no later than **July 1, 2023.** Your municipality’s “MBTA Community” designation can be located at: [“What is an ‘MBTA Community’?”](#)

In the interim, if you have any questions regarding the draft compliance regulations, submitting comments to DHCD, or the Housing Choice Act in general, please do not hesitate to contact your KP Law attorney at 617-556-0007 or by e-mail following this convention: first initial last name@k-plaw.com.

Disclaimer: This information is provided as a service by KP Law, P.C. This information is general in nature and does not, and is not intended to, constitute legal advice. Neither the provision nor receipt of this information creates an attorney-client relationship with KP Law, P.C. Whether to take any action based upon the information contained herein should be determined only after consultation with legal counsel.