



A Robinson+Cole Legal Update

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MA Zoning Reform Focused on Housing Production; Waiting for DHCD Guidance

Authored by [Jessica D. Bardi](#) and [Karla L. Chaffee](#)

The need for zoning reform has been a perennial topic in both chambers of the Massachusetts State House for almost two decades. Signed into law by Governor Baker on January 14, 2021, Chapter 358 of the Acts of 2020, "[An Act Enabling Partnerships for Growth](#)," incorporates several provisions from the Housing Choice legislation introduced by the Baker-Polito administration over three years ago (Act). The 101-page Act is primarily an economic development effort. With the aim of combating the negative economic impacts of the COVID-19 pandemic, the Act allocates more than \$630 million to a plethora of state grant programs and provides direct financial assistance for various local economic development projects. Additionally, the Act made several significant changes to the Zoning Act, described below.

Significant Zoning Changes

A simple majority: The Act reduces the voting requirement to adopt certain municipal zoning code amendments. Prior to the amendment, Chapter 40A Section 5 required that all zoning ordinance or by-law amendments be adopted by a two-thirds vote of the municipality's governing body. The Act amends Section 5 to permit an amendment to a local zoning ordinance or by-law by a **simple majority vote** of the municipality's governing body in several different scenarios outlined below.

- Zoning amendments to allow the following as-of-right:
 - multi-family housing or mixed-use development in an eligible location;
 - accessory dwelling units, whether within or attached to the principal dwelling or in a detached structure on the same lot; and
 - open space residential development.

The Act adopts the definition of *eligible location* currently found in Chapter 40R, which describes the characteristics of an area that make it a "highly suitable location for residential or mixed use smart growth zoning districts or starter home zoning districts."

- Zoning amendments to allow the following by special permit:
 - multi-family housing or mixed-use development in an eligible location;
 - accessory dwelling units, whether within the principal dwelling or attached to or in a detached structure on the same lot;
 - an increase in the permissible density of population or intensity of a particular use in a proposed multi-family or mixed-use development; and
 - a diminution in the amount of parking required for residential or mixed-use development.
- Adoption of "transfer of development rights" (TDR) and natural resource protection zoning, but only if the concentration of development in one area would not diminish the maximum number of housing units that could be developed in the municipality.

- Zoning amendments that would allow additional housing units beyond what is permitted under existing zoning. Such changes include modification to bulk and height, yard size, lot area, setback, open space, and parking- and building-coverage standards.
- Zoning amendments for adoption of a smart-growth zoning district or starter-home zoning district in accordance with Chapter 40R.

The Act also amends Chapter 40A Section 9 to allow for a simple majority vote of the special permit granting authority when granting a special permit for multi-family housing or mixed-use development.

Multi-family in MBTA Communities: The Act creates a new Section 3A of Chapter 40A dedicated to facilitating the appropriate zoning of multi-family housing in MBTA communities throughout the Commonwealth. Section 3A provides that each MBTA community shall have a zoning ordinance or by-law that permits as-of-right, non-age-restricted, multi-family housing suitable for families with children in at least one (1) *district of reasonable size*. A *district of reasonable size* must have a minimum gross density of 15 units per acre, subject to limitations imposed by the Massachusetts Wetlands Protection Act and Title 5, regulating septic systems, and must be located not more than 0.5 miles from an MBTA commuter rail station, subway station, ferry terminal or bus station.

An MBTA community that fails to adopt multi-family zoning pursuant to Chapter 40A Section 3A is not eligible for funds from the Housing Choice Initiative, the Local Capital Projects Fund or the MassWorks infrastructure program.

Plaintiff's Bond: The Act amends Chapter 40A Section 17, which governs judicial review of decisions under the Zoning Act, by adding a paragraph giving a reviewing court the discretion to require a plaintiff appealing a decision to approve a special permit, variance or site plan to post a surety or cash bond of up to \$50,000. The court may require the bond to secure payment of costs if the court finds that the harm to the defendant or to the public interest resulting from litigation delays outweighs the financial burden of the bond on the plaintiffs.

Guidance on the Way

Section 18(c) of the Act states that guidelines must be promulgated to determine if an MBTA community is in compliance with Section 3A and eligible for funding from the sources noted in the Act. On January 29, 2021, the Department of Housing and Community Development (DHCD) issued "preliminary guidance" to "(1) inform MBTA communities about the process the Department will undertake to establish compliance criteria for section 3A, and (2) notify MBTA communities that they will remain eligible for grant programs ... until more detailed compliance criteria and guidelines have been issued." DHCD recognizes that some MBTA communities might already have zoning districts that meet Section 3A criteria and that some will need to amend their zoning codes. DHCD also expects to consult with other state agencies as required by the Act and to consult MBTA communities promptly. More complete guidance will be provided by DHCD "as soon as possible." Until specific guidance is offered by DHCD, all MBTA communities are deemed compliant with Section 3A and may apply for grant funding.

The following Robinson+Cole Land Use Group attorneys are available to assist with any questions you may have regarding the Act and its impact on zoning laws in Massachusetts:

FOR MORE INFORMATION

Contact any of the following Massachusetts members of Robinson+Cole's [Land Use Group](#) listed below:

[Jessica D. Bardi](#) | [Karla L. Chaffee](#) | [Michael S. Giaimo](#) | [Matthew J. Lawlor](#)

[Alicia R. Selman](#) | [Kristen E. Spirou](#) | [Timothy C. Twardowski](#)

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Robinson & Cole LLP | 280 Trumbull Street, Hartford, CT 06103 | www.rc.com