

**CITY OF NEWTON
LAW DEPARTMENT MEMORANDUM**

DATE: March 17, 2021
TO: All Members, City Council
FROM: Andrew S. Lee, Assistant City Solicitor
RE: Housing Choice Zoning Amendments – Update

The law department issued a memorandum dated February 4, 2021 outlining the key changes made by the Housing Choice legislation to the Massachusetts Zoning Act, G.L. c. 40A. A copy of the February 4, 2021 memo is attached as Attachment A. As stated in the prior memo, the Executive Office of Housing and Development was working on additional guidance to assist municipalities in determining voting thresholds for various zoning amendments. On February 26, 2021, the Executive Office of Housing and Development issued such additional guidance. A copy of the guidance is attached as Attachment B.

The following is a summary of the highlights from the updated guidance.

As more fully set forth in both the prior memorandum and additional guidance, the Housing Choice legislation changed the voting requirement for certain types of zoning amendments from 2/3 to a simple majority. However, the legislation itself does not identify how a municipality should determine which voting threshold applies to a particular zoning proposal. The guidance recommends the following process to decide which voting threshold applies:

1. The proponent of the proposed zoning amendment should include in their petition a statement explaining if the proposal meets any of the criteria for being approved by a simple majority vote, including whether the land area affected meets the definition of an eligible location.
2. The Planning and Development Board, after consultation with the law department, should include in its report and recommendations to the full city council a determination of which voting threshold applies to the zoning proposal.
3. The City Council may affirm the voting threshold determined by the Planning and Development Board.

The Executive Office of Housing and Economic Development has also created an application by which the Mayor, City Council or Planning and Development Board may request an advisory opinion from the Executive Office on whether a particular zoning proposal affects an eligible location. The request may not be made by an individual member of the City Council or Planning and Development Board.

The law department will continue to monitor updates from the state, including the anticipated guidelines from DHCD regarding the requirements for MBTA Communities.