

GUIDE TO UNDERSTANDING
HOUSING CHOICE
AND ITS
OPPORTUNITIES



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Housing Choice Law

What is the new Housing Choice law?

In January, the Massachusetts Legislature enacted one of MAR's top advocacy priorities, the Housing Choice bill, as part of the legislative economic development package, *An Act enabling partnerships for growth*. Housing Choice policies will spur housing development by lowering the voting threshold for key zoning proposals that support housing production. We can engage at the local level to help enact these zoning changes and increase both opportunities for homeownership and the diversity of housing available across the state.

How exactly does the new Housing Choice law change things in cities and towns?

Cities and towns control land use through zoning ordinances (in cities) and bylaws (in towns). Local zoning determines what kind of housing may be built, and where it may be located, within a community. The Housing Choice law lowers the vote threshold required for certain types of zoning to pass in a city or town—from 2/3 of the voting body to a simple majority (or 50% plus one) of the voting body. Lowering the threshold makes zoning change easier, creating new opportunities for housing development.

Is this law “opt-in,” meaning that cities and towns would have to vote to first accept its provisions to change vote thresholds, before the new lower vote thresholds would apply?

No! Unlike earlier legislative proposals to update zoning to support housing, this law applies to all cities and towns (with the exception of Boston). This means that if a city or town votes on an eligible zoning amendment, the proposal will pass if it receives a simple majority of votes.

What types of housing development can these changes promote?

As of Right Development

There are three types of housing development that can be allowed “as of right” by amending zoning. “As of right” means that the ability to proceed with a project is not subject to the discretion of local government once they put guidelines in place. These types of housing development are:

- Multi-family or mixed-use development in an eligible location (near a transit or commercial hub, for example)
- Accessory Dwelling Units, or ADUs, also commonly called in-law apartments
- Open Space and Residential Development, or OSRD, which allows for clustered development surrounded by open land

Special Permit Zoning

Additionally, a city or town can make zoning changes through a simple majority vote to allow some forms of housing development by special permit. Before approving a special permit, a city or town must determine that the proposed project aligns with the intent of the local zoning. These forms of development include:

- Multi-family housing or mixed-use development in an eligible location
- An increase in number of units in a multifamily or mixed-use development, if at least 10% are designated affordable
- Accessory Dwelling Units in a detached structure on the same property
- Reduced parking requirements for a residential or mixed-use development

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Creating Zoning Districts and Maximizing Development

- Smart Growth Zoning District or a Starter Home Zoning District
- Transfer of Development Rights
- Natural Resource Protection Zoning
- Changes to dimensional standards, like reduced parking requirements, in exchange for additional housing units

What else was in the law?

The larger economic development law includes several important provisions outside of Housing Choice that are also supportive of housing:

- A provision to discourage frivolous anti-development lawsuits. It gives the courts the ability to require the posting of up to \$50,000 in surety or cash bond by those challenging local special permit approvals. Those funds are used to cover costs if the court finds that the harms to the defendant and public interest from the delays caused by appeals outweigh their financial burden.
- The creation of MBTA Communities – requiring zoning of a minimum gross density of 15 units per acre and located within a half-mile of an MBTA transit station.
- \$60 Million for Affordable Housing – \$50 million for the creation of low- and moderate-income affordable housing near public transportation, and \$10 million to support the creation and preservation of climate resilient affordable multifamily housing.
- \$5 million to fund capital repairs and improvements to broadband infrastructure.

Where can I find more information about the Housing Choice law?

The state Executive Office of Housing and Economic Development has released preliminary guidance to municipalities about what the law does and how it can be implemented, which may be found [here](#). And on the following pages, you will find more information by topic about how this law can unlock housing opportunity in your community. If you have any questions, please feel free to contact MAR Government Affairs Associate, Audrey Hettinger, at ahettinger@marealtor.com or 781-839-5515.



Opportunity: Accessory Dwelling Units

An Accessory Dwelling Unit (ADU) is a small home that is on the same property as a larger primary home. An ADU can take a variety of familiar forms:

- It may be built into an existing space in the primary home, such as a basement, attic, or garage
- It may be built as a new addition attached to the primary home
- It may be built as a structure detached from the primary home, like a small cottage

Why are ADUs useful?

There are a lot of ways in which an ADU can benefit a homeowner:

- It can house a family member or friend of a homeowner, creating flexibility and independent living while maximizing use of the property
- It can be rented, generating income for the homeowner
- It can facilitate aging in place for senior homeowners, allowing them to transition to the ADU while renting their primary home as a larger source of income, without disruption to their routines or community ties
- It can increase the property's value

And a community:

- Because ADUs are generally small by nature, they are a naturally affordable housing option relative to average housing costs in many communities
- They can allow members of the local workforce access to housing in that same community
- They enhance the variety of housing options available in a community, without requiring the development of new land or additional infrastructure
- They enhance the assessed value of a property and therefore return additional revenue to the community

If you would like to learn more about ADUs or how to pursue a zoning change to allow them in your city or town, please contact MAR Government Affairs Associate, Audrey Hettinger, at ahettinger@marealtor.com or 781-839-5515.



Opportunity: Open Space and Residential Development (OSRD)

Open Space and Residential Development, sometimes called Cluster Development, is a type of development design where homes in a new subdivision are clustered together with reduced requirements around lot area, frontage, setback, and lot coverage requirements. The remaining lot space is not developed, but it is instead preserved as open space.

Why would a community want to adopt Open Space and Residential Development?

This form of development leaves more land in its natural state than traditional subdivision development, which could benefit natural resource protection, including waterbodies and wetlands. Because the homes are clustered together, infrastructure costs could be reduced when compared to traditional design and sprawl is reduced.

With OSRD, many of the homes developed are smaller than those in traditional subdivisions, lowering price points. Local ordinances and bylaws may also stipulate that if deed-restricted affordable homes are developed, bonus market-rate homes may be added to the site.

If you are interested in helping to establish Open Space Residential Development in your community and would like to discuss it, please contact MAR Government Affairs Associate, Audrey Hettinger, at ahettinger@marealtor.com or 781-839-5515.



Opportunity: Zoning for Smart Growth Districts

A Smart Growth Zoning District is one that promotes denser development with state financial incentives.

It can be in one of three locations:

- Near transit stations
- Areas of concentrated development, like a town or city center
- Areas that have infrastructure, transportation access, or underutilized facilities

Generally, the district can't be greater in size than fifteen percent (15%) of the total land in the city or town, but the state can grant special permission for a size up to twenty-five percent (25%) of the total land.

All residential and mixed-use development must be allowed as of right. Communities can regulate some characteristics of the development through a process called site plan review, but the requirements imposed by that process cannot be overly burdensome.

Twenty percent (20%) of the housing in the district must be affordable to residents who earn eighty percent (80%) or less than the median income in the area. Those affordable units must carry a deed restriction protecting their affordability for at least 30 years.

The density allowed must be, at minimum:

- 8 units/acre for single-family dwellings
- 12 units/acre for 2- and 3- family dwellings
- 20 units/acre for larger multi-family dwellings

The district must provide a range of housing opportunities, including for families with children.

If a community with a population under 10,000 is interested in pursuing a district but doesn't believe it can meet the density requirements, it could request permission from the state for a reduction.

What is the benefit to the city or town?

In addition to increasing its housing supply; promoting economic vibrancy, new growth and sustainability; and maximizing existing transportation or other infrastructure; there are four financial incentives offered to the municipality by the state:

- Zoning Incentive Payments based on the number of new homes that may be built because of the zoning change. These payments range from \$10,000 to \$600,000.
- Bonus Payments of \$3,000 each time a building permit is issued for a new home in the district.
- Educational Costs reimbursement for the net cost of educating students residing in the new homes.
- Preference for competitive discretionary state funds across several state agencies.

How many communities have adopted Smart Growth Zoning Districts?

Currently, there are 45 communities that are home to 55 districts. Collectively, they are zoned to allow 23,000 new homes.

A city or town must receive district approval from the state prior to adopting a Smart Growth Zoning District at the local level. If you are interested in helping to create a district in your community and would like to discuss the process or learn more, please contact MAR Government Affairs Associate, Audrey Hettinger, at ahettinger@marealtor.com or 781-839-5515.

Opportunity: Zoning for Starter Home Districts

In addition to Smart Growth Zoning Districts and similar to them in several ways, Starter Home Districts may also be created through special zoning in cities and towns.

The state defines a Starter Home as one with up to 1,850 square feet in heated living area; it is a distinction based on size rather than stage of life of occupants. Starter Home District zoning can, at the discretion of the city or town, allow for an Accessory Dwelling Unit of up to 600 square feet on the same lot.

The eligible locations for these districts are the same as for Smart Growth Zoning Districts:

- Near transit stations
- Areas of concentrated development, like a town or city center
- Areas that have infrastructure, transportation access, or underutilized facilities

These districts must:

- Contain a minimum of 3 acres
- Allow at least 4 homes/acre
- Half of the homes must have three or more bedrooms
- At least 20% of the homes must be affordable to residents earning the median income in the area or below
- Provide homes that are open to residents of all ages

Why would a city or town create a Starter Home District?

This zoning would increase the type of housing that many homebuyers of all ages seek, but that they cannot access due to limited inventory. Existing residential zoning often does not accommodate the development of homes under 1,850 square feet on small lots, creating a gap between supply and demand.

Are cities and towns that create these districts, eligible for the same financial incentives as those with Smart Growth Zoning Districts?

Yes! Communities that host Starter Home Districts will receive from the state:

- Zoning Incentive Payments based on the number of new homes that may be built because of the zoning change. These payments range from \$10,000 to \$600,000.
- Bonus Payments of \$3,000 each time a building permit is issued for a new home in the district
- Educational Costs reimbursement for the net cost of educating students residing in the new homes
- Preference for competitive discretionary state funds across several state agencies

A city or town must receive district approval from the state prior to adopting a Starter Home Zoning District at the local level. If you are interested in helping to create a district in your community and would like to discuss the process or learn more, please contact MAR Government Affairs Associate, Audrey Hettinger, at ahettinger@marealtor.com or 781-839-5515.

Opportunity: Zoning for Transfer of Developments Rights (TDR)

Transfer of Development Rights is a market-based system that allows for dense development in one area of a city or town in exchange for open space preservation in another; in this way, the development that could have occurred at one site is permanently “transferred” to another site. A community that uses TDR can both preserve open space and protect natural resources while also promoting smart growth and achieving economic objectives.

TDR requires significant community planning for implementation, including the establishment of “sending” and “receiving” districts. A typical “sending” district, or one with sites whose development rights may be transferred, may be rural or agricultural in nature. A typical “receiving” district, or one with sites that may gain development rights from others, may be in an area with infrastructure already in place to support more density, such as a commercial, or town center.

Zoning ordinances or bylaws can determine which properties are in a “sending” district and which properties are in a “receiving” district. Once these districts are established, development rights may be bought and sold on the private market. Some communities go further and establish a TDR bank, which can buy development rights and hold them until such time as the market demands.

Transfer of Development Rights zoning may unlock further housing development in a community, in areas with preexisting infrastructure to support it, while preserving open space.

If you are interested in discussing how to approach Transfer of Development Rights in your community, please contact MAR Government Affairs Associate, Audrey Hettinger, at ahettinger@marealtor.com or 781-839-5515.



Opportunity: Natural Resources Protection Zoning (NRPZ)

Natural Resources Protection Zoning, similar to Open Space and Residential Development, is a smart growth strategy that regulates the new subdivision of land to maximize the protection of forests, wetlands, agricultural land, and open space while allowing for development.

NRPZ focuses on site design and encourages development that complements the existing terrain; rather than using minimum lot size requirements within a subdivision, it instead uses minimum density requirements. This approach allows for concentrated development on the area of a site that is most suitable, while protecting existing natural resources on the site.

NRPZ is as of right, with deviations such as conventional development allowed by special permit only. Development rights are calculated by formula, leading to predictability.

This zoning approach can unlock housing development while promoting open space preservation and sustainability within a community.

If you are interested in helping to establish Natural Resources Protection zoning in your community and would like to discuss it, please contact MAR Government Affairs Associate, Audrey Hettinger, at ahettinger@marealtor.com or 781-839-5515.



Opportunity: MBTA Communities

This new law requires communities served by the Massachusetts Bay Transit Authority (MBTA) to put in place a zoning ordinance or bylaw that creates at least one district of reasonable size in which multi-family housing is permitted as of right. The zoning cannot include age restrictions on the housing, and it must be suitable for families with children.

This is an excellent opportunity to create new multi-unit housing, open to all. In many cities and towns, the demand for this type of home is high, but the inventory is low—in part due to existing zoning that may prohibit this type of housing development.

What is a reasonable size district, exactly?

Under the law, it must have a minimum density allowing 15 homes per acre, subject to the limitations of the Wetlands Protection Act and state sewer and septic regulations.

Where can the district be located within the community?

It must be within ½ mile from:

- A commuter rail station
- A subway station
- A ferry terminal or
- A bus station

Which communities are MBTA Communities?

Abington, Acton, Amesbury, Andover, Arlington, Ashburnham, Ashby, Ashland, Attleboro, Auburn, Ayer, Bedford, Bellingham, Belmont, Berkley, Beverly, Billerica, Boston, Boxborough, Boxford, Braintree, Bridgewater, Brookline, Brockton, 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, Lynn, Lynnfield, Littleton, Lowell, Lunenburg, Malden, Manchester-by-the-Sea, Mansfield, Marlborough, Marblehead, Marshfield, Maynard, Medfield, Medford, Medway, Melrose, Middleton, Merrimac, Methuen, Middleborough, Milton, Millbury, Millis, Nahant, Natick, Needham, Newbury, Newburyport, Newton, Norfolk, North Andover, North Attleborough, Northborough, Northbridge, Norton, North Reading, Norwell, Norwood, Paxton, Peabody, Pembroke, Plymouth, Plympton, Princeton, Quincy, Randolph, Raynham, Reading, Rehoboth, Revere, Rochester, Rockland, Rockport, Rowley, Salem, Salisbury, Saugus, Scituate, Seekonk, Sharon, Somerville, Sherborn, Shirley, Shrewsbury, Southborough, Sterling, Stoneham, Stoughton, Stow, Sudbury, Sutton, Swampscott, Taunton, Tewksbury, Townsend, Topsfield, 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, and Woburn, Worcester, Wrentham.

Do some of these communities already have districts like the one described?

Yes, some may be in compliance through their existing zoning. Others will need to begin the zoning amendment process to create a district.

What happens if a city or town doesn't have or create a district, like the law requires?

To encourage compliance, cities and towns that are subject to the law but do not create a district will become ineligible to receive competitive state funds through some popular housing, capital projects, and infrastructure development programs. The state agencies that control these funds will issue further guidance to municipalities detailing pathways to compliance; until then, they will remain eligible for those competitive state funds.

As MBTA Communities work towards compliance, there will be excellent opportunities for public input at the local level to shape the districts through the rezoning process. For more information about how you can become involved in your community, please contact MAR Government Affairs Associate, Audrey Hettinger, at ahettinger@marealtor.com or 781-839-5515.