



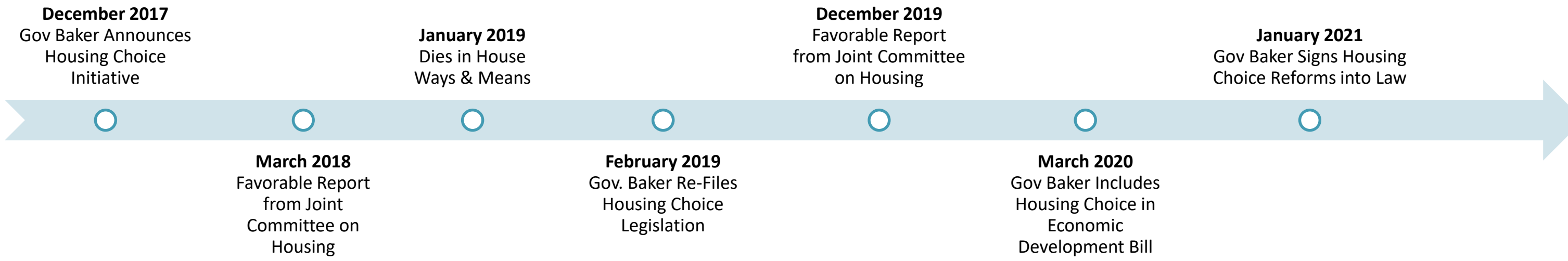
# Housing Choice

## March 2021

**Massachusetts Municipal Association (MMA)**

**03.02.2021**

# Housing Choice



- Multi-year effort to better enable municipalities to adopt the zoning measures needed to meet the state’s housing needs.
- The Baker-Polito Administration understands that not all cities and towns are the same.
- Where there is majority consensus in communities around increasing housing production, a minority of voters should not be able to block zoning reform.
- Through targeted amendments to MGL c. 40A, the state can create a more predictable and fair process for zoning, and ultimately housing production.

# The Housing Choice Campaign



- An expansive coalition of elected officials, housing advocates, planners, builders, citizens, and countless others worked to push this reform forward.
- **Spotlight Series:** 13 Spotlight Events held statewide throughout 2019 and early 2020 with dozens of endorsements spanning state and local officials, businesses, developers, non-profits, and housing advocates.
  - Dubbed a “Housing Choice Palooza” (April 25, 2019) by the Boston Globe’s Jon Chesto, the tour stopped in 13 communities.
- An energized **public hearing** on the bill in May 2019 that filled most of Gardner Auditorium.
- Countless meetings, discussions, speeches, panels, articles, editorials and policy papers...
  - E.g. Met with over 100 legislators



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The Boston Globe  
**Business**

THE BOSTON GLOBE TUESDAY, FEBRUARY 9, 2021 | BOSTONGLOBE.COM/BUSINESS

## Housing Choice brings big zoning law changes

JON CHESTO  
CHESTO MEANS BUSINESS



Housing Choice became the law of the land only a month ago. But some municipal officials aren't wasting any time putting it to use. The Legislature went into overtime to finish an economic development bill that included Housing Choice. At stake: the biggest reform to state zoning laws in five decades. Housing Choice started with Governor Charlie Baker's push to lower the threshold for a variety of local land-use votes, and evolved to include some related reforms and affordable-housing funds added by lawmakers along the way. Here's what it means in Arlington. A proposal to allow accessory apartments in one- and two-family homes will only need support from a simple majority of the 252-member Town Meeting this spring, instead of two-thirds of those voters. Another change would accommodate larger buildings, possibly some mixed-use with housing, in the town's industrial zones — if more than half of Town Meeting members agree. Then there's the multifamily overlay district that town officials are discussing near the Alewife MBTA station, because the new law requires them to do so. Baker and his housing secretary, Mike Kennedy, must be hoping this sort of activity soon plays out across the state. Baker and Kennedy will assuredly address the law's potential ramifications for badly needed housing production during a virtual bill-signing scheduled for Tuesday. Before the snowy forecast prompted a switch, the event was supposed to happen in Salem. There's a good reason for that: Salem has been Baker's go-to city to show how the two-thirds majority requirement stymied local housing votes. Mayor Kim Driscoll of Salem said she is testing up a new accessory apartment ordinance after the old one failed, twice, in separate 7-6 votes at

64 Municipalities out of 98 in the Boston metro area that have land within a half-mile of a transit station.

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DAVID L. RYAN/GLOBE STAFF (FEB. 20 2021)

Governor Charlie Baker has prodded lawmakers over Housing Choice for three years.

HOUSING, Page D4

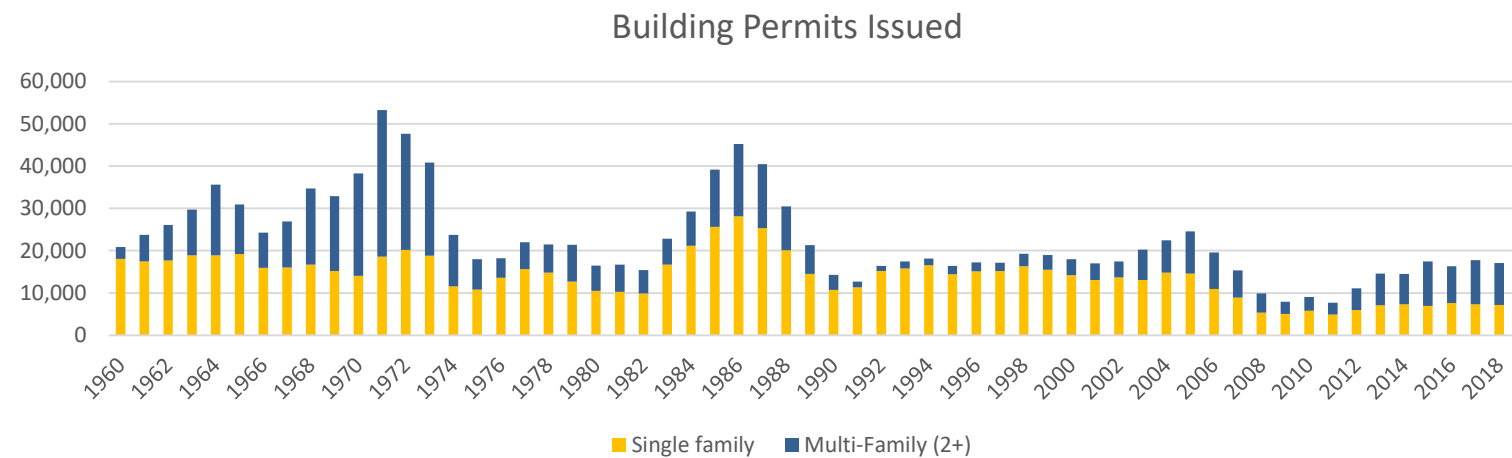
@MassEOHED



# The Housing Crisis



- Massachusetts faces a core challenge to create adequate housing to support our economy and families.
- Between 1960 and 1990, Massachusetts communities permitted almost 900,000 housing units. Since 1990, communities have permitted less than 470,000 new units.
  - In 1971, 53,272 housing units were permitted in Massachusetts. From 2017-2019, the total combined amount of permitted units is just 52,137.



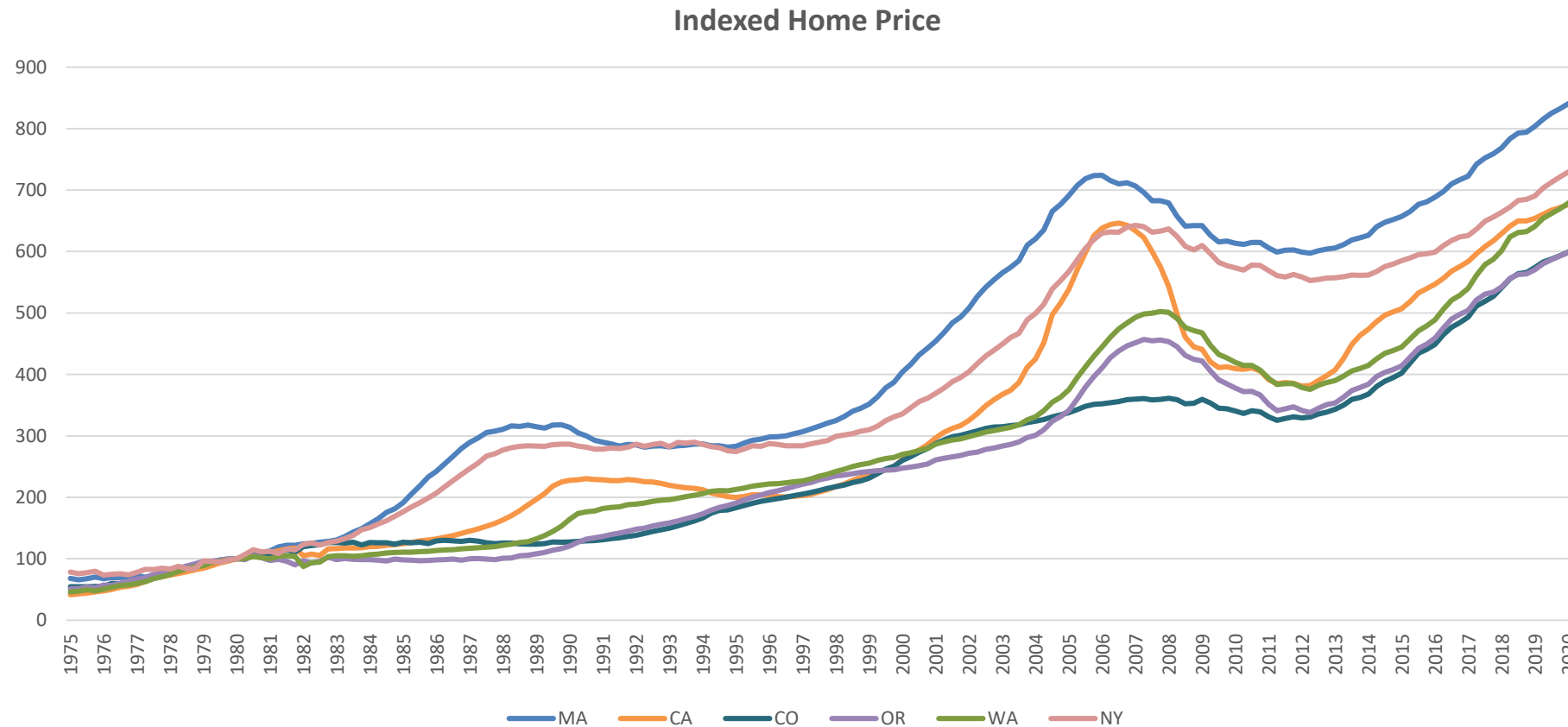
- Rents have risen dramatically across the state, and in the inner core. Statewide, rents have increased by 75% since 2000, while inner core communities have seen rents almost – or more than – double over the same period.
- Home prices have increased faster than any other state since 1980.
- As a result of increasing housing costs, the number of homeowners and renters who are cost burdened has increased significantly:
  - **Homeowners:** In 2000, less than 30% of households making less than \$100,000 were cost burdened (i.e. paying more than 30% of their income on housing). In 2017, approximately 50% of households were.
  - **Renters:** In 2017, 1 in 4 renters paid more than 50% of their income towards rent.
- Municipalities play a key role on whether or not housing is built because of their role in zoning and permitting. Cities and towns are necessary partners if the Commonwealth is to confront these housing challenges.



# Home Prices



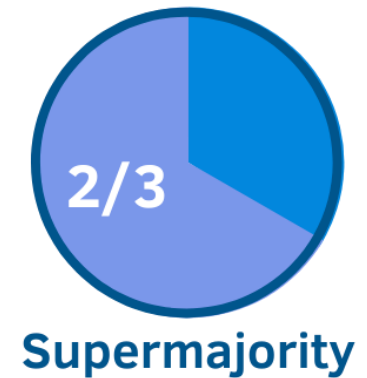
- Massachusetts single-family home prices were at the national average in 1980 and since then have increased more than any other state.
  - In 2020, the median single-family sale price reached \$445,500 – an 11.4% increase over 2019.



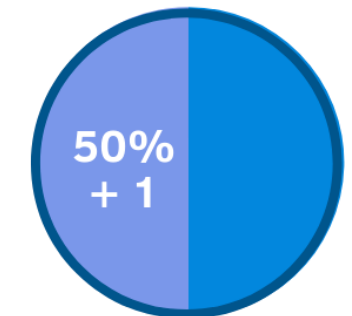
# Overview of Housing Choice



- Targeted changes to M.G.L c. 40A to reduce the threshold of votes needed to adopt certain zoning measures that promote housing production from 2/3 to simple majority.
  - These changes apply to all cities and towns in Massachusetts, except the City of Boston (which has its own zoning enabling act).
- The goal is to make it easier for local governments to approve housing supportive zoning and development.
- The new law outlines a series of housing best practices that can be enacted by simple majority vote (e.g. reducing residential dimensional requirements, adopting 40R “Smart Growth” or “Starter Home” zoning, allowing accessory dwelling units or “in-law” units by right, etc.)
  - More detail on this in later slides...



Simple Majority



# Other Notable Zoning Changes in the 2020 Economic Development Bill



- **Revenue Sharing Agreements:**
  - Allows municipalities to enter into revenue sharing agreements for sites affecting more than one local government by a simple majority vote.
- **Bonding Provision:**
  - Provides that a court, in its discretion, may require a plaintiff appealing a decision to approve a special permit, variance or site plan to post a surety or cash bond in an amount *up to* \$50,000 to secure the payment of costs if the court finds that the harm to the defendant or to the public interest resulting from delays caused by the appeal outweighs the financial burden of the surety or cash bond on the plaintiffs.
- **MBTA Communities:**
  - Provides that each MBTA community “shall 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.”
  - More information on this topic later in the presentation...



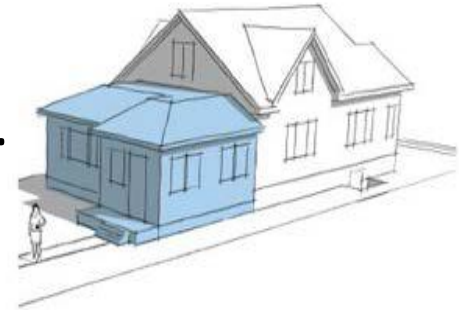
# Qualifying Amendments for Simple Majority Vote

- Zoning that allows for certain kinds of housing developments “as of right”:
  - Multi-family (3+ units) and Mixed-Use Development in an Eligible Location
  - Accessory Dwelling Units
  - Open Space and Residential Development (OSRD)
- Zoning that allows for certain kinds of housing development by special permit:
  - Multi-family and Mixed-Use Development in an Eligible Location
  - Accessory Dwelling Units that are not attached to the primary home
  - Allowing for increased density through a Special Permit process
  - Reduction of parking requirements for residential or Mixed-Use Development
- Zoning that allows for:
  - Changes to dimensional standards that allow for additional units (e.g., FAR, height, lot area, setbacks, open space, parking).
  - Amendments that adopt Smart Growth or Starter home districts, per M.G.L. c. 40R
  - Natural resource protection zoning (similar to Open Space Residential Development)
  - Transfer of Development Rights



# Examples of Zoning Qualifying for Simple Majority (1/2)

Attached ADU



- Allowing for Accessory Dwelling Units (ADUs) to be approved as of right:
  - A municipality proposes zoning to allow only owner occupied ADUs up to 800 square feet as of right. This qualifies for a simple majority because the zoning meets the statutory criteria as being no larger than  $\frac{1}{2}$  the size of the main home or 900 square feet.
  - A zoning proposal to allow 1,200 square foot ADUs as of right would **NOT** qualify for a simple majority vote.
- Reducing minimum lot area needed per dwelling, such as:
  - changing the requirement from “one-acre zoning” to  $\frac{1}{2}$  acre for single family homes,
  - changing a minimum 10,000 square foot lot size to 7,500 square feet, or
  - reducing the minimum lot area per dwelling unit from 10,000 square feet per dwelling unit (4.5 units/acre) to 5,000 square feet per dwelling unit (9 units/acre).
- A city wants to adopt a 40R district allowing multi-family residential units in its downtown near a commuter rail station. This 40R district would be a new Zoning Overlay, and would require a housing density of 20 units per acre.
  - Instead of needing 8 of 11 votes from the city council under the current law, only 6 of 11 votes would be required.

# Examples of Zoning Qualifying for Simple Majority (2/2)

- A town wants to allow duplexes in its central residential district where only single family dwellings are allowed in order to encourage development of housing that better meets the needs of its seniors.
  - They have 60 voters for town meeting (quorum = 50) and such a zoning article would require 31 votes instead of 41.



Examples of zoning changes that would **NOT** qualify for the simple majority vote (i.e. would continue to require a 2/3 vote):

- Zoning change that would change a zoning map from Limited Business to Heavy Industrial.
  - Zoning change that would increase the minimum lot size for a residential zoning district as such change decreases the overall density.
- Special Permit Granting Authority Board—Simple Majority Vote:
    - A Town allows for multi-family projects to be approved by Special Permit in its Town Center District which has a commuter rail station. Such projects require a Special Permit review by the 5-member Planning Board.
    - A developer submits a project located ¼ mile from the commuter rail station for a 100 unit building with 12 affordable units. Instead of requiring 4 affirmative votes from the Planning Board, the project only needs 3 affirmative votes.





- **What happens if the proposed zoning includes a mixture of measures that would qualify and would not qualify for the simple majority?**
  - Any amendment that requires a simple majority vote shall not be combined with an amendment that requires a 2/3 majority vote.



- Housing Choice modifications to M.G.L. c. 40A § 5 make it more difficult for affected owners and abutters to deter zoning amendments.
- Prior to the enactment of the Housing Choice legislation:
  - a written protest made by the owners of 20% of the affected land area or abutting land, would increase the required voting threshold to change the zoning, and
  - The threshold increased from a 2/3 super majority to an even larger ¾ super majority.
- Under the new law, no zoning change will trigger a supermajority greater than 2/3:
  - a protest will only change the voting threshold if it is made by owners of 50% of the affected land area or abutting land, and
  - To affirm a zoning amendment under protest, the city council or town council must approve the protested zoning amendment with a 2/3 majority
- Note, this provision applies only in a **city** or a **town** with a **town council of fewer than 25 members.**





- The new law does not specify who determines whether a proposed zoning ordinance or bylaw is the kind that can be approved by a simple majority vote.
- We recommend that proponents, planning boards, and legislative bodies clarify the voting threshold that applies to any zoning proposal:
  - The proponent of a zoning ordinance or bylaw should include in the petition a statement explaining how it meets any of the criteria for being approved by a simple majority vote.
  - After holding the public hearing required under the Zoning Act, and after consultation with municipal legal counsel, the planning board should include in its report a determination on the voting threshold for the zoning proposal.
  - The legislative body's vote consistent with that recommendation will affirm the voting threshold.
- All zoning bylaws adopted by towns must be submitted to the Attorney General for review and approval. If the Attorney General finds an inconsistency between the proposed bylaw and state law, the bylaw or portions of it may be disapproved.





- New section 3A of the Zoning Act provides that an MBTA community shall have at least one zoning district of reasonable size in which multi-family housing is permitted as of right and meets other criteria set forth in the statute:
  - Minimum gross density of 15 units per acre
  - Not more than ½ miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable.
  - No age restrictions
  - Suitable for families with children.
- The statute requires DHCD to issue guidelines that define compliance with this new section of the Zoning Act.
- DHCD issued preliminary guidance on January 29<sup>th</sup>.



- The Baker-Polito Administration wants to work with stakeholders, including towns and cities, to develop thoughtful compliance criteria and timelines so that the end result is good policy.
- We believe that stakeholder engagement is essential in order to implement this section effectively.
- To that end, municipalities (i.e. MBTA Communities) will be deemed to be in compliance with this new section until more detailed compliance criteria is established.
  - Communities seeking to pursue MassWorks or the Housing Choice Capital Grants Program in the upcoming 2021 grant cycle will remain fully eligible to apply to these programs.
- We will have more information on the stakeholder process in the coming weeks.



- Guidance & supplemental information can be found via:
  - [Mass.gov/housingchoice](https://www.mass.gov/housingchoice)
- Contact Information:
  - [housingchoice@mass.gov](mailto:housingchoice@mass.gov)



**QUESTIONS?**



# APPENDIX





- The proponent of a zoning ordinance or bylaw should explain in the petition if the land area affected meets any of the criteria for an eligible location.
- Planning board should make a determination about eligible location during the public hearing process when applicable.
- Additional guidance for determining eligible locations:
  - Regulations implementing Chapter 40R (760 CMR 59) set forth detailed criteria that DHCD applies when it determines if a land area is an eligible location under that statute may be useful as guidance.
  - Locations should be deemed eligible if within 0.5 miles of the kind of transit station listed in the statutory definition.
  - The Planning Board can make **other** eligible location determinations during its hearing process.
  - If there is uncertainty, the municipality can request an **advisory opinion** from EOHED.



- If there is uncertainty about whether a zoning proposal affects an eligible location, the municipality may request an advisory opinion from EOHED.
  - Such a request must be made by the mayor, city council, board of aldermen, or planning board (when the zoning amendment is proposed in a city); or by the select board or planning board (when the zoning amendment is proposed in a town).
  - The request should be made by completing the application at the following website: <https://www.mass.gov/forms/request-an-advisory-opinion-on-ch40a-eligible-locations>
  - EOHED will endeavor to provide a written advisory opinion within 30 days of receipt of a complete request.