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Economic development bill passes in Massachusetts

By Jeffrey Sacks and Ali Walendziak

On January 14, 2021, Massachusetts Governor Charlie Baker signed H. 5250, *An Act Enabling Partnerships for Growth* (the “Act”) into law. The Act includes several housing initiatives that have been on the governor’s agenda for years, including additional funding for affordable housing, expansion of the Massachusetts low-income housing tax credit program, Housing Choice legislation that makes it easier for towns to approve the development of affordable housing, and legislation that requires communities located near MBTA stations to zone for multi-family housing.

The text of the Act is available [here](#).

Additional funding

The new legislation increases funding for certain types of affordable housing in the amounts noted below:

- \$50 million for a program to help revitalize neighborhoods and communities with properties in blighted or substandard conditions;
- \$50 million for the development of transit-oriented housing and mixed-income affordable housing located near transit;
- \$10 million for the development and preservation of sustainable and climate-resilient affordable multifamily housing; and
- \$5 million for a Gateway Cities housing pilot program to support the construction of market-rate housing opportunities in gateway municipalities.

Expansion of the MA low-income housing tax credit

The new legislation doubles the cap for the Massachusetts low-income housing tax credit program from \$20 million to \$40 million per year. This means that the Massachusetts Department of Housing and Community Development (DHCD) may allocate up to \$40 million of tax credits to qualified projects in the Commonwealth for the next five years.

Housing Choice

The Housing Choice legislation is a key feature of the Act. Effective immediately, local governance boards may now adopt housing-related zoning amendments and special permits by a simple majority vote (rather than a 2/3 supermajority vote, which was previously required). This reform will help to increase the number of multifamily affordable housing units available throughout the Commonwealth.

The following list provides a few of the actions that are now permitted by a simple majority vote of a local governance board:

1. Amendments to zoning ordinances or by-laws 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; (c) open space residential development; or (d) modify regulations concerning the bulk and height of structures, yard sizes, lot area, setbacks, open space, parking, and building coverage requirements at a property.
2. Amendments to zoning ordinances or bylaws 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 decrease in the amount of parking required for residential or mixed-use development.
3. The adoption of smart growth zoning districts or starter home zoning districts in accordance with MGL c. 40R, *the Smart Growth Zoning Overlay District Act*.

MBTA Community

The Act also adds Section 3A to the existing Zoning Act in Massachusetts (MGL c. 40A). The new Section 3A requires every “MBTA Community” in Massachusetts to enact a zoning ordinance or bylaw that permits at least one district to be developed as multi-family housing as of right. An “MBTA Community” can be generally defined as a community located within 0.5 miles of a commuter rail station, subway station, ferry terminal, or bus station.

DHCD issued [guidance](#) on January 29, 2021, regarding the new Section 3A applicable to MBTA Communities. The guidance provides that if an MBTA Community fails to enact the requisite zoning ordinance or bylaw, it will face state funding penalties. Specifically, noncompliance communities will not be eligible for funds from the following grant programs: (i) the Housing Choice Initiative, (ii) the Local Capital Projects Fund, or (iii) the MassWorks infrastructure program. DHCD intends to issue more detailed guidelines on compliance criteria and timelines after consulting with the MBTA and the Massachusetts Department of Transportation.

Nixon Peabody will continue to track the latest updates and news on these legislative provisions.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

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