

# Planning for Affordability



Commonwealth of Massachusetts  
DEPARTMENT OF HOUSING &  
COMMUNITY DEVELOPMENT

Charles D. Baker, Governor ♦ Karyn E. Polito, Lt. Governor ♦ Chrystal Konegny, Undersecretary

## THE ZONING ACT

# What's Zoning Got to Do With It?

11-2016

Massachusetts General Laws  
Chapter 40A



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A stage with red curtains and a spotlight on the floor. The text is overlaid on the stage.

Act I: Our Housing Affordability Problem

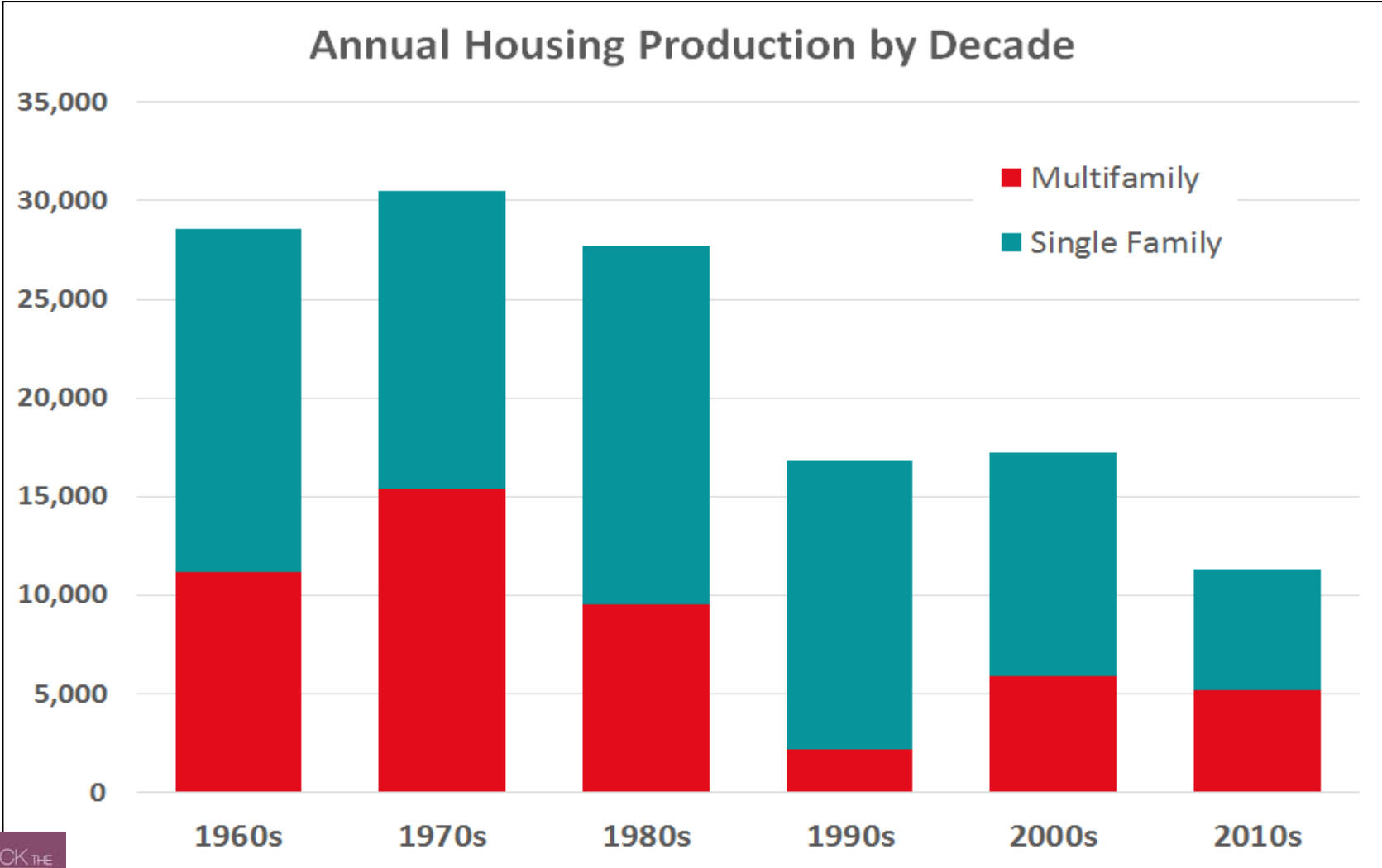
Act II: Massachusetts Zoning

Act III: A Brief Tour of a Zoning By-Law

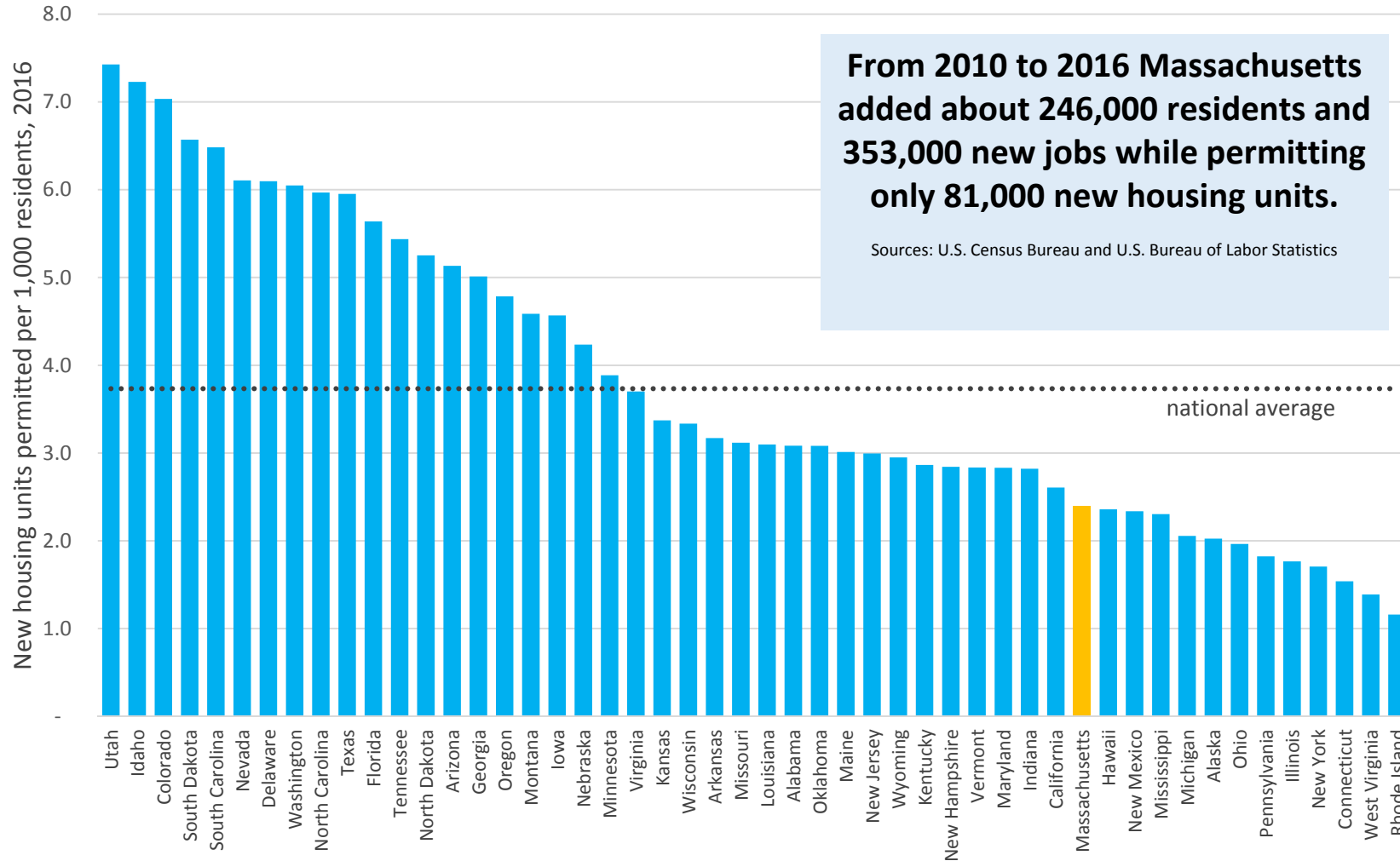
Act IV: Zoning for Affordability

Act V: How to Amend a Zoning By-Law

We are allowing less housing production now than at almost any point in recent history.



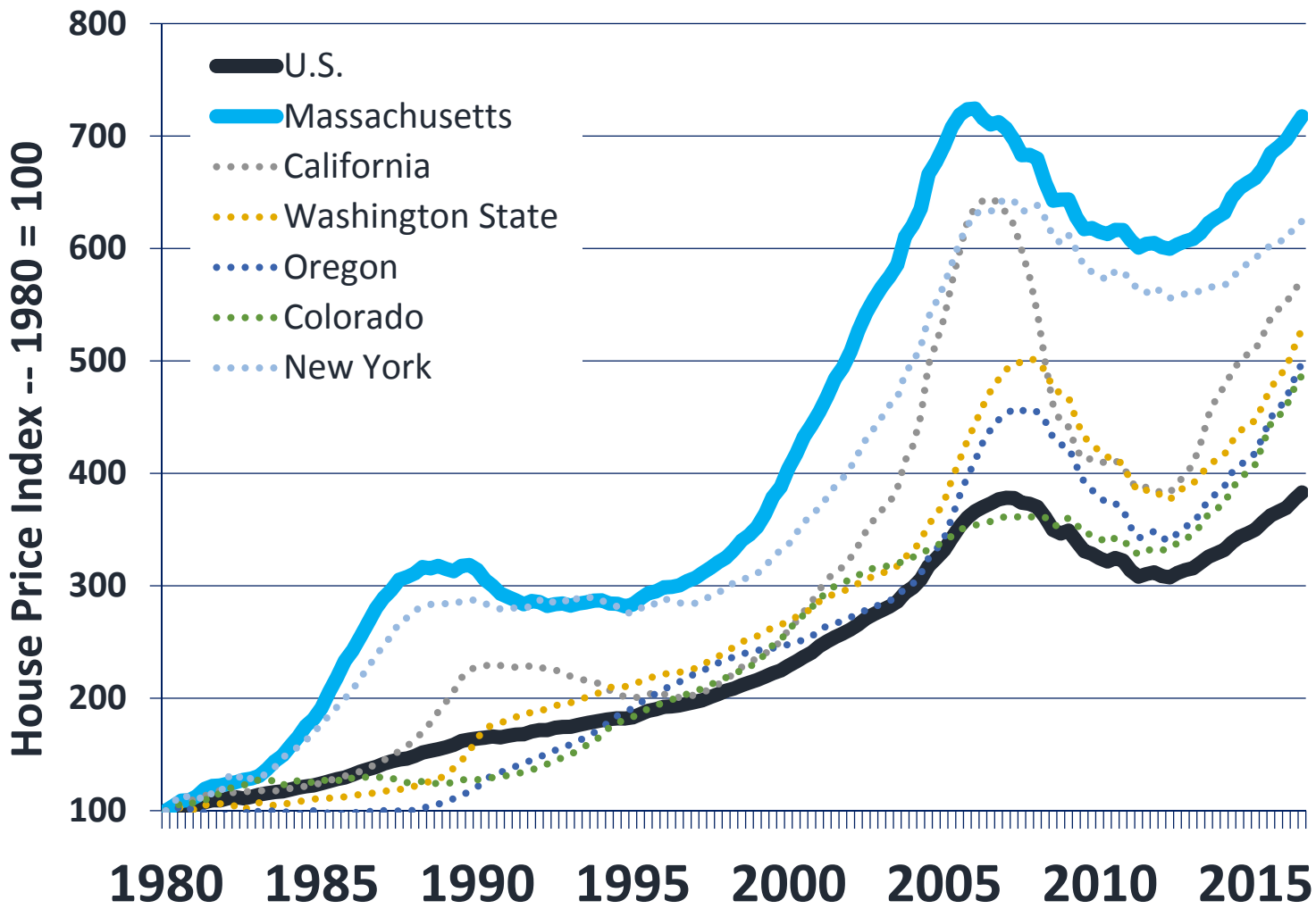
# Massachusetts now has one of the lowest rates of housing production in the U.S. despite increasing population and employment



Data from U.S. Census Bureau, 2016 Building Permit Survey.

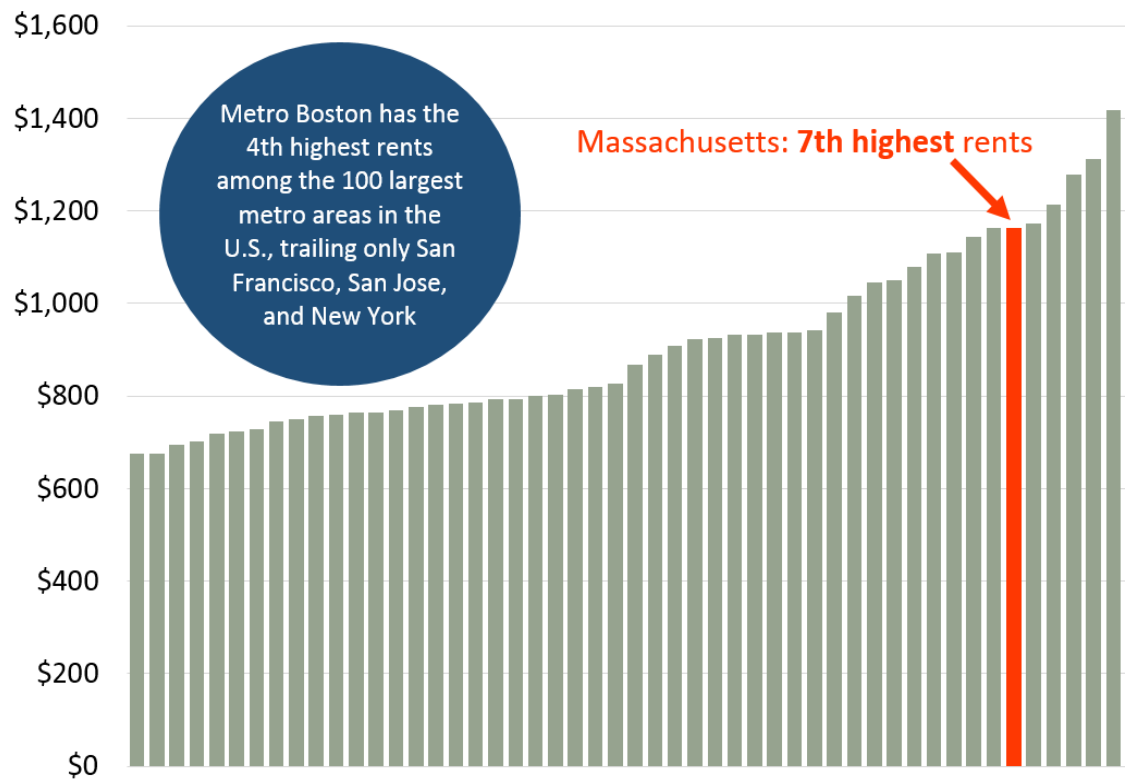


# Home prices have surged



# Massachusetts rents are also among the nation's highest, especially compared to the state's economic competitors

Median Rent by State

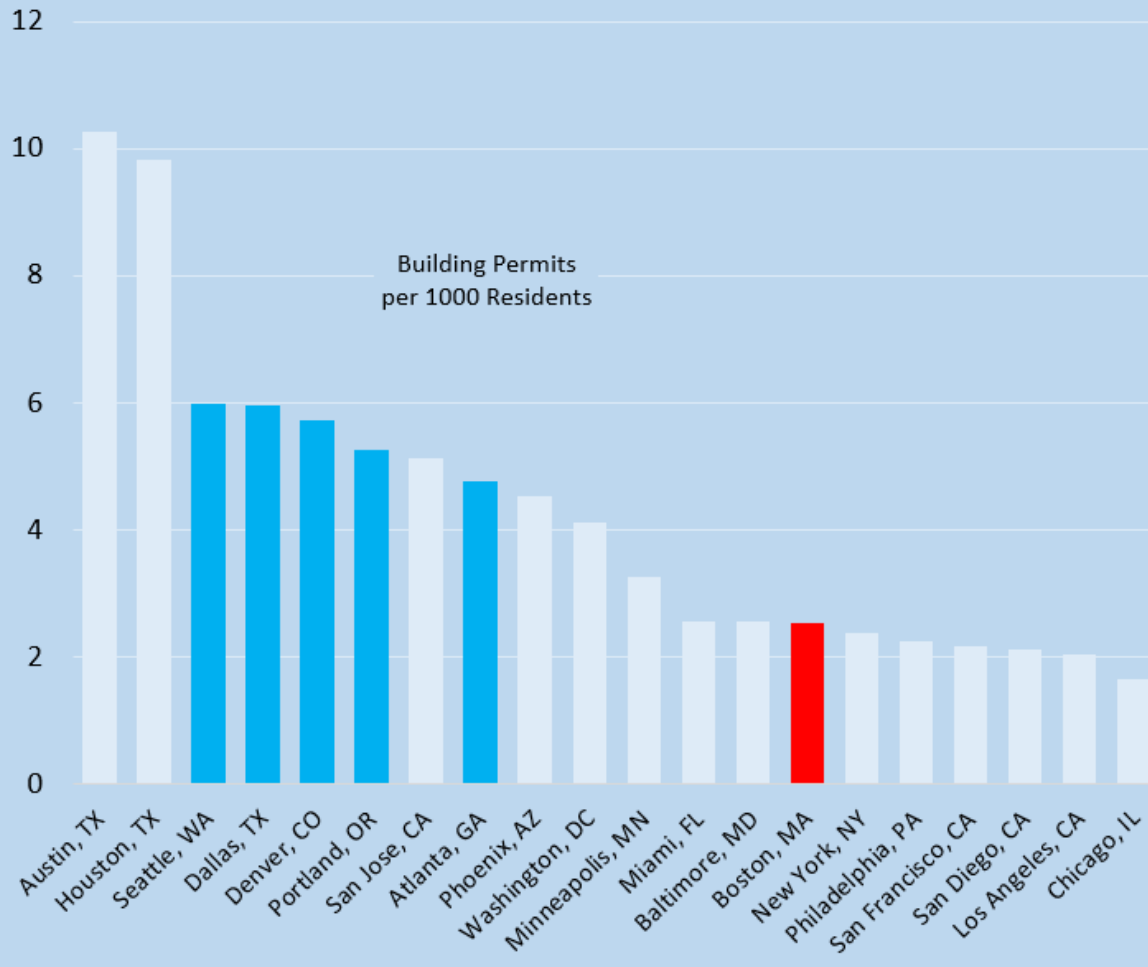


State data from U.S. Census Bureau, 2015 ACS;  
Metro data from apartmentlist.com, National Rent Report, May 2017

# Future Economic Implications

## Building Permit Rates of the 20 Largest Innovation Economy Metros

Source: U.S. Census Bureau, 2014 Building Permits Survey and 2014 ACS 1-Year Estimates



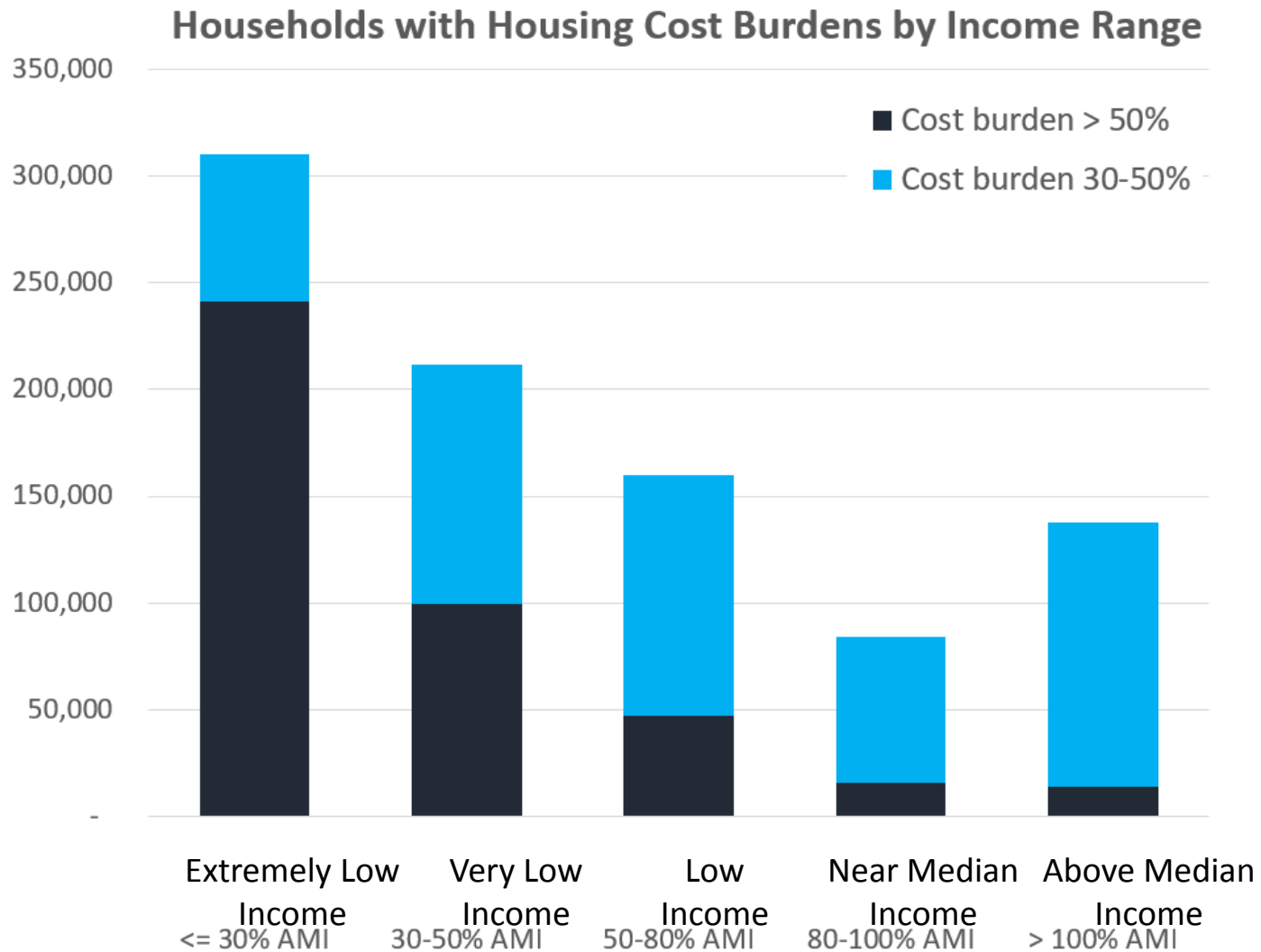
## 5 Largest Migration Imbalances

Source: U.S. Census Bureau, 2009-2014 American Community Survey





**TODAY Nearly twenty percent of households are severely cost-burdened and not receiving housing assistance.**



Source: CHAS/HUD, 2010-2014

# Massachusetts Zoning

## 1. Our Zoning is Old

M.G.L. Chapter 40A- “The Zoning Act,” was enacted in 1975

*Replaced Previous Act of 1954, and 1918*



RESOURCE:

<https://www.mass.gov/files/documents/2016/07/wr/zoningact.pdf>

# Massachusetts Zoning

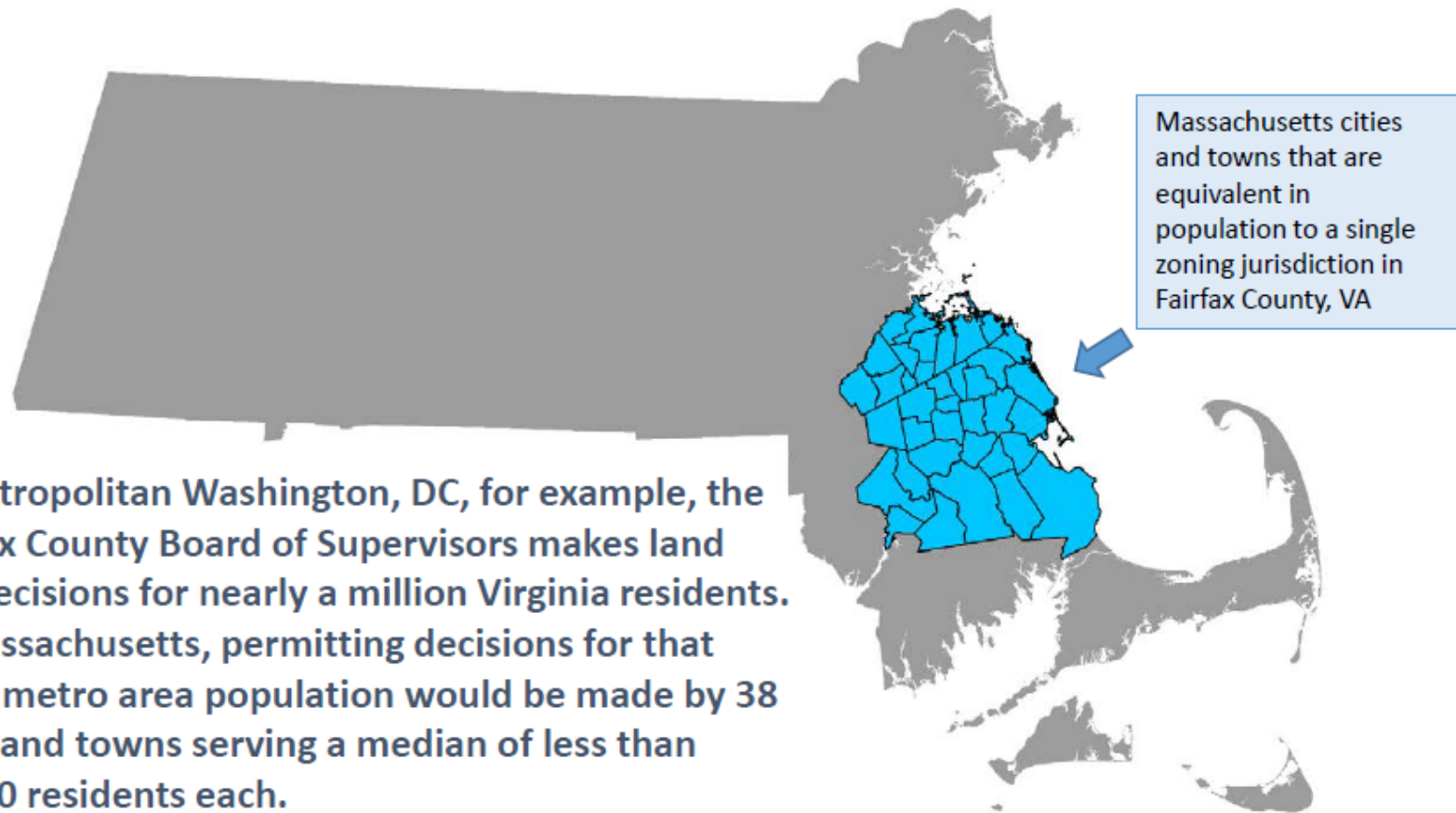
## 2. We are a “Home Rule” State

Whatever is not barred by the constitution and not reserved as exclusive jurisdiction of the state may be controlled by cities and towns

Zoning Act authorizes municipalities to create zoning by-laws to regulate the use of land, buildings and structures to the **full extent of the independent constitutional powers of cities and towns** to protect the health, safety and general welfare of their residents



# Massachusetts has 351 independent zoning jurisdictions, with a median population of 10,000



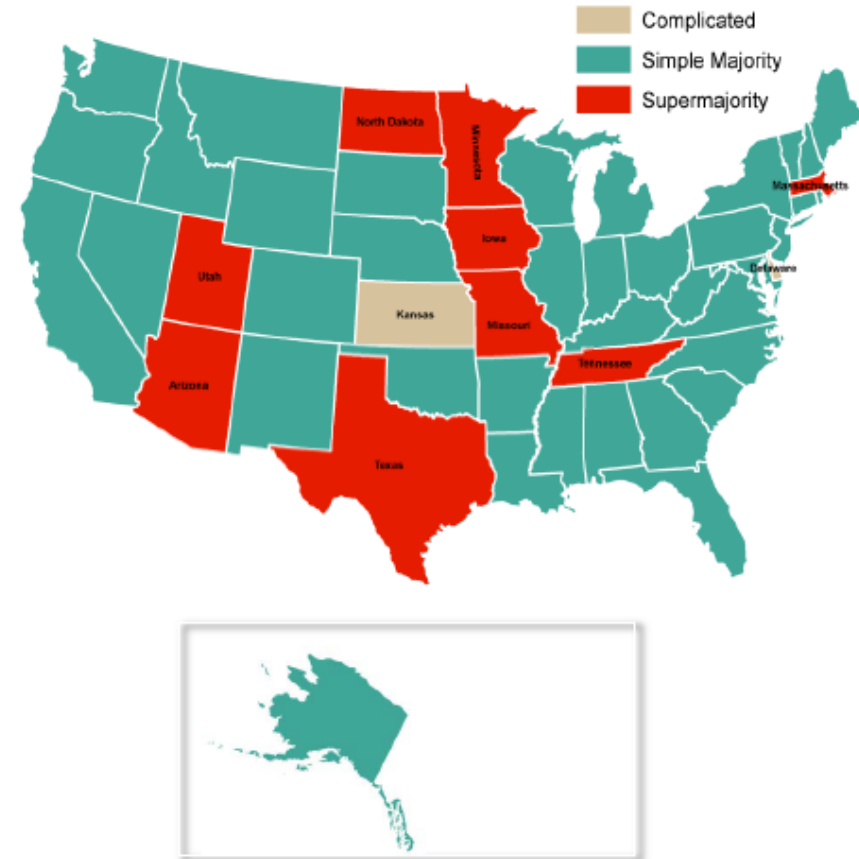
Created by Massachusetts Housing Partnership  
Data Source:  
U.S. Census Bureau

# Massachusetts Zoning

- 3. It is REALLY hard to change**
  - Amending a municipal zoning by-law requires a 2/3 majority vote for approval**
  - Even if the vote is super close, it cannot be reconsidered for two years**

# Massachusetts is a national outlier for requiring a supermajority vote to amend, modify, or adopt zoning ordinances or bylaws.

- Massachusetts is one of only 10 states in the country that requires a supermajority to change local zoning. It is the only state in New England with a supermajority requirement.
- This causes problems when local governments want to change zoning.
- Especially in Towns, where Town Meeting must approve zoning amendments, the 2/3 voting threshold can be a barrier to new zoning that would allow for increased housing production.



# Massachusetts Zoning

## 4. In Massachusetts, Zoning IS your Master Plan

Massachusetts does not require that a municipal zoning by-law comply with its Master Plan, Comprehensive Plan, Housing Production Plan, etc.



# A Tour of a Zoning By-Law

- Zoning Map
- Definitions
- Establishment of Districts
- Use Regulations
- Intensity (Dimensional) Regulations
- Special Regulations
- Administration and Enforcement

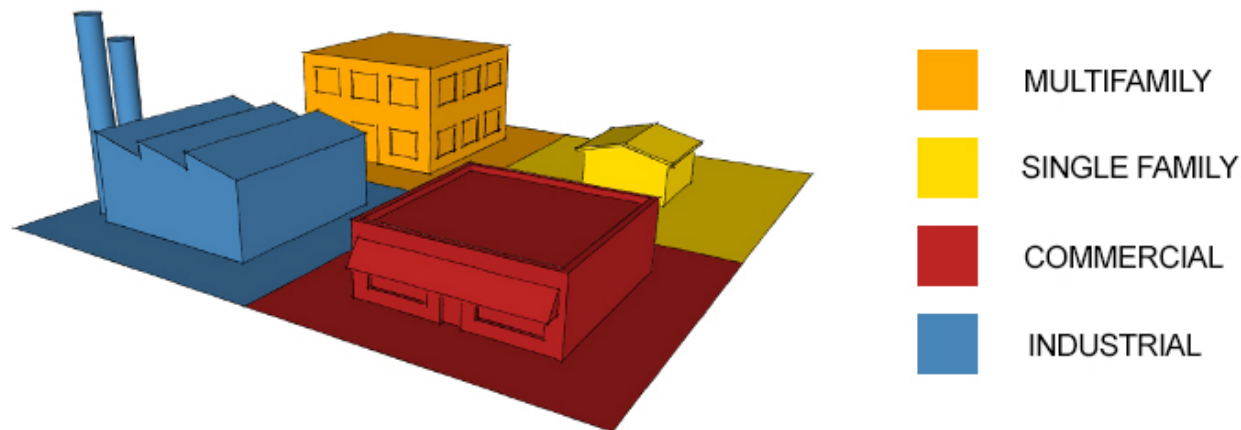




# A Definition (thanks to Judi Barrett)

Zoning is the division of a community into **districts**, with the goal of regulating what uses are permitted; the size of individual lots, the number and type structures, the placement of structures on a lot, and the size, mass and bulk of individual structures.

## EUCLIDEAN ZONING



# General Goals

Reduce congestion

Promote health and safety

Protect the environment

Improve quality of life

Protect property values

Encourage housing for persons of all income levels



# Definitions

## ARTICLE 300 – DEFINITIONS

### 301 GENERAL

In this Bylaw, the following terms shall have the following meanings unless a contrary meaning is required by the context or is specifically prescribed. Words used in the singular include the plural and words used in the plural include the singular. Words used in the present tense include the future.

### 302 DEFINITIONS

#### Accessory Building

A building devoted exclusively to an accessory use as herein defined.

#### Accessory Structure

A structure, such as, but not limited to, a detached garage, shed, swimming pool, tennis court, pier, greenhouse, or a structure with finished living space that is not a "dwelling unit," located on the same lot with and accommodating a use accessory to the principal structure or use of the lot, except a pier may be located on a lot adjacent to the principal structure.

#### Accessory Use

An activity customarily incidental to and located on the same lot as a principal use conducted by the same person or his agent. No use (other than parking) shall be considered "accessory" unless functionally dependent on and occupying less land area than the principal use to which it is related. (1987)

#### Applicant

The person submitting any application under the provisions of this Bylaw including a firm, association, organization, partnership, trust, company or corporation as well as an individual.

#### Bed and Breakfast

A structure originally built as a dwelling, in which the operator resides, and not more than four guest units are offered for overnight lodging with or without meals. (1987)

#### Board of Appeals

The Board of Appeals of the Town of Duxbury.

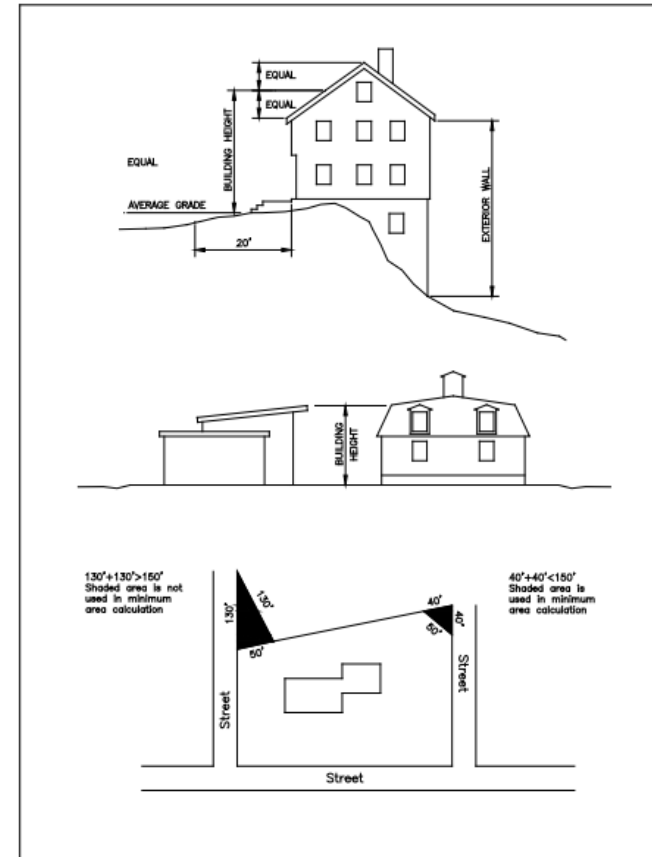
#### Building

A structure having a roof covering one hundred (100) square feet or more.

#### Building Height

The vertical distance from the average finished grade within twenty (20) feet of the structure on the street (frontage) side of a building to:

1. the highest point of the roof or parapet for flat or shed roofs, or
2. the midpoint between the lowest and highest points of the roof for gable, hip and gambrel roofs, or
3. the deck line for mansard roofs (with upper slope under four [4] inches per foot), and provided that at no point shall an exterior wall exceed the permitted heights by more than twelve (12) feet. **See Drawing in Section 300.**



#### Coverage

1. Building: The maximum percentage of a lot in any district which is covered by buildings which constitute principal and accessory uses thereof. Garages, barns, storage sheds or additions and alterations to the principal residential building occupying the lot shall not be exempt from the definition of building coverage.



# Zoning Map OF THE TOWN OF HANOVER MASSACHUSETTS

Including all Amendments through May 2010

### ZONING DISTRICTS

- Residence A District
- Business District
- Commercial District
- Planned Shopping Center District
- Limited Industrial District
- Industrial District
- Fireworks District

### ZONING OVERLAY DISTRICTS

- Interchange District
- Wireless Telecommunications District
- Aquifer Protection Zone
- Well Protection Zone
- Adult Use District

Cartography By:  
Andrew R. Port, AICP, Town Planner

#### Disclaimer & Limitation of Liability:

The Town of Hanover makes no representation, warranty or guarantee as to the content, accuracy, currency, or completeness of any of the information provided on this map. The Town explicitly disclaims any representations, warranties and guarantees, including, without limitation, the implied warranties of merchantability and fitness for a particular purpose. The information displayed on this map is to be used solely for informational purposes and is not intended nor should be used for engineering purposes. Information and GIS layers have been obtained from several sources each having its own accuracy and discrepancies and may be for error. The Town is not responsible for any special, indirect, incidental, or consequential damages that may arise from the use of or the inability to use this map. The Town assumes no responsibility whatsoever for any errors, omissions, or inaccuracies in the information provided, regardless of how caused; or any decision made or action taken or not taken by the reader or other third party in reliance upon any information or data furnished on this Zoning Map.



**HANOVER  
GIS**





# USE REGULATIONS



**Table of Use Regulations**

	RA	RB	RDA	RDB	RDC	RG	CBD	GBD1	GBD2	GBD3	IL	SCI
<b>DISTRICT</b>												
<b>Group I - Residential Uses</b>												
1. Dwelling, single-family	Y	N	Y	Y	Y	Y	See 7.3.11.4	N	Y	Y	N	N
2. Dwelling, two-family	N	N	N	N	N	Y	See 7.3.11.4	N	Y	Y	N	N
3. Conversion of a single family attached dwelling unit built prior to the enactment of this Zoning Bylaw into a two-family attached dwelling, provided the conversion does not require for safety or other reasons any exterior change which alters the single family character of the attached dwelling, and no such change is made, and further provided that the lot contains no less than 11,000 square feet	N	N	N	N	N	SP	See 7.3.11.4	N	N	N	N	N
4. Garden apartment house	SP	SP	N	N	N	N	See 7.3.11.4	N	SP	SP	N	N
5. Town house or Dwelling, multi-family	SP	SP	N	N	N	N	See 7.3.11.4	N	SP	SP	N	N
6. Apartment House	N	SP	N	N	N	N	See 7.3.11.4	N	N	N	N	N
7. A combination of business and residential uses which are otherwise allowed in the Table of Use Regulations in the underlying GBD-2 or GBD-3 Districts	N	N	N	N	N	N	See 7.3.11.4	N	SP	SP	N	N
8. A combination of business and residential uses which are otherwise allowed in the Table of Use Regulations in the underlying GBD-2 or GBD-3 Districts with up to four dwelling units otherwise allowed in this Table	N	N	N	N	N	N	See 7.3.11.4	N	Y	Y	N	N
9. Cluster Residential Housing	N	N	SP	SP	N	N	See 7.3.11.4	N	N	N	N	N
10. Multiple Use Development	N	N	N	N	N	N	See 7.3.11.4	N	N	N	N	N







# Intensity Regulations

Table of Dimensional Requirements

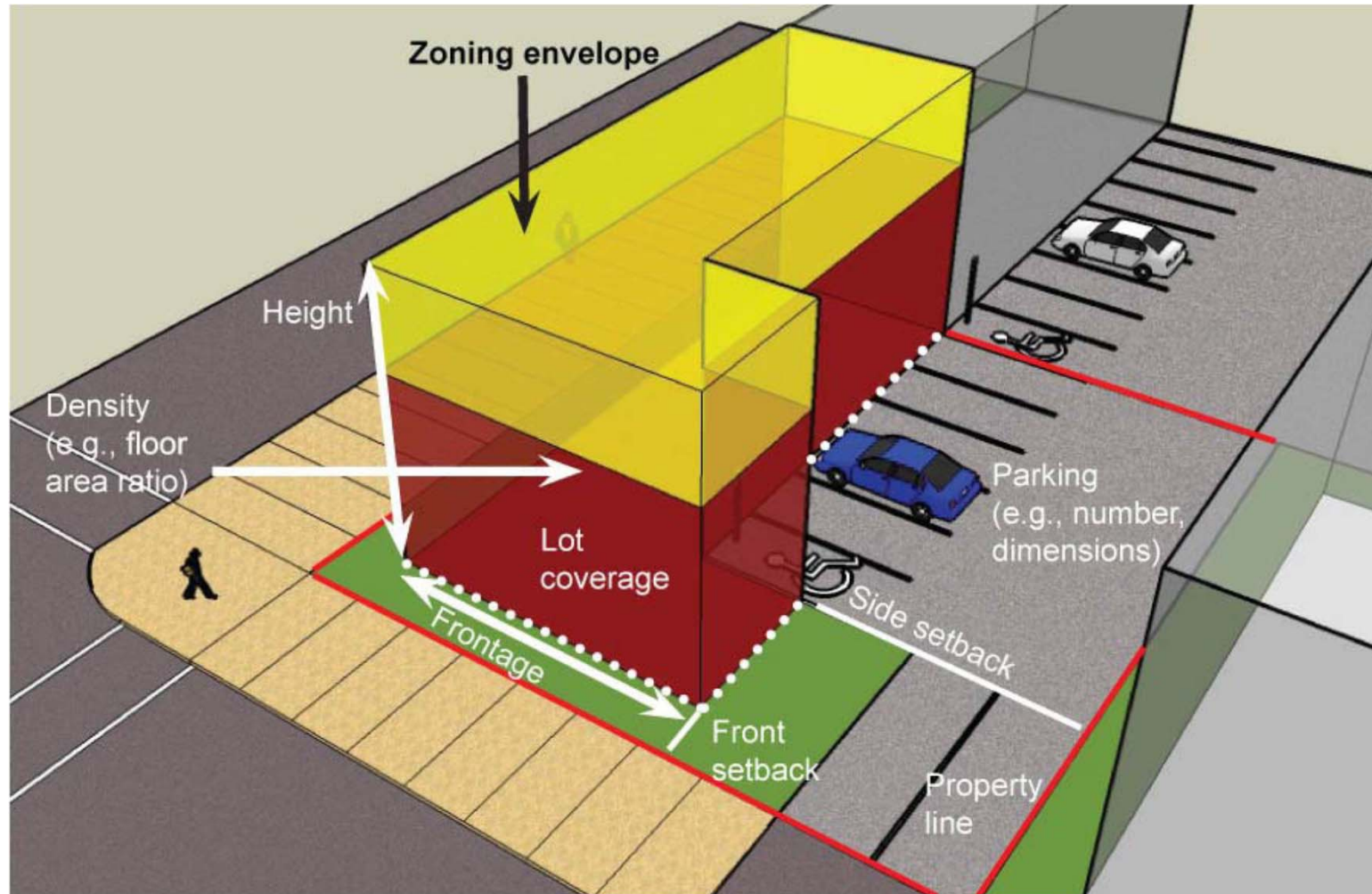
DISTRICT	RA (r)	RB (r)	RDA (g) (q)	RDB (g) (q)	RDC (q)	RG	CBD (n)	GBD-1 (s)	GBD-2 (s)	GBD-3 (s)	IL	SCI
Min. Lot Area (in square feet)	120,000	20,000	20,000	10,000	15,000	6,500 (h)	See 7.3.12	NR	NR (t)	NR (t)	20,000	NR
Min. Lot Frontage (in feet)	200	75 (b)	100 (b)	80 (b)	100 (b)	65 (b) (h)	See 7.3.12	20	50	50	100	NR
Min. Lot Width (in feet)	200	75	120	80	100	65 (h)	See 7.3.12	20	50	50	100	NR
Min. Front Yard (l) (in feet)	40	25 (d)	35	25	35	20	See 7.3.12	NR	10 Ft. Min (u)(v) 15 Ft. Max (aa)	15 Ft. Min. (u)(w)	25	40 (m)
Min Side Yard (j) (in feet)	40	15 (d)	20	15	20	10 (h)	See 7.3.12	NR	NR (x)	NR (x)	20	40
Min. Rear Yard (j) (in feet)	40	15 (d)	20	15	20	10	See 7.3.12	20	15	15	20	40
Min. Yard adj. to SCI & Residential Dist. (in feet)	40	15 (d)	15	15	15	10	See 7.3.12	20	15 (y)	15 (y)	25 (p)	40
Min. Yard adj. to other Dist. (in feet)	40	15 (d)	15	15	15	10	See 7.3.12	10	NR	NR	25	40
Min. % Open Area	75	60 (e)	75	70	70	70	See 7.3.12	NR	NR (z)	NR (z)	60	85
Min % Green Space	35	35	35	35	35	35	See 7.3.12	NR	NR	NR	NR	NR
Max % Hardscape	35	NR	35	35	35	35	See 7.3.12	NR	NR	NR	NR	NR
Max. Building Height (in stories)	3	5	2.5	2.5	2.5	2.5	See 7.3.12	3	3	3	3	3
Max. Building Height (in feet) (k)	40	45	40	40	40	40	See 7.3.12	45	45	45	45	45
Min. Distance between Buildings (in feet)	30 (c)	(d)	15	15	15	15	See 7.3.12	NR (c)	NR	NR	30 (c)	30

# Lots





# Intensity Regulations







ILLEGAL NEIGHBORHOODS



# Special Regulations

Parking Regulations

Landscape/Screening regulations

Sign Regulations

Lighting Regulations

Adult Use Regulations

Marijuana Dispensary Regulations

Earth Removal Regulations



# Administration and Enforcement

## Make-Up of Zoning Board of Appeals

Who appoints

# members (3-5)

length of term (3-5 years)

## Hearing Notification Requirements

Who gets notified?

- Petitioner
- Abutters
- Owners of land across the street
- Abutters to abutters within 300 feet of the property line

When do they get notified?

How do they get notified?



# Administration and Enforcement

## Procedural Requirements for Variances

- Submittal requirements
- Notice requirements
- Specific findings required
- Voting Requirements; 3/3 or 4/5
- Term of variance



## Procedural Requirements for Special Permits

- Who is the Special Permit Granting Authority (SPGA)?
- Submittal requirements
- Notice requirements
- Specific findings required
- Voting requirements (2/3, 4/5 or Unanimous)
- Term

# Administration and Enforcement, cont.

## APPEAL

Who can appeal?

When do they have to appeal?

What is the process for filing an appeal?

## ENFORCEMENT

Who is authorized to enforce?

What are the penalties?

## ADOPTING AND AMENDING

*We'll get back to this....*



If it ain't broke don't fix it?



# Why would Affordable Housing Advocates Want to Change a Zoning By-Law?

- 1. Big “A” affordability -eligible for SHI**
  - Fair Marketing
  - Income Eligible Residents
  - Deed Restricted
  - Ongoing Compliance/Monitoring
- 2. Little “a” affordability-less expensive housing\***
  - Smaller lots
  - Variety of housing types
  - Variety of tenure
  - Reduced parking requirements
  - Mixed use
- 3. A combination of both**







# SHI Requirements

- ▶ **Household Income/ Asset Limits**
- ▶ **Cost Limitations**
- ▶ **Subject to approved AFHMP**
- ▶ **Subject to Regulatory Agreement**
- ▶ **Subject to Deed Restriction (Homeownership)**
- ▶ **Ongoing Monitoring**

**Think Ahead!**

# Local Action Units (LAUs)

*Affordable Units Created Outside of a 40B, and not Public Housing*

- ✓ Built Outside of a Comprehensive Permit
- ✓ Built Pursuant to Local Action  
(Inclusionary Zoning, ADUs, 40R)
- ✓ Part of the LIP Program
- ✓ Eligible for SHI
- ✓ <https://www.mass.gov/service-details/local-initiative-program>



# Zoning that Creates Affordable Units

## **Mandatory Inclusionary Zoning**

- Town-wide
- District-wide
- Within Overlay District
- Multi-family only

## **Incentive-Based Inclusionary Zoning (typically via Special Permit)**

- Relief from dimensional requirements (density, setbacks, lot lines, etc.)
- Relief from parking requirements
- Accessory Dwelling Units
- Mixed use in exchange for affordability



# Shrewsbury-Inclusionary Zoning

- Adopted 2005
- Applies to ALL developments > 5 units
- Requires 10%-25% affordable units depending on development type
- Applies to single-family, duplex, apartments townhouses
- Provisions for density bonus with Special Permit
- *Less than 2-25 units created to-date*

# Shrewsbury-Inclusionary Zoning



## Madison Place

- 12 acre site
- Completed 2012
- 8 buildings
- 12 units/building
- 96 1 & 2 bedroom units  
(840-1,100 square feet)
- 15% inclusionary (15 units)



Town of Shrewsbury, Massachusetts

100 Maple Avenue | Shrewsbury, MA 01545 | [www.Shrewsbury-MA.gov](http://www.Shrewsbury-MA.gov)



# Watertown-Inclusionary Zoning

- Adopted 1989
- Two tiered set aside based on project size (12.5%-15%)
- No contribution if less than 5 units/lots
- If a project with over 20 units, then two income tiers for rentals
- 5% of units = 65% AMI and 10% of units at 80% AMI
- Homeownership projects remain at 80% AMI
- Cash contribution based on Department of Housing & Community Development's Total Cost figure: \$329,000 to \$349,000
- *300-400 units created!*



# Watertown-Inclusionary Zoning



## Hingham- Affordable Requirement for Multi-Family

Adopted c. 2004

Added single requirement to *existing* multi-family zoning district

10% for projects <6

15% for projects >15%





# Needham: Garden Street Overlay District

Adopted 2009

Underlying Zoning

Business (second story apartments allowed with SP)

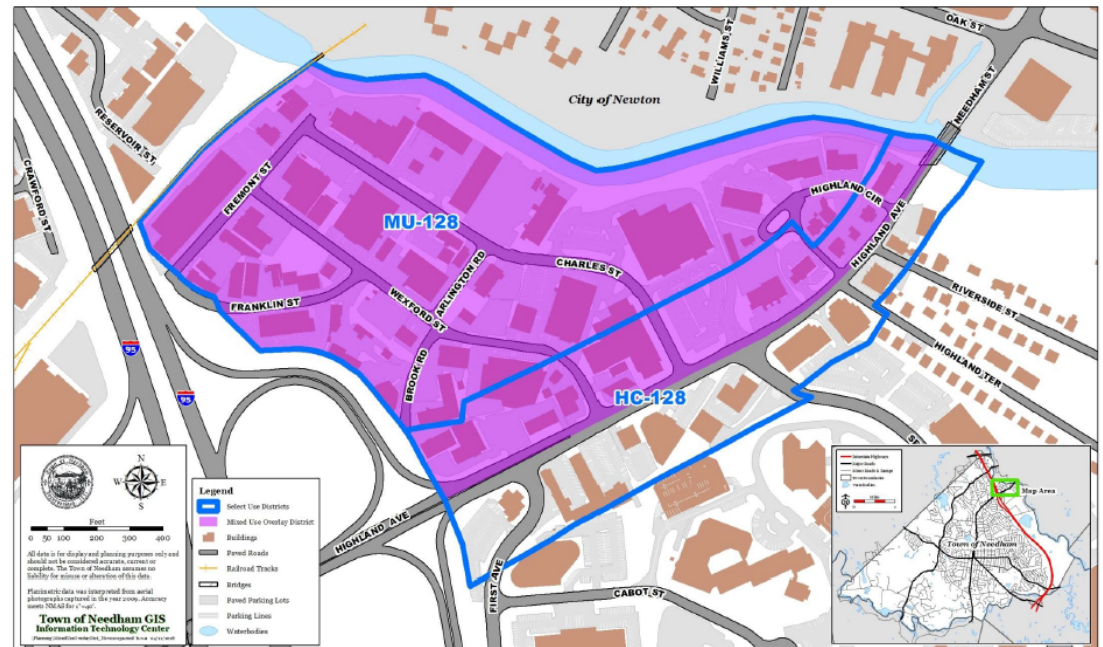
Allowed With Special Permit

Mixed Residential/Commercial

10% Affordable

Reduced dimensional and parking requirements

Article 19: Amend Zoning By-Law - Map Change to Mixed Use Overlay District



# Town of Dartmouth-Open Space Residential Design (OSRD)

Adopted early 2000s

Applies to projects >5

Required for all subdivision applications-used by most

Requires 50% Open Space

Standard yield, with 20% bonus for the provision of 10% affordable units



# Zoning that Creates Affordable Units-ADUs

- Apartments in single-family homes
- Additions to homes
- Conversion of garages or barns
- Free-standing cottages
- Designed into new construction



# Town of Lincoln-Accessory Apartments (2017)

ARTICLE 12 To see if the Town will vote to amend the Zoning By-Law of the Town of Lincoln, deleting Section 14.3, Accessory Apartments in a R-1 District, in its entirety, and replacing it with a new Section 14.3, to be consistent with Department of Housing and Community Development (DHCD) regulations, so that affordable accessory apartment units that are added in accordance with the terms of this Bylaw may be counted in the Town's Subsidized Housing Inventory (SHI), and by reorganizing and reformatting other provisions of this Section 14, as substantially on file with the Town Clerk; or take any other action relative thereto.

# Zoning that Creates Affordable Units- 40R

## **40R “Smart Growth” Zoning Districts (2004)**

State and Local Approval Process

20% Affordable

Minimum density requirements

Must be ½ mile from transit station

Great flexibility in dimensional and use requirements

Must include a mix of uses

Must be determined “highly suitable” location by DHCD

Lower right to appeal

Possible fiscal incentives from State

## ***Results (2018)***

37 municipalities have created 43 Districts

40 tried unsuccessfully

15,000 “future zoned units;” 3500 built units

Typically in older/denser municipalities

[https://www.chapa.org/sites/default/files/TheUseofCh40R\\_2018.pdf](https://www.chapa.org/sites/default/files/TheUseofCh40R_2018.pdf)

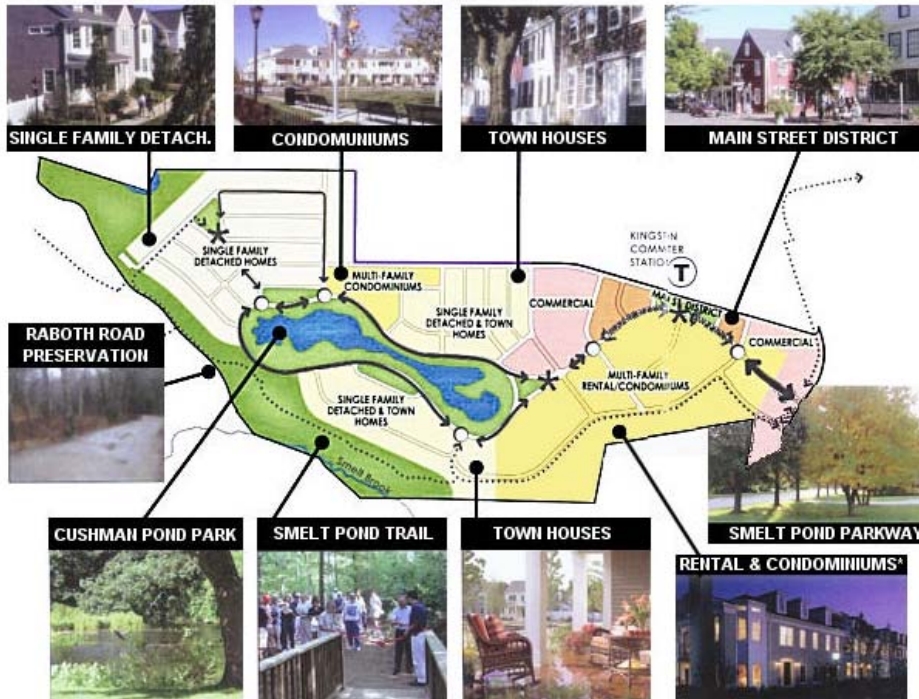


# Town of Kingston-Kingston's Place 40R



## 1021 Kingston's Place, Kingston

1021 kingston's place SITE PLAN - May 2006

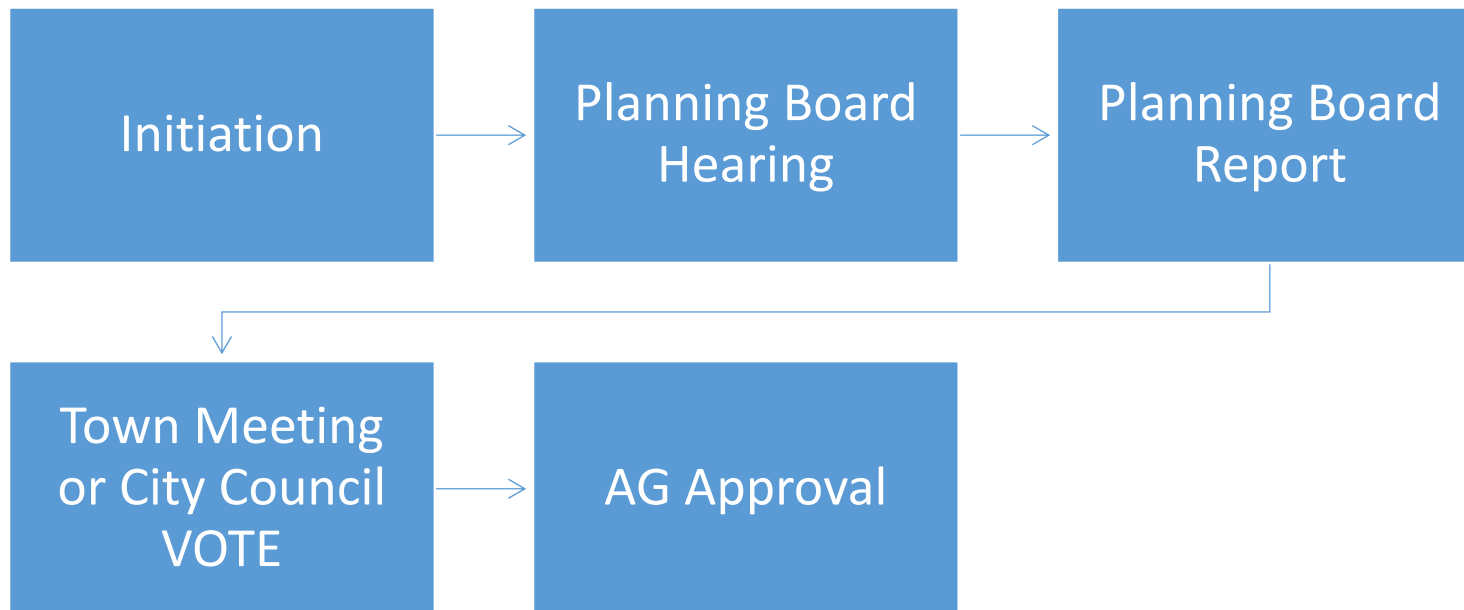


- 730 Units
- Mixed-Use
- Transit-Oriented
- Variety of Housing
- New Urbanism



Editor's Note: Graphic layout and photo titles modified slightly for web display.

# HOW TO AMEND A ZONING BY-LAW



[http://masscptc.org/documents/conference-docs/2012/2012\\_01\\_26%20CPTC%20adopting%20zoning%20bylaws.pdf](http://masscptc.org/documents/conference-docs/2012/2012_01_26%20CPTC%20adopting%20zoning%20bylaws.pdf)

# Details are very important

Who Initiates the Process?

Who Gets Notifies

Where Notices are Posted

Hearing Protocol

Submission of Article to Legislative Body

Form/Language of Warrant Article

Timing of Report to Attorney General



# Who can Initiate?

- City Council
- Board of Selectmen
- Zoning Board
- Individual Land Owner
- Planning Board
- Regional Planning Agency
- Ten Registered Voters (100 for STM)



# Mandatory Public Hearing

## Who holds the Public Hearing?

Towns: Planning Board

Cities: Planning Board and City Council

## Public Notice

- “newspaper of general circulation” 14 days before the hearing
- posted in “a conspicuous place in city or town hall”
- mailed to DHCD, RPA, abutting municipalities, non-resident property owners



# Be Cognizant of Other Influencers

- ✓ **Neighborhood Associations**
- ✓ **Local Realtors and Developers**
- ✓ **School Committee**
- ✓ **Advisory Committee (aka Finance Committee)**
- ✓ **Moderator**
- ✓ **Other Boards and Commissions**
- ✓ **Abutters**
- ✓ **Local Press**



## Get Your Ammunition in Order

- What other towns (similar to yours do this?)
- Fiscal impacts for town (schools, services, public safety)
- Fiscal impacts for residents
- Public safety issues
- Environmental issues
- The “character” issue



# Get the Planning Board on Board

No surprises!

Be prepared for opposition

Be open to modification at the meeting

Planning Board can modify the (within reason)



# PLANNING BOARD REPORT

Planning Board report is mandatory, and can be written or delivered in-person at Town Meeting

Be prepared for other “reports”  
Finance Committee  
Selectmen  
Abutters



# Legislative Body Votes

- ✓ Town Meeting
- ✓ City Council
- ✓ Town Council

**2/3 Vote Required**

**2 Year Wait Period if it Fails**





# Town Clerk Submits to Attorney General (30 Days)

## FORM 7

Town: \_\_\_\_\_  
 Planning Board Hearing Date: \_\_\_\_\_  
 Relative to Article(s): \_\_\_\_\_

### Form 7

**Complete and sign the following.** When necessary, you may need to use multiple copies of this Form 7 if Articles were considered at separate Planning Board Hearings.

- 1.) If applicable, date on which the proposed amendments were submitted to the Board of Selectmen:  
 Amendments were originally proposed by: \_\_\_\_\_ Date #1 \_\_\_\_\_  
 [Attachment #1, copy of original proposal.] *(If not applicable, put N/A.)*
- 2.) If applicable, date on which the Selectmen submitted the proposed amendments to the Planning Board *(must be within 14 days of Date #1, above):*  
 Date #2 \_\_\_\_\_  
*(If not applicable, put N/A.)*
- 3.) Date on which the **first** Notice of Planning Board hearing was **published** in a newspaper of general circulation in the town *(must be at least 14 days prior to Date #10, below):*  
 Date #3 \_\_\_\_\_  
 [Attachment #2, copy of the notice. Please identify the Article number next to each Article referred to in the notice.]
- 4.) Date on which the **second** Notice of Planning Board hearing was **published** in a newspaper of general circulation in the town *(must be sometime during the week immediately following the week in which Date #3, first published notice of Planning Board Hearing, falls):*  
 Date #4 \_\_\_\_\_  
 [Attachment #3, copy of the notice. Please identify the Article number next to each Article referred to in the notice.]
- 5.) Date on which Notice of Planning Board Hearing was posted in a conspicuous place in the Town Hall *(must be at least 14 days prior to Date #10, below):*  
 Date #5 \_\_\_\_\_  
 [Attachment #4, copy of the notice. Please identify the Article number next to each Article referred to in the notice.]
- 6.) Date on which copy of Notice of Planning Board Hearing was **mailed** to the Department of Housing and Community Development *(must be at any date reasonably prior to Date #10, below):*  
 Date #6 \_\_\_\_\_
- 7.) Date on which copy of Notice of Planning Board Hearing was **mailed** to the Regional Planning Agency, if any *(must be at any date reasonably prior to Date #10, below):*  
 No Agency: \_\_\_\_\_ Date #7 \_\_\_\_\_
- 8.) Date on which copy of Notice of Planning Board Hearing was **mailed** to the planning boards of each abutting city or town *(must be at any date reasonably prior to Date #10, below):*  
 Date #8 \_\_\_\_\_
- 9.) In cases involving boundary, density, or use changes within a district, date on which Notice of Planning Board Hearing was mailed to any **non-resident property owner** who had filed a request with the town clerk and whose property lies in the district where the zoning change is sought *(need be done only when requests have been filed with the town clerk); or indicate if there was no such filing:*  
 None Filed: \_\_\_\_\_ Date #9 \_\_\_\_\_

## When to Get Started Timing is Everything!

“The board of selectmen or city council shall within **14** days of receipt....submit it to the planning board for review.”

“Said public hearing shall be held within **65** days after the proposed zoning ordinance or by-law is ...submitted to planning board...”

“Notice of the time and place of such public hearing....shall be published for two successive weeks , the first to be not more than **14** days before the hearing...”

“No vote to adopt a proposed by-law or ordinance shall be taken unless a report by the planning board has been submitted to the town meeting or city council, or **21** days after such hearing has elapsed...”

“If a City Council fails to vote to adopt any proposed ordinance within **90** days after the City Council hearing, or if a town meeting fails to vote within **6** month after the planning board hearing, no action shall be taken until a subsequent public hearing is held with notice and report as needed...”



**2-12 MONTHS!**

# Things to Think About

- Entire process can take 2-12 months
- Ask for help drafting the proposed amendment (Town Planner, Town Council)
- Spread the word
- Most Municipalities have Finance Committee or Advisory Committees who review the By-law and prepare the written recommendation for the Town Meeting warrant

