

## ARTICLE 29 – ACCESSORY DWELLING UNITS QUANTUM OF VOTE

Until 2020, all zoning amendments in Massachusetts required a two-thirds vote for adoption. When the law known as the “Housing Choice Legislation” (Chapter 358 of the Acts of 2020) was adopted, it included revisions to MGL Chapter 40A, Section 5, which governs the quantum (percentage) of vote required to adopt different types of zoning amendments. The required quantum of vote for ADUs varies based on the provisions of the proposed amendment.

The first test is whether the proposed ADUs meet the definition of “accessory dwelling unit” in MGL Chapter 40A, Section 1A. ADUs in Hingham meet the statutory definition.

The next test is whether allowed ADUs are attached and/or detached and whether they are allowed as of right or by special permit.

The following types of ADUs (so long as they meet the statutory definition) require only a simple majority vote for adoption:

- (a) Attached ADUs allowed as of right; and
- (b) Detached ADUs that require a special permit.

All other ADUs require a two-thirds vote for adoption.

In addition, Chapter 40A, Section 5, expressly states: “Any amendment that requires a simple majority vote shall not be combined with an amendment that requires a two-thirds majority vote.”

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Section V-K of the Hingham Zoning Bylaw currently only allows attached ADUs by special permit. Therefore, any zoning amendments that affect the requirements for attached ADUs require a two-thirds vote for adoption.

Article 29 would also allow detached ADUs by special permit. This use requires a simple majority vote for adoption.

Following discussions with the Attorney General's Municipal Law Unit, in order to comply with Chapter 40A, Section 5, the Recommended Motion of the Advisory Committee is divided into two parts. Each part will require a separate vote of Town Meeting.

Part A amends the general requirements for ADUs and requires a two-thirds vote for adoption.

Part B allows for detached ADUs by special permit and requires a simple majority vote for adoption.

- The changes proposed in Part A have been repeated in Part B, Item 12 but will only be needed if Part A fails to receive the required two-thirds vote.

# ARTICLE 29 – ACCESSORY DWELLING UNITS

TOWN MEETING VOTE PROCESS*	NOTES
The Recommended Motion of the Advisory Committee for affirmative action on Article 29 will be received as the main motion under the article	The Recommended Motion of the Advisory Committee on Article 29 is supported by the majority of the Planning Board which voted 4-1 in favor of adoption
All proposed amendments must be in writing unless they are so brief and simple as to be easily understood when stated orally.	The member of the Planning Board who voted in the minority has expressed her intention to offer an amendment to Article 29 for the purpose of removing the existing requirement that an occupant of an accessory dwelling be a “family member” as defined in Section V-K of the Zoning By-Law.
If an amendment is proposed, a vote will first be taken on the amendment. Adoption of the amendment requires a majority vote	An amendment need not be voted on in parts as it is not the final vote under the Article.
<p><u>If the amendment is adopted</u>, Town Meeting will then vote on the motion as amended.</p> <p><u>If the amendment fails</u>, Town Meeting will then vote on the original Recommended Motion of the Advisory Committee</p>	Whether Town Meeting votes on the original Recommended Motion or the motion as amended, each of Part A and Part B must be voted separately.

\* See Moderator’s Message on Town Meeting Procedure (pp. 3-4) of 2023 Annual Town Meeting Warrant for full explanation of Town Meeting voting procedures

\*\*All town general and zoning bylaw amendments adopted by Town Meeting are subject to final approval by the AG’s Municipal Law Unit

# ARTICLE 29 – ACCESSORY DWELLING UNITS

## RECOMMENDED MOTION - POSSIBLE VOTE OUTCOMES\*

TOWN MEETING VOTE	OUTCOME	NOTES
PART A (two-thirds vote) and PART B (simple majority vote) both receive the required quantum of vote	All changes recommended by the Planning Board are incorporated into Section V-K (ADU bylaw)	Family member requirement remains in place.
<u>Both</u> PART A and PART B <u>fail</u> to receive the required quantum of vote	There are no changes to Section V-K and it remains as it appears in the 2022 Zoning Bylaw.	Only attached ADUs continue to be allowed subject to the existing requirements. Family member requirement remains in place.
PART A <u>is adopted</u> with two-thirds vote. PART B <u>fails</u> to receive a simple majority vote.	Only attached ADUs continue to be allowed and all changes set forth in Part A (ADU size, waivers, minimum occupancy) will apply	Detached ADUs not permitted.
PART A <u>fails</u> to receive two-thirds vote. PART B <u>is adopted</u> with a simple majority vote.	<ul style="list-style-type: none"> <li>• Both attached and detached ADUs are allowed</li> <li>• Family member requirement remains</li> <li>• All conditions specific to detached ADUs are approved (e.g. lot size, location)</li> <li>• Additional changes are approved but only affect detached ADUs (see *Notes)</li> </ul>	<p>*Additional changes approved (per Part B, Item 12 of Recommended Motion) will only affect detached ADUs:</p> <ul style="list-style-type: none"> <li>• Larger ADU allowed</li> <li>• Waiver available for separate utilities</li> <li>• Waiver available for exterior stairs</li> <li>• Owner absence limited to 6 months</li> <li>• Minimum occupancy of 6 months required for ADU</li> </ul>

\*Outcomes summarized here assume no amendments are approved by Town Meeting

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# ARTICLE 29 – ACCESSORY DWELLING UNITS

## PROPOSED AMENDMENT - POSSIBLE VOTE OUTCOMES\*

TOWN MEETING VOTE	OUTCOME	NOTES
PART A (two-thirds vote) and PART B (simple majority vote) both receive the required quantum of vote	All changes recommended by the Planning Board are incorporated into Section V-K (ADU bylaw) <i>and family member requirement is removed for attached and detached ADUs.</i>	
<u>Both</u> PART A and PART B <u>fail</u> to receive the required quantum of vote	There are no changes to Section V-K and it remains as it appears in the 2022 Zoning Bylaw.	Only attached ADUs continue to be allowed subject to the existing requirements, including family member requirement.
PART A <u>is adopted</u> with two-thirds vote. PART B <u>fails</u> to receive a simple majority vote.	Only attached ADUs continue to be allowed and all changes set forth in Part A (ADU size, waivers, minimum occupancy) will apply <i>and family member requirement is removed</i>	Detached ADUs not permitted.
PART A <u>fails</u> to receive two-thirds vote. PART B <u>is adopted</u> with a simple majority vote.	<ul style="list-style-type: none"> <li>• Both attached and detached ADUs are allowed.</li> <li>• All conditions specific to detached ADUs apply (e.g. lot size, location)</li> <li>• Change in definition of “family member” is not approved.</li> <li>• Additional changes are approved but only affect detached ADUs.</li> <li>• <i>No family member requirement for detached ADUs</i></li> </ul>	<p>Additional changes (per Part B, Item 12 of Recommended Motion) are adopted and only affect detached ADUs but not attached ADUs:</p> <ul style="list-style-type: none"> <li>• Larger ADU allowed</li> <li>• Waiver available for separate utilities</li> <li>• Waiver available for exterior stairs</li> <li>• Owner absence limited to 6 months</li> <li>• Minimum occupancy of 6 months required</li> </ul>

\*Outcomes summarized here assume no other amendments are approved by Town Meeting

\*All town general and zoning bylaw amendments adopted by Town Meeting are subject to final approval by the AG’s Municipal Law Unit