

MBTA COMMUNITIES: MUNICIPALITIES & COMPLIANCE

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Massachusetts Municipal Association

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Recap: MGL Chapter 40A, Section 3A

(a)(I) An 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; provided, however, that such multi-family housing shall be without age restrictions and shall be suitable for families with children. For the purposes of this section, a district of reasonable size shall:

(i) have a minimum gross density of 15 units per acre, subject to any further limitations imposed by section 40 of chapter 131 and title 5 of the state environmental code established pursuant to section 13 of chapter 21A; and

(ii) be located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable.

(b) An MBTA community that fails to comply with this section shall not be eligible for funds from:

(i) the Housing Choice Initiative as described by the governor in a message to the general court dated December 11, 2017;

(ii) the Local Capital Projects Fund established in section 2EEEE of chapter 29; or

(iii) the MassWorks infrastructure program established in section 63 of chapter 23A; or

(iv) the HousingWorks infrastructure program established in section 27 of chapter 23B.

(c) The ~~department, in consultation with~~ executive office of housing and livable communities, in consultation with the executive office of economic development, the Massachusetts Bay Transportation Authority and the Massachusetts Department of Transportation, shall promulgate guidelines to determine if an MBTA community is in compliance with this section.

Effective 1/14/2021, Section 18 of Chapter 358 of the Acts of 2020

Amended effective 7/29/2021, Section 10 of Chapter 29 of the Acts of 2021 (subsection (c): “department” changed to “department of housing and community development”)

Amended effective 5/2/2023, Chapter 7 of the Acts of 2023: Sections 152, 153 & 154

Recap: Compliance Guidelines

Compliance Guidelines for Multi-family Zoning Districts Under Section 3A of the Zoning Act

<https://www.mass.gov/info-details/section-3a-guidelines>

1. Overview

- **Purpose:** “Promulgate guidelines to determine if an MBTA community is in compliance with Section 3A.”

2. Definitions: Defines terms used in the Guidelines that are either not used in Section 3A or not defined in Chapter 40A, Section 1A

3. General Principles of Compliance

4. Allowing Multi-Family Housing “As of Right”

- Site plan review
- Affordability requirements (Revised October 21, 2022)

5. Determining Reasonable Size

- Minimum Land Area & Minimum multi-family unit capacity
- Mixed-Use Development Districts (Added August 17, 2023)
- Water and wastewater infrastructure within the district

6. Minimum Gross Density

7. Determining Suitability for Families with Children

8. Location of Districts

9. Determination of Compliance

- Additional discretionary grant programs that will take compliance into consideration (List expanded August 17, 2023)

10. Ongoing Obligations; Rescission of a Determination of Compliance

11. Changes to MBTA Service

12. Appendix 1: MBTA Community Categories & Appendix 2: Compliance Methodology/Model

Issued by the Executive
Office of Housing and
Livable Communities
(“EOHLC”) [formerly
known as the Department
of Housing and Community
Development (“DHCD”)]

Issue Date: August 10, 2022

Revised: October 21, 2022

Revised: August 17, 2023

Guidelines: Revised Affordability Provisions

Section 4.b. Affordability Requirements [Revisions 10/21/2022]

- 1. There is no requirement that affordable units be eligible for listing on the Subsidized Housing Inventory. Communities have the option to require a percentage of “workforce housing” units occupied by households earning more than 80% of area median income (AMI).**
- 2. May require that more than 10% of the units in a project be affordable units (but not more than 20%), provided that the community demonstrates that a reasonable variety of multi-family housing types can be feasibly developed at the higher percentage.**
- 3 A community may set income limits for affordable units below 80% AMI, provided that it demonstrates that a reasonable variety of multi-family housing types can be feasibly developed at the proposed affordability levels.**

Under scenarios 2 and 3, the increased affordability requirements must be supported by an economic feasibility analysis prepared by a qualified and independent third party acceptable to EOHLC.

- 4. For previously approved and adopted 40R “smart growth” zoning districts, a community may amend an existing 40R district to comply with the Guidelines and retain an existing 25% affordable unit requirement.**

Guidelines: Mixed-Use Development Districts

Section 5.c. Reasonable Size-Consideration Given to Unit Capacity in Mixed-Use Development Districts

[Revisions 8/17/2023]

- These provisions apply when a community wishes to require mixed-uses in a particular district.
 "Mixed-use development zoning district" means a zoning district where multiple residential units are allowed as of right if, but only if, combined with non-residential uses, including, without limitation, commercial, institutional, industrial or other uses.
- If the proposed mixed-use development district meets the criteria set forth in the Guidelines, a community may apply to EOHLC to have mixed-use unit capacity credited toward the community's minimum unit capacity requirement.
- The criteria include an "eligible location" where village or downtown development is essential, there are no limits on unit or bedroom size, the development is allowed "as of right", non-residential uses are capped at 33% of the floor area of the project and limited to the first floor, and there are no parking requirements for the non-residential uses.
- Request for the unit capacity credit must be submitted on EOHLC's approved form at least 90 days prior to the zoning amendment vote.
- The reduction in MBTA community multi-family unit capacity based on mixed-use development unit capacity cannot exceed 25% of the MBTA community's multi-family unit capacity requirement.
- Mixed-use development districts will not count toward a community's minimum land acreage requirement.

MBTA Community Multi-family Zoning District

Quantum of Vote

M.G.L. C. 40A, §5 - ADOPTION OR CHANGE OF ZONING ORDINANCES OR BY-LAWS; PROCEDURE
(Amended as part of Chapter 358 of the Acts of 2020)

M.G.L. C. 40A, §1A
DEFINITIONS

The following shall be adopted by a vote of a simple majority [rather than 2/3] of all members of the town council or of the city council where there is a commission form of government or a single branch or of each branch where there are 2 branches or by a vote of a simple majority of town meeting:

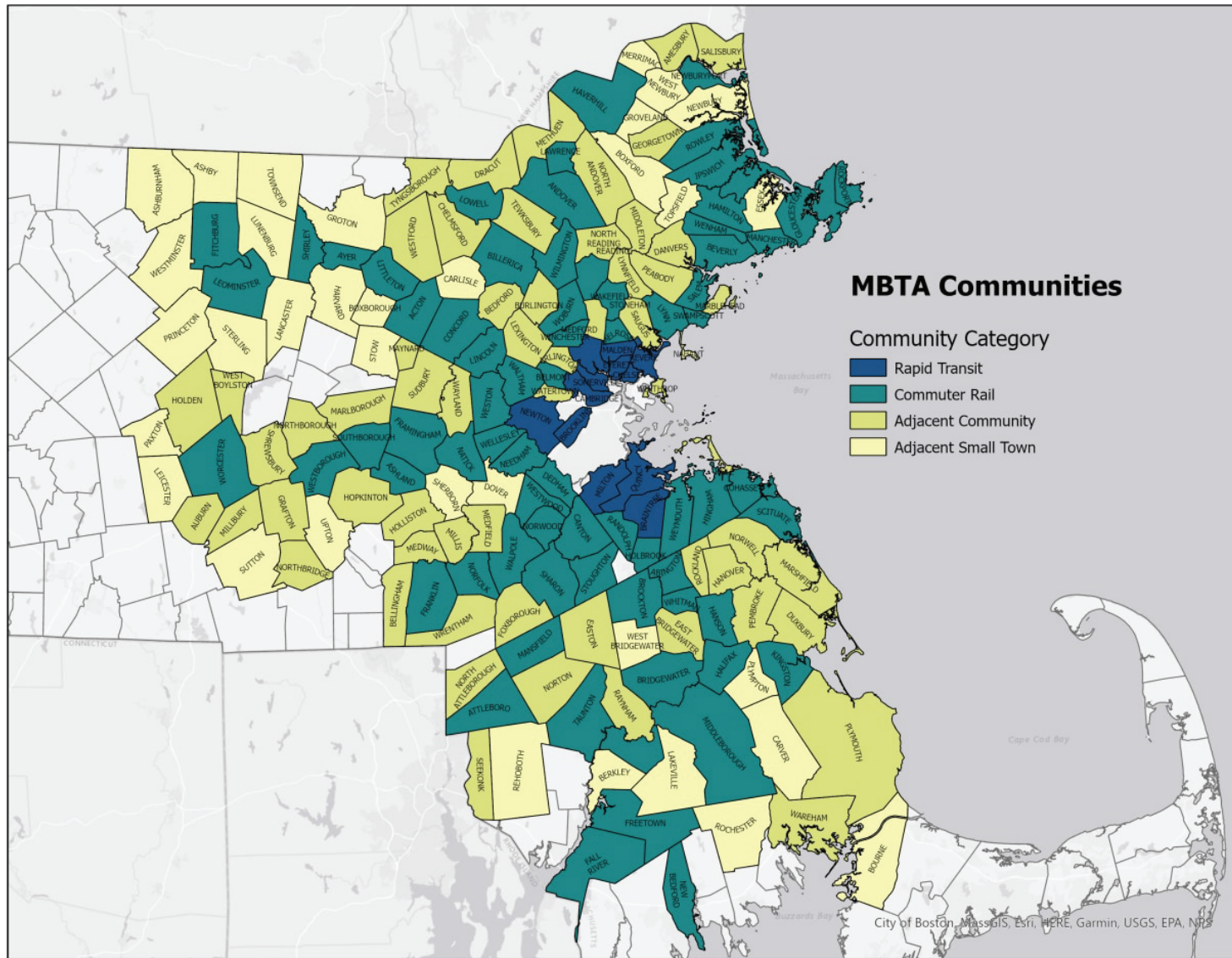
(1) an amendment to a zoning ordinance or by-law to allow any of the following as of right:

- (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; or
- (c) open-space residential development.

“**Eligible locations**”, areas that by virtue of their infrastructure, transportation access, existing underutilized facilities or location make highly suitable locations for residential or mixed-use smart growth zoning districts or starter home zoning districts, including without limitation:

- (i) areas near transit stations, including rapid transit, commuter rail and bus and ferry terminals; or
- (ii) areas of concentrated development, including town and city centers, other existing commercial districts in cities and towns and existing rural village districts.

MBTA Communities



“MBTA community” means a city or town that is:

- (i) one of the 51 cities and towns as defined in section 1 of chapter 161A;
- (ii) one of the 14 cities and towns as defined in said section 1 of said chapter 161A;
- (iii) other served communities as defined in said section 1 of said chapter 161A; or
- (iv) a municipality that has been added to the Massachusetts Bay Transportation Authority under section 6 of chapter 161A or in accordance with any special law relative to the area constituting the authority.

[MGL Ch. 40A, § 1A]

Source: Mass.gov - Multi-family Zoning Requirements for MBTA Communities

Timeline For Compliance

Deadlines to adopt zoning and *submit District Compliance Application

- ✓ December 31, 2023 Rapid Transit Communities
- ✓ December 31, 2024 Commuter Rail and Adjacent communities
- ✓ December 31, 2025 Adjacent small towns

***Note:** *This deadline is for submitting the District Compliance Application. Adoption of the zoning alone is not sufficient to meet the deadline and retain interim compliance status.*

Attorney General, Municipal Law Unit Approval

In addition to compliance with the Guidelines, zoning amendments adopted by Towns must also submit and receive approval of the zoning amendment pursuant to Chapter 40, Section 32.

Important Note

Receipt of approval from the Municipal Law Unit does not constitute compliance with Section 3A and the Guidelines.

Likewise, a compliance determination from EOHLC does not constitute approval under Chapter 40, Section 32.

If a zoning amendment receives MLU approval, the zoning change will go into effect in accordance with the provisions of Chapter 40, Section 32, even if the zoning amendment does not receive a determination of compliance from EOHLC.

Current Status of MBTA Community Zoning Adoption

Update from EOHLC (as of 2/22/2024):

- Arlington, Lexington, and Salem have approved districts
- Approximately 20 other communities have applied for district compliance
- Several communities have submitted an economic feasibility analysis to support zoning that would require more than 10% of units to meet affordability requirements. These are under review with no determinations yet made.
- A number of communities have submitted draft zoning amendments to EOHLC for pre-adoption review. Approximately 11 have received feedback and 20+ are currently under review.

According to the Municipal Law Unit Decision (MLU) website, approximately seven towns have received Attorney General approval of their MBTA Community zoning bylaws, with notes that such zoning must also receive a determination of compliance from EOHLC.

A handful of other decisions advise towns regarding the need to comply with Section 3A.

