

# MBTA COMMUNITY MULTI-FAMILY HOUSING

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Massachusetts Municipal Lawyers Association

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# MGL Chapter 40A, Section 3A

**(a)(1) 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:**

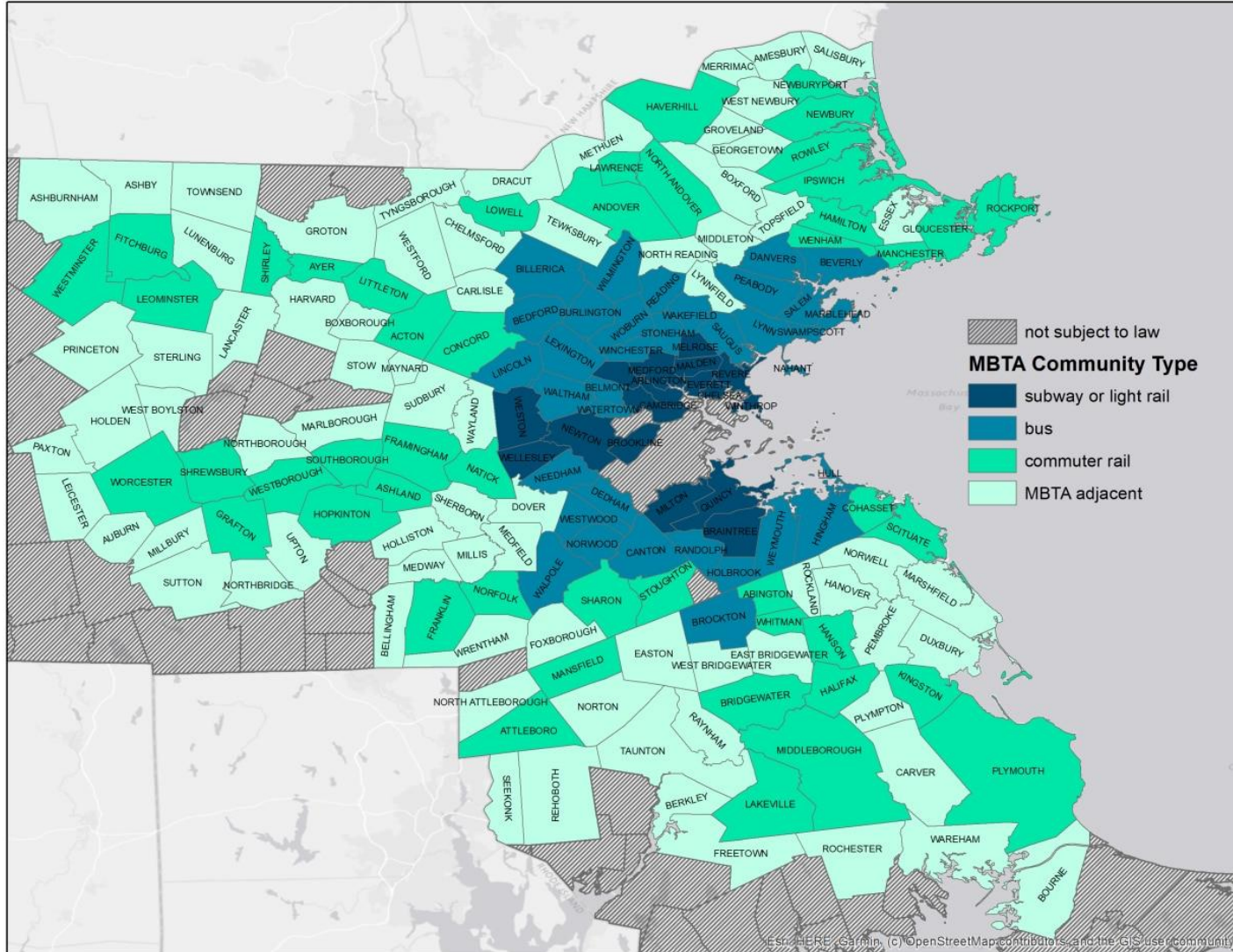
**(i) the Housing Choice Initiative as described by the governor in a message to the general court dated December 11, 2017;**

**(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.**

**(c) The department, in consultation with 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.**

# 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.

“**Rapid transit community**” means an MBTA community with a subway station within its borders, or within 0.5 mile of its border. An MBTA community with a subway station within its borders, or within 0.5 mile of its border, shall be deemed to be a rapid transit community even if there is one or more commuter rail stations or MBTA bus lines located in that community.

“**Bus service community**” means an MBTA community with a bus station within its borders or within 0.5 miles of its border, **OR** an MBTA bus stop within its borders, and no subway station or commuter rail station within its border, or within 0.5 mile of its border.

“**Commuter rail community**” means an MBTA community with a commuter rail station within its borders, or within 0.5 mile of its border, and no subway station within its borders, or within 0.5 mile of its border.

“**Adjacent community**” means an MBTA community with no transit station within its border or within 0.5 mile of its border.

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

# MULTI-FAMILY HOUSING

G.L. c. 40A, Section 1A defines “**multi-family housing**” as:

“a building with 3 or more residential dwelling units or 2 or more buildings on the same lot with more than one residential dwelling unit in each building.”

Draft Guidelines define “**multi-family district**” as:

“a zoning district, including an overlay district, in which multi-family uses are allowed by right.”

Department of Housing and Community Development  
**DRAFT Compliance Guidelines for Multi-family Districts  
Under Section 3A of the Zoning Act**

DHCD issued Draft Guidelines on December 15, 2021

DHCD is accepting comments on the Draft Guidelines until **March 31, 2022.**

While the Draft Guidelines are under review, each MBTA community must take the following steps to remain in compliance with chapter 40A, §3A and be eligible for funding under the three programs listed above:

- Hold a briefing of the Select Board, City Council or Town Council on the Draft Guidelines no later than **May 2, 2022;** and
- Submit the MBTA Community Information Form by **May 2, 2022.**

## TIMELINE FOR COMPLIANCE

To remain in compliance, each MBTA community must do one of the following no later than **December 31, 2022**:

- Submit a complete request for determination of compliance (i.e., submit information as outlined in the Guidelines demonstrating that the community has established a multi-family zoning district that complies with chapter 40A, §3A); or
- Submit a proposed action plan as provided for in the Guidelines (i.e., send written notice to DHCD that a multi-family zoning district must be adopted, and a proposed action plan and timeline for planning activities, community outreach, drafting zoning amendments, public hearings, legislative action, and other steps to establish a multi-family zoning district that complies with chapter 40A, §3A)
- DHCD will endeavor to respond to inquiries during the action plan period with informal advice as to whether proposed zoning will comply with c. 40A, §3A

# 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:

(I) 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.

# ALLOWING MULTI-FAMILY HOUSING “AS OF RIGHT”

## Per the Draft Guidelines:

To comply with Section 3A, a multi-family district must allow multi-family housing **“as of right”** meaning the construction and occupancy of **multi-family housing** is allowed in that district without the need to obtain any discretionary permit or approval.\*

\*Definition in Draft Guidelines only paraphrases the definition in MGL 40A, §1A:

**“As of right”** - development that may proceed under a zoning ordinance or by-law without the need for a special permit, variance, zoning amendment, waiver or other discretionary zoning approval.



# SITE PLAN REVIEW OF “AS OF RIGHT” USE

## Per the Draft Guidelines:

**Site plan review and approval** may be required for multi-family uses allowed as of right.

**Site plan approval** may regulate matters such as vehicular access and circulation on a site, architectural design of a building, and screening of adjacent properties.

**Site plan review** may not be used to deny a project that is allowed as of right\*, nor may it impose conditions that make it infeasible or impractical to proceed with a multi-family use that is allowed as of right.

\*As a general rule site plan review may not be denied; but see *Prudential Ins. Co. of America v. Bd. of Appeals of Westwood*, 23 Mass.App.Ct. 278, n.9 (1986):

“A board may lawfully reject a site plan that **[(a)]** fails to furnish adequate information on the various considerations imposed by the by-law as conditions of the approval of the plan... **[or (b)]** In some cases, the site plan, although proper in form, may be so intrusive on the needs of the public in one regulated aspect or another that rejection by the board would be tenable.” (brackets added)

“The judge was essentially to examine the proposal to see if the traffic problem was so intractable that it could admit of no reasonable solution.” *Id.* at 283 (emphasis added)

# SUITABILITY FOR FAMILIES WITH CHILDREN

**Section 3A** states that a compliant multi-family district must be **without age restrictions** and must be **suitable for families with children**.

Per Draft Guidelines:

**“Housing suitable for families”** means housing comprised of residential dwelling units that are not age-restricted housing, and for which there are no legal restriction on the number of bedrooms, the size of bedrooms, or the number of occupants.

**“Age-restricted housing”** means any housing unit encumbered by a title restriction requiring occupancy by at least one person age 55 or older.

# LIMITATIONS ON MULTI-FAMILY DISTRICT ZONING REGULATIONS

## Per the Draft Guidelines:

DHCD will deem a multi-family district to comply with these requirements as long as the zoning:

- does not require multi-family uses to include units with age restrictions and
- does not place any limits or restrictions on:
  - the size of the units\*
  - the number of bedrooms
  - the size of bedrooms\*, or
  - the number of occupants

\*See Massachusetts State Sanitary Code (105 CMR 410):

### 410.400: Minimum Square Footage

(A) Every dwelling unit shall contain at least 150 square feet of floor space for its first occupant, and at least 100 square feet of floor space for each additional occupant, the floor space to be calculated on the basis of total habitable room area.

(B) In a dwelling unit, every room occupied for sleeping purposes by one occupant shall contain at least 70 square feet of floor space; every room occupied for sleeping purposes by more than one occupant shall contain at least 50 square feet of floor space for each occupant.

(C) In a rooming unit, every room occupied for sleeping purposes by one occupant shall contain at least 80 square feet of floor space; every room occupied for sleeping purposes by more than one occupant shall contain at least 60 square feet for each occupant.

# EFFECT OF NONCOMPLIANCE

## MGL Ch. 40A, § 3A:

(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 2E of chapter 29; or
- (iii) the MassWorks infrastructure program established in section 63 of chapter 23A.

**NOTE:** Section 3A(c) authorizes the promulgation of guidelines “to determine if an MBTA community is in compliance with this section.” Section 3A(b) lists specific state funds that are affected based on compliance with Section 3A.

## Draft Guidelines:

If at any point DHCD determines that an MBTA community is not in compliance with Section 3A, that MBTA community will not be eligible for funds from the following grant programs\*:

- (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 2E of chapter 29; or
- (iii) the MassWorks infrastructure program established in section 63 of chapter 23A.

DHCD may, in its discretion, take non-compliance into consideration when making other discretionary grant awards.\*\*

\*The Local Capital Projects Fund is not a grant program

\*\*Section 3 only restricts eligibility for the funds listed in (i), (ii) and (iii) as the consequence for failure to comply.

# STATE FUNDS AFFECTED BY NONCOMPLIANCE: HOUSING CHOICE INITIATIVE

## (i) **The Housing Choice Initiative** (<https://www.mass.gov/housing-choice-designation-and-grants>)

(Summary of FY2023 Program; subject to change)

The Housing Choice Community Grant Program rewards municipalities that have produced a significant number of housing units\* in the last five years and that have adopted or established Best Practices that encourage housing production. (emphasis added)

\***“significant number of housing units”** - The Housing Choice designation is based on PRODUCTION OF NEW YEAR-ROUND housing units over the last 5 years. The threshold for qualifications is a 5% increase (or 500 units), or a 3% increase (or 300 units) and best practices.

“Activities may include capital projects such as construction, modernization, or major repair of physical infrastructure, acquisition of property or interests in property; long-lived equipment; or feasibility, engineering or schematic designs for capital projects. Planning and zoning projects may also be funded by this program.”

For FY2023, approximately \$4 Million is available in grants for qualifying municipalities. **Grants in this category will likely be \$25,000-\$250,000.**

**NOTES:** If units are created in a communities in compliance with the Grant Program Guidelines, those communities are eligible to become Housing Choice Communities, however:

- a. Adopting the MBTA Community zoning alone does not qualify a community for grant funds. The community must first earn Housing Choice designation which includes creation of the “significant number of housing units” (defined above). Adopting the multi-family housing district will be the gatekeep prerequisite to eligibility.
- b. ***This is a temporary designation.*** It depends on housing creation and communities fall off this list after five years if unit creation is not sustained year after year.

## STATE FUNDS AFFECTED BY NONCOMPLIANCE: LOCAL CAPITAL PROJECT FUNDS

### **(ii) Local Capital Projects Fund established in section 2EEEE of chapter 29**

*There shall be established and set up on the books of the commonwealth a Local Capital Projects Fund. The fund shall be credited with any funds transferred from the Gaming Revenue Fund established in section 59 of chapter 23K and any monies credited to or transferred to the fund from any other fund or source.*

#### **Notes:**

- a. The Local Capital Project Fund is a state budget source, not a “grant program” – there is no “application” a community can submit to the state to obtain “Local Capital Project Funds”.
- b. It is not yet clear all of the state budget line items or programs that are funded in whole or in part by the Local Capital Projects Fund, but efforts are being made to clarify this question. To date, the following has been learned:
  - For the last few years, the Local Capital Project Fund was used to partially fund an appropriation in the state budget for local housing authorities. Governor Baker’s proposed budget for FY23 continues this use:
  - In FY14, FY15, it appears that 100% of the Local Capital Projects Fund was applied to the MassWorks infrastructure program (with some limited earmarked appropriations).
- c. There is no way to predict where the state will appropriate the Local Capital Project Fund in the future so past appropriation may not provide an indication of future impact of this statutory provision on MBTA Communities.

## STATE FUNDS AFFECTED BY NONCOMPLIANCE: MASSWORKS INFRASTRUCTURE PROGRAM

### **(iii) The MassWorks infrastructure program established in section 63 of chapter 23A.**

*Per M.G.L. ch. 23A, §63, the primary purpose of the MassWorks Program is: to issue grants to municipalities and other public instrumentalities for design, construction, building, land acquisition, rehabilitation, repair and other improvements to publicly-owned infrastructure including, but not limited to, sewers, utility extensions, streets, roads, curb-cuts, parking, water treatment systems, telecommunications systems, transit improvements, public parks and spaces within urban renewal districts, and pedestrian and bicycle ways.*

Source: [FY2023 MassWorks Program Guidelines](#)

**Allowable Use of Funds** - Applicants may request capital grant funds for predevelopment activities and/or to cover any and all reasonable direct costs associated with the proposed improvements to the public infrastructure, including pre-construction expenses, direct construction costs, and the expenses for project administration...Funds may generally be used for the following types of expenses:

- Predevelopment: Engineering documents, pre-permitting, proforma development, due diligence, etc.
- Pre-Construction: Design, final engineering/surveying, permitting, bidding, etc.
- Direct Construction: All earthwork and/or site work (for example, demolition, sidewalk and road construction, utility relocation, traffic signals, water/sewer extensions, bridge/culvert repairs, etc.)
- Construction Administration: Project management, traffic control, public safety details, etc.

**Maximum Award Amount** - There is no set maximum or minimum amount that an applicant may request for a MassWorks grant, except in the case of STRAP [small town road project] awards [\$1,000,000 cap], or as might otherwise be dictated by statute.

# DETERMINING REASONABLE SIZE: DEFINITIONS

In making determinations of “reasonable size,” DHCD will take into consideration

- the area of the district and
- the district’s multi-family unit capacity (that is, the number of units of multi-family housing that can be developed as of right within the district).

## Guideline Definitions:

“Reasonable size” means not less than 50 contiguous acres of land with a unit capacity equal to or greater than the unit capacity specified in section 5 [of the Guidelines].

## Section 3.b of Guidelines:

“Reasonable size” is a relative rather than an absolute determination. Because of the diversity of MBTA communities, a multi-family district that is “reasonable” in one city or town may not be reasonable in another city or town. Objective differences in community characteristics must be considered in determining what is “reasonable” for each community.



## DETERMINING REASONABLE SIZE: MINIMUM LAND AREA

The Draft Guidelines' interpretation: Section 3A's requirement that a multi-family district be a "reasonable size" indicates that the purpose of the statute is to encourage zoning that allows for the development of a reasonable amount of multi-family housing in each MBTA community.

Section 3A does not define "reasonable size". The Draft Guidelines say that **a multi-family district must comprise at least 50 acres of land**—or approximately one-tenth of the land area within 0.5 mile of a transit station.

- A district should not be a single development site on which the municipality is willing to permit a particular multi-family project.
- An overlay district is permitted, provided at least one portion of the overlay district is at least 25 contiguous acres.
- No portion of the district that is less than 5 contiguous acres will count toward the minimum (50 acre) size requirement.

# DETERMINING REASONABLE SIZE: MINIMUM MULTI-FAMILY UNIT CAPACITY

**Section 3A requirement:** gross density of 15 units per acre, subject to any further limitations imposed by wetlands regulations and Title 5

**Draft Guidelines requirements:** “a reasonable number of multi-family housing units”

- *District's unit capacity* = a number of units equal to or greater than a specified percentage of the total number of housing units within the community. The required percentage will depend on the type of transit service in the community.
- Regardless of community size, a minimum district capacity of 750 units is required.

## MBTA Communities - Cohort Designations and Capacity Calculations

Show 5 entries

Search: Lancaster

Municipality	MBTA Community Type	2020 Housing Units (Census PL-94)	Minimum multifamily district unit capacity requirement
Lancaster	MBTA adjacent	2,788	750*

Showing 1 to 1 of 1 entries (filtered from 175 total entries)

Previous 1 Next

\* MBTA communities with a unit capacity lower than 750 units are noted as having a unit capacity of 750. This is the fewest number of multi-family units needed to meet the gross density requirement of 15 units per acre (i.e. 50 acres x 15 units per acre).

### Category

Minimum multi-family units as a percentage of total housing stock

Rapid transit community	25%
Bus service community	20%
Commuter rail community	15%
Adjacent community	10%

Show 5 entries

Search: Wellesley

Municipality	MBTA Community Type	2020 Housing Units (Census PL-94)	Minimum multifamily district unit capacity requirement
Wellesley	subway or light rail	9,282	2,321

Source: [Mass.gov - Multi-family Zoning Requirements for MBTA Communities](https://www.mass.gov/info-details/multi-family-zoning-requirements-for-mbta-communities)

## DETERMINING REASONABLE SIZE: DETERMINING UNIT CAPACITY WITHIN THE MULTI-FAMILY ZONING DISTRICT

### Draft Guidelines:

*When determining the unit capacity for a specific multi-family district, each MBTA community must estimate how many units of multi-family housing could be constructed on each parcel of developable land within the district.*

Parcel is not defined; Lot is defined in Chapter 40A §1A as “an area of land with definite boundaries that is used or available for use as the site of a building or buildings.” Is “parcel” intended to be different than “lot”? If so, what is a parcel?

- The estimate should take into account the amount of developable land in the district*
- **“Developable land”** means land on which multi-family housing units have been or can be permitted and constructed. Developable land shall **not** include land under water, wetland resource areas, areas lacking adequate water or wastewater infrastructure or capacity, publicly owned land that is dedicated to existing public uses, or privately owned land encumbered by any kind of use restriction that prohibits residential use.*

## DETERMINING REASONABLE SIZE: DETERMINING UNIT CAPACITY WITHIN THE MULTI-FAMILY ZONING DISTRICT (cont.)

The estimate must take into account for each parcel:

- Zoning requirements, including height limitations, lot coverage limitations, maximum floor area ratio, set back requirements and parking space requirements, lot shape factor, other restrictions applicable in that district under the zoning ordinance or by-law
- Restrictions and limitations set forth in any other municipal by-laws or ordinances
- Examples: Local wetlands protection; tree preservation; stormwater

## DETERMINING REASONABLE SIZE: DETERMINING UNIT CAPACITY WITHIN THE MULTI-FAMILY ZONING DISTRICT (cont.)

The estimate must take into account for each parcel:

- Limitations on development resulting from inadequate water or wastewater infrastructure\*, and, in areas not served by public sewer, any applicable limitations under Title 5 of the state environmental code or local septic regulations;
- “Known” title restrictions on use of the land within the district;
- Known limitations, if any, on the development of new multi-family housing within the district based on physical conditions such the presence of waterbodies, and wetlands.

\*Is this capacity, physical infrastructure, or both? Determining water and sewer capacity can be tricky.

## DETERMINING REASONABLE SIZE: DETERMINING UNIT CAPACITY WITHIN THE MULTI-FAMILY ZONING DISTRICT (cont.)

Draft Guidelines:

*If the estimate of the number of multi-family units that can be constructed in the multi-family district is less than the minimum unit capacity, then the MBTA community must change the boundaries of the multi-family district or make changes to dimensional regulations applicable to that district (or to other local ordinances or bylaws) to allow for the development of a greater number of multi-family units as of right.*

## DETERMINING REASONABLE SIZE: DETERMINING UNIT CAPACITY WITHIN THE MULTI-FAMILY ZONING DISTRICT (cont.)

The statute and Draft Guidelines do not mandate the construction of any specified number of housing units; it is only required that there be a multi-family zoning district of reasonable size.

*“There is no requirement nor expectation that a multi-family district will be built out to its full unit capacity.”*

Multi-family districts may include parcels with existing multi-family units, so long as the multi-family zoning district complies with the statute and Guidelines when finalized.

(Note – existing units do not have to comply with the new zoning; remember, it is the zoning that counts, not what is on the ground.)

# MINIMUM GROSS DENSITY

## Section 3A requires:

A compliant multi-family district must have a **minimum gross density** of **15 units per acre**, subject to any further limitations imposed by section 40 of chapter 131 [Wetlands Act] and title 5 of the state environmental code established pursuant to section 13 of chapter 21A [septic systems].

**“Gross density”** means a units-per-acre density measurement that includes land occupied by public rights-of-way and any recreational, civic, commercial, and other nonresidential uses.

## Examples of ~15 Units Per Acre:



Source: *The Urbanist* illustrating new mixed-housing-type subdivision at ~15 units per acre



Westwood, MA



Norfolk, MA



Sudbury, MA



Lexington, MA

Credit: Amy Dain

Source: [Mass.gov](#) - Multi-family Zoning Requirements for MBTA Communities



## MINIMUM GROSS DENSITY (cont.)

Draft Guidelines provide that:

DHCD will deem a zoning district to be compliant with Section 3A's minimum gross density requirement if the following criteria are met.

### **a. District-wide gross density**

- a multi-family district—not just the individual parcels of land within the district—must have a minimum gross density of 15 units per acre, subject to wetland and Title 5 regulations
- To comply, the zoning must legally and practically allow for a district-wide gross density of 15 units per acre.
- This calculation must include “land occupied by public rights-of-way and any recreational, civic, commercial and other nonresidential uses.”

Draft Guidelines Example: To meet that requirement for a 50-acre multi-family district, the municipality must show at least 15 existing or potential new multi-family units per acre, or a total of at least 750 existing or potential new multi-family units.

### **b. Achieving district-wide gross density by sub-districts**

- an MBTA community may establish sub-districts within a multi-family district, with different density requirements and limitations for each sub-district, provided that the gross density for the district as a whole meets the statutory requirement of not less than 15 multi-family units per acre.

# BREAKING DOWN THE DISTRICT AND UNIT REQUIREMENTS

## **Section 3A Simply Requires:**

An MBTA community shall have a zoning ordinance or by-law that provides for **at least 1 district of reasonable size**

For the purposes of this section, a district of reasonable size shall:

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;

## **Draft Guidelines interpret that to mean:**

Reasonable size\* = **at least 50 acres** without regard to size (land area or population) of community but, \*if the natural environment of the community won't allow for 15 units per acre on 50 acres, or the community's multiplier makes 50 acres impractical without high-rise buildings, an even larger zoning district will be required.

then the Guidelines layer on top of the statutory requirements the following:

- Designation of “types” of MBTA communities and a “multiplier” for each type of MBTA community based on 2020 census housing stock
- Because a minimum of 50 acres is uniformly applied (and Section 3A requires 15 units per acre), smaller communities with less housing units (typically most non-urban “adjacent” communities with no transit stations or bus stops) must have a minimum of 750 units (resulting in a much higher % of multi-family housing in relation to its overall housing stock)
- Likewise, in many larger communities that have existing multi-family housing outside of the 0.5 radius, the 50-acre minimum, combined with the housing stock multiplier, will result in a much higher % of multi-family housing in relation to overall housing stock. In non-urban communities, this would result in a fundamental change in the character of communities.

**Question: Is the structure of these additional requirements consistent with Chapter 3A or with the stated goal that “MBTA communities should adopt multi-family districts that will lead to development of multi-family housing projects of a scale, density and character that are consistent with a community’s long-term planning goals.”**

## LOCATION OF DISTRICTS: GENERAL RULE

### Section 3A states:

A district of reasonable size ...shall be located **not more than 0.5 miles** from a commuter rail station, subway station, ferry terminal or bus station, if applicable.

### The Draft Guidelines state:

DHCD will interpret that requirement consistent with the following guidelines:

1. General rule for measuring distance from a transit station.

The distance from a transit station may be **measured from the boundary of any parcel of land owned by a public entity and used for purposes related to the transit station**, such as an access roadway or parking lot.



# LOCATION OF DISTRICTS: SOME LAND AREA WITHIN 0.5 MILES OF A TRANSIT STATION

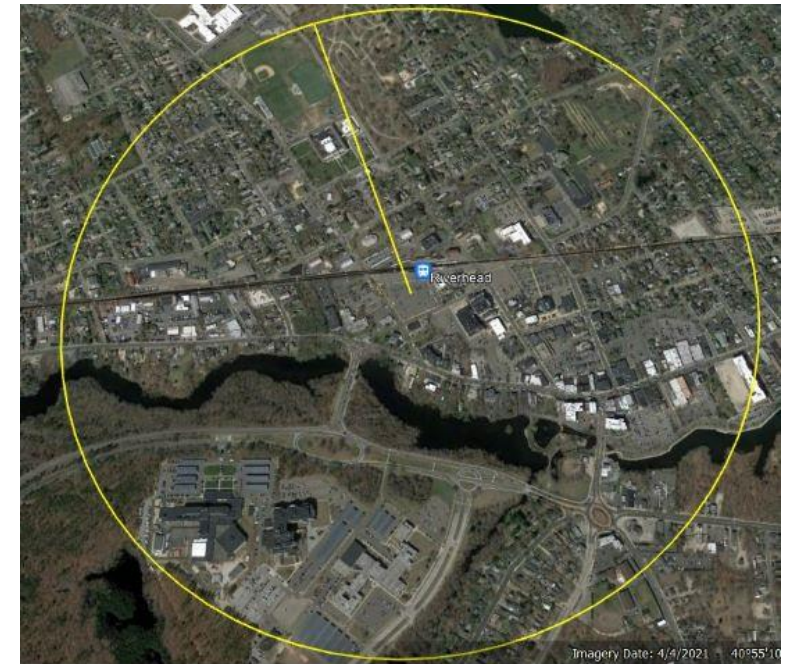
## 2. MBTA communities with some land area within 0.5 miles of a transit station

An MBTA community that has a transit station within its boundaries, or some land area within 0.5 mile of a transit station located in another MBTA community:

- District is in compliance if a substantial portion of the multi-family district is located within the 0.5-mile distance
- Absent compelling circumstances, at least  $\frac{1}{2}$  of the land area of the district should be located within 0.5 mile of the transit station.
- District may include land areas that are further than 0.5 mile from the transit station, provided that such areas are easily accessible to the transit station based on existing street patterns and pedestrian connections.

*(continued on next slide)*

**Note:** This station is not in MA and is for example purposes only.



Ruler

Line	Path	Polygon	Circle	3D path	3D polygon
Measure the circumference or area of a circle on the ground					
Radius:		0.50		Miles	
Area:		501.72		Acres	

Source: Google Earth Pro



## LOCATION OF DISTRICTS: SOME LAND AREA WITHIN 0.5 MILES OF A TRANSIT STATION (cont.)

### **2. MBTA communities with some land area within 0.5 miles of a transit station (cont.)**

An MBTA community that has a transit station within its boundaries, or some land area within 0.5 mile of a transit station located in another MBTA community:

- **Where none of the land area within 0.5 mile of transit station is appropriate for development of multi-family housing** (e.g. wetlands, parks, conservation land), the community may propose a district less than ½ of its land area within a 0.5 mile of a transit station.
  - To the maximum extent feasible, the land areas within such a district should be easily accessible to the transit station based on existing street patterns, pedestrian connections, and bicycle lanes.



**Notes:** Based on public information; for discussion purposes only

- Shaded areas are public or protected lands, wetlands, flood plain
- Based on 2020 housing units with multiplier applied, calculation would be substantially below 750 units, but Draft Guidelines impose mandatory minimum of 750 units.

## LOCATION OF DISTRICTS: NO LAND AREA WITHIN 0.5 MILES OF A TRANSIT STATION

### **For “Adjacent Communities”**

Chapter 40A, §3A does not place any restriction on the location of the multi-family zoning district for communities that do not have land area within 0.5 mile of a transit station. The Draft Guidelines, however, provide the following:

*When an MBTA community has no land area within 0.5 mile of a transit station, the multi-family district should, if feasible, be located in an area with reasonable access to a transit station based on existing street patterns, pedestrian connections, and bicycle lanes, or in an area that otherwise is consistent with the Commonwealth’s sustainable development principles—for example, near an existing downtown or village center, near an RTA bus stop or line, or in a location with existing under-utilized facilities that can be redeveloped into new multi-family housing.*

## LOCATION OF DISTRICTS: NO LAND AREA WITHIN 0.5 MILES OF A TRANSIT STATION (cont.)

**“Commonwealth’s sustainable development principles”** means the principles set forth at <https://www.mass.gov/files/documents/2017/11/01/sustainable%20development%20principles.pdf> as such principles may be modified and updated from time to time.

Sustainable Development Principles include:

- Concentrate Development and mix uses
- Advance Equity
- Make Efficient Decisions
- Protect Land and Ecosystems
- Use Natural Resources Wisely
- Expand Housing Opportunities
- Provide Transportation Choice
- Increase Job and Business Opportunities
- Promote Clean Energy
- Plan Regionally

## RECOMMENDED STEPS:

### 1. CREATE A CALENDAR

The Guidelines set forth DHCD's deadlines for maintaining interim compliance and achieving full compliance. Using those benchmarks, each community should create a calendar that includes all of the steps necessary to move the public discussion and proposed zoning amendments through your community's local process.

- May 2, 2022
  - ✓ Present draft guidelines to Select Board, City Council, Town Council
  - ✓ Submit MBTA Community Information Form to DHCD
  - ✓ Submit updated GIS maps if notified by DHCD to do so
- May-December 2022
  - ✓ Analyze current zoning
  - ✓ Hold public hearings on zoning changes
  - ✓ Determine zoning amendments necessary to comply
- December 31, 2022
  - ✓ submit action plan or request for compliance determination to DHCD

- Upon receipt of approval of Action Plan by DHCD, due between March and July 2023 (G.L. c. 40A, § 5)
  - ✓ Present zoning amendments to Planning Board/City Council/Select Board
  - ✓ hold hearings within 65 days of submission but after publication in a newspaper not less than 14 days beforehand
  - ✓ board issues report with recommendations to Town Meeting or City Council or 120 days passes after hearing
  - ✓ vote must be taken by city council within 90 days of council hearing or by Town Meeting within 6 months of board hearing
- December 31, 2023\* Subway and bus communities must adopt
- December 31, 2024 Commuter rail and adjacent communities must adopt

**\*Note:** For subway and bus communities that legislate by Annual Town Meeting (with no fall Special Town Meeting), December 31, 2023 does not take into account the realistic timeframes for these communities to draft, socialize in the community, and undertake the statutory requirements for adoption of zoning amendments.



## RECOMMENDED STEPS: 2. REVIEW EXISTING ZONING AND HOUSING

- Is there an existing multi-family housing zoning district in your community? If yes:
  - Is the use allowed as of right?
  - How many acres does it comprise? Does it allow for 15 units per acre and/or the minimum multi-family unit capacity?
  - How much of the district is within 0.5 miles of a transit station (or, if applicable, in an area that allows for easy travel to a transit station)?
  - How many existing multifamily housing units are within the existing district and/or could reasonably be developed within the existing district?
- A request to DHCD for a determination of compliance may be made for a multi-family district that was in existence on the date that Section 3A became law.
- If current zoning is not as of right and/or the number of qualifying multi-family housing units is insufficient:
  - Are existing regulations sufficient to change directly to an as of right use, or what amendments are needed?  
  
For example, when were site plan review performance standards and parking requirements last reviewed and updated?

## RECOMMENDED STEPS:

### 4. CONSIDER ZONING DISTRICT OPTIONS

First: location, location, location

- Study existing land uses, including location of existing multi-family structures, and land that would be suitable for multi-family.
- If there is land area within .5 miles of a transit station, look at that area first in order to comply with requirement that at least half of the district must be within .5 miles. If there is more than one transit station within .5 miles, look at each'; the Draft Guidelines allow part of the district near each station.
- Consider enacting a specific multi-family housing district, must be at least 50 acres. Can include sub-districts, so long as overall density is 15 units/acre.
- Overlay districts provide flexibility and can allow the underlying zoning as well.
- Draft Guidelines require at least one area of 25 contiguous acres, and no part of the district can be less than 5 acres.

## RECOMMENDED STEPS:

### 5. CONSIDER ZONING DISTRICT REQUIREMENTS

Determine the zoning regulations to include for the district.

- The statute does not contain any requirement for an affordable housing component. An affordability provision is usually desirable. If you have an existing inclusionary zoning provision, that can be applied to the multi-family district. If not, consider an affordable housing requirement for the multi-family housing district.
- Consider carefully the dimensional requirements to achieve the required 15 units per acre while encouraging multi-family housing that will be an asset to the community.
- Consider including other provisions found in your zoning, whether FAR, electric vehicle stations, tree preservation, stormwater, etc. in the multi-family zoning as part of the “by right” zoning. “By right” does not mean no regulations, but be aware of how it impacts the density calculation.
- Mixed-use is allowed in the multi-family zone so long as the multi-family housing density works.

## RECOMMENDED STEPS:

### 5. CONSIDER ZONING DISTRICT REQUIREMENTS

What about existing multi-family housing?

- If there is existing multi-family housing in the proposed district that was allowed by special permit, incorporate any provisions that applied to the special permit in the new zoning. Also, remember that site plan review can (and should) apply.
- If there is existing multi-family housing in the proposed district that was allowed by a comprehensive permit, will it be in compliance with the new zoning? Most comprehensive permits provide that the affordability and other conditions continue for so long as the development is not in compliance with local by-laws and ordinances.

## HELPFUL LINKS

1. DHCD Resources: <https://www.mass.gov/info-details/multi-family-zoning-requirement-for-mbta-communities#review-the-draft-guidelines->
2. Mass Housing Partnership MBTA Zoning Compliance Technical Assistance: <https://www.mhp.net/community/complete-neighborhoods-initiative>
3. MAPC Materials: <https://www.mapc.org/resource-library/mbta-multifamily-zoning/>
4. Housing Choice Community Grants: <https://www.mass.gov/how-to/housing-choice-community-grant-program>
5. Mass Works Infrastructure Program: <https://www.mass.gov/service-details/massworks-infrastructure-program>

## SUBMISSION OF COMMENTS TO DHCD

The MMLA is coordinating with the MMA to compile comments and questions on the draft Guidelines for submission to DHCD prior to the public comment period deadline of March 31, 2022.

1. If any MMLA member is interested in being on the working group compiling the comments, please contact [james.lampke@lampkelaw.com](mailto:james.lampke@lampkelaw.com) no later than Friday, February 18<sup>th</sup>. Please indicate which type(s) of MBTA Community(ies) you represent (rapid transit, commuter rail, bus service, adjacent); and/or
2. Any MMLA member who wishes to have comments and questions (identified by you or your municipal clients) reviewed for inclusion in the MMLA's comprehensive comments, please submit them to [james.lampke@lampkelaw.com](mailto:james.lampke@lampkelaw.com) no later than Tuesday, March 15<sup>th</sup>.

The MMLA plans to submit comments to DHCD in advance of the deadline and make them available to the membership so that any of your communities who wish to may send a letter supporting and/or supplementing the MMLA/MMA comments.