

**Details about the Economic Feasibility Analysis for compliance with Section 4.b. of the
Compliance Guidelines for Multi-family Zoning Districts Under Section 3A of the Zoning Act
(Compliance Guidelines)**

1. What is “inclusionary zoning”?

Inclusionary zoning refers to a zoning ordinance or bylaw that allows residential development, but only if a proposed project includes a specified number or percentage of units that are restricted for occupancy by individuals or families with incomes below a specified level, usually a percentage of the area median income. If the units are to be sold to homeowners, the initial sales price is capped, and the unit resale price is also capped. If the units are to be rented to tenants, the rents are capped. The affordable units may not generate sufficient revenue to cover their costs, so inclusionary zoning will lead to new housing production only if the market-rate units in project can effectively subsidize the development of the affordable units. Inclusionary zoning often requires a special permit or other discretionary permit from a local board, which imposes conditions related to the number of affordable units and appurtenant recorded use restrictions and monitoring obligations.

2. How do the Compliance Guidelines reconcile inclusionary zoning requirements with the law’s requirement that multi-family housing be allowed as of right?

Since inclusionary zoning already exists in many MBTA communities, and because these communities have identified significant local needs to produce affordable units that are consistent with the overall goals of Section 3A of the Zoning Act, the Compliance Guidelines make allowance for zoning that requires some affordable units. Specifically, Section 4.b. of the Compliance Guidelines provide that:

- For purposes of making compliance determinations with Section 3A, EOHLC will consider an affordability requirement to be consistent with as of right zoning as long as the zoning requires not more than 10 percent of the units in a project to be affordable units, and the cap on the income of families or individuals who are eligible to occupy the affordable units is not less than 80 percent of area median income, the “Affordability Baseline”.
- Notwithstanding the foregoing, EOHLC may, in its discretion, approve a greater percentage of affordable units, or deeper affordability for some or all of the affordable units, in either of the following circumstances:
 - The affordability requirements applicable in the multi-family zoning district are reviewed and approved by EOHLC as part of a smart growth district under chapter 40R, or under another zoning incentive program administered by EOHLC; or
 - The affordability requirements applicable in the multi-family zoning district are supported by an economic feasibility analysis, prepared for the municipality by a qualified and independent third party. The analysis must demonstrate that a reasonable variety of multi-family housing types can be feasibly developed at the proposed affordability levels, taking into account the densities allowed as of right in the district, the dimensional requirements applicable within the district, and the minimum number of parking spaces required.
- In no case will EOHLC approve alternative affordability requirements that require more than 20 percent of the units in a project to be affordable units, **except** in a smart growth zoning district under chapter 40R with a 25 percent affordability requirement approved and adopted prior to

the August 8, 2023, issuance of the Compliance Guidelines, including any such existing district that is expanded or amended to comply with the Compliance Guidelines

The following table sets forth when inclusionary zoning is presumed to be compliant with the Compliance Guidelines. In all cases, the interaction between the inclusionary zoning requirements, the use and dimensional zoning regulations, and the existing parcel configurations and development in the district designated for compliance with Section 3A will be reviewed to ensure that the nominal inclusionary zoning requirements are consistent with the effective requirements for developing multifamily housing in the district.

TABLE 1: Basic Requirements for inclusionary zoning permissibility in zoning districts designated for compliance with Section 3A

Percent units per project to be restricted as affordable	Maximum percentage of Area Median Income (AMI) threshold for households to be eligible to buy or rent units	Compliant with Section 3A
Less than or equal to 10%	Greater than ¹ or equal to 80 %	Yes
Less than or equal to 10%	Less than 80%	At EOHLC discretion, subject to Economic Feasibility Analysis
Greater than 10% and less than or equal to 20% of units outside of approved EOHLC program such as UCH-TIF or c. 40R	Any	At EOHLC discretion, subject to Economic Feasibility Analysis
Greater than 10%, and less than or equal to 20% of units in an approved EOHLC program such as UCH-TIF or c. 40R	Any	At EOHLC discretion, taking into account any requirements of the applicable EOHLC program
Up to 25% units in a 40R district approved and adopted prior to 8/10/2022	Any	At EOHLC discretion.

¹ Nothing in the Compliance Guidelines affects eligibility for units to be listed on the Subsidized Housing Inventory (SHI) under c. 40B. However, units for which households with incomes greater than 80% of Area Median Income are eligible to rent or buy are not eligible for inclusion on the SHI

Inclusionary zoning may be more complicated than the scenarios set forth in Table 1. For additional direction on a particular bylaw or ordinance, please contact program staff at DHCD3A@mass.gov.

3. Does every MBTA community with inclusionary zoning requirements need to complete an Economic Feasibility Analysis?

No. An MBTA community can incorporate an inclusionary zoning requirement into a compliant zoning district as long as it is consistent with the Affordability Baseline. If the zoning district has an existing inclusionary requirement that exceeds the Affordability Baseline, and the zoning is amended to conform to the Affordability Baseline then no Economic Feasibility Analysis is needed.

4. Why do MBTA communities with inclusionary zoning that requires more than 10% of units in a project and/or requires affordability at less than 80% of Area Median Income (AMI) need to complete an economic feasibility analysis?

The purpose of an economic feasibility analysis is to demonstrate that a reasonable variety of multi-family housing types can be feasibly developed at the proposed affordability levels, taking into account the densities allowed as of right in the district, the dimensional requirements applicable within the district, and the minimum number of parking spaces required. EOHLC requires such a demonstration because it would be inconsistent with the intent of the law to issue a determination of compliance for a zoning district in which multi-family housing is purportedly allowed as of right, but production of new multi-family housing is unlikely to occur, or is likely to be unreasonably limited, because of inclusionary zoning requirements.

5. Who must complete an economic feasibility analysis?

In general, an MBTA community must complete an economic feasibility analysis if it is proposing a zoning district with inclusionary zoning requirements that exceed the Affordability Baseline (*i.e.*, **MORE THAN** 10% of the units in a project to be restricted as affordable and/or requires that those units be affordable to households earning **LESS THAN** 80% of Area Median Income). Please see Table 1, and review Section 4b of the Compliance Guidelines for exceptions to this general rule.

6. When must the economic feasibility analysis be submitted?

The economic feasibility analysis must be submitted as part of the district compliance application. Additionally, EOHLC offers a “pre-adoption review”, upon request, in accordance with Section 9.b. of the Compliance Guidelines. In a pre-adoption review, the text of the inclusionary zoning is reviewed together with all the other elements required for determining district compliance.

7. What does an economic feasibility analysis have to contain?

Please refer to the *Economic Feasibility Analysis Instructions*.

8. What do we do if our inclusionary zoning has a range of requirements depending on project tenure (rent or ownership) and/or a range of affordability standards and % required?

If the inclusionary zoning imposes any requirements that apply to the district designated for compliance with Section 3A that exceed the Affordability Baseline, then an economic feasibility analysis is required.

9. Can a Regional Planning Agency serve as the “qualified and independent third party”?

Yes.

10. Can an economic feasibility analysis be submitted that was conducted 5 years ago? How long is an analysis good for?

EOHLC will accept an analysis that was conducted up to 5 years prior to the date of submission. However, the analysis must be applicable to the zoning in the district designated for compliance with Section 3A. A prior analysis may be revised to analyze new zoning requirements that may be part of a district submitted for compliance with Section 3A.

11. What standards will EOHLC use to review and approve Economic Feasibility Analyses?

The following criteria will be used to determine if an economic feasibility analysis is approvable:

1. The analysis demonstrates that it allows for a reasonable variety of multi-family housing to be economically feasible, at the proposed affordability levels, considering:
 - a. the densities allowed as of right in the district; and
 - b. the dimensional requirements applicable within the district; and
 - c. the minimum number of parking spaces required; and
 - d. The existing configuration of parcels and residential development in the district, and how the zoning interacts with those existing conditions; and
 - e. If applicable, examples of prior development of multi-family housing under existing inclusionary zoning requirements and in zoning districts comparable to the district designated for compliance with Section 3A.;
2. EOHLC review of the inclusionary zoning text, zoning district text, and the completed Compliance Model shows the proposed requirements can meet the criteria above for development of the specific varieties of multi-family housing that the zoning permits as of right. Please note, the text of the inclusionary zoning bylaw/ordinance will be reviewed together with all required elements for district compliance as each of these elements work together as a package in relationship to the feasibility of inclusionary zoning requirements.

12. What Technical Assistance/funding programs are available to help municipalities complete an economic feasibility analysis? Is there a standard scope of work we can use to procure a consultant?

The following Technical Assistance resources are available for assistance to develop an economic feasibility analysis:

EOHLC grant programs available through the Community One Stop:

- Community Planning Grants - On Tuesday 5/9/2023, the Healey-Driscoll Administration announced the availability of additional funding for municipalities across the Commonwealth to support community planning and engagement efforts geared towards increasing the production of housing. Section 3A Economic Feasibility Analyses and other compliance activities are eligible for this funding. Applications are available through the Community One Stop for Growth program, which is **open through June 2, 2023**, at www.mass.gov/onestop. These "early action" grants will be announced in mid-June and municipalities must be able to execute a contract by

June 30, 2023. This funding opportunity is a chance to secure funding for completing an economic feasibility analysis with a start date of July 1, 2023. Get more information about this opportunity at: <https://www.mass.gov/how-to/community-planning-grant-program>

- Housing Choice Community Grants (available for municipalities designated as Housing Choice Communities)
- Rural and Small Town Development Fund (available for municipalities less than 7,000 population or less than 500 persons per square mile)

Additional technical assistance from regional planning agencies and other organizations is also available, more information is available [here](#).