
**COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT**

No. SJC-13580

THE ATTORNEY GENERAL
Plaintiff / Counterclaim Defendant – Appellant,

v.

TOWN OF MILTON
Defendant / Counterclaim Plaintiff / Third Party Plaintiff – Appellee,
and,
JOE ATCHUE,
Defendant – Appellee

v.

THE EXECUTIVE OFFICE OF HOUSING AND LIVABLE COMMUNITIES
Third Party Defendant – Appellant

On Reservation and Report from the Supreme Judicial
Court for Suffolk County

BRIEF OF *AMICI CURIAE*
**METROPOLITAN AREA PLANNING COUNCIL,
MASSACHUSETTS ASSOCIATION OF REGIONAL PLANNING
AGENCIES, AND THE AMERICAN PLANNING ASSOCIATION
MASSACHUSETTS CHAPTER, IN SUPPORT OF APPELLANTS**

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AMICI'S DECLARATION

This brief is submitted pursuant to Mass. R. App. P. 17(a) (allowing the filing of amicus briefs when solicited by an appellate court) and this Court's March 2024 amicus announcement, asking:

Whether and to what extent municipalities are obligated to comply with the requirements of G. L. c. 40A, § 3A (a) and (c), and the related "Compliance Guidelines for Multi-family Zoning Districts Under Section 3A of the Zoning Act," issued by what is now the Executive Office of Housing and Livable Communities, including (1) whether G. L. c. 40A, § 3A (b), provides the sole remedy for noncompliance, and (2) whether and to what extent the Attorney General's office is authorized and has standing to enforce compliance with § 3A.

Pursuant to Mass. R. App. P. 17(c)(5), Amici and its counsel declare that: (a) no party or a party's counsel authored this brief in whole or in part; (b) no party or a party's counsel contributed money to fund preparing or submitting of the brief; (c) no person or entity except Amici or Amici's counsel provided money intended to fund preparing or submitting of the brief; and (d) Amici's counsel has not represented any party in this case or in other proceedings involving similar issues, and Amici's counsel was not a party and did not represent a party in a proceeding or legal transaction that is at issue in this present appeal.

AMICI'S STATEMENT OF IDENTITY AND INTEREST

Amici are a group of planning organizations, agencies, and associations in the Commonwealth. Amici submit this brief in support of Appellants to assist the Court in determining whether:

the compliance guidelines promulgated by the Executive Office of Housing and Livable Communities (“EOHLC”) under G.L. c. 40A, § 3A(c), (the “Guidelines”) permissibly clarify and develop the details of [MBTA communities’] obligation[s] to have a compliant zoning district?¹

Individual amici are the Metropolitan Area Planning Council (MAPC), the Massachusetts Association of Regional Planning Agencies (MARPA), and the American Planning Association Massachusetts Chapter (APA-MA).

The Metropolitan Area Planning Council (MAPC)

Formed under Chapter 40B, Section 24 of the Massachusetts General Laws, the Metropolitan Area Planning Council (MAPC) is the regional planning agency serving the people who live and work in the 101 cities and towns of Metropolitan Boston. MAPC’s mission is to promote smart growth and regional collaboration. MAPC deploys its expertise in planning and zoning to help its municipalities with

¹ Question Presented #2 in the Brief of the Attorney General (AG) and the Executive Office of Housing and Livable Communities (EOHLC) dated June 3, 2024. The appellants’ original question was specific to Milton but, as the Court’s solicitation for amicus briefs acknowledges, the answer affects all MBTA communities.

their zoning and land use regulations to protect and enhance the environmental, economic, and social quality of life. As a government research organization, MAPC's many research studies and publications are widely relied upon by lawmakers and various other organizations.

MAPC provides a range of resources to assist communities in understanding and complying with the requirements of the MBTA Communities Act (codified at G.L. c. 40A, § 3A(c)), including:

- visioning and location selection,
- community engagement,
- analyzing existing zoning for compliance,
- crafting zoning scenarios that could achieve compliance,
- compliance model testing,
- creating 3D visualizations and illustrations of zoning scenarios,
- preparing economic feasibility analyses for inclusionary zoning policies,
- Town Meeting preparation in towns, and City Council preparation in cities,
- developing digital tools to inform decision-making, and
- support with application submissions.

The Massachusetts Association of Regional Planning Agencies (MARPA)

The Massachusetts Association of Regional Planning Agencies (MARPA) comprises the Commonwealth's thirteen regional planning agencies (RPAs), including MAPC and others that support MBTA communities in working to implement Section 3A of the MBTA Communities Act. MARPA and its RPAs research, analyze, and provide leadership on a wide range of their members' responsibilities, including affordable housing production and retention, land use planning, and zoning. MARPA's work also includes coordinating with other organizations on legislative advocacy at the local, regional, Commonwealth, and federal levels of government.

The American Planning Association Massachusetts Chapter (APA-MA)

The American Planning Association Massachusetts Chapter (APA-MA) is an official Chapter of the American Planning Association. APA-MA is composed of 1,100-plus professional public and private sector planners, many of whom are municipal and consulting planners working to implement Section 3A of the MBTA Communities Act. APA-MA's mission is to enhance and support planning in Massachusetts through education, advocacy, outreach, communication, and provisioning services and resources to members and the larger planning community that maximize diversity, equity, and inclusion.

ARGUMENT

I. Introduction

There are so many things that make Massachusetts a great place to live, work, and play: education, healthcare, safety, economy, and so much more. But the Commonwealth is experiencing a housing crisis, with some of the nation’s highest and fastest growing homeownership and rent prices putting our future at risk. Our municipalities are necessary partners in solving this crisis. Indeed, their local zoning ordinances and by-laws dictate whether and where different types of housing can be built. These are rare points of bipartisan consensus.

The Legislature designed Section 3A of the MBTA Communities Act (“Section 3A”)² to stimulate multi-family housing development near transit stations. But Section 3A does not mandate housing production. It requires one thing: MBTA communities must pass a zoning law that *allows* multi-family housing within a district of “reasonable size.” Understanding that communities would need direction and support to implement Section 3A, the Legislature charged the Executive Office of Housing and Livable Communities (“EOHLC”) to “promulgate guidelines to determine if” a community’s zoning is compliant.³

² G.L. c. 40A, § 3A, Add. 31.

³ Amici understand that EOHLC was previously called the Department of Housing and Community. As the parties have done, Amici will use “EOHLC” throughout this brief.

EOHLC spent two years developing comprehensive Section 3A compliance guidelines⁴ based on extensive input from key stakeholders, including the MBTA, the Massachusetts Department of Transportation, officials and residents of affected communities (including Milton), and various planning organizations (including Amici). The resulting Guidelines provide practical means for MBTA communities to achieve compliance by utilizing the kinds of tools, measures, and benchmarks that are conventional in the planning field.

With publicly funded planning and technical assistance grants, Milton developed a Section 3A-compliant multi-family district, and Town Meeting voted to adopt it. On the eve of the compliance deadline, however, a slim majority of voters-at-large overturned the initial vote by referendum. Milton now challenges whether the Guidelines are lawful. But Milton misreads what the Guidelines require and makes unfounded conclusions about the consequences of compliance. Compliance under the Guidelines would not “redetermine the community character of scores of cities and towns,” as Milton suggests. It would merely fulfill the promise of Section 3A, unlocking the potential for multi-family development within a reasonably sized district. Nothing more, nothing less.

⁴ The “Compliance Guidelines for Multi-family Zoning Districts Under Section 3A of the Zoning Act,” issued in their final form on August 17, 2023 (“Guidelines”). RA I:279–308, Add. 33–62.

The vast majority of MBTA communities have relied on the Guidelines and taken significant steps toward Section 3A compliance. To date, 100+ communities have adopted or proposed new multi-family zoning. This unprecedented progress confirms that the Guidelines were carefully crafted and properly promulgated. Invalidating them would be a disservice to the entire Commonwealth.

II. The Guidelines Are Fully Consistent With Section 3(A), Including on “Reasonable Size”

Section 3A requires that all MBTA communities have a zoning district within their ordinance or by-law in which multi-family housing is permitted as of right. *See* G.L. c. 40A, § 3A(a), Add. 31. This mandatory multi-family housing district must have a minimum gross density of 15 units per acre and at least some part of the district must be located within 0.5 miles of a transit station (if applicable). *Id.* The district is also required to be of a “reasonable size.” *Id.* Unlike the absolute density and location constraints, Section 3A’s size requirement is *relative*. In this respect, the Legislature understood that a one-size-fits-all approach would not suit the Commonwealth’s 170+ unique MBTA communities. It knew flexibility is paramount.

Having made the fundamental policy decision that each MBTA community shall have a reasonably-sized district for as-of-right multi-family housing, the Legislature wisely delegated the separate task of working out the necessary implementation details to EOHLC. *See* G.L. c. 40A, § 3A(c), Add. 31. That the

Legislature selected EOHLC to provide Section 3A compliance guidelines is no surprise. After all, Section 3A’s purpose is to address the Commonwealth’s housing crisis, and the Legislature formed EOHLC for the very same purpose.⁵ Who better than EOHLC, an office dedicated to housing production and preservation, to establish a framework for determining whether a Section 3A district is reasonably sized to meet the housing crisis?

Just as the Legislature intended, EOHLC consulted with key stakeholders throughout the Commonwealth, leveraged its ample resources and housing expertise, and developed flexible and sensible guidance for measuring the size of a multi-family housing district and assessing its reasonableness. Where Section 3A sets forth the Legislature’s zoning mandate, EOHLC’s Guidelines provide objective measures for how an MBTA community can comply. The following sections analyze the “reasonable size” aspects of the Guidelines and explain how and why they are fully consistent with Section 3A.

⁵ Compare St. 2023, c. 7, Add. 32 (announcing that the Commonwealth’s objectives to “address[] the housing crisis” will be advanced “by the creation of a cabinet-level executive office focused on the production of housing and support for livable communities”), *with* <https://malegislature.gov/Events/Sessions/Detail/3711/Video1> at 21:48–57 (speaking in support of Section 3A, Senator Crighton: “we, in Massachusetts, are facing a housing crisis”).

A. How the Guidelines Combine Land Area With Unit Capacity to Assess “Reasonable Size”

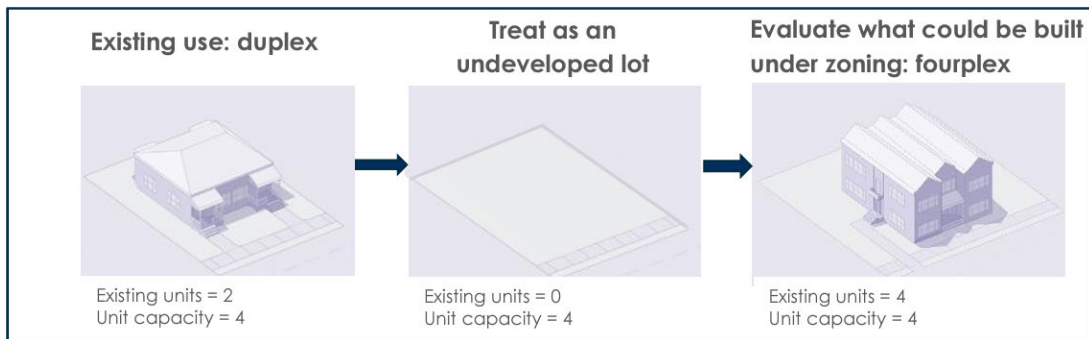
The Guidelines provide clear quantitative benchmarks for each MBTA community to achieve compliance with Section 3A’s “reasonable size” requirement. These benchmarks include the land area of the community’s proposed multi-family district and the unit capacity of that district. The rationale behind this approach is simple, intuitive, and follows known planning principles.

The Guidelines use minimum land area to promote “neighborhood-scale district[s]” and to prevent workaround plans based on “a single development site.” RA I:286, Add. 40. A vanishingly small plot of land with high-density zoning allowances would not incentivize significant development. Accordingly, for rapid transit communities like Milton, the Guidelines define the minimum land area of a reasonably-sized multi-family district as “50 acres, or 1.5% of the developable land . . . , whichever is *less*.” *Id.* (original emphasis). The former benchmark—50 acres—applies to Milton, a town with a total land area of more than 8,320 acres (13 square miles). RA I:300, Add. 54.

The Guidelines further acknowledge that “[a] reasonably sized multi-family zoning district must also be able to accommodate a reasonable number of multi-family housing units.” RA I:287, Add. 41. Thus, the Guidelines utilize the measure of “unit capacity,” which is “an estimate of the total number of multi-family housing units that can be developed as of right within a multi-family zoning

district.” RA I:282, Add. 36. In other words, treating each lot as if it were undeveloped, unit capacity measures the number of housing units that a community’s zoning restrictions allow. Unit capacity shows only what hypothetically *could* be built.

The Guidelines assign each MBTA community a minimum unit capacity and explain how EOHLC determined the community-specific capacity values based on various pertinent factors (e.g., access to transit, total housing stock, and total land area). RA I:287–288, Add. 41–42; RA I:297–288–304, Add. 51–58. Milton’s minimum unit capacity is 2,461 units, i.e., 25% of its existing 9,844 housing units. RA I:300, Add. 54.



A community complies with Section 3A’s “reasonable size” requirement when its multi-family district satisfies the assigned minimum land area *and* minimum unit capacity. These two benchmarks work in tandem to promote and serve Section 3A’s purpose of stimulating multi-family development to address the Commonwealth’s housing crisis through mandatory zoning. Where minimum land area precludes ineffectively small districts, minimum unit capacity prevents other

problematic workarounds. Without minimum unit capacity, a district that permits multi-family housing by its literal terms could be deemed Section 3A compliant despite dimensional zoning restrictions that effectively stifle or even preclude such development.⁶ This kind of *de facto* ban on multi-family housing would render Section 3A useless.

B. Why Unit Capacity Is a Sensible Measure of “Reasonable Size” Under Section 3A

Everyone can agree that land area is a common way to measure the size of a zone or district geographically. Other equally common ways to measure size stem from a population perspective (e.g., gross population or population density) or an economic perspective (e.g., gross domestic product or market size). Unit capacity, the number of housing units a community’s zoning restrictions allow, is yet another known and widely-used approach; it views size from a zoning perspective.

Though Milton contends otherwise, assessing compliance with Section 3A’s “reasonable size” requirement in terms of zoning is straightforward and commonsensical. For one, Section 3A is a law about zoning. It sits within the *zoning* chapter (Chapter 40A) of the Commonwealth’s General Laws, and it

⁶ For example, zoning dimensional standards—such as height limits, large setback requirements, high parking minimums, lot coverage limits, etc.—constrain the number of multi-family units that can exist on a parcel or lot. The Guidelines counteract this type of workaround through the minimum unit capacity benchmark.

mandates that MBTA communities pass compliant *zoning* ordinances or by-laws to facilitate housing production. As all of the Amici can (and do presently) attest, when housing and planning specialists discuss the concept of size or magnitude in the context of zoning provisions that affect housing production, they often speak in terms of capacity (e.g., “zoning capacity” or “zoned capacity”).

Virtually all residential zoning by-laws and ordinances define, directly or through mathematical application of the zoning requirements, a maximum number of units that can be built on a parcel or in a district. To illustrate, consider a single-family zone of 10 acres with a minimum lot size of 1 acre: The unit capacity, or the maximum number of units that could be built within the zoning requirements, is 10 units. As this example shows, unit capacity is integral to zoning.

The purpose of Section 3A is to stimulate multi-family housing production by removing zoning roadblocks. So, logically, the extent of a reasonably-sized Section 3A district should be based on its multi-family housing production potential under an MBTA community’s zoning restrictions. That is exactly what the Guidelines accomplish with community-specific unit capacity benchmarks.

C. Why Unit Capacity Does Not Require Unit Production

Milton’s brief calls the Guidelines “unlawful” because the minimum capacity benchmark is “a mandate that numerous communities . . . include at least about 25% of their total housing stock in one or more high-density districts.” Red.

Br. at 11 (original emphasis); *see also id.* at 40, 42. But the Guidelines plainly say otherwise:

Minimum unit capacity is a measure of whether a multi-family zoning district is of a reasonable size, not a requirement to produce housing units. *Nothing in Section 3A or these guidelines should be interpreted as a mandate to construct a specified number of housing units, nor as a housing production target.* Demonstrating compliance with the minimum multi-family unit capacity requires only that an MBTA community show that the zoning allows multi-family housing as of right and that a sufficient number of multi-family housing units could be added to or replace existing uses and structures over time—even though such additions or replacements may be unlikely to occur soon.

RA I:289, Add. 43 (emphasis added).

Milton’s brief conflates two distinct concepts—unit *capacity* and unit *production*. As discussed, the Guidelines define “unit capacity” as “an estimate of the total number of multi-family housing units that can be developed as of right within a multi-family zoning district.” RA I:282, Add. 36. It treats the lots of a proposed multi-family district as empty and determines the number of housing units a community’s zoning restrictions allow on those hypothetically empty lots. To satisfy its minimum unit capacity, an MBTA community need not produce any housing units at all, much less “include at least 25% of its total housing stock in a high-density district.” Red Br. at 40.

As Milton’s Department of Planning and Community Development explained at the December 2023 Special Town Meeting, “[t]he MBTA Communities Law is a mandate for Towns to create zoning, **not a mandate for**

Towns to create new housing,” and “[EO]HLC’s guidelines lay out certain thresholds our zoning district must meet[] to comply with the law.” RA II:328–329 (original emphasis). Section 3A and the Guidelines are about zoning; they are not housing mandates. This point could not be more clear.

What is the MBTA Communities law?

The MBTA Communities Law is a mandate for Towns to create zoning, **not a mandate for Towns to create new housing**. The theory behind the law is to loosen restrictive zoning laws and enable property owners to meet intense demand for housing in Greater Boston.

- If Town Meeting passes zoning and the Executive Office of Housing and Livable Communities deems it compliant with the law, then Milton is compliant **regardless of how many housing units are eventually produced**.

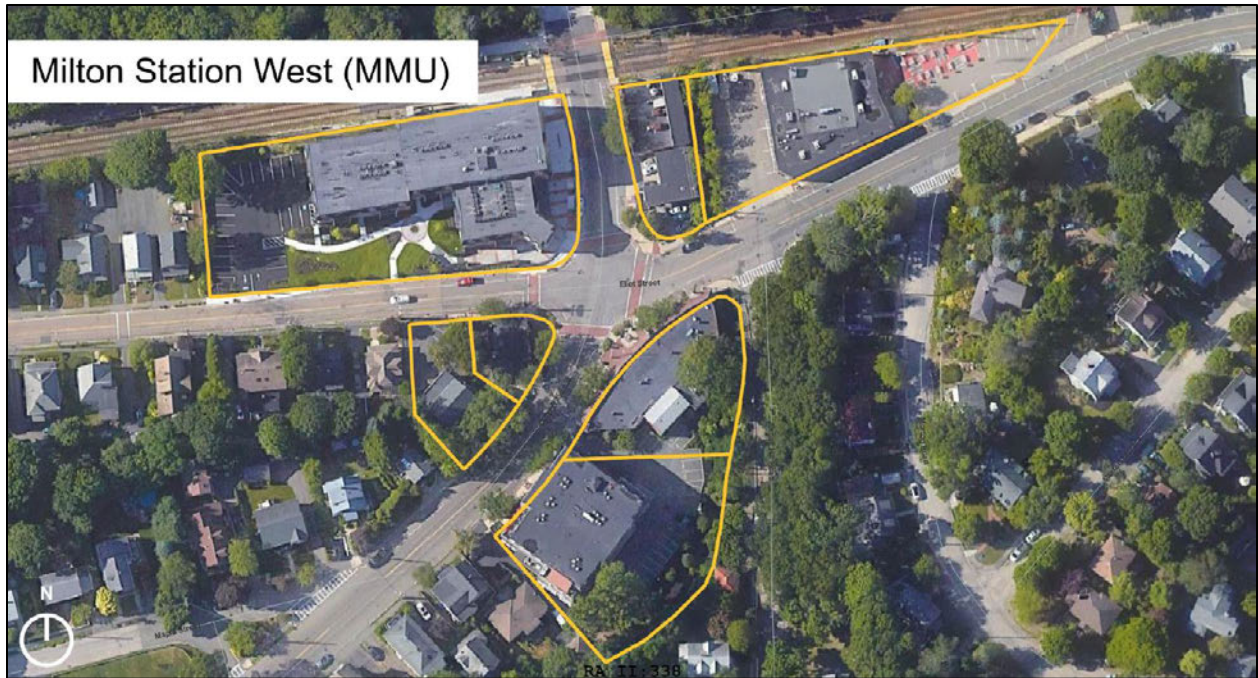


RA II:328 (source: Milton Department of Planning and Community Development).

Just as the Guidelines cannot be said to mandate housing production, it is likewise inaccurate to characterize the minimum capacity compliance benchmarks as “transformative” based on the assumption that “all” of the permissibly zoned multi-family units will be built. Red Brief at 42 (“If the units so authorized are all built, that would cause significant changes in the affected communities.”). There is

no expectation that the build-out in a Section 3A district will ever meet its unit capacity—a theoretical value—much less anytime soon.

The kinds of zoning changes that Section 3A and the Guidelines contemplate to increase unit capacity do not remove the many other impediments to multi-family housing development. For one, it is incredibly expensive to build housing in Massachusetts. With total development costs in Boston’s inner suburbs well above \$500K per unit, increased multi-family unit capacity via as-of-right zoning does not guarantee that owners and developers will immediately flock to make such a significant capital investment, especially at today’s high interest rates. And recall that unit capacity is an estimated measure that hypothetically assumes all lots in a given district are empty. But theory is different from practice. The reality is that the Guidelines permit MBTA communities to comply with Section 3A by zoning in areas that are already developed and unripe for change. As shown below, the plan Milton submitted and believed to be compliant (before its rejection by Milton’s voter referendum) is a prime example of re-zoning developed land. *See* RA II:331 (Milton’s Department of Planning and Community Development identifying a goal to “[d]isincentivize teardowns”).



RA II:338 (source: Milton Department of Planning and Community Development).

Section 3A and the Guidelines work to remove longstanding zoning barriers against multi-family housing in MBTA communities. Doing so sets the table for future development and positions the Commonwealth to resolve its housing crisis in the years to come. Yes, of course, there will be change; that’s the point of Section 3A. But it will be *reasonable* change, achieved gradually by permitting multi-family development to occur naturally, rather than demanding immediate housing production.

D. How the Guidelines Preserve Flexibility for MBTA Communities in Achieving a Reasonably Sized District

By couching the multi-family district’s size requirement in terms of reasonableness, the Legislature showed that flexibility is key to implementing

Section 3A effectively. EOHLC expressly enshrined and applied this principle throughout the Guidelines:

“Reasonable size” is a relative rather than an absolute determination. Because of the diversity of MBTA communities, a multi-family zoning district that is “reasonable” in one city or town may not be reasonable in another city or town.

RA I:284, Add. 38. As a result, the Guidelines do not diminish an MBTA community’s ability to make decisions around multi-family housing. They instead set objective measures and benchmarks for communities, while leaving communities free to determine the specific way in which they will meet those benchmarks to comply with Section 3A. Indeed, the Guideline’s combination of minimum land area and minimum unit capacity accommodates countless paths to compliance with Section 3A’s “reasonable size” requirement.

Suppose a community prefers a multi-family district with a relatively small land area footprint. In that case, the Guidelines allow the community to comply by zoning for an accommodating increase in density (i.e., dwelling units per acre). The inverse is also true: A community can comply with a larger land area district having a correspondingly smaller density. The Guidelines also promote flexibility by permitting MBTA communities to meet their assigned minimum land area and unit capacity benchmarks by partitioning their multi-family district into multiple sub-districts with different land areas and zoning parameters. As illustrated below,

an MBTA community can zone for a wide variety of multi-family housing solutions to achieve Section 3A compliance under the Guidelines.

Examples of ~15 Units Per Acre:

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

RA I:179

Credit: Amy Dain

14

RA I:179 (source: EOHLC).

Here again, the plan Milton submitted to EOHLC is illustrative. Milton’s plan proposed six sub-districts with land areas ranging from 3.8 to 47.0 acres, maximum height restrictions ranging from 2.5 to 6.0 stories, and various other unique constraints regarding minimum lot size, maximum units per lot, maximum units per acre, etc. *See* RA II:332–343. And this was just one of the “many potential paths to technical compliance” that Milton developed. *See* RA II:353 (below). Simply put, the Guidelines do not order “transformative zoning changes”;

they instead allow communities to create a tailor-made compliance solution that adheres to their own planning priorities. Red Br. at 42.

Wrapping Up

Our testing and iterating showed that there are many potential paths to technical compliance; half of the 30 iterations we tested met the thresholds outlined in the compliance guideline.

Getting to the final outcome on the warrant was an exercise in tradeoffs and prioritizing competing planning priorities. Other potential subdistricts would not meet as many of the guiding principles as those in Article 1.

We believe that Article 1 represents the best combination of compliance with the state's guidelines and adherence to Milton's planning priorities.



RA II:353 (source: Milton Department of Planning and Community Development).

E. Why the “Reasonable Size” Benchmarks in the Guidelines Are Equitable, Modest, and Sensible Under the Circumstances

The “reasonable size” benchmarks set forth in EOHLC’s Guidelines are modest and sensible by any objective assessment. Here again, Milton provides a telling example.

Milton’s minimum land area benchmark is 50 acres, the largest geographic size identified in the Guidelines. RA I:300, Add. 54. Although the mark may loom large in isolation, it pales in comparison to Milton’s total land area of more than 8,320 acres (13 square miles). A mere 50 acres is *less than 0.6%* of Milton’s

total land area. A similar analysis sheds light on Milton’s minimum unit capacity of 2,461 units (25% of its housing stock). RA I:300, Add. 54. Assuming an average gross density of 15 units per acre—the minimum, per Section 3A—Milton’s capacity benchmark corresponds to a district of 164 acres, *less than 2%* of Milton’s land area. The plan Milton ultimately proposed had slightly greater density and thus slightly less acreage—just 144.4 acres. *See* RA II:342. In Milton’s words, “the Legislature had something ‘modest’ in mind: increased housing density within an area small and compact enough to be a short walking distance from a transit station.” Red Br. at 43. A district sized at less than 2% of Milton’s land area undeniably fits the bill.

Tellingly, all of the eleven other rapid transit communities in Milton’s category—most of whom had larger unit capacity benchmarks—were able to propose Section 3A zoning by the deadline set forth in the Guidelines. Add. 63–65. Furthermore, 106 municipalities have either adopted zoning intended for Section 3A compliance or have submitted zoning to EOHLC for pre-adoption review to confirm that their proposed zoning will comply with Section 3A. *Id.* This includes municipalities in all four community categories (rapid transit community, commuter rail community, adjacent community, and adjacent small town), from Cambridge to Halifax. If the Guidelines were truly unreasonable and *ultra vires*, progress toward compliance would not be so widespread.

It makes sense that EOHLC's Guidelines have been well received: They were rigorously promulgated. As Section 3A requires, EOHLC consulted with both the Massachusetts Department of Transportation and the Massachusetts Bay Transportation Authority. RA I:119–123. In fact, EOHLC went above and beyond, engaging with the MBTA communities, regional planning entities (including Amici), owners and developers of market, affordable, and mixed-income housing, and a wide variety of other experts and advocates. Nearly 400 public comments were submitted in response to the initial December 2021 draft guidelines—including over 125 from MBTA Community officials, Milton's Select Board amongst them. RA I:117. EOHLC held sixteen online informational sessions during the beginning of 2022 that attracted over 1,000 registrants from at least 132 affected municipalities (including Milton). RA I:117–118.

Hearing the communities' concerns, EOHLC built in even more flexibility than was originally proposed. The final version of the Guidelines allowed a reduction in the 50-acre land area requirement so that no municipality would be required to zone more than 1.5% of its developable land area. *Compare* RA I:145 (preliminary) *with* RA I:286, Add. 40 (final). For adjacent small towns, the land area requirement was removed altogether. *Id.* EOHLC also modified its approach to unit capacity. It set aside a universal floor of 750 units in favor of a more bespoke approach where the floor is set by one of two alternative measurements

that considers both the minimum land area (if applicable) and existing density. *Compare* RA I:146–147 (preliminary), RA I:287–288, Add. 41–42 (final). As a result, 50 of the region’s smallest municipalities have a unit capacity floor below 750 units and many more municipalities had their unit capacity significantly reduced. RA I:297–303.

In Milton, transit stations are on the north end of the town, with the half-mile radius extending into Boston and the Neponset River Reservation. RA I:160–161. Most of the closest parcels within the town, just south of the transit line, are small, ranging from 5,000 to 7,500 square feet. RA I:160–161, 163. Milton expressed concern that a rigid location requirement left them with two general options that would “present difficulties . . . that could lead to minimal production of actual housing units.” RA I: 161–162. That concern was addressed in the final Guidelines, which did away with the simpler bifurcated compliance pattern (some v. no land area within 0.5 miles of a transit station) to allow municipalities like Milton to locate more of the district outside of the transit station radius. *Compare* RA I:148 (preliminary), *with* RA I:291–292, Add. 45–46 (final). This change allowed Milton to place a portion of its proposed Section 3A district within East Milton Square, as it had hoped to do. *See* RA I:163; RA II:163.

EOHLC listened to the MBTA communities and provided them with a final set of Guidelines that are reasonable, flexible, and allow each to zone in a manner that not only complies with Section 3A, but also makes sense for them.

CONCLUSION

The Legislature spoke with one bipartisan voice when it passed Section 3A, and its message was clear: The Commonwealth will address its housing crisis not by mandating multi-family development, but by mandating that MBTA communities adopt local zoning that unlocks the potential for multi-family development to occur. Following the Legislature's instruction, EOHLC promulgated Guidelines that lead MBTA communities down the path of adopting Section 3A compliant zoning. The Guidelines are consistent with Section 3A and are accomplishing the Legislature's goal at an awe-inspiring pace. Invalidating the Guidelines would cause unwarranted confusion and risk all the progress on multi-family zoning that has been gained. The Commonwealth would feel the negative reverberations of this setback for years. The Court should not let it be so.

Dated: September 16, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief complies with the rules of the Court that pertain to the filing of amicus briefs, including, but not limited to, the requirements imposed by Mass R. App. P. 16, Mass. R. App. P. 17, and Mass. R. App. P. 20. I further certify that the foregoing brief complies with the applicable length limit in Mass. R. App. P. 20 because it uses 14-point Times New Roman font and is 3,735 words long, not including the portions of the brief excluded under Mass. R. App. P. 20, counted with the word-count function of Microsoft Word for Office 365.

Dated: September 16, 2024

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CERTIFICATE OF SERVICE

I, Katie E. Hyma, hereby certify that on September 16, 2024, I caused a true and accurate copy of the Brief for Amicus Curiae to be served by email on all counsel of record.

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Report as of September 4, 2024 Add.63

G.L. C. 40A, § 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; (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 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.

ST. 2023, C. 7 (EXCERPT)

Whereas, the Commonwealth is in the midst of a housing crisis that in which residents find it increasingly difficult to access affordable housing, which also makes it more challenging to attract and retain businesses and limits our collective economic growth and prosperity;

Whereas, addressing the housing crisis will require significant public investment in affordable housing and housing-related infrastructure, innovative policies to encourage the production of more market-rate, workforce, affordable, and specialized housing, and the revitalization and creation of neighborhoods where people live, work and play;

Whereas, achieving these common objectives will be advanced by the creation of a cabinet-level executive office focused on the production of housing and support for livable communities;

Now therefore,



Commonwealth of Massachusetts
EXECUTIVE OFFICE OF HOUSING &
LIVABLE COMMUNITIES

Maura T. Healey, Governor ♦ Kimberley Driscoll, Lieutenant Governor ♦ Edward M. Augustus, Jr., Secretary

Issue Date: August 10, 2022
Revised: October 21, 2022
Revised: August 17, 2023

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

1. Overview of Section 3A of the Zoning Act

Section 3A of the Zoning Act provides: *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.*

The purpose of Section 3A is to encourage the production of multi-family housing by requiring MBTA communities to adopt zoning districts where multi-family housing is allowed as of right, and that meet other requirements set forth in the statute.

The Executive Office of Housing and Livable Communities (EOHLC), in consultation with Executive Office of Economic Development, the Massachusetts Bay Transportation Authority and the Massachusetts Department of Transportation, is required to promulgate guidelines to determine if an MBTA community is in compliance with Section 3A. EOHLC promulgated preliminary guidance on January 29, 2021. EOHLC updated that preliminary guidance on December 15, 2021, and on that same date issued draft guidelines for public comment. These final guidelines supersede all prior guidance and set forth how MBTA communities may achieve compliance with Section 3A.

2. Definitions

“Adjacent community” means an MBTA community that (i) has within its boundaries less than 100 acres of developable station area, and (ii) is not an adjacent small town.

“Adjacent small town” means an MBTA community that (i) has within its boundaries less than 100 acres of developable station area, and (ii) either has a population density of less than 500 persons per square mile, or a population of not more than 7,000 year-round residents as determined in the most recently published United States Decennial Census of Population and Housing.

“Affordable unit” means a multi-family housing unit that is subject to a restriction in its chain of title limiting the sale price or rent, or limiting occupancy to an individual or household of a specified income, or both. Affordable units may be, but are not required to be, eligible for inclusion on EOHLC’s Subsidized Housing Inventory. Nothing in these Guidelines changes the Subsidized Housing Inventory eligibility criteria, and no affordable unit shall be counted on the Subsidized Housing Inventory unless it satisfies the requirements for inclusion under 760 CMR 56.03(2) or any other regulation or guidance issued by EOHLC.

“Age-restricted housing” means any housing unit encumbered by a title restriction requiring a minimum age for some or all occupants.

“As of right” means 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.

“Bus station” means a location with a passenger platform and other fixed infrastructure serving as a point of embarkation for the MBTA Silver Line. Upon the request of an MBTA community, EOHLC, in consultation with the MBTA, may determine that other locations qualify as a bus station if (i) such location has a sheltered platform or other fixed infrastructure serving a point of embarkation for a high-capacity MBTA bus line, and (ii) the area around such fixed infrastructure is highly suitable for multi-family housing.

“Commuter rail community” means an MBTA community that (i) does not meet the criteria for a rapid transit community, and (ii) has within its borders at least 100 acres of developable station area associated with one or more commuter rail stations.

“Commuter rail station” means any MBTA commuter rail station with year-round, rather than intermittent, seasonal, or event-based, service, including stations under construction and scheduled to being service before the end of 2023, but not including existing stations at which service will be terminated, or reduced below regular year-round service, before the end of 2023.

“Compliance model” means the model created by EOHLC to determine compliance with Section 3A’s reasonable size, gross density, and location requirements. The compliance model is described in further detail in Appendix 2.

“Determination of compliance” means a determination made by EOHLC as to whether an MBTA community has a multi-family zoning district that complies with the requirements of Section 3A. A determination of compliance may be determination of interim compliance or a determination of district compliance, as described in section 9.

“Developable land” means land on which multi-family housing can be permitted and constructed. For purposes of these guidelines, developable land consists of: (i) all privately-owned land except lots or portions of lots that meet the definition of excluded land, and (ii) developable public land.

“Developable public land” means any publicly-owned land that (i) is used by a local housing authority; (ii) has been identified as a site for housing development in a housing production plan

approved by EOHLIC; or (iii) has been designated by the public owner for disposition and redevelopment. Other publicly-owned land may qualify as developable public land if EOHLIC determines, at the request of an MBTA community and after consultation with the public owner, that such land is the location of obsolete structures or uses, or otherwise is suitable for conversion to multi-family housing, and will be converted to or made available for multi-family housing within a reasonable period of time.

“Developable station area” means developable land that is within 0.5 miles of a transit station.

“EOHLIC” means the Executive Office of Housing and Livable Communities.

“EOED” means the Executive Office of Economic Development.

“Excluded land” means land areas on which it is not possible or practical to construct multi-family housing. For purposes of these guidelines, excluded land is defined by reference to the ownership, use codes, use restrictions, and hydrological characteristics in MassGIS and consists of the following:

- (i) All publicly-owned land, except for lots or portions of lots determined to be developable public land.
- (ii) All rivers, streams, lakes, ponds and other surface waterbodies.
- (iii) All wetland resource areas, together with a buffer zone around wetlands and waterbodies equivalent to the minimum setback required by title 5 of the state environmental code.
- (iv) Protected open space and recreational land that is legally protected in perpetuity (for example, land owned by a local land trust or subject to a conservation restriction), or that is likely to remain undeveloped due to functional or traditional use (for example, cemeteries).
- (v) All public rights-of-way and private rights-of-way.
- (vi) Privately-owned land on which development is prohibited to protect private or public water supplies, including, but not limited to, Zone I wellhead protection areas and Zone A surface water supply protection areas.
- (vii) Privately-owned land used for educational or institutional uses such as a hospital, prison, electric, water, wastewater or other utility, museum, or private school, college or university.

“Ferry terminal” means the location where passengers embark and disembark from regular, year-round MBTA ferry service.

“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.

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

“Listed funding sources” means (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; and (iii) the MassWorks infrastructure program established in section 63 of chapter 23A.

“Lot” means an area of land with definite boundaries that is used or available for use as the site of a building or buildings.

“MassGIS data” means the comprehensive, statewide database of geospatial information and mapping functions maintained by the Commonwealth's Bureau of Geographic Information, within the Executive Office of Technology Services and Security, including the lot boundaries and use codes provided by municipalities.

“MBTA” means the Massachusetts Bay Transportation Authority.

“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.

“Mixed-use development” means development containing a mix of residential uses and non-residential uses, including, without limitation, commercial, institutional, industrial or other uses.

“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.

“Multi-family housing” means a building with 3 or more residential dwelling units or 2 or more buildings on the same lot with more than 1 residential dwelling unit in each building.

“Multi-family unit capacity” means an estimate of the total number of multi-family housing units that can be developed as of right within a multi-family zoning district, made in accordance with the requirements of section 5.b below.

“Multi-family zoning district” means a zoning district, including a base district or an overlay district, in which multi-family housing is allowed as of right; provided that the district shall be in a fixed location or locations, and shown on a map that is part of the zoning ordinance or by-law.

“One Stop Application” means the single application portal for the Community One Stop for Growth through which (i) the Executive Office of Housing and Economic Development considers requests for funding from the MassWorks infrastructure program; (ii) EOHLIC considers requests for funding from the Housing Choice Initiative, (iii) EOED, EOHLIC and other state agencies consider requests for funding from other discretionary grant programs.

“Private rights-of-way” means land area within which private streets, roads and other ways have been laid out and maintained, to the extent such land areas can be reasonably identified by examination of available tax parcel data.

“Publicly-owned land” means (i) any land owned by the United States or a federal agency or authority; (ii) any land owned by the Commonwealth of Massachusetts or a state agency or authority; and (iii) any land owned by a municipality or municipal board or authority.

“Public rights-of-way” means land area within which public streets, roads and other ways have been laid out and maintained, to the extent such land areas can be reasonably identified by examination of available tax parcel data.

“Rapid transit community” means an MBTA community that has within its borders at least 100 acres of developable station area associated with one or more subway stations, or MBTA Silver Line bus rapid transit stations.

“Residential dwelling unit” means a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

“Section 3A” means section 3A of the Zoning Act.

“Sensitive land” means developable land that, due to its soils, slope, hydrology, or other physical characteristics, has significant conservation values that could be impaired, or vulnerabilities that could be exacerbated, by the development of multi-family housing. It also includes locations where multi-family housing would be at increased risk of damage caused by flooding. Sensitive land includes, but is not limited to, wetland buffer zones extending beyond the title 5 setback area; land subject to flooding that is not a wetland resource area; priority habitat for rare or threatened species; DEP-approved wellhead protection areas in which development may be restricted, but is not prohibited (Zone II and interim wellhead protection areas); and land areas with prime agricultural soils that are in active agricultural use.

“Site plan review” means a process established by local ordinance or by-law by which a local board reviews, and potentially imposes conditions on, the appearance and layout of a specific project prior to the issuance of a building permit.

“Subway station” means any of the stops along the MBTA Red Line, Green Line, Orange Line, or Blue Line, including any extensions to such lines now under construction and scheduled to begin service before the end of 2023.

“Transit station” means an MBTA subway station, commuter rail station, ferry terminal or bus station.

“Transit station area” means the land area within 0.5 miles of a transit station.

“Zoning Act” means chapter 40A of the Massachusetts General Laws.

3. General Principles of Compliance

These compliance guidelines describe how an MBTA community can comply with the requirements of Section 3A. The guidelines specifically address:

- What it means to allow multi-family housing “as of right.”
- The metrics that determine if a multi-family zoning district is “of reasonable size.”
- How to determine if a multi-family zoning district has 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.
- The meaning of Section 3A’s mandate that “such multi-family housing shall be without age restrictions and shall be suitable for families with children.”
- The extent to which MBTA communities have flexibility to choose the location of a multi-family zoning district.

The following general principles have informed the more specific compliance criteria that follow:

- MBTA communities with subway stations, commuter rail stations and other transit stations benefit from having these assets located within their boundaries and should provide opportunity for multi-family housing development around these assets. MBTA communities with no transit stations within their boundaries benefit from proximity to transit stations in nearby communities.
- The multi-family zoning districts required by Section 3A should encourage the development of multi-family housing projects of a scale, density and aesthetic that are compatible with existing surrounding uses, and minimize impacts to sensitive land.
- “Reasonable size” is a relative rather than an absolute determination. Because of the diversity of MBTA communities, a multi-family zoning district that is “reasonable” in one city or town may not be reasonable in another city or town.
- When possible, multi-family zoning districts should be in areas that have safe, accessible, and convenient access to transit stations for pedestrians and bicyclists.

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

To comply with Section 3A, a multi-family zoning district must allow multi-family housing “as of right,” meaning that the construction and occupancy of multi-family housing is allowed in that district without the need for a special permit, variance, zoning amendment, waiver, or other discretionary approval. EOHLC will determine whether zoning provisions allow for multi-family housing as of right consistent with the following guidelines.

a. *Site plan review*

The Zoning Act does not establish nor recognize site plan review as an independent method of regulating land use. However, the Massachusetts courts have recognized site plan review as a permissible regulatory tool, including for uses that are permitted as of right. The court decisions establish that when site plan review is required for a use permitted as of right, site plan review involves the regulation of a use and not its outright prohibition. The scope of review is therefore limited to imposing reasonable terms and conditions on the proposed use, consistent with applicable case law.¹ These guidelines similarly recognize that site plan review may be required for multi-family housing projects that are allowed as of right, within the parameters established by the applicable case law. 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 should not unreasonably delay a project nor impose conditions that make it infeasible or impractical to proceed with a project that is allowed as of right and complies with applicable dimensional regulations.

b. *Affordability requirements*

Section 3A does not include any express requirement or authorization for an MBTA community to require affordable units in a multi-family housing project that is allowed as of right. It is a common practice in many cities and towns to require affordable units in a multi-family project that requires a special permit, or as a condition for building at greater densities than the zoning otherwise would allow. These inclusionary zoning requirements serve the policy goal of increasing affordable housing production. If affordability requirements are excessive, however, they can make it economically infeasible to construct new multi-family housing.

For purposes of making compliance determinations with Section 3A, EOHLIC 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. Notwithstanding the foregoing, EOHLIC 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:

- (i) The affordability requirements applicable in the multi-family zoning district are reviewed and approved by EOHLIC as part of a smart growth district under chapter 40R, or under another zoning incentive program administered by EOHLIC; or
- (ii) 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 acceptable to EOHLIC, and using a methodology and format acceptable to EOHLIC. The analysis must demonstrate that a reasonable

¹ See, e.g., *Y.D. Dugout, Inc. v. Board of Appeals of Canton*, 357 Mass. 25 (1970); *Prudential Insurance Co. of America v. Board of Appeals of Westwood*, 23 Mass. App. Ct. 278 (1986); *Osberg v. Planning Bd. of Sturbridge*, 44 Mass. App. Ct. 56, 59 (1997) (Planning Board “may impose reasonable terms and conditions on the proposed use, but it does not have discretionary power to deny the use”).

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 issuance of these guidelines, including any such existing district that is expanded or amended to comply with these guidelines.

c. *Other requirements that do not apply uniformly in the multi-family zoning district*

Zoning will not be deemed compliant with Section 3A's requirement that multi-family housing be allowed as of right if the zoning imposes requirements on multi-family housing that are not generally applicable to other uses. The following are examples of requirements that would be deemed to be inconsistent with "as of right" use: (i) a requirement that multi-family housing meet higher energy efficiency standards than other uses; (ii) a requirement that a multi-family use achieve a third party certification that is not required for other uses in the district; and (iii) a requirement that multi-family use must be combined with commercial or other uses on the same lot or as part of a single project. Mixed use projects may be allowed as of right in a multi-family zoning district, as long as multi-family housing is separately allowed as of right.

5. Determining "Reasonable Size"

In making determinations of "reasonable size," EOHLC will take into consideration both the land area of the multi-family zoning district, and the multi-family zoning district's multi-family unit capacity.

a. *Minimum land area*

A zoning district is a specifically delineated land area with uniform regulations and requirements governing the use of land and the placement, spacing, and size of buildings. For purposes of compliance with Section 3A, a multi-family zoning district should be a neighborhood-scale district, not a single development site on which the municipality is willing to permit a particular multi-family project. EOHLC will certify compliance with Section 3A only if an MBTA community's multi-family zoning district meets the minimum land area applicable to that MBTA community, if any, as set forth in Appendix 1. The minimum land area for each MBTA community has been determined as follows:

- (i) In rapid transit communities, commuter rail communities, and adjacent communities, the minimum land area of the multi-family zoning district is 50 acres, or 1.5% of the developable land in an MBTA community, whichever is *less*. In certain cases, noted in Appendix 1, a smaller minimum land area applies.
- (ii) In adjacent small towns, there is no minimum land area. In these communities, the multi-family zoning district may comprise as many or as few acres as the community

determines is appropriate, as long as the district meets the applicable minimum multi-family unit capacity and the minimum gross density requirements.

In all cases, at least half of the multi-family zoning district land areas must comprise contiguous lots of land. No portion of the district that is less than 5 contiguous acres land will count toward the minimum size requirement. If the multi-family unit capacity and gross density requirements can be achieved in a district of fewer than 5 acres, then the district must consist entirely of contiguous lots.

b. *Minimum multi-family unit capacity*

A reasonably sized multi-family zoning district must also be able to accommodate a reasonable number of multi-family housing units as of right. For purposes of determinations of compliance with Section 3A, EOHLIC will consider a reasonable multi-family unit capacity for each MBTA community to be a specified percentage of the total number of housing units within the community, with the applicable percentage based on the type of transit service in the community, as shown on Table 1:

Table 1.

| Category | Percentage of total housing units |
|-------------------------|--|
| Rapid transit community | 25% |
| Commuter rail community | 15% |
| Adjacent community | 10% |
| Adjacent small town | 5% |

To be deemed in compliance with Section 3A, each MBTA community must have a multi-family zoning district with a multi-family unit capacity equal to or greater than the minimum unit capacity shown for it in Appendix 1. The minimum multi-family unit capacity for each MBTA community has been determined as follows:

- (i) First, by multiplying the number of housing units in that community by 0.25, 0.15, 0.10, or .05 depending on the MBTA community category. For example, a rapid transit community with 7,500 housing units is required to have a multi-family zoning district with a multi-family unit capacity of $7,500 \times 0.25 = 1,875$ multi-family units. For purposes of these guidelines, the number of total housing units in each MBTA community has been established by reference to the most recently published United States Decennial Census of Population and Housing.
- (ii) Second, when there is a minimum land area applicable to an MBTA community, by multiplying that minimum land area (up to 50 acres) by Section 3A's minimum gross density requirement of 15 units per acre. The product of that multiplication creates a floor on multi-family unit capacity. For example, an MBTA community with a minimum land area of 40 acres must have a district with a multi-family unit capacity of at least 600 (40×15) units.
- (iii) The minimum unit capacity applicable to each MBTA community is *the greater of* the numbers resulting from steps (i) and (ii) above, but subject to the following limitation: In no case does the minimum multi-family unit capacity exceed 25% of the total housing

units in that MBTA community.

Example: The minimum multi-family unit capacity for an adjacent community with 1,000 housing units and a minimum land area of 50 acres is determined as follows: (i) first, by multiplying $1,000 \times .1 = 100$ units; (ii) second, by multiplying $50 \times 15 = 750$ units; (iii) by taking the larger number, but adjusting that number down, if necessary, so that unit capacity is no more than 25% of 1,000 = 250 units. In this case, the adjustment in step (iii) results in a minimum unit capacity of 250 units.

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

In making determinations of whether an MBTA Community has a multi-family zoning district of “reasonable size” under this section, EOHLIC shall also take into consideration the existence and impact of mixed-use development zoning districts, subject to the requirements below.

EOHLIC shall take these mixed-use development districts into consideration as reducing the unit capacity needed for a multi-family zoning district to be “reasonable” (as listed in Appendix I) where:

- (i) the mixed-use development zoning district is in an eligible location where existing village-style or downtown development is essential to preserve pedestrian access to amenities;
- (ii) there are no age restrictions or limits on unit size, number of bedrooms, bedroom size or number of occupants and the residential units permitted are suitable for families with children;
- (iii) mixed-used development in the district is allowed “as of right” as that phrase has been interpreted by EOHLIC (for example, in section 4(c) with respect to affordability requirements);
- (iv) the requirement for non-residential uses is limited to the ground floor of buildings, and in no case represents a requirement that more than thirty-three percent of the floor area of a building, lot, or project must be for non-residential uses;
- (v) the requirement for non-residential uses does not preclude a minimum of three residential dwelling units per lot;
- (vi) the requirement for non-residential uses allows a broad mix of non-residential uses as-of-right in keeping with the nature of the area; and
- (vii) there are no minimum parking requirements associated with the non-residential uses allowed as of right.

An MBTA community asking to reduce the unit capacity requirement for its multi-family zoning district(s) based on the unit capacity for one or more mixed-use development districts shall submit to EOHLIC, on a form to be provided by EOHLIC, a request for a determination that the mixed-use development district is in an eligible location meeting the requirements of subparagraph (i). This request must be submitted at least 90 days prior to the vote of the MBTA community’s legislative body.

An MBTA community also may submit a broader inquiry as to Section 3A compliance in accordance with section 9(b). EOHLC shall respond prior to the vote of the MBTA community's legislative body if the request is timely submitted.

In any community with both a multi-family zoning district and a mixed-use development district that meets these considerations, the unit capacity requirement for the multi-family zoning district listed in Appendix I shall be reduced by the lesser of

- (i) the unit capacity of residential dwelling units in the mixed-use development district or subdistrict (as calculated by EOHLC using a methodology similar to that in section 5(d) which takes into account the impact of non-residential uses), or
 - (ii) twenty five percent of the unit capacity requirement listed in Appendix I. This consideration shall not affect the minimum land area acreage or contiguity requirements for a multi-family zoning district otherwise required by these Guidelines.
- d. *Methodology for determining a multi-family zoning district's multi-family unit capacity*

MBTA communities seeking a determination of compliance must use the EOHLC compliance model to provide an estimate of the number of multi-family housing units that can be developed as of right within the multi-family zoning district. The multi-family unit capacity of an existing or proposed district shall be calculated using the unit capacity worksheet described in Appendix 2. This worksheet produces an estimate of a district's multi-family unit capacity using inputs such as the amount of developable land in the district, the dimensional requirements applicable to lots and buildings (including, for example, height limitations, lot coverage limitations, and maximum floor area ratio), and the parking space requirements applicable to multi-family uses.

Minimum unit capacity is a measure of whether a multi-family zoning district is of a reasonable size, not a requirement to produce housing units. Nothing in Section 3A or these guidelines should be interpreted as a mandate to construct a specified number of housing units, nor as a housing production target. Demonstrating compliance with the minimum multi-family unit capacity requires only that an MBTA community show that the zoning allows multi-family housing as of right and that a sufficient number of multi-family housing units could be added to or replace existing uses and structures over time—even though such additions or replacements may be unlikely to occur soon.

If an MBTA community has two or more zoning districts in which multi-family housing is allowed as of right, then two or more districts may be considered cumulatively to meet the minimum land area and minimum multi-family unit capacity requirements, as long as each district independently complies with Section 3A's other requirements.

- e. *Water and wastewater infrastructure within the multi-family zoning district*

MBTA communities are encouraged to consider the availability of water and wastewater infrastructure when selecting the location of a new multi-family zoning district. But compliance with Section 3A does not require a municipality to install new water or wastewater infrastructure, or add to the capacity of existing infrastructure, to accommodate future multi-family housing production within

the multi-family zoning district. In most cases, multi-family housing can be created using private septic and wastewater treatment systems that meet state environmental standards. Where public systems currently exist, but capacity is limited, private developers may be able to support the cost of necessary water and sewer extensions. While the zoning must allow for gross average density of at least 15 units per acre, there may be other legal or practical limitations, including lack of infrastructure or infrastructure capacity, that result in actual housing production at lower density than the zoning allows.

The multi-family unit capacity analysis does not need to take into consideration limitations on development resulting from existing water or wastewater infrastructure within the multi-family zoning district, or, in areas not served by public sewer, any applicable limitations under title 5 of the state environmental code. For purposes of the unit capacity analysis, it is assumed that housing developers will design projects that work within existing water and wastewater constraints, and that developers, the municipality, or the Commonwealth will provide funding for infrastructure upgrades as needed for individual projects.

6. Minimum Gross Density

Section 3A expressly requires that a multi-family zoning district—not just the individual lots of land within the district—must 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. The Zoning Act defines “gross density” as “a units-per-acre density measurement that includes land occupied by public rights-of-way and any recreational, civic, commercial and other nonresidential uses.”

a. District-wide gross density

To meet the district-wide gross density requirement, the dimensional restrictions and parking requirements for the multi-family zoning district must allow for a gross density of 15 units per acre of land within the district. By way of example, to meet that requirement for a 40-acre multi-family zoning district, the zoning must allow for at least 15 multi-family units per acre, or a total of at least 600 multi-family units.

For purposes of determining compliance with Section 3A’s gross density requirement, the EOHLC compliance model will not count in the denominator any excluded land located within the multi-family zoning district, except public rights-of-way, private rights-of-way, and publicly-owned land used for recreational, civic, commercial, and other nonresidential uses. This method of calculating minimum gross density respects the Zoning Act’s definition of gross density—“a units-per-acre density measurement that includes land occupied by public rights-of-way and any recreational, civic, commercial and other nonresidential uses”—while making it unnecessary to draw patchwork multi-family zoning districts that carve out wetlands and other types of excluded land that are not developed or developable.

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

Zoning ordinances and by-laws typically limit the unit density on individual lots. To comply with Section 3A’s gross density requirement, an MBTA community may establish reasonable sub-

districts within a multi-family zoning district, with different density limits 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. EOHLC will review sub-districts to ensure that the density allowed as of right in each sub-district is reasonable and not intended to frustrate the purpose of Section 3A by allowing projects of a such high density that they are not likely to be constructed.

c. *Wetland and septic considerations relating to density*

Section 3A provides that 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.” This directive means that even though the zoning district must permit 15 units per acre as of right, any multi-family housing produced within the district is subject to, and must comply with, the state wetlands protection act and title 5 of the state environmental code—even if such compliance means a proposed project will be less dense than 15 units per acre.

7. Determining Suitability for Families with Children

Section 3A states that a compliant multi-family zoning district must allow multi-family housing as of right, and that “such multi-family housing shall be without age restrictions and shall be suitable for families with children.” EOHLC will deem a multi-family zoning 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 limit or restrict the size of the units, cap the number of bedrooms, the size of bedrooms, or the number of occupants, or impose a minimum age of occupants. Limits, if any, on the size of units or number of bedrooms established by state law or regulation are not relevant to Section 3A or to determinations of compliance made pursuant to these guidelines.

8. Location of Districts

a. *General rule for determining the applicability of Section 3A’s location requirement*

Section 3A states that a compliant multi-family zoning district shall “be located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable.” When an MBTA community has only a small amount of transit station area within its boundaries, it may not be possible or practical to locate all of the multi-family zoning district within 0.5 miles of a transit station. Transit station area may not be a practical location for a multi-family zoning district if it does not include developable land where multi-family housing can actually be constructed. Therefore, for purposes of determining compliance with Section 3A, EOHLC will consider the statute’s location requirement to be “applicable” to a particular MBTA community only if that community has within its borders at least 100 acres of developable station area. EOHLC will require more or less of the multi-family zoning district to be located within transit station areas depending on how much total developable station area is in that community, as shown on Table 2:

Table 2.

| <u>Total developable station area within the MBTA community (acres)</u> | <u>Portion of the multi-family zoning district that must be within a transit station area</u> |
|---|---|
| 0-100 | 0% |
| 101-250 | 20% |
| 251-400 | 40% |
| 401-600 | 50% |
| 601-800 | 75% |
| 801+ | 90% |

The percentages specified in this table apply to both the minimum land area and the minimum multi-family unit capacity. For example, in an MBTA community that has a total of 500 acres of transit station area within its boundaries, a multi-family zoning district will comply with Section 3A’s location requirement if at least 50 percent of the district’s minimum land area is located within the transit station area, *and* at least 50 percent of the district’s minimum multi-family unit capacity is located within the transit station area.

A community with transit station areas associated with more than one transit station may locate the multi-family zoning district in any of the transit station areas. For example, a rapid transit community with transit station area around a subway station in one part of town, and transit station area around a commuter rail station in another part of town, may locate its multi-family zoning district in either or both transit station areas.

b. MBTA communities with limited or no transit station area

When an MBTA community has less than 100 acres of developable station area within its boundaries, the MBTA community may locate the multi-family zoning district anywhere within its boundaries. To encourage transit-oriented multi-family housing consistent with the general intent of Section 3A, MBTA communities are encouraged to consider locating the multi-family zoning district 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 qualifies as an “eligible location” as defined in Chapter 40A—for example, near an existing downtown or village center, near a regional transit authority bus stop or line, or in a location with existing under-utilized facilities that can be redeveloped into new multi-family housing.

c. General guidance on district location applicable to all MBTA communities

When choosing the location of a new multi-family zoning district, every MBTA community should consider how much of a proposed district is sensitive land on which permitting requirements and other considerations could make it challenging or inadvisable to construct multi-family housing. For example, an MBTA community may want to avoid including in a multi-family zoning district areas that are subject to flooding, or are known habitat for rare or threatened species, or have prime agricultural soils in active agricultural use.

9. Determinations of Compliance

Section 3A provides that any MBTA community that fails to comply with Section 3A’s requirements will be ineligible for funding from any of the listed funding sources. EOHLIC will make determinations of compliance with Section 3A in accordance with these guidelines to inform state agency decisions on which MBTA communities are eligible to receive funding from the listed funding sources. The following discretionary grant programs will take compliance with Section 3A into consideration when making grant award recommendations:

- i. Community Planning Grants, EOHLIC,
- ii. Massachusetts Downtown Initiative, EOED,
- iii. Urban Agenda, EOED,
- iv. Rural and Small Town Development Fund, EOED,
- v. Brownfields Redevelopment Fund, MassDevelopment,
- vi. Site Readiness Program, MassDevelopment,
- vii. Underutilized Properties Program, MassDevelopment,
- viii. Collaborative Workspace Program, MassDevelopment,
- ix. Real Estate Services Technical Assistance, MassDevelopment,
- x. Commonwealth Places Programs, MassDevelopment,
- xi. Land Use Planning Grants, EOEEA,
- xii. Local Acquisitions for Natural Diversity (LAND) Grants, EOEEA, and
- xiii. Municipal Vulnerability Preparedness (MVP) Planning and Project Grants, EOEEA

Determinations of compliance also may inform other funding decisions by EOED, EOHLIC, the MBTA and other state agencies which consider local housing policies when evaluating applications for discretionary grant programs or making other discretionary funding decisions.

EOHLIC interprets Section 3A as allowing every MBTA community a reasonable opportunity to enact zoning amendments as needed to come into compliance. Accordingly, EOHLIC will recognize both *interim* compliance, which means an MBTA community is taking active steps to enact a multi-family zoning district that complies with Section 3A, and *district* compliance, which is achieved when EOHLIC determines that an MBTA community has a multi-family zoning district that complies with Section 3A. The requirements for interim and district compliance are described in more detail below.

Table 3.

| Transit Category (# of municipalities) | Deadline to Submit Action Plan | Deadline to Submit District Compliance Application |
|---|---------------------------------------|---|
| Rapid transit community (12) | January 31, 2023 | December 31, 2023 |
| Commuter rail community (71) | January 31, 2023 | December 31, 2024 |
| Adjacent community (58) | January 31, 2023 | December 31, 2024 |
| Adjacent small town (34) | January 31, 2023 | December 31, 2025 |

- a. *Process to achieve interim compliance*

Many MBTA communities do not currently have a multi-family zoning district of reasonable size that complies with the requirements of Section 3A. Prior to achieving district compliance (but no later than the deadlines set forth in Table 3), these MBTA communities can achieve interim compliance by taking the following affirmative steps towards the creation of a compliant multi-family zoning district.

- i. *Creation and submission of an action plan.* An MBTA community seeking to achieve interim compliance must first submit an action plan on a form to be provided by EOHLC. An MBTA community action plan must provide information about current zoning, past planning for multi-family housing, if any, and potential locations for a multi-family zoning district. The action plan also will require the MBTA community to establish a timeline for various actions needed to create a compliant multi-family zoning district.
 - ii. *EOHLC approval of an action plan.* EOHLC will review each submitted action plan for consistency with these guidelines, including but not limited to the timelines in Table 3. If EOHLC determines that the MBTA community's action plan is reasonable and will lead to district compliance in a timely manner, EOHLC will issue a determination of interim compliance. EOHLC may require modifications to a proposed action plan prior to approval.
 - iii. *Implementation of the action plan.* After EOHLC approves an action plan and issues a determination of interim compliance, an MBTA community must diligently implement the action plan. EOHLC may revoke a determination of interim compliance if an MBTA community has not made sufficient progress in implementing an approved action plan. EOHLC and EOED will review an MBTA community's progress in implementing its action plan prior to making an award of funds under the Housing Choice Initiative and Massworks infrastructure program.
 - iv. *Deadlines for submitting action plans.* To achieve interim compliance for grants made through the 2023 One Stop Application, action plans must be submitted by no later than January 31, 2023. An MBTA community that does not submit an action plan by that date may not receive a EOHLC determination of interim compliance in time to receive an award of funds from the listed funding sources in 2023. An MBTA community that does not achieve interim compliance in time for the 2023 One Stop Application may submit an action plan to become eligible for a subsequent round of the One Stop Application, provided that an action plan must be submitted by no later than January 31 of the year in which the MBTA community seeks to establish grant eligibility; and provided further that no action plan may be submitted or approved after the applicable district compliance application deadline set forth in Table 3.
- b. *Assistance for communities implementing an action plan.*

MBTA communities are encouraged to communicate as needed with EOHLC staff throughout the process of implementing an action plan, and may inquire about whether a proposed multi-family zoning district complies with Section 3A prior to a vote by the municipal legislative body to create or

modify such a district. Such requests shall be made on a form to be provided by EOHLIC. If a request is submitted at least 90 days prior to the vote of the legislative body, EOHLIC shall respond prior to the vote.

c. Requests for determination of district compliance

When an MBTA community believes it has a multi-family zoning district that complies with Section 3A, it may request a determination of district compliance from EOHLIC. Such a request may be made for a multi-family zoning district that was in existence on the date that Section 3A became law, or for a multi-family zoning district that was created or amended after the enactment of Section 3A. In either case, such request shall be made on an application form required by EOHLIC and shall include, at a minimum, the following information. Municipalities will need to submit:

- (i) A certified copy of the municipal zoning ordinance or by-law and zoning map, including all provisions that relate to uses and structures in the multi-family zoning district.
- (ii) An estimate of multi-family unit capacity using the compliance model.
- (iii) GIS shapefile for the multi-family zoning district.
- (iv) In the case of a by-law enacted by a town, evidence that the clerk has submitted a copy of the adopted multi-family zoning district to the office of the Attorney General for approval as required by state law, or evidence of the Attorney General's approval.

After receipt of a request for determination of district compliance, EOHLIC will notify the requesting MBTA community within 30 days if additional information is required to process the request. Upon reviewing a complete application, EOHLIC will provide the MBTA community a written determination either stating that the existing multi-family zoning district complies with Section 3A, or identifying the reasons why the multi-family zoning district fails to comply with Section 3A and the steps that must be taken to achieve compliance. An MBTA community that has achieved interim compliance prior to requesting a determination of district compliance shall remain in interim compliance for the period during which a request for determination of district compliance, with all required information, is pending at EOHLIC.

10. Ongoing Obligations; Rescission of a Determination of Compliance

After receiving a determination of compliance, an MBTA community must notify EOHLIC in writing of any zoning amendment or proposed zoning amendment that affects the compliant multi-family zoning district, or any other by-law, ordinance, rule or regulation that limits the development of multi-family housing in the multi-family zoning district. EOHLIC may rescind a determination of district compliance, or require changes to a multi-family zoning district to remain in compliance, if EOHLIC determines that:

- (i) The MBTA community submitted inaccurate information in its application for a determination of compliance;
- (ii) The MBTA community failed to notify EOHLIC of a zoning amendment that affects the multi-family zoning district;

- (iii) The MBTA community enacts or amends any by-law or ordinance, or other rule or regulation, that materially alters the minimum land area and/or the multi-family unit capacity in the multi-family zoning district;
- (iv) A board, authority or official in the MBTA community does not issue permits, or otherwise acts or fails to act, to allow construction of a multi-family housing project that is allowed as of right in the multi-family zoning district (or any mixed-use zoning development district taken into account in determining the required multi-family unit capacity in the multi-family zoning district);
- (v) The MBTA community takes other action that causes the multi-family zoning district to no longer comply with Section 3A; or
- (vi) An MBTA community with an approved multi-family zoning district has changed transit category as a result of a newly opened or decommissioned transit station, or the establishment of permanent, regular service at a transit station where there was formerly intermittent or event-based service.

11. Changes to MBTA Service

Section 3A applies to the 177 MBTA communities identified in section 1A of the Zoning Act and section 1 of chapter 161A of the General Laws. When MBTA service changes, the list of MBTA communities and/or the transit category assignments of those MBTA communities in Appendix 1 may change as well.

The transit category assignments identified in Appendix 1 of these guidelines reflect certain MBTA service changes that will result from new infrastructure now under construction in connection with the South Coast Rail and Green Line Extension projects. These service changes include the opening of new Green Line stations and commuter rail stations, as well as the elimination of regular commuter rail service at the Lakeville station. These changes are scheduled to take effect in all cases a year or more before any municipal district compliance deadline. Affected MBTA communities are noted in Appendix 1.

Municipalities that are not now identified as MBTA communities and may be identified as such in the future are not addressed in these guidelines or included in Appendix 1. New MBTA communities will be addressed with revisions to Appendix 1, and separate compliance timelines, in the future.

Future changes to Silver Line routes or stations may change district location requirements when expanded high-capacity service combined with new facilities creates a bus station where there was not one before. Changes to other bus routes, including the addition or elimination of bus stops or reductions or expansions of bus service levels, do not affect the transit categories assigned to MBTA communities and will not affect location requirements for multi-family zoning districts. Any future changes to MBTA transit service, transit routes and transit service levels are determined by the MBTA Board of Directors consistent with the MBTA’s Service Delivery Policy.

List of Appendices:

- Appendix 1: MBTA Community Categories and Requirements
- Appendix 2: Compliance Methodology/Model

Appendix 1:

MBTA Community Categories and Requirements

| Community | Community category | 2020 Housing Units | Minimum multi-family unit capacity* | Minimum land area** | Developable station area*** | % of district to be located in station area |
|------------------|---------------------------|---------------------------|--|----------------------------|------------------------------------|--|
| Abington | Commuter Rail | 6,811 | 1,022 | 50 | 307 | 40% |
| Acton | Commuter Rail | 9,219 | 1,383 | 50 | 246 | 20% |
| Amesbury | Adjacent Community | 7,889 | 789 | 50 | - | 0% |
| Andover | Commuter Rail | 13,541 | 2,031 | 50 | 587 | 50% |
| Arlington | Adjacent Community | 20,461 | 2,046 | 32 | 58 | 0% |
| Ashburnham | Adjacent Small Town | 2,730 | 137 | - | - | 0% |
| Ashby | Adjacent Small Town | 1,243 | 62 | - | - | 0% |
| Ashland | Commuter Rail | 7,495 | 1,124 | 50 | 272 | 40% |
| Attleboro | Commuter Rail | 19,097 | 2,865 | 50 | 467 | 50% |
| Auburn | Adjacent Community | 6,999 | 750 | 50 | - | 0% |
| Ayer | Commuter Rail | 3,807 | 750 | 50 | 284 | 40% |
| Bedford | Adjacent Community | 5,444 | 750 | 50 | - | 0% |
| Bellingham | Adjacent Community | 6,749 | 750 | 50 | - | 0% |
| Belmont | Commuter Rail | 10,882 | 1,632 | 27 | 502 | 50% |
| Berkley | Adjacent Small Town | 2,360 | 118 | - | 79 | 0% |
| Beverly | Commuter Rail | 17,887 | 2,683 | 50 | 1,435 | 90% |
| Billerica | Commuter Rail | 15,485 | 2,323 | 50 | 308 | 40% |
| Bourne | Adjacent Small Town | 11,140 | 557 | - | - | 0% |
| Boxborough | Adjacent Small Town | 2,362 | 118 | - | - | 0% |
| Boxford | Adjacent Small Town | 2,818 | 141 | - | - | 0% |
| Braintree | Rapid Transit | 15,077 | 3,769 | 50 | 485 | 50% |
| Bridgewater | Commuter Rail | 9,342 | 1,401 | 50 | 181 | 20% |
| Brockton | Commuter Rail | 37,304 | 5,596 | 50 | 995 | 90% |
| Brookline | Rapid Transit | 27,961 | 6,990 | 41 | 1,349 | 90% |

| Community | Community category | 2020 Housing Units | Minimum multi-family unit capacity* | Minimum land area** | Developable station area*** | % of district to be located in station area |
|------------------|---------------------|--------------------|-------------------------------------|---------------------|-----------------------------|---|
| Burlington | Adjacent Community | 10,431 | 1,043 | 50 | - | 0% |
| Cambridge | Rapid Transit | 53,907 | 13,477 | 32 | 1,392 | 90% |
| Canton | Commuter Rail | 9,930 | 1,490 | 50 | 451 | 50% |
| Carlisle | Adjacent Small Town | 1,897 | 95 | - | - | 0% |
| Carver | Adjacent Small Town | 4,701 | 235 | - | - | 0% |
| Chelmsford | Adjacent Community | 14,769 | 1,477 | 50 | - | 0% |
| Chelsea | Rapid Transit | 14,554 | 3,639 | 14 | 608 | 75% |
| Cohasset | Commuter Rail | 3,341 | 638 | 43 | 241 | 20% |
| Concord | Commuter Rail | 7,295 | 1,094 | 50 | 519 | 50% |
| Danvers | Adjacent Community | 11,763 | 1,176 | 50 | - | 0% |
| Dedham | Commuter Rail | 10,459 | 1,569 | 49 | 507 | 50% |
| Dover | Adjacent Small Town | 2,046 | 102 | - | - | 0% |
| Dracut | Adjacent Community | 12,325 | 1,233 | 50 | - | 0% |
| Duxbury | Adjacent Community | 6,274 | 750 | 50 | - | 0% |
| East Bridgewater | Adjacent Community | 5,211 | 750 | 50 | - | 0% |
| Easton | Adjacent Community | 9,132 | 913 | 50 | - | 0% |
| Essex | Adjacent Small Town | 1,662 | 83 | - | - | 0% |
| Everett | Rapid Transit | 18,208 | 4,552 | 22 | 200 | 20% |
| Fall River | Commuter Rail | 44,346 | 6,652 | 50 | 324 | 40% |
| Fitchburg | Commuter Rail | 17,452 | 2,618 | 50 | 601 | 75% |
| Foxborough | Adjacent Community | 7,682 | 768 | 50 | - | 0% |
| Framingham | Commuter Rail | 29,033 | 4,355 | 50 | 270 | 40% |
| Franklin | Commuter Rail | 12,551 | 1,883 | 50 | 643 | 75% |
| Freetown | Commuter Rail | 3,485 | 750 | 50 | 346 | 40% |
| Georgetown | Adjacent Community | 3,159 | 750 | 50 | - | 0% |
| Gloucester | Commuter Rail | 15,133 | 2,270 | 50 | 430 | 50% |
| Grafton | Adjacent Community | 7,760 | 776 | 50 | 82 | 0% |

| Community | Community category | 2020 Housing Units | Minimum multi-family unit capacity* | Minimum land area** | Developable station area*** | % of district to be located in station area |
|------------|---------------------|--------------------|-------------------------------------|---------------------|-----------------------------|---|
| Groton | Adjacent Small Town | 4,153 | 208 | - | - | 0% |
| Groveland | Adjacent Small Town | 2,596 | 130 | - | - | 0% |
| Halifax | Commuter Rail | 3,107 | 750 | 50 | 300 | 40% |
| Hamilton | Commuter Rail | 2,925 | 731 | 49 | 184 | 20% |
| Hanover | Adjacent Community | 5,268 | 750 | 50 | - | 0% |
| Hanson | Commuter Rail | 3,960 | 750 | 50 | 218 | 20% |
| Harvard | Adjacent Small Town | 2,251 | 113 | - | - | 0% |
| Haverhill | Commuter Rail | 27,927 | 4,189 | 50 | 415 | 50% |
| Hingham | Commuter Rail | 9,930 | 1,490 | 50 | 757 | 75% |
| Holbrook | Commuter Rail | 4,414 | 662 | 41 | 170 | 20% |
| Holden | Adjacent Community | 7,439 | 750 | 50 | - | 0% |
| Holliston | Adjacent Community | 5,562 | 750 | 50 | - | 0% |
| Hopkinton | Adjacent Community | 6,645 | 750 | 50 | 79 | 0% |
| Hull | Adjacent Community | 5,856 | 586 | 7 | 34 | 0% |
| Ipswich | Commuter Rail | 6,476 | 971 | 50 | 327 | 40% |
| Kingston | Commuter Rail | 5,364 | 805 | 50 | 345 | 40% |
| Lakeville | Adjacent Small Town | 4,624 | 231 | - | 30 | 0% |
| Lancaster | Adjacent Small Town | 2,788 | 139 | - | - | 0% |
| Lawrence | Commuter Rail | 30,008 | 4,501 | 39 | 271 | 40% |
| Leicester | Adjacent Small Town | 4,371 | 219 | - | - | 0% |
| Leominster | Commuter Rail | 18,732 | 2,810 | 50 | 340 | 40% |
| Lexington | Adjacent Community | 12,310 | 1,231 | 50 | - | 0% |
| Lincoln | Commuter Rail | 2,771 | 635 | 42 | 130 | 20% |
| Littleton | Commuter Rail | 3,889 | 750 | 50 | 244 | 20% |
| Lowell | Commuter Rail | 43,482 | 6,522 | 50 | 274 | 40% |
| Lunenburg | Adjacent Small Town | 4,805 | 240 | - | - | 0% |
| Lynn | Commuter Rail | 36,782 | 5,517 | 50 | 637 | 75% |

| Community | Community category | 2020 Housing Units | Minimum multi-family unit capacity* | Minimum land area** | Developable station area*** | % of district to be located in station area |
|---------------|---------------------|--------------------|-------------------------------------|---------------------|-----------------------------|---|
| Lynnfield | Adjacent Community | 4,773 | 607 | 40 | - | 0% |
| Malden | Rapid Transit | 27,721 | 6,930 | 31 | 484 | 50% |
| Manchester | Commuter Rail | 2,433 | 559 | 37 | 305 | 40% |
| Mansfield | Commuter Rail | 9,282 | 1,392 | 50 | 327 | 40% |
| Marblehead | Adjacent Community | 8,965 | 897 | 27 | - | 0% |
| Marlborough | Adjacent Community | 17,547 | 1,755 | 50 | - | 0% |
| Marshfield | Adjacent Community | 11,575 | 1,158 | 50 | - | 0% |
| Maynard | Adjacent Community | 4,741 | 474 | 21 | - | 0% |
| Medfield | Adjacent Community | 4,450 | 750 | 50 | - | 0% |
| Medford | Rapid Transit | 25,770 | 6,443 | 35 | 714 | 75% |
| Medway | Adjacent Community | 4,826 | 750 | 50 | - | 0% |
| Melrose | Commuter Rail | 12,614 | 1,892 | 25 | 774 | 75% |
| Merrimac | Adjacent Small Town | 2,761 | 138 | - | - | 0% |
| Methuen | Adjacent Community | 20,194 | 2,019 | 50 | - | 0% |
| Middleborough | Commuter Rail | 9,808 | 1,471 | 50 | 260 | 40% |
| Middleton | Adjacent Community | 3,359 | 750 | 50 | - | 0% |
| Millbury | Adjacent Community | 5,987 | 750 | 50 | - | 0% |
| Millis | Adjacent Community | 3,412 | 750 | 50 | - | 0% |
| Milton | Rapid Transit | 9,844 | 2,461 | 50 | 404 | 50% |
| Nahant | Adjacent Small Town | 1,680 | 84 | - | - | 0% |
| Natick | Commuter Rail | 15,680 | 2,352 | 50 | 680 | 75% |
| Needham | Commuter Rail | 11,891 | 1,784 | 50 | 1,223 | 90% |
| New Bedford | Commuter Rail | 44,588 | 6,688 | 50 | 744 | 75% |
| Newbury | Adjacent Small Town | 3,072 | 154 | - | 69 | 0% |
| Newburyport | Commuter Rail | 8,615 | 1,292 | 35 | 213 | 20% |
| Newton | Rapid Transit | 33,320 | 8,330 | 50 | 2,833 | 90% |
| Norfolk | Commuter Rail | 3,601 | 750 | 50 | 333 | 40% |

| Community | Community category | 2020 Housing Units | Minimum multi-family unit capacity* | Minimum land area** | Developable station area*** | % of district to be located in station area |
|--------------------|---------------------|--------------------|-------------------------------------|---------------------|-----------------------------|---|
| North Andover | Adjacent Community | 11,914 | 1,191 | 50 | 5 | 0% |
| North Attleborough | Adjacent Community | 12,551 | 1,255 | 50 | - | 0% |
| North Reading | Adjacent Community | 5,875 | 750 | 50 | - | 0% |
| Northborough | Adjacent Community | 5,897 | 750 | 50 | - | 0% |
| Northbridge | Adjacent Community | 6,691 | 750 | 50 | - | 0% |
| Norton | Adjacent Community | 6,971 | 750 | 50 | - | 0% |
| Norwell | Adjacent Community | 3,805 | 750 | 50 | - | 0% |
| Norwood | Commuter Rail | 13,634 | 2,045 | 50 | 861 | 90% |
| Paxton | Adjacent Small Town | 1,689 | 84 | - | - | 0% |
| Peabody | Adjacent Community | 23,191 | 2,319 | 50 | - | 0% |
| Pembroke | Adjacent Community | 7,007 | 750 | 50 | - | 0% |
| Plymouth | Adjacent Community | 28,074 | 2,807 | 50 | - | 0% |
| Plympton | Adjacent Small Town | 1,068 | 53 | - | - | 0% |
| Princeton | Adjacent Small Town | 1,383 | 69 | - | - | 0% |
| Quincy | Rapid Transit | 47,009 | 11,752 | 50 | 1,222 | 90% |
| Randolph | Commuter Rail | 12,901 | 1,935 | 48 | 182 | 20% |
| Raynham | Adjacent Community | 5,749 | 750 | 50 | - | 0% |
| Reading | Commuter Rail | 9,952 | 1,493 | 43 | 343 | 40% |
| Rehoboth | Adjacent Small Town | 4,611 | 231 | - | - | 0% |
| Revere | Rapid Transit | 24,539 | 6,135 | 27 | 457 | 50% |
| Rochester | Adjacent Small Town | 2,105 | 105 | - | - | 0% |
| Rockland | Adjacent Community | 7,263 | 726 | 47 | - | 0% |
| Rockport | Commuter Rail | 4,380 | 657 | 32 | 252 | 40% |
| Rowley | Commuter Rail | 2,405 | 601 | 40 | 149 | 20% |
| Salem | Commuter Rail | 20,349 | 3,052 | 41 | 266 | 40% |
| Salisbury | Adjacent Community | 5,305 | 750 | 50 | - | 0% |
| Saugus | Adjacent Community | 11,303 | 1,130 | 50 | 11 | 0% |

| Community | Community category | 2020 Housing Units | Minimum multi-family unit capacity* | Minimum land area** | Developable station area*** | % of district to be located in station area |
|--------------|---------------------|--------------------|-------------------------------------|---------------------|-----------------------------|---|
| Scituate | Commuter Rail | 8,260 | 1,239 | 50 | 373 | 40% |
| Seekonk | Adjacent Community | 6,057 | 750 | 50 | - | 0% |
| Sharon | Commuter Rail | 6,581 | 987 | 50 | 261 | 40% |
| Sherborn | Adjacent Small Town | 1,562 | 78 | - | - | 0% |
| Shirley | Commuter Rail | 2,599 | 650 | 43 | 338 | 40% |
| Shrewsbury | Adjacent Community | 14,966 | 1,497 | 50 | 52 | 0% |
| Somerville | Rapid Transit | 36,269 | 9,067 | 24 | 1,314 | 90% |
| Southborough | Commuter Rail | 3,763 | 750 | 50 | 167 | 20% |
| Sterling | Adjacent Small Town | 3,117 | 156 | - | - | 0% |
| Stoneham | Adjacent Community | 10,159 | 1,016 | 27 | 12 | 0% |
| Stoughton | Commuter Rail | 11,739 | 1,761 | 50 | 317 | 40% |
| Stow | Adjacent Small Town | 2,770 | 139 | - | - | 0% |
| Sudbury | Adjacent Community | 6,556 | 750 | 50 | - | 0% |
| Sutton | Adjacent Small Town | 3,612 | 181 | - | - | 0% |
| Swampscott | Commuter Rail | 6,362 | 954 | 20 | 236 | 20% |
| Taunton | Commuter Rail | 24,965 | 3,745 | 50 | 269 | 40% |
| Tewksbury | Adjacent Community | 12,139 | 1,214 | 50 | - | 0% |
| Topsfield | Adjacent Small Town | 2,358 | 118 | - | - | 0% |
| Townsend | Adjacent Small Town | 3,566 | 178 | - | - | 0% |
| Tyngsborough | Adjacent Community | 4,669 | 750 | 50 | - | 0% |
| Upton | Adjacent Small Town | 2,995 | 150 | - | - | 0% |
| Wakefield | Commuter Rail | 11,305 | 1,696 | 36 | 630 | 75% |
| Walpole | Commuter Rail | 10,042 | 1,506 | 50 | 638 | 75% |
| Waltham | Commuter Rail | 26,545 | 3,982 | 50 | 470 | 50% |
| Wareham | Adjacent Community | 12,967 | 1,297 | 50 | - | 0% |
| Watertown | Adjacent Community | 17,010 | 1,701 | 24 | 27 | 0% |
| Wayland | Adjacent Community | 5,296 | 750 | 50 | - | 0% |

| Community | Community category | 2020 Housing Units | Minimum multi-family unit capacity* | Minimum land area** | Developable station area*** | % of district to be located in station area |
|------------------|---------------------|--------------------|-------------------------------------|---------------------|-----------------------------|---|
| Wellesley | Commuter Rail | 9,282 | 1,392 | 50 | 921 | 90% |
| Wenham | Commuter Rail | 1,460 | 365 | 24 | 111 | 20% |
| West Boylston | Adjacent Community | 3,052 | 587 | 39 | - | 0% |
| West Bridgewater | Adjacent Small Town | 2,898 | 145 | - | - | 0% |
| West Newbury | Adjacent Small Town | 1,740 | 87 | - | - | 0% |
| Westborough | Commuter Rail | 8,334 | 1,250 | 50 | 194 | 20% |
| Westford | Adjacent Community | 9,237 | 924 | 50 | - | 0% |
| Westminster | Adjacent Small Town | 3,301 | 165 | - | 30 | 0% |
| Weston | Commuter Rail | 4,043 | 750 | 50 | 702 | 75% |
| Westwood | Commuter Rail | 5,801 | 870 | 50 | 470 | 50% |
| Weymouth | Commuter Rail | 25,419 | 3,813 | 50 | 713 | 75% |
| Whitman | Commuter Rail | 5,984 | 898 | 37 | 242 | 20% |
| Wilmington | Commuter Rail | 8,320 | 1,248 | 50 | 538 | 50% |
| Winchester | Commuter Rail | 8,135 | 1,220 | 37 | 446 | 50% |
| Winthrop | Adjacent Community | 8,821 | 882 | 12 | 14 | 0% |
| Woburn | Commuter Rail | 17,540 | 2,631 | 50 | 702 | 75% |
| Worcester | Commuter Rail | 84,281 | 12,642 | 50 | 290 | 40% |
| Wrentham | Adjacent Community | 4,620 | 750 | 50 | - | 0% |

296,806

Minimum multi-family unit capacity for most communities will be based on the 2020 housing stock and the applicable percentage for that municipality's community type. In some cases, the minimum unit capacity is derived from an extrapolation of the required minimum land area multiplied by the statutory minimum gross density of 15 dwelling units per acre. In cases where the required unit capacity from these two methods would exceed 25% of the community's housing stock, the required unit capacity has instead been capped at that 25% level.

*

Minimum land area is 50 acres for all communities in the rapid transit, commuter rail and adjacent community types. There is no minimum land area requirement for adjacent small towns. Where 50 acres exceeds 1.5% of the developable land area in a town, a cap has been instituted that sets minimum land area to 1.5% of developable land area in the town.

**

Developable station area is derived by taking the area of a half-mile circle around an MBTA commuter rail station, rapid transit station, or ferry terminal and removing any areas comprised of excluded land.

| Community | Community category | 2020 Housing Units | Minimum multi-family unit capacity* | Minimum land area** | Developable station area*** | % of district to be located in station area |
|------------------|---------------------------|---------------------------|--|----------------------------|------------------------------------|--|
|------------------|---------------------------|---------------------------|--|----------------------------|------------------------------------|--|

**** This Appendix was updated on 3/13/2023 to add two new MBTA communities (Fall River and New Bedford, which became MBTA communities on 1/1/2023)

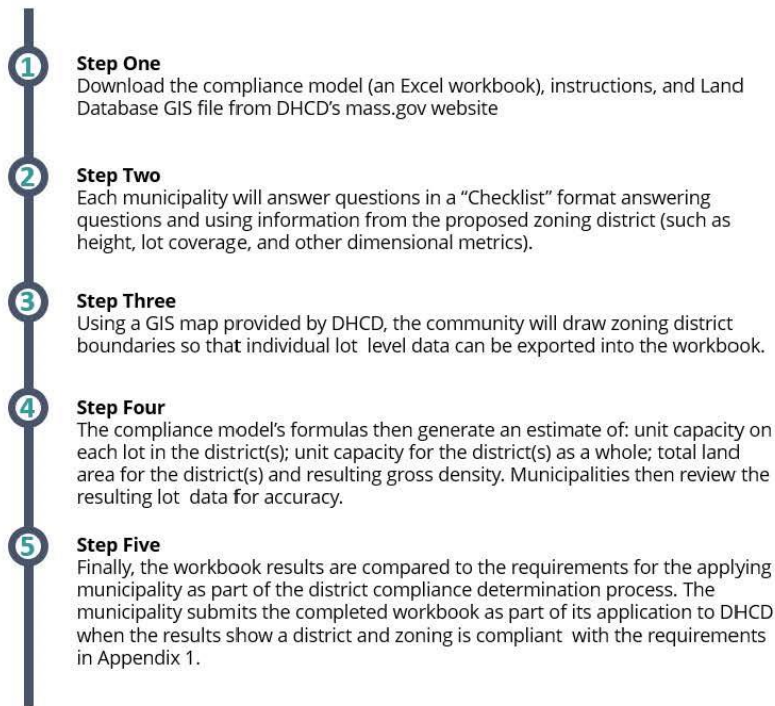
Appendix 2

Compliance Model Overview

The purpose of the compliance model is to ensure a consistent approach to measuring and evaluating multi-family zoning districts for compliance with Section 3A. The compliance model is intended to create a reasonable estimate of multi-family unit capacity of each multi-family zoning district. It is not intended to provide a precise determination of how many units may be developed on any individual lot or combination of lots.

The model uses geospatial tax parcel data from local assessors, compiled and hosted by MassGIS, to define lot boundaries and dimensions in each multi-family zoning district. The model also captures key dimensional and regulatory elements of the multi-family zoning district that impact multi-family unit capacity. The product of the compliance model is a Microsoft Excel workbook that must be submitted as part of a compliance application to DHCD. Consultant support is available at no cost to assist MBTA communities in meeting all the technical requirements of compliance.

The Compliance Modeling Process at a Glance:



Components of the Compliance Model

Land database

The compliance model includes geospatial parcel data for each MBTA community that identifies how much land area on each lot within a multi-family zoning district is developable land. Applicants will prepare this parcel data for the model's calculations by creating a shapefile for each district, measuring each district's land area, and exporting all lot records within the district's boundaries into an Excel or .csv file. These exported tables can then be pasted into the zoning review checklist and unit capacity estimator, described below.

Zoning review checklist and unit capacity estimator

To capture the data needed to estimate a district's multi-family unit capacity, municipalities will be required to complete a zoning review checklist. The checklist is of a series of questions and responses about allowed residential uses, parking requirements, dimensional restrictions (such as maximum building height and minimum open space), and other regulatory elements applicable in the district.

The unit capacity estimator uses the GIS exported lot information from the land database and the information entered into the zoning review checklist to calculate an estimate of the maximum number of multi-family residential units that could be constructed on each lot in each district as of right. It then aggregates the unit capacity estimates for each lot into an estimate of total unit capacity for each district. It also derives an estimate of the gross density for each district.

Case-Specific Refinements to the Compliance Model Inputs and Outputs

To ensure the integrity and reasonableness of each unit capacity estimate, DHCD may adjust the compliance model inputs and outputs as necessary to account for physical conditions or zoning restrictions not adequately captured by the compliance model. For example, DHCD may override the GIS data and change one or more lots from excluded land to developable land where a municipality demonstrates those lots meet the definition of developable land. DHCD may also adjust the unit capacity estimator's algorithm when it does not adequately account for an atypical zoning requirement or other local development restriction that will clearly impact unit capacity.

Advisory Concerning Enforcement of the MBTA Communities Zoning Law

The Office of the Attorney General is issuing this Advisory to assist cities, towns, and residents in understanding the requirements imposed by the MBTA Communities Zoning Law (G.L. c. 40A, § 3A) (the “Law”). The Law was enacted to address the Commonwealth’s acute need for housing by facilitating the development of transit-oriented, multifamily housing. By any measure, Massachusetts is in a housing crisis that is inflicting unacceptable economic, social, and environmental harms across our state – particularly on working families and people of color. The Law directly responds to this crisis by implementing zoning reforms that require MBTA Communities to permit reasonable levels of multifamily housing development near transit stations.¹

Massachusetts cities and towns have broad authority to enact local zoning ordinances and by-laws to promote the public welfare, so long as they are not inconsistent with constitutional or statutory requirements.² The MBTA Communities Zoning Law provides one such statutory requirement: that MBTA Communities must allow at least one zoning district of reasonable size in which multifamily housing is permitted “as of right.”³ The district must generally be located within half a mile of a transit station and allow for development at a minimum gross density of fifteen units per acre.⁴ MBTA Communities cannot impose age-based occupancy limitations or other restrictions that interfere with the construction of units suitable for families with children within the zoning district.⁵ For example, the zoning district cannot have limits on the size of units or caps on the number of bedrooms or occupants. The required zoning district must also allow for the construction of multifamily units without special permits, variances, waivers or other discretionary approvals.⁶ These measures can prevent, delay, or significantly increase the costs of construction. As directed by the Legislature, the Department of Housing and Community Development has promulgated guidelines regarding compliance.⁷ These guidelines provide

¹ An MBTA Community is a town or city which hosts MBTA service; which abuts a town or city that hosts service; or which has been added to the Transit Authority pursuant to a special law. *See* G.L. c. 40A, § 3A(a)(1); G.L. c. 40A, § 1. Currently, there are 177 MBTA Communities in Massachusetts. A list of these MBTA Communities, and other information related to the Law, can be found [here](#).

² *See generally* Mass. Const. Amend. Art. 89 (amending Mass. Const. Amend. Art. 2); G.L. c. 40A, § 1 et seq. (the “Zoning Act”).

³ G.L. c. 40A, § 3A(a)(1) (requiring that MBTA Communities “shall have” a compliant zoning district).

⁴ *Id.*

⁵ *Id.*

⁶ G.L. c. 40A, § 1A.

⁷ G.L. c. 40A, § 3A(c) (“The [D]epartment . . . shall promulgate guidelines”); Department of Housing and Community Development, *Compliance Guidelines for Multi-family Zoning Districts Under Section 3A of the Zoning Act* (revised October 21, 2022).

additional information and benchmarks to be utilized in determining whether MBTA Communities are complying with the Law.

All MBTA Communities must comply with the Law. Communities that do not currently have a compliant multi-family zoning district must take steps outlined in the DHCD guidelines to demonstrate interim compliance. Communities that fail to comply with the Law may be subject to civil enforcement action.⁸ Non-compliant MBTA Communities are also subject to the administrative consequence of being rendered ineligible to receive certain forms of state funding.⁹ Importantly, MBTA Communities cannot avoid their obligations under the Law by foregoing this funding. The Law requires that MBTA Communities “shall have” a compliant zoning district and does not provide any mechanism by which a town or city may opt out of this requirement.¹⁰

MBTA Communities that fail to comply with the Law’s requirements also risk liability under federal and state fair housing laws. The Massachusetts Antidiscrimination Law¹¹ and federal Fair Housing Act¹² prohibit towns and cities from using their zoning power for a discriminatory purpose or with discriminatory effect.¹³ An MBTA Community may violate these laws if, for example, its zoning restrictions have the effect of unfairly limiting housing opportunities for families with children, individuals who receive housing subsidies, people of color, people with disabilities, or other protected groups.

⁸ See, e.g., G.L. c. 12, § 10 (the Attorney General shall take notice of “all violations of law” and bring “such... civil proceedings before the appropriate state and federal courts... as [s]he may deem to be for the public interest”); G.L. c. 231A, § 2 et seq. (authorizing declaratory judgment actions to “secure determinations of right, duty, status, or other legal relations under... statute[s]”).

⁹ G.L. c. 40A, § 3A(b).

¹⁰ G.L. c. 40A, § 3A(a)(1).

¹¹ G.L. c. 151B § 1 et seq.

¹² 42 U.S.C. § 3601 et seq.

¹³ See, e.g., G.L. c. 151B, § 4(4A) (prohibiting activities that interfere with the exercise or enjoyment of fair housing rights); 804 C.M.R. § 2.01(2)(f)-(h) (Antidiscrimination Law applies to “persons who... interfere with another person in the exercise or enjoyment of any right under M.G.L. c. 151, § 4... persons who directly or indirectly prevent or attempt to prevent the construction, purchase, sale or rental of any dwelling or land covered by M.G.L. c. 151B, § 4... [and] persons who aid or abet in doing any illegal acts...”); 804 C.M.R. § 2.01(5)(f) (“Examples of unlawful housing practices include... to pass an ordinance that unlawfully denies a dwelling, commercial space or land to a person or group of persons because of their protected status.”).

SECTION 3A COMPLIANCE STATUS AS OF SEPTEMBER 4, 2024

| Municipality | Community category | Submitted for Pre-adoption review (Y/N) | Adopted zoning intended for 3A compliance | 2020 Housing Units | Minimum multi-family unit capacity |
|---------------------|---------------------------|--|--|---------------------------|---|
| Abington | Commuter Rail | Yes | Yes | 6,811 | 1,022 |
| Acton | Commuter Rail | No | Yes | 9,219 | 1,383 |
| Andover | Commuter Rail | No | Yes | 13,541 | 2,031 |
| Arlington | Adjacent community | Yes | Yes | 20,461 | 2,046 |
| Auburn | Adjacent community | No | Yes | 6,999 | 750 |
| Bedford | Adjacent community | No | Yes | 5,444 | 750 |
| Belmont | Commuter Rail | Yes | No | 10,882 | 1,632 |
| Billerica | Commuter Rail | Yes | No | 15,485 | 2,323 |
| Bourne | Adjacent small town | Yes | No | 11,140 | 557 |
| Braintree | Rapid Transit | No | Yes | 15,077 | 3,769 |
| Bridgewater | Commuter Rail | No | Yes | 9,342 | 1,401 |
| Brookline | Rapid Transit | No | Yes | 27,961 | 6,990 |
| Burlington | Adjacent community | Yes | Yes | 10,431 | 1,043 |
| Cambridge | Rapid Transit | No | Yes | 53,907 | 13,477 |
| Canton | Commuter Rail | Yes | Yes | 9,930 | 1,490 |
| Chelmsford | Adjacent community | Yes | Yes | 14,769 | 1,477 |
| Chelsea | Rapid Transit | Yes | Yes | 14,554 | 3,639 |
| Cohasset | Commuter Rail | No | Yes | 3,341 | 638 |
| Concord | Commuter Rail | Yes | Yes | 7,295 | 1,094 |
| Danvers | Adjacent community | Yes | Yes | 11,763 | 1,176 |
| Dedham | Commuter Rail | No | Yes | 10,459 | 1,569 |
| Dracut | Adjacent community | Yes | No | 12,325 | 1,233 |
| Easton | Adjacent community | Yes | Yes | 9,132 | 913 |
| Essex | Adjacent small town | No | Yes | 1,662 | 83 |
| Everett | Rapid Transit | No | Yes | 18,208 | 4,552 |
| Fitchburg | Commuter Rail | Yes | No | 17,452 | 2,618 |
| Foxborough | Adjacent community | Yes | No | 7,682 | 768 |
| Franklin | Commuter Rail | No | Yes | 12,551 | 1,883 |
| Freetown | Commuter Rail | Yes | No | 3,485 | 750 |
| Grafton | Adjacent community | No | Yes | 7,760 | 776 |
| Halifax | Commuter Rail | Yes | No | 3,107 | 750 |
| Hanover | Adjacent community | Yes | No | 5,268 | 750 |
| Hanson | Commuter Rail | Yes | No | 3,960 | 750 |
| Harvard | Adjacent small town | No | Yes | 2,251 | 113 |
| Haverhill | Commuter Rail | No | Yes | 27,927 | 4,189 |
| Hingham | Commuter Rail | No | Yes | 9,930 | 1,490 |
| Holbrook | Commuter Rail | Yes | No | 4,414 | 662 |
| Hopkinton | Adjacent community | Yes | No | 6,645 | 750 |
| Hull | Adjacent community | Yes | Yes | 5,856 | 586 |
| Ipswich | Commuter Rail | Yes | No | 6,476 | 971 |
| Leominster | Commuter Rail | Yes | No | 18,732 | 2,810 |
| Lexington | Adjacent community | No | Yes | 12,310 | 1,231 |
| Lincoln | Commuter Rail | Yes | Yes | 2,771 | 635 |
| Littleton | Commuter Rail | No | Yes | 3,889 | 750 |
| Lowell | Commuter Rail | No | Yes | 43,482 | 6,522 |
| Lynn | Commuter Rail | Yes | No | 36,782 | 5,517 |
| Malden | Rapid Transit | Yes | Yes | 27,721 | 6,930 |

| | | | | | |
|---------------|---------------------|-----|-----|--------|--------|
| Manchester | Commuter Rail | Yes | No | 2,433 | 559 |
| Mansfield | Commuter Rail | Yes | Yes | 9,282 | 1,392 |
| Marblehead | Adjacent community | Yes | No | 8,965 | 897 |
| Marlborough | Adjacent community | Yes | No | 17,547 | 1,755 |
| Marshfield | Adjacent community | Yes | No | 11,575 | 1,158 |
| Maynard | Adjacent community | Yes | Yes | 4,741 | 474 |
| Medfield | Adjacent community | No | Yes | 4,450 | 750 |
| Medford | Rapid Transit | No | Yes | 25,770 | 6,443 |
| Melrose | Commuter Rail | Yes | No | 12,614 | 1,892 |
| Millis | Adjacent community | Yes | No | 3,412 | 750 |
| Needham | Commuter Rail | Yes | No | 11,891 | 1,784 |
| New Bedford | Commuter Rail | Yes | No | 44,588 | 6,688 |
| Newbury | Adjacent small town | No | Yes | 3,072 | 154 |
| Newburyport | Commuter Rail | Yes | No | 8,615 | 1,292 |
| Newton | Rapid Transit | Yes | Yes | 33,320 | 8,330 |
| Norfolk | Commuter Rail | No | Yes | 3,601 | 750 |
| North Andover | Adjacent community | Yes | Yes | 11,914 | 1,191 |
| North Reading | Adjacent community | Yes | No | 5,875 | 750 |
| Northborough | Adjacent community | No | Yes | 5,897 | 750 |
| Northbridge | Adjacent community | No | Yes | 6,691 | 750 |
| Norwell | Adjacent community | Yes | No | 3,805 | 750 |
| Norwood | Commuter Rail | Yes | Yes | 13,634 | 2,045 |
| Pembroke | Adjacent community | No | Yes | 7,007 | 750 |
| Plymouth | Adjacent community | No | Yes | 28,074 | 2,807 |
| Quincy | Rapid Transit | No | Yes | 47,009 | 11,752 |
| Revere | Rapid Transit | No | Yes | 24,539 | 6,135 |
| Rockland | Adjacent community | No | Yes | 7,263 | 726 |
| Rockport | Commuter Rail | No | Yes | 4,380 | 657 |
| Salem | Commuter Rail | No | Yes | 20,349 | 3,052 |
| Salisbury | Adjacent community | No | Yes | 5,305 | 750 |
| Scituate | Commuter Rail | Yes | Yes | 8,260 | 1,239 |
| Sharon | Commuter Rail | No | Yes | 6,581 | 987 |
| Sherborn | Adjacent small town | Yes | No | 1,562 | 78 |
| Shrewsbury | Adjacent community | Yes | No | 14,966 | 1,497 |
| Somerville | Rapid Transit | No | Yes | 36,269 | 9,067 |
| Sterling | Adjacent small town | Yes | No | 3,117 | 156 |
| Stoneham | Adjacent community | No | Yes | 10,159 | 1,016 |
| Stoughton | Commuter Rail | No | Yes | 11,739 | 1,761 |
| Sudbury | Adjacent community | Yes | Yes | 6,556 | 750 |
| Swampscott | Commuter Rail | Yes | Yes | 6,362 | 954 |
| Taunton | Commuter Rail | No | Yes | 24,965 | 3,745 |
| Tewksbury | Adjacent community | Yes | No | 12,139 | 1,214 |
| Topsfield | Adjacent small town | Yes | Yes | 2,358 | 118 |
| Tyngsborough | Adjacent community | Yes | No | 4,669 | 750 |
| Wakefield | Commuter Rail | Yes | No | 11,305 | 1,696 |
| Walpole | Commuter Rail | Yes | Yes | 10,042 | 1,506 |
| Waltham | Commuter Rail | Yes | No | 26,545 | 3,982 |
| Wareham | Adjacent community | No | Yes | 12,967 | 1,297 |
| Wayland | Adjacent community | No | Yes | 5,296 | 750 |
| Wellesley | Commuter Rail | Yes | Yes | 9,282 | 1,392 |

| | | | | | |
|---------------|---------------------|-----|-----|--------|-------|
| West Boylston | Adjacent community | No | Yes | 3,052 | 587 |
| West Newbury | Adjacent small town | Yes | No | 1,740 | 87 |
| Westborough | Commuter Rail | Yes | Yes | 8,334 | 1,250 |
| Westford | Adjacent community | Yes | Yes | 9,237 | 924 |
| Westwood | Commuter Rail | No | Yes | 5,801 | 870 |
| Weymouth | Commuter Rail | No | Yes | 25,419 | 3,813 |
| Whitman | Commuter Rail | No | Yes | 5,984 | 898 |
| Wilmington | Commuter Rail | Yes | No | 8,320 | 1,248 |
| Winchester | Commuter Rail | No | Yes | 8,135 | 1,220 |

Source: EOHLIC, Compliance status as of 9/4/24

<https://www.mass.gov/files/csv/2024-09/Compliance%20Status%20Sheet%20as%20of%209-4-24.csv>