

New DHCD Guidelines on Multi-Family Districts for MBTA Communities

Long-awaited guidance for municipalities concerning how to comply with new requirements under the Governor's Housing Choice legislation have finally been issued by the Department of Health and Community Development ("DHCD"). General Laws Chapter 40A, Section 3A(a) ("Section 3A") requires that all "MBTA Communities" have at least one zoning district of reasonable size where multi-family housing is allowed as of right. In total, DHCD has defined [175 communities](#) as "MBTA Communities." These are broken down into four types of communities: (1) Subway or Light Rail; (2) Bus; (3) Commuter Rail; and (4) MBTA Adjacent. Different rules apply depending on the type of community. Affected communities and towns have until **December 31, 2022**, to come into interim compliance and until **March 31, 2024** (Subway or Bus Communities) or **March 31, 2025** (Commuter Rail and MBTA Adjacent Communities) to come into full compliance.

The statute goes on to explain that a "district of reasonable size" must:

(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 Draft Compliance Guidance provides a timeline for MBTA Communities to meet this obligation:

- **May 2, 2022** (preferably before) – Communities must hold a briefing with their City Council, Town Council, or Select Board on the Draft Compliance Guidance
- **May 2, 2022** – Communities must submit the online [MBTA Community Information Form](#). This is where Communities attest to holding the Briefing described above and understanding the requirements of Section 3A. Communities may also request technical assistance from DHCD.
- **December 31, 2022** – Communities must come into interim compliance. This can be done by submitting: (1) a complete request for a determination of compliance as outlined in Section 9a of the Guidelines; or (2) notify DHCD that the Community is not in compliance and submit a proposed action plan as outlined in Section 9b of the Guidelines.
- **July 1, 2023** – Communities must submit an action plan and timeline to DHCD for any planning studies or community outreach activities in order to comply with Section 3A.
- **December 21, 2023** – Rapid Transit and Bus Communities adopt zoning amendments complying with the statute. A complete application to DHCD requesting

determination of compliance is due 90 days after.

- **December 31, 2024** – Commuter Rail and MBTA Adjacent Communities adopt zoning amendments complying with the statute. A complete application to DHCD requesting determination of compliance is due 90 days after.

If DHCD determines that an MBTA Community is not in compliance with Section 3A, that Community will no longer be eligible for: (1) the Housing Choice Initiative; (2) the Local Capital Projects Fund from G.L. c. 29, § 2E(4); (3) the MassWorks Infrastructure Program from G.L. c. 23A, § 63.

In order to comply with Section 3A, the Districts must meet specific requirements for size and density, and must allow multi-family housing *as of right*.

- **As of Right**

MBTA Communities must have at least one multi-family district where multi-family housing is allowed as of right. In this context, “as of right” means not requiring any discretionary permit or approval. Communities may still require site plan review, but may not use site plan review to deny a multi-family housing project when it is allowed as of right.

- **Reasonable Size**

Districts must comprise at least 50 acres of land. The district need not be a single contiguous area of land, but if it consists of more than one area, at least one of those areas must include 25 contiguous acres, and no portion of the district may be less than 5 acres in size. In addition to land area, the multi-family district must have a sufficient number of housing units. The minimum number of units depends on the type of MBTA Community, as shown on the chart below.

| Category | Minimum multi-family units as a percentage of total housing stock |
|-------------------------|---|
| Rapid transit community | 25% |
| Bus service community | 20% |
| Commuter rail community | 15% |
| Adjacent Community | 10% |

For example, consider if a particular MBTA Community was required to have 900 units in its multi-family district. It could theoretically reach this goal by allowing as-of-right conversion of a district of 300 single-family homes to three-family. Please also note that each District must have a minimum of 750 units, so for smaller MBTA Communities, the relative percentage will be higher.

- **Minimum Gross Density**

In general, Section 3A requires that a multi-family district have a minimum gross density of 15 units per acre. This number is also subject to the limitations G.L. c. 131, § 30 and Title 5 of the State Environmental Code established pursuant to G.L. c. 21A, § 13.

The deadline to file comments on the guidelines is **March 31, 2022**. Please reach out to any of your contacts at Anderson & Kreiger if you would like help in drafting comments.

A copy of the draft guidelines is available [here](#), and further explanation from DHCD—including a short webinar—is available [here](#).