

MBTA COMMUNITIES
FREQUENTLY ASKED QUESTIONS

A. General

A1. What role does DHCD play in determining compliance with the new section 3A of the Zoning Act (“Section 3A”)?

Section 3A gives DHCD, in consultation with the Massachusetts Bay Transportation Authority and the Massachusetts Department of Transportation, discretion to promulgate guidelines to determine if an MBTA community complies with Section 3A. DHCD released draft guidelines on December 15, 2021. The draft guidelines clarify what is required to comply with the statute, for example by defining what it means for a district to be of “reasonable size,” and explaining how communities demonstrate that a district meets the law’s minimum gross density requirement. The draft guidelines do not impose mandates or create restrictions that are not in the law.

A2. Can you clarify how DHCD determined if a particular MBTA community is a rapid transit community, a bus service community, a commuter rail community, or an adjacent community?

MBTA communities were categorized based on whether they have transit service located within the municipality or within 0.5 miles of the municipal boundary, and if so what type of transit service. A community with access to more than one transit type is classified in the category with the higher unit capacity requirement. More specifically:

- A rapid transit community has an MBTA subway station located within its borders, or within 0.5 miles of its border. Note, a rapid transit community may also have other types of transit stations.
- A bus service community has no subway station within its border or within 0.5 miles of its border, but does have an MBTA bus route with one or more bus stops located within the community. Note, a bus community that happens also to have a commuter rail station within its borders is placed within the bus community category due to the presence of the bus route.
- A commuter rail community has a commuter rail station within its borders or within 0.5 miles of its border, but has no bus route or subway station.
- An adjacent community abuts a rapid transit community, bus service community or commuter rail community, has no subway station or commuter rail station within its boundaries or within 0.5 miles of its border, and has no MBTA bus route running through it.

A2A. *My community has a commuter rail station and a bus route. We appear to be misclassified based on the definition of “bus service community” in the draft guidelines. Can you clarify why we were classified as a bus service community?*

There is a typographical error in the definition of “bus service community” in the draft guidelines. For purposes of the draft guidelines, this definition was intended to read as follows: “*Bus service community*” means an MBTA community with a bus station within its borders or within 0.5 miles of its border, or an MBTA bus stop within its borders, and no subway station ~~or commuter rail station~~ within its border, or within 0.5 mile of its border. That error will be corrected in the final guidelines. (Added March 10, 2022)

B. Location of Districts

B1. *How much discretion does each MBTA community have with respect to where a multi-family district is located?*

A multi-family zoning district must be located within 0.5 miles of a transit station, with at least half of the district’s land area within the 0.5-mile radius, when that is possible. Where it is not possible to locate a district within 0.5 miles of a transit station, cities and towns otherwise have considerable flexibility to decide where to locate these districts. These districts may be located where there are existing single-family, multi-family, commercial or other existing uses and structures, or in areas ready for redevelopment. DHCD strongly encourages cities and towns to consider multi-family districts where there is existing or planned pedestrian and bicycle access to a transit station, or that otherwise are in areas of concentrated development. Regardless of location, each community must demonstrate that the zoning allows for multi-family housing that meets or exceeds the required unit capacity and at a density that meets the statutory minimum.

B2. *What if my community has more than one transit station—for example, a subway station and a separate commuter rail station, or multiple commuter rail stations? Do I need a multi-family zoning district in proximity to each station? If not, can I choose which transit station the district?*

Section 3A requires each MBTA community to “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” An MBTA community may have more than 1 such multi-family zoning district, but a single district is all that Section 3A requires. If an MBTA community has more than one transit station, it may locate the multi-family zoning district within 0.5 miles of any of them.

B3. *Can my town establish a multi-family district in an area where there is already significant multi-family development?*

Yes, but you still must demonstrate the district meets the “reasonable size” criteria, including the minimum unit capacity, and at the required minimum gross density.

B4. Can my town establish a multi-family district in an area where there are many single family homes on small lots?

Yes, but it may be difficult to demonstrate such a district meets the minimum multi-family unit capacity and gross density requirements, because the zoning is unlikely to allow for the construction of the required number and density of multi-family housing units on small parcels.

B5. My community has been categorized as a “bus service community” because we have an MBTA bus route, with several bus stops in town. Are bus stops or park-and-ride locations the same as “bus stations,” and do we have to locate our multi-family zoning district within 0.5 miles of one of a bus stop or park-and-ride location if we have one?

No. Neither a bus stop nor a park-and-ride location is considered to be a bus station. The draft guidelines attempted to make this point by including a definition of bus station.

B6. What is required of “adjacent communities” with no land area within ½ mile of a transit station?

Section 3A requires all MBTA communities, including adjacent communities, to have at least 1 zoning district in which multi-family uses are allowed by right. An adjacent community with no land area within ½ mile of a transit station should locate its district in an area that makes the most sense for that community, and should carefully consider establishing the district in an area of concentrated development, or an area with pedestrian access to a transit station that is more than one half mile away. (*Added March 10, 2022*)

C. Size of Districts

C1. How do the draft compliance guidelines define reasonable size?

The draft compliance guidelines consider two factors in determining if a zoning district is of reasonable size. First, they require the land area in the district be at least 50 acres. Second, the draft guidelines consider the number of multi-family units that the zoning allows in the district—what the guidelines refer to as the district’s “multi-family unit capacity.” The minimum multi-family unit capacity for each district depends on the type of transit service in a particular community, if any, and ranges from 10 to 25 percent of the community’s total housing stock. This may at first sound like a large number of units, but keep in mind that “unit capacity” is just a measure of the number of multi-family units allowed by right in the district—many of which may already exist. Unit capacity is not a requirement to construct a particular number of units, or any units at all. Section 3A requires multi-family by right zoning, not housing production.

C2. A minimum land area of 50 acres seems like a lot—isn't that too big for most communities?

The intent of Section 3A is to require the creation of multi-family zoning districts within 0.5 miles of a transit station, where applicable. For reference, a circle with a half-mile radius and a transit station at its center comprises about 500 acres. The minimum district size of 50 acres is approximately one-tenth of that land area. In most MBTA communities, 50 acres will be well under 1 percent of the community's total land area. A minimum land area of 50 acres will encourage long-term, neighborhood-scale planning, instead of using zoning as a way to permit proposed projects on specific sites. But 50 acres is still only a small fraction of the land area in a town and gives communities significant flexibility on where to locate a district in the half-mile radius around a transit station.

C3. Section 5.a of the draft guidelines states that portions of an overlay district can be a minimum of 5 acres as long as one portion of the overlay district is 25 acres. Does this apply to "base districts" as well?

Yes, base districts and overlay districts have the same minimum land area requirements.

C4. My community has 2500 total housing units and is categorized as an "adjacent community." Is the required unit capacity 250 (10% of the total housing units) or 750 (50 acres x 15 units/acre)?

Your town's minimum unit capacity is 250 as that term is defined in the draft guidelines. But, to comply with Section 3A, the multi-family zoning district also must meet the minimum gross density requirement of not less than 750 multi-family units (for a 50-acre district). Because the guidelines establish a minimum land area of 50 acres and the statute requires a minimum gross density of 15 units per acre, the result is that every MBTA community, regardless of its size, must provide a zoning district that allows at least 750 multi-family units as of right. This requirement is a floor on the number of units a zoning district must allow—many MBTA communities are required to have a district with a larger unit capacity. In other words, because of the minimum gross density requirement, a compliant district must allow at least 750 units regardless of the number of housing units in the community.

C5. My community is categorized as a "commuter rail community" because we have a commuter rail station. We have almost 10,000 housing units. Are you saying we need to construct new multi-family units equal to 15% of our total housing stock?

No, your community does not have to produce 1,500 new housing units. Your community must adopt a multi-family zoning district that can accommodate that many units. Those units may be existing units, as long as they would be allowed to be built as of right under the district's zoning; or they may be new units that potentially could be constructed by right sometime in the future; or a combination of existing and potential new units.

C6. *According to the draft guidelines, my community must have a zoning district with a unit capacity of 970 units. We have an area in town with 800 multi-family units already. Some of these units were built by special permit, and others were built under chapter 40B. Can we create a new zoning district in this area and count the existing units?*

The zoning district must allow for 970 multi-family units by right. To determine the unit capacity of a new or existing multi-family zoning district, you do not “count” existing units—you instead determine how many multi-family units the zoning district would allow by right on that parcel if it were undeveloped. Depending on the density, height, open space, setbacks, parking and other requirements that apply in the district, and the amount of developable land on each parcel, it is possible that all of the existing 800 units could be constructed by right—or even more than the existing 800 units. The important thing to understand is that you are counting what the zoning allows by right, not the number of units that currently exist. Note that in addition to meeting the unit capacity requirement, the district must meet the minimum gross density requirement as well. In some cases, the zoning for a district will need to allow for more multi-family units to meet the minimum gross density requirement.

C7. *By basing the minimum multi-family unit capacity on the number of existing housing units the draft guidelines require greater density in communities that already are densely developed. Shouldn't there be more expected of communities that haven't already allowed for multi-family housing?*

MBTA communities include dense, urban communities, suburban communities and rural communities. One of the guiding principles of the draft guidelines is that MBTA communities should adopt multi-family districts that will lead to development of multi-family housing projects of a scale, density and character that are consistent with a community's long-term planning goals, while also leveraging local and state investment in public transportation. The draft guidelines are intended to establish zoning requirements that will lead to more multi-family housing production in appropriate locations, while allowing towns to adhere to other municipal goals. *(Added March 10, 2022)*

D. Minimum Gross Density

D1. *What does it mean to have a minimum gross density of 15 units per acre?*

Section 3A states that each multi-family zoning 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.” The law 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.” The law clearly states that the gross density requirement applies to the district as a whole, rather than to individual parcels or projects within

that district. The draft guidelines provide further instruction on how to calculate the gross density of an existing or proposed multi-family zoning district.

D2. Can the multi-family district have subdistricts with varying degrees of density as long as the average gross density is 15 units/acre?

Yes. The draft guidelines permit the multi-family district to contain sub-districts that may have varying densities (higher and lower than a gross density of 15 units/acre) as long as the gross density for the entire district is at least 15 units/acre.

D3. Is a district that allows or requires mixed use and residential gross density of at least 15 units per acre acceptable to meet the guidelines?

Yes, commercial and other uses can also be permitted by right or by special permit in a multi-family zoning district. A mixed-use district will be deemed to comply with Section 3A as long as it meets the unit capacity, density and other requirements in the guidelines.

D4. A density of 15 units per acre is out of character with my rural community. Can the final guidelines reduce the minimum gross density requirement from 15 units per acre for more rural MBTA communities in which that density is out of character with existing development patterns?

No. The minimum gross density of 15 units per acre is expressly set forth in Section 3A. The guidelines must be consistent with the statute. But, the dimensional requirements in the zoning district can encourage the construction of low-rise multi-family housing projects where that kind of development is desired. (*Added March 10, 2022*)

E. Interim Compliance Requirements

E1. DHCD released draft guidelines on December 15. What is expected of us until these draft guidelines are issued as final guidelines?

While DHCD is collecting public comment on the draft guidelines, and until final guidelines are issued, an MBTA community can remain in compliance with Section 3A by taking the following actions set forth in the “How to Comply for 2022 for MBTA Communities” which can be [found here](#). If you would like to submit comments on the draft guidelines, you may do so [online here](#).

E2. Who signs the attestation required in section 9 of the guidelines? We are concerned our small town doesn't have the expertise to make this statement.

The attestation must be signed by each municipality's chief executive officer—the mayor in a city and the board of selectmen in a town, unless some other municipal office is designated to be the chief executive officer under the provisions of a local charter. Technical assistance will

be available after the guidelines are finalized and you may also consult with your Regional Planning Agency for assistance.

E3. What happens if my community does not comply with Section 3A?

MBTA communities that do not timely comply with Section 3A will not be eligible to receive Massworks or Housing Choice funding through the 2022 Community One-Stop Application. Non-compliant MBTA communities will also be ineligible to receive funding from the Local Capital Projects Fund established in section 2EEEE of chapter 29. The compliance requirements in effect until the issuance of final guidelines can be [found here](#).

E4. Does Section 3A require all MBTA communities to adopt a multi-family zoning district, or is compliance optional?

Section 3A states that each “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 ...” The word “shall” indicates that the legislature intended to require all MBTA communities to have a multi-family zoning district. *(Added March 10, 2022)*

E5. Subsection (b) of Section 3A says that an MBTA community that does not have a compliant multi-family zoning district shall not be eligible for funds from: (i) the Housing Choice Initiative as described by the governor in a message to the general court dated December 11, 2017; (ii) the Local Capital Projects Fund established in section 2EEEE of chapter 29; or (iii) the MassWorks infrastructure program established in section 63 of chapter 23A. What are these grant programs?

The MassWorks infrastructure program provides the largest and most flexible source of capital funds to municipalities and other eligible public entities primarily for public infrastructure projects that support and accelerate housing production, spur private development, and create jobs throughout the Commonwealth. EOHEd grants approximately \$75 million in MassWorks funding every year. The Housing Choice Initiative is a flexible grant program open to communities that have been designated as “housing choice communities”. Approximately \$19 million in grant funding has been awarded since 2018. The Local Capital Projects Fund collects a portion of the state’s gaming revenue and has been used in recent years to fund the operations of local housing authorities. *(Added March 10, 2022)*

F. Technical Assistance

F1. Where can I find help understanding the new law and how best to comply with it?

Additional resources are available at mass.gov/MBTACommunities. Funding opportunities for planning and other technical assistance will be available in next year’s One Stop application. Further information on the One Stop application is available at mass.gov/onestop. Other technical assistance will be offered by the Massachusetts Housing

Partnership (MHP) and regional planning agencies. Details about MHP's technical assistance are available at www.mhp.net/mbtazoning.

G. Miscellaneous

G1. What if I already have a zoning district in which multi-family housing is allowed by special permit? Does that count?

No, the law requires that multi-family uses be allowed by right in the district. Those uses may be subject to site plan review and design review, but multi-family uses cannot be subject to special permits or other discretionary permits that a local board can deny the use, or impose conditions unrelated to site layout, pedestrian safety, internal circulation of automobiles, and public safety considerations.

G2. Can an MBTA community's zoning require that multi-family projects within a multi-family zoning district include a specified percentage of affordable units?

Yes, reasonable affordability requirements are allowed, as long as they are financially feasible and do not unduly impede the construction of new multi-family housing in the district. At least 140 cities and towns in the Commonwealth have some form of "inclusionary" zoning requiring that a percentage of units in new housing developments be affordable. Any affordability requirements in a zoning ordinance or bylaw will be reviewed on a case-by-case basis to ensure that they are reasonable.

G2A. Answer G.2 says that the multi-family zoning may require projects to include a percentage of affordable units, as long as the requirements are financially feasible and do not unduly impede the construction of new multi-family housing in the district. How will DHCD review affordability requirements to ensure that they are reasonable?

The final guidelines may provide more specific rules about what is reasonable and what is not. DHCD encourages and invites public comment on this issue to inform the final guidelines. (Added March 10, 2022)

G3. Can a project within the multi-family zoning district be required to have an adequate number of parking spaces?

Requiring too many parking spaces for multi-family housing projects can practically impede the number of multi-family units that can be constructed within the district. A municipality should consider reducing or eliminating any minimum parking requirements in the multi-family zoning district—particularly for projects that are within walking or biking distance to a transit station—to allow for a greater density of multi-family units on each parcel. In all cases, a municipality must consider whether the unit capacity and minimum gross density

requirements are met given the amount of parking required.

G4. My community does not currently provide a public sewer system. Are we required to design and construct a public sewer system and offer sewer hook ups to support higher density housing? If so, how can we pay for that expensive infrastructure?

No. Multi-family housing can be created at the required density using private septic and wastewater treatment systems that meet state environmental standards. Where public systems currently exist, private developers may be able to support the cost of necessary water and sewer extensions. Communities are encouraged to consider the location of any municipal water sources and other nitrogen-sensitive areas when siting multi-family zoning districts to minimize barriers to installing septic and wastewater systems that can serve the needs of multi-family housing development in the district. Cities and towns seeking to affirmatively plan for growth may also be eligible for state grants to defray the cost of new or expanded public infrastructure.

G5. My community is concerned that new multi-family housing will mean many more children in the school system. Our school system is already at capacity and we do not have the resources to accommodate more children. What can we do?

The new law does not require immediate housing production—only the creation of compliant zoning districts where multi-family housing *may* be created as of right. It is unlikely that communities will see an immediate increase in school attendance, given the time needed to assemble land for development, design and build housing. Moreover, studies have shown that in most cases new multi-family housing development has no negative impact on a community's school system.