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Barney S. Heath  
Director

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## MEMORANDUM

**DATE:** March 24, 2022

**TO:** Councilor Deborah Crossley, Chair, Zoning & Planning Committee  
Members of the Zoning & Planning Committee

**FROM:** Barney Heath, Director, Department of Planning and Development  
Jennifer Caira, Deputy Director Department of Planning and Development  
Zachery LeMel, Chief of Long Range Planning

**RE:** **#39-22 Requesting discussion on state guidance for implementing the Housing Choice Bill**  
**COUNCILOR CROSSLEY** on behalf of the Zoning & Planning Committee requesting discussion  
on state guidance for implementing the Housing Choice element of the MA Economic  
Development legislation. (formerly #131-21)

**MEETING:** March 29, 2022

**CC:** City Council  
Planning Board  
Jonathan Yeo, Chief Operating Officer  
Alissa O. Giuliani, City Solicitor

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### Introduction

At the upcoming Zoning and Planning Committee (ZAP) meeting on March 29, 2023, Util and Planning staff will present an analysis testing the Version 1.0 Village Center Overlay District (VCOD) for MBTA Communities Compliance. The conversation will focus on:

- Background on MBTA Communities
- Requirements/Guidelines Specific to Newton
- The Compliance Model
- Version 1.0 VCOD Compliance Model Results
- Possible Paths Towards MBTA Compliance
- Next Steps

### Background on MBTA Communities

In January 2021, Governor Baker signed an omnibus economic development package, *An Act Enabling Partnerships for Growth* (the "Act"), which notably included the [Housing Choice zoning reforms](#). The Act

included a new multi-family zoning requirement for MBTA communities (Section 3A), which Newton is one of, where at least one zoning district of reasonable size permits multi-family housing by-right meeting the following criteria:

- Minimum gross density of 15 units per acre
- Not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station
- No age restrictions
- Suitable for families with children

The Department of Housing and Community Development (DHCD) issued final guidelines on August 10, 2022 to determine if an MBTA community is in compliance with Section 3A. Revised guidelines were provided on 10/21/2022. More information on the guidelines can be found [here](#). In addition, Planning staff created a [webpage](#) with previously presented material and other resources. Finally, the Attorney General issued an [Advisory](#) to clarify requirements imposed on towns and cities by the 2021 MBTA Communities Zoning Law on March 15, 2023 (Attachment A).

### Requirements/Guidelines Specific to Newton

Newton is considered a “rapid transit community.” This categorization, along with certain geographic considerations, is used to determine Newton’s specific requirements. These are:

| Newton Compliance Requirements (min.) |                    |                             |  |   |
|---------------------------------------|--------------------|-----------------------------|--|---|
| Multi-family unit capacity (min.)*    | Land area (min.)** | Developable station area*** | % of district to be located in station area (min.) | % of contiguous land for multi-family zoning district(s) (min.)**** |
| 8,330 units                           | 50 acres           | 2,833 acres                 | 90%  | 50%   |

\*Minimum multi-family unit capacity for Newton is based on the 2020 housing stock and the applicable percentage for that municipality’s community type.

\*\*Minimum land area is 50 acres for all communities in the rapid transit, commuter rail and adjacent community types.

\*\*\*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.

\*\*\*\*In all cases, at least half of the multi-family zoning district land areas must comprise contiguous lots of land.

To comply, Newton’s submitted zoning district must meet each of the requirements above. To determine compliance, DHCD has created a [Compliance Model](#) for all MBTA Communities to use.

Finally, all rapid transit communities must adopt compliant zoning by December 31, 2023. Newton will need to submit a district compliance application, which includes:

- 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.
- An estimate of multi-family unit capacity using the compliance model.

- GIS shapefile for the multi-family zoning district.

### The Compliance Model

The compliance model is the primary tool for measuring a zoning district for compliance with Section 3A of M.G.L. Chapter 40A. There are several zoning requirements in Section 3A related to district size and location, multi-family unit capacity, gross density, and other benchmarks. The compliance model ensures a standard way of evaluating and estimating multi-family zoning districts on these metrics across all MBTA communities.

The compliance model was developed to create reasonable estimates that can be used to verify compliance with Section 3A. It is not intended to be as rigorous as a full, detailed build out analysis. Therefore, while the outputs from the model provide good estimates relative to the compliance metrics, they do not provide absolute measures of development potential. The development of the model was completed with the input and assistance of consultants and other experts and key stakeholders.

At the upcoming Zoning and Planning (ZAP) meeting, Utile will present the results of inputting the Version 1.0 Village Center Overlay District (VCOD) into the compliance model.

### Version 1.0 VCOD Compliance Model Results

For the purposes of this initial analysis only the [Version 1.0 VCOD](#) areas within 0.5 miles of a subway or commuter rail station (i.e. station area) were included. These village centers are Newton Centre, Newton Highlands, Waban, Auburndale, West Newton, and Newtonville (Attachment B). The table below shows an approximate unit capacity for the three VCOD districts for each village center:

| Unit Capacity (rounded)    |                                  |     |     |
|----------------------------|----------------------------------|-----|-----|
| Village Center             | VC1                              | VC2 | VC3 |
| Newton Centre              | 50                               | 250 | 400 |
| Newton Highlands           | 40                               | 100 | 150 |
| Waban                      | 100                              | 200 | –   |
| Auburndale                 | 40                               | 200 | 100 |
| West Newton                | 100                              | 200 | 650 |
| Newtonville                | 350                              | 300 | 300 |
| <b>Total Unit Capacity</b> | <b>Approximately 3,500 units</b> |     |     |

Additional inputs factored into the unit capacity table above:

- All lots over 30,000 square feet were removed since the draft VCOD zoning requires a special permit at that size. Only unit capacity allowed by-right counts towards the MBTA Communities requirement.
- Lots in VC1 allow for a maximum of four units per lot within new construction per the updated framework presented at the [March 13, 2023 ZAP meeting](#).
- All VC3 districts are modeled at 2.5 stories of residential in accordance with the Version 1.0 draft. As MBTA Communities does not permit us to require mixed-use, Version 1.0 proposed that in the VC3 districts a mixed-use project could be 4.5 stories by-right and a fully residential building could be 2.5 stories maximum in order to incentivize mixed-use. Only the 2.5 stories fully residential option counts towards the unit capacity. In the updated framework Planning has proposed designating mixed-use priority streets and either requiring or incentivizing mixed-use only along those streets.
- In accordance with Version 1.0 VCOD, parking is assumed at one space per unit.

In conjunction with unit capacity, MBTA Communities requires a compliant district to maintain an aggregate density of 15 units per acre, inclusive of rights-of-way. The table below shows the gross density of the three VCOD sub-districts, as well as the total aggregate density:

| Aggregate Density (rounded)    |                      |               |               |
|--------------------------------|----------------------|---------------|---------------|
|                                | VC1                  | VC2           | VC3           |
| Land Area (acres)*             | 55                   | 55            | 50            |
| Total Units                    | 680                  | 1,250         | 1,600         |
| Gross Density (est.)           | 12.5 units/acre      | 23 units/acre | 32 units/acre |
| <b>Aggregate Gross Density</b> | <b>22 units/acre</b> |               |               |

\*Includes rights-of-way

As described above there are five main criteria that Newton will need to meet to demonstrate compliance. The table below represents a snapshot of how Version 1.0 VCOD compares to the requirements. These numbers will evolve as we work on Version 2.0 VCOD and look at options for achieving compliance. If the land area is increased in order to increase the unit capacity, the area that needs to be contiguous will also increase, and the aggregate density will be adjusted. Ten percent of our land area can also be outside of a station area. As we start to get closer to a compliant district, we will have a better understanding of how much area this is and where we might want to locate it to maximize unit capacity.

| Compliance Summary (rounded)                             |                          |                                   |            |
|--|--------------------------|-----------------------------------|------------|
|  | MBTA Requirements (min.) | Version 1.0 VCOD Results (actual) | Compliance |
| Multi-family unit capacity                               | 8,330 units              | ~3,500 units                      | NO         |
| Aggregate Density  | 15 units/acre            | 22 units/acre                     | YES        |
| Land area  | 50 acres                 | 160 acres                         | YES        |
| % of district to be located in station area              | 90%                      | 100%                              | YES*       |
| % of contiguous land for multi-family zoning district(s) | 50%                      | 35%**                             | NO         |

\*Only VCOD zones within station area were tested

\*\*Newtonville is the largest contiguous VCOD and is used as the contiguous percentage

### Possible Paths Towards MBTA Compliance

Again, the Version 1.0 VCOD does not bring Newton into MBTA Communities compliance. However, Planning staff are confident that Newton can comply and that there are different pathways available towards compliance. Below are options, both within the VCOD and in addition to it, to explore for compliance. It will likely be necessary to utilize a number of these strategies to meet all of the requirements.

#### VCOD Strategies:

- Eliminate parking requirements for some or all districts
- Raise the special permit threshold above 30,000 sf
- Expand VC1 boundaries
- Expand VC2 and VC3 areas
- Increase density allowed for new construction in VC1
- Limit the areas where mixed-use is required or incentivized

#### Additional Strategies:

- Connect some of the Green Line stations to create a contiguous district
- Connect the village centers along Washington Street to create a contiguous district
- Create new zones, based on the VCOD, that are appropriate for areas along Route 9 and Needham Street within a half-mile radius of Green Line stations

- Explore options for zoning golf courses for multifamily housing

### **Next Steps**

Planning and Utile will update the model to reflect the forthcoming Version 2.0 VCOD zoning and maps and will explore some of the above strategies to understand how they impact compliance.

### **Attachments**

**Attachment A** Attorney General's Advisory

**Attachment B** MBTA station area map with VCOD districts



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**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.<sup>1</sup>

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.<sup>2</sup> 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.”<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> These guidelines provide

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<sup>1</sup> 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](#).

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

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

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> G.L. c. 40A, § 1A.

<sup>7</sup> 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.<sup>8</sup> Non-compliant MBTA Communities are also subject to the administrative consequence of being rendered ineligible to receive certain forms of state funding.<sup>9</sup> 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.<sup>10</sup>

MBTA Communities that fail to comply with the Law’s requirements also risk liability under federal and state fair housing laws. The Massachusetts Antidiscrimination Law<sup>11</sup> and federal Fair Housing Act<sup>12</sup> prohibit towns and cities from using their zoning power for a discriminatory purpose or with discriminatory effect.<sup>13</sup> 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.

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<sup>8</sup> *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]”).

<sup>9</sup> G.L. c. 40A, § 3A(b).

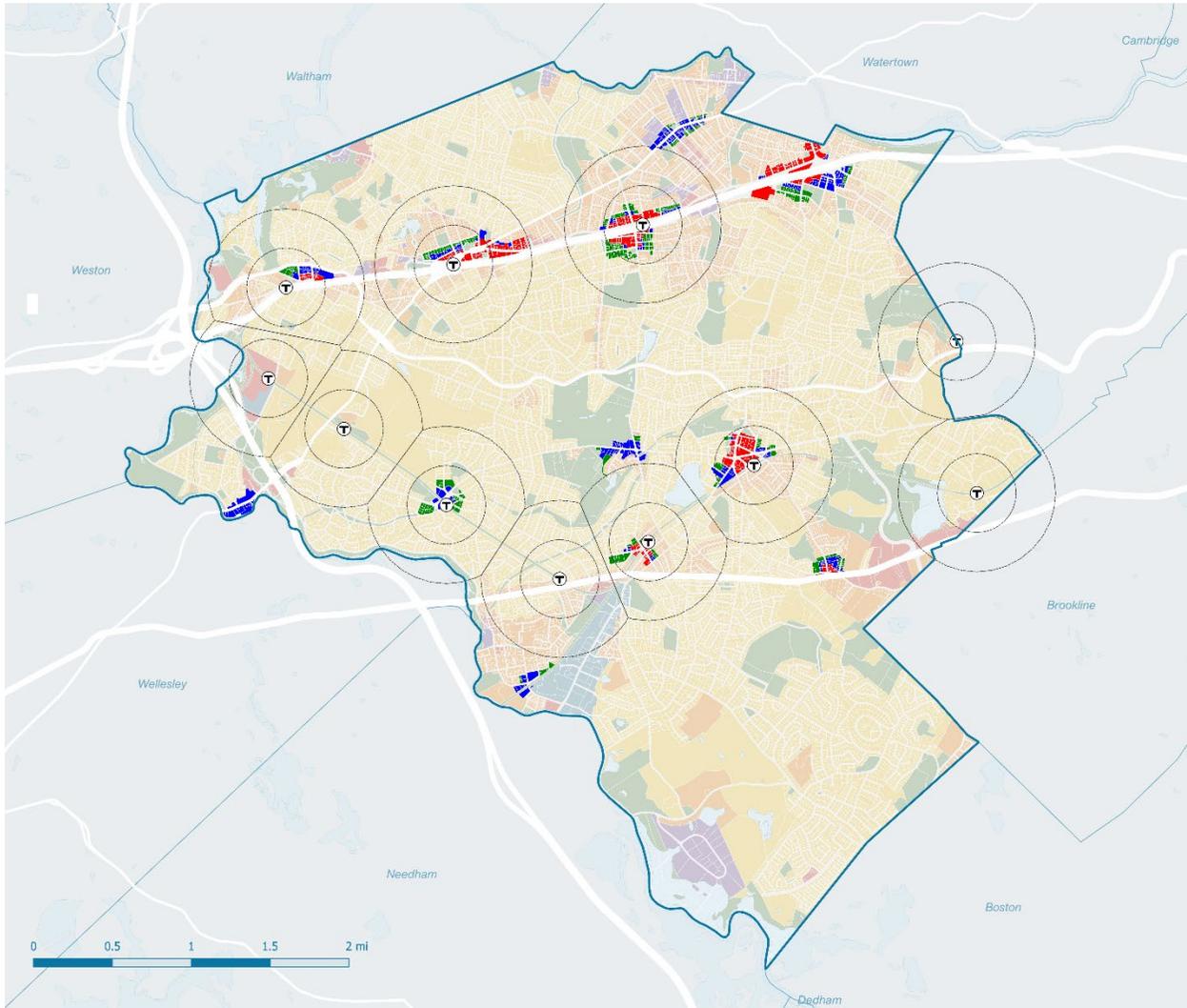
<sup>10</sup> G.L. c. 40A, § 3A(a)(1).

<sup>11</sup> G.L. c. 151B § 1 et seq.

<sup>12</sup> 42 U.S.C. § 3601 et seq.

<sup>13</sup> *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.”).

MBTA station area map with VCOD districts



Legend:

-  - VC1 District
-  - VC2 District
-  - VC3 District
-  - 0.25- and 0.5-mile radius from MBTA Subway or Commuter Rail Station