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Barney S. Heath  
Director

## MEMORANDUM

**DATE:** September 23, 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:** September 28, 2022

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

### Introduction

On December 15, 2021, the Department of Housing and Community Development (DHCD) issued draft guidelines on how to comply with the multi-family zoning requirements for MBTA Communities. This new law requires that an MBTA community shall have at least one zoning district of reasonable size in which multi-family housing is permitted as of right and meets other criteria set forth in the statute:

- Minimum gross density of 15 units per acre
- Located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable
- No age restrictions and suitable for families with children

On August 10, 2022, following a public a comment period, DHCD issued the final guidelines to determine if an MBTA community is in compliance with Section 3A. DHCD Secretary Mike Kennealy and Undersecretary Jennifer Maddox provided an overview letter (Attachment A) of the updates within the final guidelines. The final guidelines themselves, and additional information, can be found on the state website here:

<https://www.mass.gov/info-details/multi-family-zoning-requirement-for-mbta-communities#review-the-section-3a-guidelines->

**Final Guideline Updates Relevant for Newton**

Planning staff will be on hand for a discussion at the upcoming ZAP meeting on the final guidelines provided by the State. Below are the relevant updates within the final guidelines for Newton. Some City Councilors have already submitted clarifying questions and comments to Planning Staff. Where appropriate, answers will be incorporated in this memo. Staff are unable to provide answers to some questions until the DHCD provides further clarification.

*A Greater Percentage of the Compliant Zoning District(s) Required within 0.5 Miles of Transit Station*

The final guidelines focus on the amount of developable land that is within ½ mile of a transit station when categorizing communities and establishing district location requirements. The percentage of each district that must be located within 0.5 miles of a station area varies depending on how much developable station area is within a community. Communities with more developable station area are required to have more multi-family district land area and unit capacity within a half mile of transit stations.

Newton has a significant amount of land within a station area, 2,833 acres as defined by the State. The final guidelines requires 90% of Newton’s compliant zoning district(s) to be in that station area. The minimum district size remains at 50 acres.

% of District to be Located in Station Area	
Draft Guidelines	Final Guidelines
50%	90%

*Affordability Requirements are Explicitly Permitted, but Questions Remain*

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 the set-aside of certain percentages of units in a multi-unit development as affordable to households at a given income level. These inclusionary zoning requirements serve an important policy goal of increasing affordable housing production. As with other development requirements, setting the exact percentage of affordable units and income level eligibility of the occupants needs to be economically calibrated so as not to effectively prevent housing from being developed at all.

DHCD’s final guidelines provide for:

- Up to 10% (at 80% area median income) in all districts, in all communities
- Up to 20% for a zoning district approved under MGL chapter 40R or that otherwise goes through a DHCD approval process OR if local affordability requirements predate the enactment of Section 3A

While Newton’s Inclusionary Zoning Ordinance (IZ) predates Section 3A, Newton’s IZ requirements mandate affordable units below 80% area median income. This deeper level of affordability required

conflicts with the final guidelines. Planning staff have approached DHCD staff about whether or not Newton's predated IZ ordinance could be deemed eligible under a waiver provision.

*Mixed-Use Development can be Allowed but Not Required within a Compliant Zoning District(s)*

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. For example:

- Zoning cannot require multi-family housing to be combined with commercial or other uses on the same lot or as part of a single project. Mixed use and commercial 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.
- Multi-family housing cannot be required to meet higher energy efficiency standards than other uses

This update is particularly relevant given the village center zoning effort currently underway, which is expressly meant to facilitate vibrant and active spaces at the ground floor. Planning staff and our consultant, Utile, are looking at ways to incentivize active ground floor uses within the village center zoning proposal and comply with MBTA Communities requirements.

*All MBTA Communities will use a Compliance Model Provide by DHCD to Determine Compliance*

The Compliance Model will be provided later this fall by DHCD. The Model is an Excel Workbook that walks applicants through a zoning checklist and parcel information exported from a geographic information systems (GIS) file provided by DHCD. A copy of the completed Excel Workbook is a required part of an application for full compliance. The model was developed with guidance from an advisory group consisting of architects, engineers, planning professionals, local officials, GIS experts, data scientists and other experts. Planning staff are focused on developing zoning proposals that are best for village centers and will evaluate that zoning against the compliance model once the model is available.

### **Looking Ahead**

The guidelines establish a clear timeline for municipalities to adopt compliant zoning districts. The key dates are:

- January 31, 2023 – [Action Plan](#) Submission Deadline
- December 31, 2023 – District Compliance Submission Deadline (i.e. adopted zoning)

### **Attachments**

Attachment A                      Final Compliance Guidelines Letter (DHCD)



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August 10, 2022

Dear Local Officials in MBTA Communities:

Today, we are excited to share with you the final guidelines to determine compliance with section 3A of the Zoning Act—the new requirement for every MBTA community to have at least one zoning district in which multi-family housing is allowed as of right, and which is located near a transit station, if applicable.

In December 2021, the Baker-Polito Administration released draft guidelines on the new multi-family zoning requirement for MBTA communities. At the time, we stated that the final guidelines would be issued after consideration of feedback from a robust stakeholder engagement process and public comment period. The public comment period ran from December 15, 2021 through March 31, 2022. During that time, EOHEd, DHCD, and the Massachusetts Housing Partnership (MHP) conducted approximately 24 engagement sessions and collected nearly 400 public comments. We want to express our appreciation for those that participated in that important process. The guidelines we are releasing today are informed by the feedback you provided.

The final guidelines incorporate several changes, including:

- **Revised Community Categories:** MBTA Communities are now categorized as rapid transit, commuter rail, adjacent, or adjacent small town. The “bus service” category has been eliminated.
- **Significant Adjustments for Small and Rural Towns with No Transit Stations:** The final guidelines eliminate the minimum land area requirement and reduce the multi-family unit capacity requirement for communities with a population of less than 7,000 or less than 500 residents per square mile.
- **Changes to the Reasonable Size Criteria:** The guidelines establish “circuit breakers” that prevent multi-family unit capacity from exceeding 25% of a community’s existing

housing stock, or the minimum land from exceeding 1.5% of its total developable land area.

- **Tailored District Location Requirements:** The portion of a multi-family zoning district that must be located within a half mile of a transit station now varies based on the amount of developable station area within each MBTA community. Communities with more developable station area land will be required to have more of their multi-family districts within a half mile of transit stations. A community with less than 100 developable acres within a half mile of a station will be free to choose any appropriate location.
- **Multi-family Unit Capacity Tool:** To help communities calculate multi-family unit capacity in a consistent, transparent, and data-driven way, we built a compliance model workbook tool. The compliance model will provide a GIS land map for each municipality and calculate a zoning district's multi-family unit capacity and gross density based on inputs provided by each community. This tool will be widely available for use in the fall.

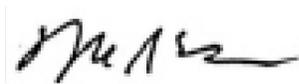
The final guidelines also include refinements and adjustments in other key areas, such as affordability, local site plan review, and other technical matters, including updated definitions.

Please visit [mass.gov/mbtacommunities](https://mass.gov/mbtacommunities) for the guidelines and other relevant information, including forms pertaining to the compliance process. The website also includes an online form for technical assistance requests. With the release of these guidelines, we stand ready, willing, and able to make resources and technical assistance available to help municipalities comply with the law. In that spirit, a webinar will be held on September 8, 2022 at 1:00pm to explain the guidelines in more detail.

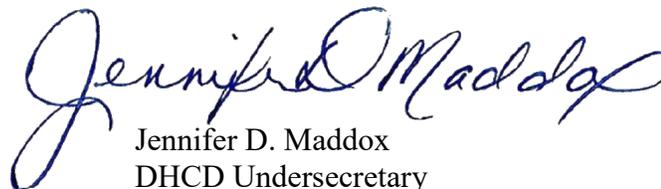
As you review the guidelines and begin work to comply with the new law's zoning requirement, keep in mind: If Massachusetts is to remain a desirable place for individuals, families, and businesses, then we need to confront the housing crisis together. This law is not a housing production mandate. It is all about setting the table for more transit-oriented housing in the years and decades ahead—which is not just good housing policy, but good climate and transportation policy, too.

We are excited to start the next chapter in the implementation of this new requirement, so we can lay the groundwork for a better future in the Commonwealth of Massachusetts.

Thank you,



Mike Kennealy  
EOHED Secretary



Jennifer D. Maddox  
DHCD Undersecretary