



**AGENDA**  
**JOINT MEETING OF BOARD OF SELECTMEN AND PLANNING BOARD**  
**June 7, 2023 @ 9:30 AM**

Following the guidance issued by the State in 2020 regarding the Open Meeting Law, this public meeting will be held remotely, and individuals wishing to participate may do so by utilizing Zoom video conferencing technology. To join the meeting by video conferencing using a computer or tablet, please click on the link <https://us06web.zoom.us/j/84969957945> and enter the Meeting ID 849 6995 7945 and Passcode 422273. To join by telephone only, please call 1-312-626-6799. Please see the attached page regarding Zoom participation.

- |                 |            |  |
|-----------------|------------|--|
| <b>9:30 AM</b>  | <b>1.1</b> | <b>Introduction (Carol Lisbon, Chair, Planning Board)</b>  |
| <b>9:45 AM</b>  | <b>1.2</b> | <b>Overview of MBTA Communities Act, MGL Ch40A S3A (Jeff Davis, Project Planner, Horsley Witten Group)</b>               |
| <b>10:00 AM</b> | <b>1.3</b> | <b>Legal Requirements for MBTA Communities (Nina Pickering-Cook, Town Counsel)</b>                                       |
| <b>10:15 AM</b> | <b>1.4</b> | <b>Projected Activities and Timeline for Dover - FY24 &amp; FY25 (Jeff Davis, Project Planner, Horsley Witten Group)</b> |
| <b>10:30 AM</b> | <b>1.5</b> | <b>Discussion - Board of Selectmen and Planning Board</b>  |

**Join Zoom Meeting:**

<https://us06web.zoom.us/j/84969957945>

**Meeting ID:** 849 6995 7945

**Passcode:** 422273

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**Or call on the telephone:**

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+1 849 699 57945 US (New York)

**Zoom Dover BOS protocol:**

1. All participants are automatically muted by Host
2. Public Comment is only allowed during the Public Comment period
3. Please click Raise Hand in the webinar controls to let the host know you would like to comment.

**Attachments:**

**Multi-Family Zoning Requirements for MBTA Communities from Commonwealth of Massachusetts website, <https://www.mass.gov/info-details/multi-family-zoning-requirement-for-mbta-communities>**

**List of Massachusetts Towns with status of Action Plans**

**DHCD Determination of Interim Compliance, Town of Dover**

**Advisory Concerning Enforcement of the MBTA Communities Zoning Law, Attorney General**

# Multi-Family Zoning Requirement for MBTA Communities

This page includes Compliance Guidelines on new Section 3A of MGL c. 40A and related materials.

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 December 15, 2021, the Department of Housing and Community Development (now EOHLC) issued draft guidelines on how to comply with the law. After the release of the draft guidelines, the Baker-Polito Administration held a public comment period until March 31, 2022. During the public comment period, there were over 24 engagement sessions and DHCD (now EOHLC) received nearly 400 comments through an online portal. The public comment process served to inform the revised guidelines.

On August 10, 2022, DHCD (now EOHLC) issued the final guidelines to determine if an MBTA community is in compliance with Section 3A. [Read the letter](#) ([/doc/mbta-communities-final-compliance-guidelines-letter/download](#)) sent to each MBTA Community from Secretary Mike Kennealy and Undersecretary Jennifer Maddox. We encourage you to visit this page often as it will be updated from time to time.

## TABLE OF CONTENTS

[What is an "MBTA Community"? \(#what-is-an-\)](#)

[Why is multi-family zoning near transit and in neighboring communities important? \(#why-is-multi-family-zoning-near-transit-and-in-neighboring-communities-important?\)](#)

[What is the law? \(#what-is-the-law?\)](#)

[Section 3A Guidelines \(#section-3a-guidelines-\)](#)

[Compliance Model \(#compliance-model-\)](#)

[Complying with Section 3A Guidelines \(#complying-with-section-3a-guidelines-\)](#)

[Technical Assistance for Municipalities \(#technical-assistance-for-municipalities-\)](#)

[Resources \(#resources-\)](#)

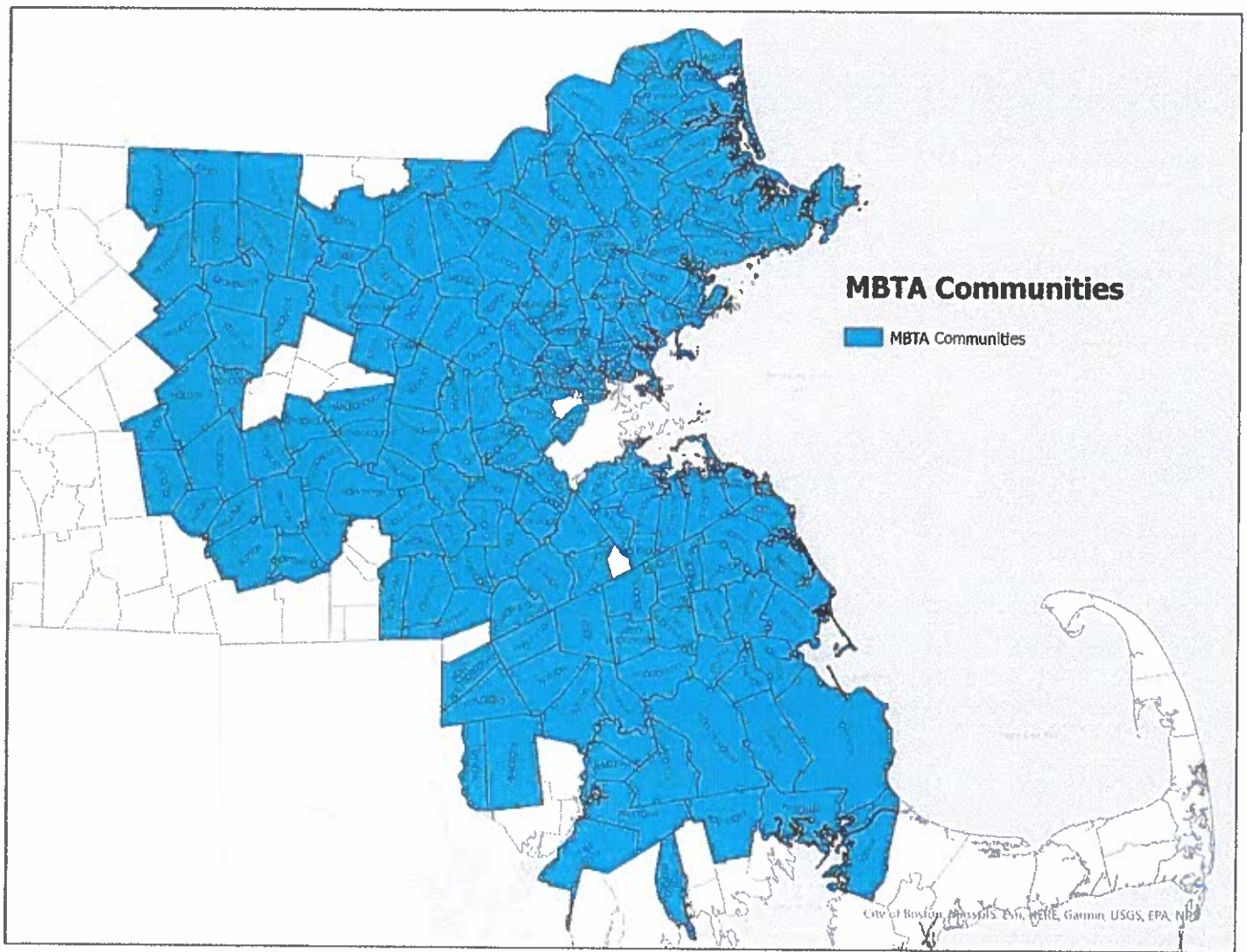
[Contact \(#contact\)](#)

## What is an "MBTA Community"?

"MBTA community" is defined by reference to Section 1 of MGL c. 161A:

- one of the "14 cities and towns" that initially hosted MBTA service;
- one of the "51 cities and towns" that also host MBTA service but joined later;
- other "served communities" that about a city or town that hosts MBTA service; or
- a municipality that has been added to the MBTA under G.L. c. 161A, sec. 6 or in accordance with any special law relative to the area constituting the authority.

In total, 177 MBTA communities are subject to the new requirements of Section 3A of the Zoning Act. While served by the MBTA, Boston is exempted from the Zoning Act, including section 3A. This is illustrated in the map below.



## Why is multi-family zoning near transit and in neighboring communities important?

Massachusetts is in a housing crisis.

- Massachusetts has among the highest, and fastest growing, home prices and rents of any state in the nation.
- Rising costs have dramatically increased financial pressures on low- and middle-income families, forcing them to sacrifice other priorities in order to pay housing costs. High housing costs are a primary driver of homelessness.
- These high costs are a disadvantage as we compete economically against peer states. The risk of future job growth moving outside Massachusetts is rising due to the high costs of living.

## How does creating zoning for multi-family housing help the housing crisis?

The lack of zoning for multi-family housing is a barrier for new housing development in Massachusetts. By allowing multifamily housing near transit, we can create new housing in walkable neighborhoods closer to transit. This is not just good housing policy, it is good climate and transportation policy, too. The result of transit-oriented development is:

- More housing closer to the places that we go every day, such as local shops, jobs, schools, restaurants, parks, etc.
- Better access to work, services, and other destinations by increasing mobility and utilization of public transit
- Reduced reliance on single occupancy vehicles, which helps in our larger effort to confront the climate crisis

## What is the law?

The requirement is codified as Section 3A of MGL c. 40A:

*Section 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; or (iii) the MassWorks infrastructure program established in section 63 of chapter 23A.

(c) The department, in consultation with 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.

## Attorney General Advisory

On March 15, 2023, Massachusetts' Attorney General Andrea Campbell issued an Advisory concerning the enforcement of the requirements imposed on cities and towns by Chapter 40A, Section 3A.

The 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 that meets other criteria set forth in the statute. Failure to comply with the law results in a loss of eligibility for the community, for certain funding programs.

The Attorney General's Advisory states "All MBTA Communities must comply with the Law." The Advisory further states that "MBTA Communities cannot avoid their obligations under the Law by foregoing this funding."

In addition, the Advisory cautions that "Communities that fail to comply with the Law may be subject to civil enforcement action" and, "Communities that fail to comply with the Law's requirements also risk liability under federal and state fair housing laws. 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."

The Attorney General's press release and the text of the Advisory are available here:

### AG Campbell Advisory Press Release

([news/ag-campbell-issues-advisory-on-requirements-of-mbta-communities-zoning-law](#))

### AG Campbell M.G.L. c.40A, § 3A Advisory

(<https://www.mass.gov/doc/advisory-concerning-enforcement-of-the-mbta-communities-zoning-law/download>)

## Section 3A Guidelines

Below you will find a link to the guidelines for determining compliance with Section 3A of MGL c. 40A and summary of revisions made on 10/21/2022.

### Guidelines (PDF)

(<https://www.mass.gov/doc/compliance-guidelines-for-multi-family-zoning-districts-under-section-3a-of-the-zoning-act/download>)

### Guidelines (HTML)

([info-details/section-3a-guidelines](#))

### Summary of 10/21 Revisions (PDF)

(<https://www.mass.gov/doc/summary-of-changes-to-compliance-guidelines-under-section-3a-of-the-zoning-act-102122/download>)

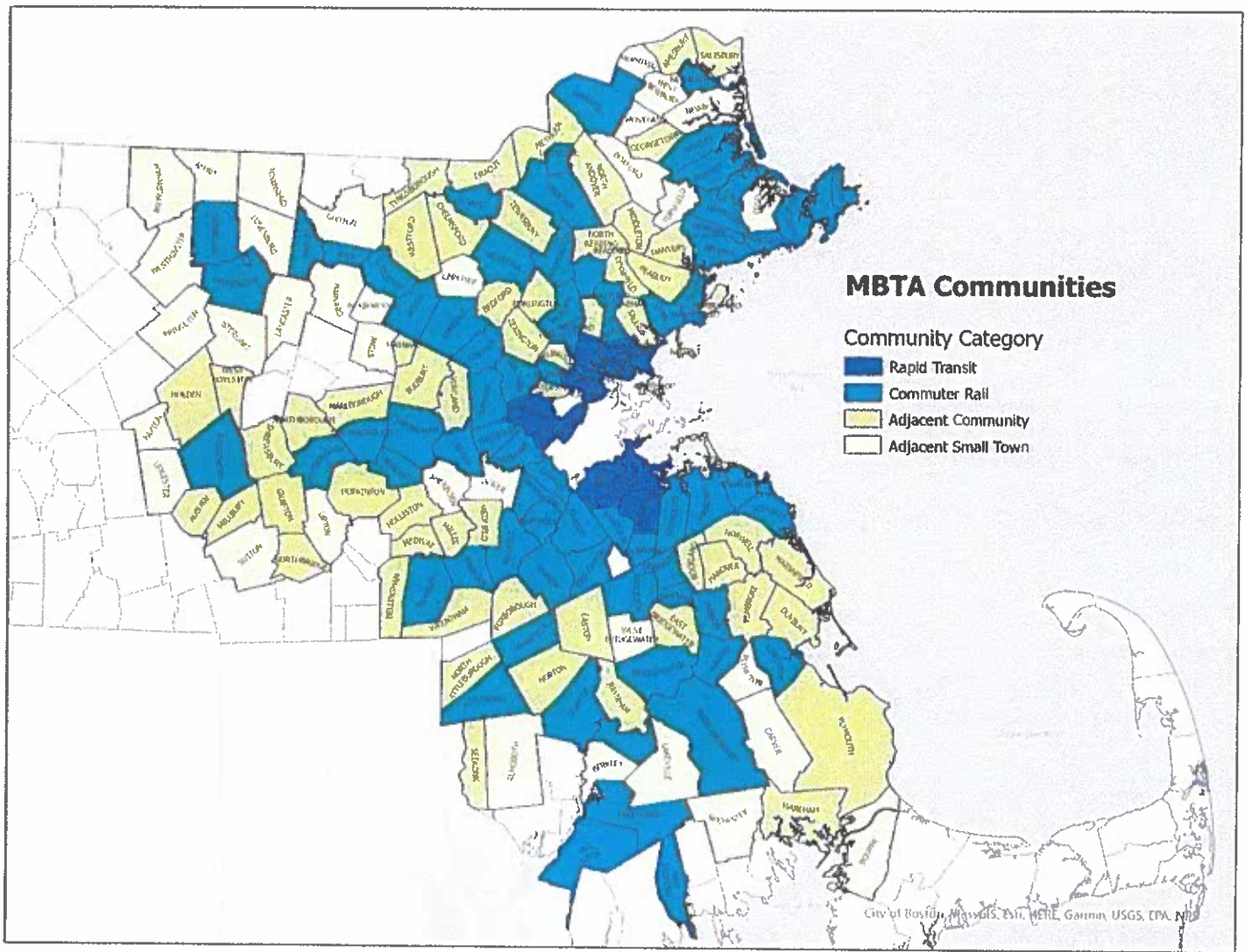
### Summary of 10/21 Revisions (HTML)

([info-details/summary-of-1021-revisions-to-section-3a-guidelines](#))

## MBTA Community Categories

All communities served by the MBTA must zone to allow for multifamily housing as of right, with a greater obligation for communities with better access to transit stations.





### Appendix 1 MBTA Community Categories and Requirements

Show  entries

Search:

Community	Community category	2020 Housing Units	Minimum multi-family unit capacity*	Minimum land area**	Developable station area***	% local
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%

Showing 1 to 5 of 177 entries

Previous

\* 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 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, minimum land area is 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.

## Additional Resources

### MBTA Communities - Community Category Designations and Capacity Calculations

<https://www.mass.gov/doc/mbta-communities-community-category-designations-and-capacity-calculations/download> (English, XLSX 30.53 KB)

## 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.

There is technical assistance available for municipalities seeking support as they use the model. Additional resources, guides, and examples will be posted to this page as they become available.

### Compliance Model & Components

</info-details/compliance-model-components>

### Compliance Model User Guide & Methodology Documents

</info-details/compliance-model-user-guide-methodology-documents>

## Complying with Section 3A Guidelines

The Guidelines establish timelines for municipalities to adopt compliant zoning districts. MBTA communities that are noncompliant with Section 3A are ineligible for funding from certain funding sources provided by the Commonwealth. There are two forms of compliance, district (or "full compliance") and Interim compliance.

### District Compliance

District Compliance is achieved when an MBTA community adopts a multi-family zoning district that meets all the requirements of the compliance guidelines and is certified by DHCD. The deadline to submit a compliance application to DHCD varies by community category as shown in the table below.

Community Category	Deadline
Rapid transit community	12/31/2023
Commuter rail community	12/31/2024
Adjacent community	12/31/2024
Adjacent small town	12/31/2025

The District Compliance Application must be submitted online at the link below. Instructions for completing the form are provided by separate document below. Please read the instructions and the form in their entirety before completing the District Compliance Application.

### Submit a District Compliance Application

</forms/district-compliance-application-form>

### District Compliance Form (PDF)

<https://www.mass.gov/doc/district-compliance-form-pdf/download>

### Instructions to Complete District Compliance Application Form

<https://www.mass.gov/doc/instructions-to-complete-district-compliance-application-form/download>

MBTA Communities seeking assurance that proposed zoning will meet Section 3A requirements before bringing that zoning to a local legislative session may submit a pre-adoption review application. Please be advised that pre-adoption review applications must be submitted at least 90 days prior to a local legislative session to allow for a timely DHCD review.

## Submit a Pre-Adoption Review Application

[\(/forms/pre-adoption-review-application-form\)](/forms/pre-adoption-review-application-form)

## Instructions to Complete Pre-Adoption Application Form

<https://www.mass.gov/doc/instructions-to-complete-pre-adoption-application-form/download>

## Interim Compliance – Action Plan

An MBTA community that does not have zoning in place that complies with Section 3A must take active steps towards achieving compliance in order to remain eligible for certain annual funding rounds. The Guidelines allow communities to create and complete an online Action Plan form that outlines the municipality's process for adopting compliant zoning. When DHCD approves the Action Plan, then the community will achieve "interim compliance" and will retain eligibility for the funding sources that require compliance with Section 3A.

- To remain eligible for the calendar year 2023 round of [MassWorks](/orgs/massworks) and [Housing Choice](/how-to/housing-choice-community-grant-program) grants, as well as the [Local Capital Projects Fund](https://malegislature.gov/Laws/GeneralLaws/PartI/TitleIII/Chapter29/Section2EEE), an MBTA community must submit an Action Plan no later than January 31, 2023.
- No MBTA community may remain in interim compliance after its district compliance deadline has passed.
- A copy of the Action Plan form and access to the online Action Plan form are available below

## Submit an Action Plan

[\(/forms/interim-compliance-action-plan-form\)](/forms/interim-compliance-action-plan-form)

## Action Plan Form (PDF)

<https://www.mass.gov/doc/action-plan-for-mbta-communities/download>

## Action Plan Submission Statuses

The status of MBTA communities' Action Plan submissions is available in the link below. An MBTA community may have an Action Plan that has been submitted and approved, submitted and under review, or not submitted. This list will be updated as additional Action Plans are approved or submitted.

Please note, submitting an Action Plan is not the same as achieving Interim Compliance which occurs when DHCD makes such an affirmative determination.

Show  entries

Search:

Municipality	Status of Submission
Abington	Approved
Acton	Approved
Amesbury	Approved
Andover	Approved
Arlington	Approved

Showing 1 to 5 of 177 entries

Previous

[AP Status Sheet as of 4-20-23.csv](https://www.mass.gov/files/csv/2023-04/AP%20Status%20Sheet%20as%20of%204-20-23.csv)

## Submitted Section 3A Action Plans

<https://www.mass.gov/doc/submitted-section-3a-action-plans/download>

## Technical Assistance for Municipalities

Technical Assistance with Section 3A compliance is available from many sources, including the [Community One Stop for Growth](/guides/community-one-stop-for-growth) ([Community Planning](/how-to/community-planning-grant-program)), [Rural and Small Town Development Fund](/how-to/rural-and-small-town-development-fund) ([Planning Assistance Grants](/service-details/planning-assistance-grants)), and [Energy and Environmental Affairs Land Use Grants](/how-to/housing-choice-grant-program) ([Housing Choice](/how-to/housing-choice-grant-program) Grants). If you do not know which type of technical assistance is right for your situation, fill out the "Technical Assistance Inquiry Form" below and DHCD will respond with suggestions.



## Technical Assistance Inquiry Form

(/forms/municipal-technical-assistance-form)

## List of TA Grant Awards and Resources

(/info-details/3a-technical-assistance-awards-resources)

### Massachusetts Housing Partnership (MHP):

#### MHP Technical Assistance for MBTA Communities

MHP is currently offering free direct technical assistance from pre-qualified consultants to municipalities for activities directly related to compliance with the multi-family zoning requirement. Eligible activities will include siting and mapping the district, developing appropriate use and intensity requirements; calculating capacity yield, drafting zoning by-law/ordinance; and community engagement. Apply at [MHP 3ATA](#)

([https://urldefense.com/v3/\\_https://www.cognitoforms.com/MassachusettsHousingPartnership/MHPMBTACommunitiesTechnicalAssistanceProgram3ATA\\_!!CUhgQOZqV7MlI9YwbII09BKyeQY6KCK-HsWrTqcNRVQ](https://urldefense.com/v3/_https://www.cognitoforms.com/MassachusettsHousingPartnership/MHPMBTACommunitiesTechnicalAssistanceProgram3ATA_!!CUhgQOZqV7MlI9YwbII09BKyeQY6KCK-HsWrTqcNRVQ))

#### Online Workshop Series for MBTA Communities

MHP will be offering a series of trainings during the fall 2022 on topics communities should consider when planning their multi-family districts. The working title is *More than Compliance: Multi-Family Districts that Work for Your Community* and will address related topics ranging from infrastructure basics to community engagement and messaging strategies. Registration details will be available soon on our website at [MHP 3A-TA](#)

([https://urldefense.com/v3/\\_https://www.mhp.net/community/complete-neighborhoods-initiative\\_!!CUhgQOZqV7MlI9YwbII09BKyeQY6KCK-HsWrTqcNRVQ](https://urldefense.com/v3/_https://www.mhp.net/community/complete-neighborhoods-initiative_!!CUhgQOZqV7MlI9YwbII09BKyeQY6KCK-HsWrTqcNRVQ))

### Regional Planning Agencies

We encourage communities to consult with your RPA staff during this process as well. District Local Technical Assistance is available from every RPA and is typically offered in the beginning of the calendar year.

### Resources

As we create and present webinars, slide decks, tutorials, sample tools, guides and other materials to assist MBTA Communities understand and comply with Section 3A, we will provide communities with those resources in the page below.

#### Resources for MBTA Communities

(/info-details/resources-for-mbta-communities)

### Contact

#### DHCD Section 3A Team

#### Online

[DHCD3A@mass.gov](mailto:DHCD3A@mass.gov) (mailto:DHCD3A@mass.gov)



[All Topics](#) (/topics/massachusetts-topics)

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## MASSACHUSETTS TOWNS - STATUS OF ACTION PLANS

Municipality	Status of Submission
Abington	Approved
Acton	Approved
Amesbury	Approved
Andover	Approved
Arlington	Approved
Ashburnham	Approved
Ashby	Approved
Ashland	Approved
Attleboro	Approved
Auburn	Approved
Ayer	Approved
Bedford	Approved
Bellingham	Approved
Belmont	Approved
Berkley	Not Submitted
Beverly	Approved
Billerica	Approved
Bourne	Approved
Boxborough	Approved
Boxford	Approved
Braintree	Approved
Bridgewater	Approved
Brockton	Approved
Brookline	Approved
Burlington	Approved
Cambridge	Submitted and in review
Canton	Approved
Carlisle	Approved
Carver	Approved
Chelmsford	Approved
Chelsea	Approved
Cohasset	Approved
Concord	Approved
Danvers	Approved
Dedham	Approved
Dover	Approved
Dracut	Approved
Duxbury	Approved
East Bridgewater	Approved
Easton	Approved
Essex	Approved
Everett	Submitted and in review
Fall River	Submitted and in review
Fitchburg	Approved
Foxborough	Approved
Framingham	Submitted and in review

Franklin	Approved
Freetown	Approved
Georgetown	Approved
Gloucester	Approved
Grafton	Approved
Groton	Approved
Groveland	Approved
Halifax	Approved
Hamilton	Approved
Hanover	Approved
Hanson	Approved
Harvard	Approved
Haverhill	Approved
Hingham	Approved
Holbrook	Approved
Holden	Not Submitted
Holliston	Approved
Hopkinton	Approved
Hull	Approved
Ipswich	Approved
Kingston	Approved
Lakeville	Approved
Lancaster	Approved
Lawrence	Approved
Leicester	Approved
Leominster	Approved
Lexington	Approved
Lincoln	Approved
Littleton	Approved
Lowell	Approved
Lunenburg	Approved
Lynn	Submitted and in review
Lynnfield	Approved
Malden	Approved
Manchester	Approved
Mansfield	Approved
Marblehead	Approved
Marlborough	Approved
Marshfield	Submitted and in review
Maynard	Approved
Medfield	Approved
Medford	Approved
Medway	Approved
Melrose	Approved
Merrimac	Approved
Methuen	Approved
Middleborough	Not Submitted

Middleton	Approved
Millbury	Approved
Millis	Approved
Milton	Approved
Nahant	Approved
Natick	Submitted and in review
Needham	Approved
New Bedford	Approved
Newbury	Approved
Newburyport	Approved
Newton	Approved
Norfolk	Approved
North Andover	Approved
North Attleborough	Approved
North Reading	Approved
Northborough	Approved
Northbridge	Approved
Norton	Approved
Norwell	Approved
Norwood	Approved
Paxton	Approved
Peabody	Approved
Pembroke	Approved
Plymouth	Approved
Plympton	Approved
Princeton	Approved
Quincy	Submitted and in review
Randolph	Approved
Raynham	Approved
Reading	Approved
Rehoboth	Approved
Revere	Approved
Rochester	Submitted and in review
Rockland	Approved
Rockport	Approved
Rowley	Approved
Salem	Approved
Salisbury	Approved
Saugus	Approved
Scituate	Approved
Seekonk	Approved
Sharon	Approved
Sherborn	Approved
Shirley	Approved
Shrewsbury	Approved
Somerville	Approved
Southborough	Approved

Sterling	Approved
Stoneham	Approved
Stoughton	Approved
Stow	Approved
Sudbury	Approved
Sutton	Approved
Swampscott	Approved
Taunton	Approved
Tewksbury	Approved
Topsfield	Approved
Townsend	Approved
Tyngsborough	Approved
Upton	Approved
Wakefield	Approved
Walpole	Approved
Waltham	Submitted and in review
Wareham	Approved
Watertown	Approved
Wayland	Approved
Wellesley	Approved
Wenham	Approved
West Boylston	Approved
West Bridgewater	Approved
West Newbury	Approved
Westborough	Approved
Westford	Approved
Westminster	Approved
Weston	Approved
Westwood	Submitted and in review
Weymouth	Approved
Whitman	Approved
Wilmington	Approved
Winchester	Approved
Winthrop	Approved
Woburn	Approved
Worcester	Submitted and in review
Wrentham	Approved





Commonwealth of Massachusetts  
DEPARTMENT OF HOUSING &  
COMMUNITY DEVELOPMENT

Maura T. Healey, Governor ◆ Kimberley Driscoll, Lieutenant Governor ◆ Jennifer D. Maddox, Undersecretary

March 31, 2023

Robyn Hunter, Chair  
Board of Selectmen  
Dover Town House  
5 Springdale Ave.  
Dover, MA 02030

RE: Determination of Interim Compliance under MGL c. 40A, Section 3A

Dear Chair Hunter:

The Department of Housing and Community Development (DHCD) is in receipt of the Action Plan submitted by Dover on January 25, 2023. Thank you for taking this step as outlined in the Compliance Guidelines.

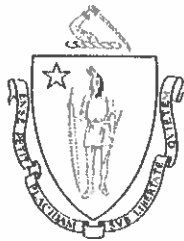
I am pleased to inform you that DHCD approved the Action Plan, and that Dover has achieved Interim Compliance. This Interim Compliance is valid until your due date for District Compliance, which is 12/31/2025. Please be advised that pursuant to Section 9(a)(iii) of the guidelines, a community's progress in implementing their Action Plan may be independently evaluated as part of the application review process for any of the funding sources that are subject to compliance with Section 3A.

We appreciate submittal of the Action Plan describing Dover's planning efforts related to Section 3A District Compliance and wish your community the best in implementation of its components. If you have any questions regarding this determination, please contact Nate Carlucci at [nathan.carlucci@mass.gov](mailto:nathan.carlucci@mass.gov).

Sincerely,

Jennifer D. Maddox  
Undersecretary

cc: Nathan Carlucci, MBTA Communities Compliance Coordinator



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL  
ONE ASHBURTON PLACE  
BOSTON, MASSACHUSETTS 02108

ANDREA JOY CAMPBELL  
ATTORNEY GENERAL

(617) 727-2200  
www.mass.gov/ago

**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.”).