

DOVER MBTA COMMUNITIES ACT – FREQUENTLY ASKED QUESTIONS

3-12-25

OVERVIEW

What is the MBTA Communities Act?

Massachusetts created a requirement that each of the 177 designated MBTA Communities in the Commonwealth must develop a zoned district that allows multi-family housing “as of right.”
(References: MGL c.40A Section 3A; MGL c.161A Section 1)

What does “as of right” mean?

The term “as of right” in zoning means that a proposed development project may proceed according to a zoning bylaw without the need for a special permit, variance, zoning amendment, or other discretionary zoning approval. Notably “as of right” does allow for a site plan review process as well as reviews by all relevant boards, commissions and departments to ensure that the development adheres to Dover’s existing bylaws and regulations.

What is the definition of “multi-family” under the law?

“Multi-family” refers to a building with three or more residential units, or two or more buildings on the same lot with more than one residential unit in each building. The definition encompasses a range of housing types, including townhomes, triple-deckers, and single-family cluster-style developments.

Why was Dover designated as an MBTA Community?

Even though Dover does not have MBTA services within its borders, because it abuts a town that does provide services, it has been deemed to be a “Small Adjacent Community” and so must comply with the law.

Supreme Judicial Court Ruling Attorney General v. Town of Milton – What the ruling says and what this means for Dover

The SJC found that the MBTA Communities statute itself is constitutional. The ruling may be read [here](#).

The SJC found that the AG has the authority to bring suit against communities that are not compliant (“We further declare that the Attorney General has the power to bring suit for declaratory and injunctive relief to enforce § 3A and its corresponding guidelines.”). The SJC found that the state did not follow the proper procedure in promulgating the guidelines (“However, because HLC’s current guidelines were not promulgated in accordance with the APA, we declare them ineffective and, as such, presently unenforceable.”). There is a public comment period for EOHLC’s regulations which began January 31, 2025 and will remain open until February 21, 2025, and a

form for submitting comments is available with the EOHLCLC. Secretary Augustus clarified that Dover, previously determined to be in interim compliance with the MBTA Communities law under its implementing Guidelines, remains in interim compliance with the law under EOHLCLC's emergency regulations until December 31, 2025. In essence, Dover is still required to comply with the MBTA Communities Act or risk loss of grant funding or risk potential legal action.

What are MBTA Community Act requirements for Dover?

By **Dec. 31, 2025**, Dover must establish and approve a zoning district that could be developed at some point that:

- Provides for a minimum of 102 units
- Is not age-restricted and must be suitable for families with children.
- Has a minimum gross density of 15 housing units per acre.

What are the most common misconceptions about the new law?

The MBTA Communities Act is **not**:

- A mandate to build housing.
- A housing production target.
- Meant to specifically address affordable housing needs, though it may do so.
- A one-size-fits-all tool to address all housing needs in a community.

Designed to override existing local zoning bylaws, wetlands regulations, septic and well regulations, and other general bylaws and regulations.

MBTA vs. 40B

The key differences between Chapter 40B and the MBTA Communities zoning requirement in Massachusetts are:

Chapter 40B

Allows developers to override local zoning bylaws and regulations if a town has less than 10% affordable housing stock, in order to build affordable housing developments.

At least 20-25% of units in the development must be income-restricted as affordable.

Developers can appeal to the state Housing Appeals Committee if their project is denied locally in non-compliant towns.

Applies statewide to all cities and towns that don't meet the 10% affordable housing threshold.

MBTA Communities Zoning (Section 3A)

Requires MBTA communities to have at least one zoning district allowing multi-family housing as-of-right near transit stations.

Does not mandate a specific percentage of affordable units, but the housing must be suitable for families.

Applies only to the 177 cities and towns served by the MBTA transit system.

Non-compliant communities become ineligible for certain state housing, infrastructure and transportation funding programs.

Aims to promote transit-oriented housing development near public transit to increase housing supply.

In summary, 40B is a state override to require affordable housing production, while the MBTA zoning law requires zoning for multi-family housing near transit in communities served by the MBTA, regardless of their existing affordable housing stock levels

TOWN REQUIREMENTS & PLANNING

How and when must Dover comply with the law?

Dover must comply with the law by selecting a district or districts to be zoned for MBTA compliance and writing a zoning bylaw regulating this specific type of development. The proposed bylaw and map amendment will be proposed at a Special Town Meeting scheduled for September 29, 2025. The Town of Dover has until December 31, 2025 to comply.

What are the penalties for not complying?

The Town would lose access to the following state-funded grants:

Loss of access to grant funds, per Section 3A:

- Housing Choice Initiative

- Local Capital Projects Fund
- MassWorks infrastructure program
- Additional grant programs:
 - Community Planning Grants, EOHL
 - Massachusetts Downtown Initiative, EOED
 - Urban Agenda, EOED
 - Rural and Small Town Development Fund, EOED
 - Brownfields Redevelopment Fund, MassDevelopment
 - Site Readiness Program, MassDevelopment
 - Underutilized Properties Program, MassDevelopment
 - Collaborative Workspace Program, MassDevelopment
 - Real Estate Services Technical Assistance, MassDevelopment
 - Commonwealth Places Programs, MassDevelopment
 - Land Use Planning Grants, EOEEA
 - Local Acquisitions for Natural Diversity (LAND) Grants, EOEEA
 - Municipal Vulnerability Preparedness

Attorney General's Advisory Guidance (March 2023)

- 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 EOHL (DHCD) guidelines to demonstrate interim compliance.

- Communities that fail to comply with the Law may be subject to civil enforcement action.

How has Dover been planning for its compliance with the law?

The Dover Planning Board and Housing Task Force are discussing compliance strategies in open meetings, and will host public workshops to educate and engage the public, as well as public hearing(s) to discuss the proposed zoning language in advance of the Special 2025 Town Meeting. Dover has been working with the Horsley Witten Group to ensure the proposed zoning meets the State's requirements.

How can community members weigh in?

Community members are encouraged to submit a response to our [Community Survey](#) and attend one or both of the **Planning Board Public Information Sessions** scheduled for **Tuesday, March 25, 2025** via [Zoom](#) at **7:00 PM** and **Tuesday, April 22, 2025** via [Zoom](#) at **7:00 PM**. There will also be two Planning Board public hearings held in September, 2025. The Dover Housing Task Force will also be sponsoring opportunities for education and dialogue.

Which town parcels will be targeted for MBTA Communities compliance?

Please check the Town's MBTA Zoning webpage [here](#) to see the latest iteration of the currently proposed MBTA Zoning Districts. The Planning Board is reviewing multiple districts for this zone.

How many new housing units will be built in Dover as a result of the new law?

This is not a housing production mandate, so this is difficult to predict. In fact, the Act does not require Dover to build anything at all. What it does do is require us to create a designated district where this type of development would theoretically be allowed, subject to Dover's existing bylaws and regulations (including water and septic requirements among other things).

What will this cost Dover?

There is no cost for complying with MBTA Communities. On the contrary, non-compliance will result in a financial burden to residents, due to our inability to access state grant funding. Lack of compliance will also lead to potential legal action taken by the Attorney General against the Town.

Most notably: The Act does not require Dover to expend funds to meet the infrastructure (water and septic) needs of development built under this Act.

ZONING BASICS & STRATEGY

What is zoning?

Zoning refers to a set of regulations that restrict how a property can and cannot be used. It can also refer to regulations concerning the size, shape and scale of the buildings on a certain property within a specific geographic area.

Will a Zoning Overlay District be used, and if so, what does that mean?

A Zoning Overlay gives property developers the choice to follow either the Overlay District rules or the original Underlying Zoning rules. For instance, an MBTA Overlay District would introduce new development guidelines that developers can choose to follow. An Overlay District is a type of land use zoning district that "lies" on top of the existing zoning and potentially covers many underlying districts or portions thereof. The use of Overlay Districts provides communities with an opportunity to meet the unique needs of geographic areas that may either require higher levels of protection or that may not be reaching their fullest development potential. Overlay Districts provide one of the most flexible means to alter zoning as they can impose either greater restrictions or more flexible provisions depending on the goals for the district. Examples of typical overlays that are more restrictive include those for sensitive resources such as flood plains or aquifer protection districts. Examples of typical overlays that are more flexible include those for village centers, or other areas designated for higher levels of density and economic development. An example of an existing overlay district in Dover is the Large-Scale Solar District which is located on Powisset Street by the Town Transfer Station

PERMITTING FUTURE DEVELOPMENTS

How would a potential development in the MBTA Zone be permitted?

Just like any other development in Dover, MBTA projects will still be subject to the review of the Planning Board, Board of Health, Conservation Commission, Building Inspector, and Fire and Police, and will need to comply with all other local regulations and bylaws.

AFFORDABLE HOUSING

Will Dover's proposed compliance with the new law result in creation of more affordable housing?

The law offers communities that are required to comply with the MBTA Communities Act the option to require that a percentage (up to 10%) of all units under MBTA Zoning be made affordable. Dover's Planning Board, in consultation with the Board of Selectmen and the Housing Task Force, made the determination not to include an affordability requirement in the proposed MBTA zoning,

Will new multi-family units built in MBTA Communities zones count toward the town's Subsidized Housing Inventory (SHI)?

If affordability were required, any new affordable units would count towards our Subsidized Housing Inventory, allowing us to keep pace with 40B requirements. Dover decided that affordability would not be a requirement of the MBTA zoning.

PUBLIC FORUM QUESTIONS

Can a MBTA district be located on town owned land?

No, an overlay may not be placed on Town owned land.

Can a developer put a CR or easement on a property that has been used for MBTA development?

Yes, a developer may choose to put a portion of the MBTA overlay into a CR. A developer may also include an easement on the property.

Does the MBTA district have to be the same size as the lot? (i.e. could a portion of the Junction St property be used instead of the whole thing as long as enough was used to meet requirements (15 units per acre and 102 units)?

No, the MBTA district may be smaller than the lot as long as it meets the compliance model standards.

Do we have any information about the cost to educate a population that may include children?

Dover does not have these numbers at this time.

Does the state compliance modelling factor in wetlands and vernal pools?/ How are wetlands and buffer zones and groundwater protection districts accounted for in an overlay?

The state compliance model takes into account registered wetlands and vernal pools when calculating acreage and density.

How is this different from a subdivision?

A subdivision is the separation of one lot into multiple lots with the creation of a roadway. A developer may choose to create a subdivision within the overlay.

How many units are currently built at County Court and also at The Meadows

There are currently 56 units at County Court and 24 units at The Meadows

Looking at the developments in Meadows and County Court: how are these different than the multi-family housing we are talking about for MBTA?

The Meadows and County Court are 40B developments which supersede Zoning requirements such as setbacks, height, density, and other Zoning factors. They also include a specific percentage of affordable units. MBTA overlay must comply with the Zoning of the proposed district and is not required to provide any affordable units.

Can property with a CR on it be included in the overlay and be used for housing?

No, a property with an existing CR may not be designated as an MBTA District.

Can DLCT land be an overlay district?

No, an existing DLCT site may not be designated as an MBTA District.

How would a developer utilize the MBTA zone near County Court?

A developer would need to purchase one or more lots within County Court and construct new units that meet the MBTA Zoning requirements, the 40B density and setbacks shall not apply to any MBTA housing

MORE INFORMATION

<https://www.mass.gov/info-details/multi-family-zoning-requirement-for-mbta-communities>

If you have any additional questions, please email Jasmin Farinacci, Town Planner, at planning@doverma.gov