

MBTA Communities Act: Multi-Family Zoning Requirement

Creating as-of-right Multi-Family Zoning in Mass

Housing affordability remains one of the most pressing issues in Massachusetts in 2023. Reports since the onset of the COVID pandemic indicate that the Commonwealth is currently [short approximately](#) 108,000 units and will need to [produce up to](#) 200,000 additional housing units by 2030. Unaffordable housing hurts all of our residents and stymies economic development; as workers choose not to live in Massachusetts or are priced out, we see decreases in employment and municipal revenue. Workers who choose to stay in the state but are physically pushed further from commercial centers have longer commuting times, contributing to increased emissions and less-healthy lifestyles.

The most effective way to combat unaffordability is to encourage the construction of new housing units, including [market rate](#) developments; increasing the housing stock will result in lower housing prices. Increasing density around transit and city centers by loosening strict land and zoning regulations—a practice known as “smart growth”—is one of the most effective ways to accomplish this while simultaneously being more environmentally friendly and reducing the effects of exclusionary zoning that perpetuates racial segregation.



In January 2021, Massachusetts enacted [Section 3A](#) of the Zoning Act, also known as the “MBTA Communities Act,” to promote higher-density, transit-oriented housing construction. The law requires municipalities that benefit from MBTA transportation services to establish zoning districts near said services that allow multi-family housing as-of-right. The goal is for more municipalities throughout Massachusetts to play a part in alleviating the housing crisis, which in turn will help increase the housing supply while also improving the health of the environment and the workforce with closer access to public transit.

What is the MBTA Communities Act?

Municipalities that host or are adjacent to MBTA transportation services, called “MBTA Communities,” are required to have at least one district of a “reasonable size” in which multi-family housing is permitted as-of-right. These districts must have a gross density of at least 15 units per acre, be located within 0.5 miles of the relevant MBTA station, if applicable, and have no age restrictions.

What is an MBTA Community?

There are four types of communities, depending on the presence of MBTA services and the size of the municipality. Please note each municipality can only fit into one category, and is assigned to the first category it matches:

- 1.) **Rapid Transit Community:** a community that has at least 100 acres of developable station area and either a subway station or the Silver Line.
- 2.) **Commuter Rail Community:** a community that has at least 100 acres of developable station area and commuter rail stations.
- 3.) **Adjacent Small Town:** a community that has less than 100 acres of developable station area, and either a) has a population of less than 500 persons per square mile, or a population less than 7,000 year-round residents.
- 4.) **Adjacent Community:** a community that has less than 100 acres of developable station area, and is not a “small town” as described above.

What is “as-of-right” zoning?

[“As-of-right”](#) means that multi-family construction and occupancy must be allowed without a need for a special permit, variance, or other discretionary zoning approval. It does not require any additional affordability requirements, beyond what the municipality may already require. This also prohibits zoning overlays that add requirements that would not be applied to other uses. For example, the zoning cannot require third-party certification or mixed-use with commercial purposes.

What is a "reasonable size" district for a community?

"Reasonable size" districts must meet certain requirements related to minimum land area and unit capacity.

- 1.) **Minimum Land Area:** for all communities, at least half of the district must be contiguous.
 - a.) For rapid transit, commuter rail, and adjacent communities, the minimum land area must be 50 acres or 1.5% of the developable land, whichever is less.
 - b.) In adjacent small towns, there is no minimum land area if the unit capacity is met.

- 2.) **Minimum Unit Capacity:** the unit capacity within the district is required to be at least the greater of the following two categories:
 - a.) A certain percentage of the community's total housing stock. This varies by community type:
 - i.) *Rapid Transit:* 25%
 - ii.) *Commuter Rail:* 15%
 - iii.) *Adjacent Community:* 10%
 - iv.) *Adjacent Small Town:* 5%

For example, if an adjacent small town had 2,000 housing units, it would be required to have $2,000 \times 0.05 = 100$ units in its district.

- b.) If there is minimum land area required, the required unit count is that which reaches the density requirement of 15 units per acre. Thus, for a 50-acre community, this would require $50 \times 15 = 750$ units.



Compliance Requirements

As the MBTA Communities Act becomes fully implemented, all communities have several deadlines to hit [certain levels of compliance](#).

- 1.) **Interim Compliance:** Towns must create an Action Plan that outlines the process for adopting compliant zoning. The zoning does not yet have to be implemented. Once the Department of Housing and Community Development approves, “Interim Compliance” is achieved. **Deadline: January 31, 2023**
- 2.) **District Compliance:** Achieved when the MBTA Community adopts the zoning that meets all compliance guidelines. **Deadline: Varies by community type.**

First Action Plans

Due on January 31, 2023 for Interim Compliance, each municipality was required to submit an Action Plan to DHCD for initial review. If DHCD finds the plans to be insufficient, they can send it back to the municipality for revision. In addition to meeting the requirements of the MBTA Communities Act, it must meet Federal Fair Housing Laws, as well as Massachusetts Anti-Discrimination Laws. As of writing, four municipalities have not submitted a plan: Berkley, Holden, Marshfield, and Middleborough. Several dozen others are still awaiting approval from DHCD, which may result in further municipal adjustments. Fall River and New Bedford, which became MBTA Communities recently, have until the end of March 2023 to submit their plans to remain in compliance.

District Compliance

Once a community meets Interim Compliance, the next big deadline occurs when the zoning must be implemented. These dates differ by MBTA Community Type. Rapid Transit communities must achieve District Compliance by December 31, 2023; these twelve communities include Braintree, Brookline, Cambridge, Chelsea, Everett, Malden, Medford, Milton, Newton, Quincy, Revere and Somerville.

The following are the dates for the other MBTA Community categories:

- 1.) **Commuter Rail Communities** (74 communities): December 31, 2024
- 2.) **Adjacent Communities** (59): December 31, 2024
- 3.) **Adjacent Small Towns** (35): December 31, 2025

Potential Civil Action for Noncompliance

On March 15, 2023, Attorney General Andrea Campbell issued an [advisory](#) setting her office's interpretation of the MBTA Communities Act and explaining that all communities must comply. If communities are out of compliance (i.e. they fail to receive approval from DHCD for Interim Compliance, or fail to adopt necessary zoning requirements for District Compliance), they risk civil enforcement action, administrative consequences of not being eligible for certain forms of state funding (such as the Housing Choice Initiative, the Local Capital Projects Fund, or MassWorks infrastructure programs), or liability under state and federal housing laws such as the Fair Housing Act.

Civil enforcement could be taken against any community not in compliance. Thus, the four communities failing to meet Interim Compliance are all subject to litigation, if the Attorney General so chooses. However, the hope is that the threat of enforcement will be a sufficient and effective deterrent; given the municipal resources required to litigate, the Attorney General's office is unlikely to pursue immediate action against noncompliant communities.



Technical Assistance

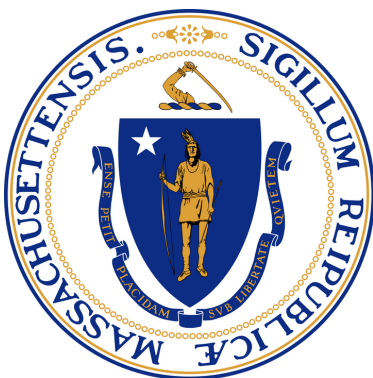
There are resources and grants available for municipalities to receive technical assistance. Some of the sources include:

- 1.) **Community One Stop for Growth:** A [single-application portal](#) for a number of community development grants offered through the state and MassDevelopment. Some relevant grants include:
 - a.) [Community Planning Grant Program](#)
 - b.) [Rural and Small Town Development Fund](#)
 - c.) [Housing Choice Grant Program](#)

- 2.) **Energy and Environmental Affairs Land Use Grants:** [Grants available](#) from the state to support municipalities and regional planning agencies to support planning, zoning, conserving, and developing land in accordance to the state's Sustainable Development Principles.

- 3.) **Massachusetts Housing Partnership:** Statewide public non-profit that offers a number of support programs, including:
 - a.) [Early Action Technical Assistance Mid-Round](#)
 - b.) [MHP Technical Assistance for MBTA Communities](#)

- 4.) **Technical Assistance from Regional Planning Agencies:** District Local Technical Assistance is available from every Regional Planning Agency.



Summary

The MBTA Communities Act is a requirement for municipalities benefiting from MBTA services to increase their allowed multi-family zoning. The goal is to increase the housing stock across Massachusetts, especially in areas near transit. By providing higher-density housing options near transit, these districts will help provide more affordable housing, as well as increase the percentage of workforce near public transit, decreasing commuting burdens and emissions.

MBTA Communities are required to have submitted an Action Plan as of January 31, 2023. Implementation of these plans will be required over the next three years, depending on the community type. However, some communities are already out-of-compliance; four communities failed to submit Action Plans by the due date. Others may fail to comply in full District Compliance by their required deadline. As such, Attorney General Campbell has issued an advisory that the state is prepared to take litigious action against municipalities that refuse to comply.

We applaud this advisory by the Attorney General's Office, and we hope that the Governor's administration continues to enforce compliance moving forward. Action Plans must be fully enacted, and failures to do so must be met with state enforcement. We also encourage the Healey Administration to expand other tools, such as increasing available state funds under Chapter 40R Smartgrowth Zoning Districts, a powerful incentive that can work alongside the new requirements to support MBTA communities in developing compliant zoning districts and new housing.



Housing Forward-MA is a nonprofit research and education organization focused on developing and disseminating accurate data related to housing creation in Massachusetts and the broader economic impacts of housing supply and demand. By providing training, education, and model policy proposals our organization will support organizing and advocacy efforts for affordable, workforce housing across the state.

For more information, please visit our website: www.housingforwardma.org