

# Compliance Under Section 3A of Chapter 40A (The Zoning Act)

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By Central Massachusetts Regional Planning Commission

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# Compliance Timeline: Commuter Rail & Adjacent Communities

**March 31, 2022**

- **Deadline for Public Comments on Draft Guidelines**

**May 2, 2022**

- **Hold a briefing with the Select Board**
- **Submit Community Information Form**

**December 31, 2022**

- **Deadline for Interim Compliance**
  - (i) Submit application for a determination of compliance as set forth in section 9.a of the Guidelines\*, or
  - (ii) Notify DHCD that there is no existing multi-family district that fully complies with these guidelines as described in Section 9.c of the Guidelines (*\*Application form will be available when Guidelines are final*)

**July 1, 2023**

- **Deadline for DHCD Approval of Action Plan**
  - Create and submit action plan with compliance timeline (*See Section 9.b.i of the Guidelines*)

**December 31, 2024**

- **Deadline for Adopting New Zoning**
  - Implement the action plan by adopting Zoning Bylaw amendments that meet the requirements (*See 9.b.iii of the Guidelines*)

**March 31, 2024**

- **Deadline to Apply for Determination of Compliance (*See Section 9.b.iv*)**

# Background on Chapter 40A, Section 3A

- *House No. 5250, An Act Enabling Partnerships for Growth* (also known as the Economic Development Bill) passed Massachusetts Legislature in December 2020 and was signed by Governor Baker in January 2021
- A range of housing provisions were included in the bill, such as:
  - Housing Choice Zoning Reforms
  - \$50M for Transit Oriented Housing Development
  - \$50M for Neighborhood Stabilization
  - \$10M for Climate-Resilient Affordable Housing Production
- Section 18 of the Economic Development Bill includes section 3A which encourages designated MBTA communities to adopt zoning districts where multi-family zoning is permitted by-right, plus meet other requirements set forth in the statute

# Confronting the Housing Crisis

- Massachusetts has some of the highest, and fastest growing, home prices and rents in the nation
- The state has a shortage of an estimated 200,000 housing units
- Low- and middle-income households such as young families, workers, and seniors, are facing increased financial pressure to pay housing costs
- Lack of housing production is an impediment to community development and a competitive disadvantage to our economy and job growth
- Municipalities play a key role, through zoning and permitting, in determining whether or not housing is constructed



# What are the consequences if Millbury does not comply with the new legislation?

Communities that do not meet compliance deadlines will **not be eligible to apply** for funds from these State programs:

- Housing Choice Initiative
- Local Capital Projects Fund
- MassWorks Infrastructure Program

# Chapter 358 of the Acts of 2020

SECTION 18. Said chapter 40A is hereby further amended by inserting after section 3 the following section:-

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.

# Draft Compliance Guidelines

Section 3A (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.”

Massachusetts Department of Housing & Community Development (DHCD) released DRAFT Guidelines regarding the Multi-Family Zoning Requirement for MBTA Communities.

The [DRAFT Compliance Guidelines](#) specifically address:

1. What it means to permit multi-family housing “as of right”;
2. Metrics that determine “reasonable size” of multi-family district;
3. How to determine if a multi-family district has a minimum gross density of 15 units per acre
4. Clarifications of age restrictions and suitability for families with children
5. Extent to which MBTA communities have flexibility to choose the location of a multi-family district

# The Draft Guidelines

are NOT:

- A production mandate or requirement to build new units
- Related to Chapter 40B which allows developers to bypass local zoning in communities with less than 10% affordable housing



# 1. Allowing Multi-Family Housing “As of Right”

- The construction and occupancy of multi-family housing is allowed in the district without the need to obtain any discretionary permit or approval
- Site plan review and approval may be required for multi-family uses allowed as of right
- Site plan approval may regulate matters such as vehicular access and circulation on a site, architectural design of a building, and screening of adjacent properties
- Site plan review cannot impose conditions that make it infeasible or impractical to proceed with a multi-family use

# 2. Determining “Reasonable Size”

DHCD will take into consideration both the area of the district and the district’s multi-family unit capacity (the number of units of multi-family housing that can be developed as of right within the district)

### a. Minimum Land Area

- At least 50 acres of land or about one-tenth of the land area within 0.5 mile of a transit station
- Overlay districts are acceptable, as long as they do not consist of a collection of small, non-contiguous parcels
- At least one portion of the overlay district land area must include at least 25 contiguous acres
- No portion of the district that is less than 5 contiguous acres of land will count toward the minimum size requirement

### b. Minimum Multi-Family Unit Capacity

- The district must be able to accommodate a reasonable number of multi-family housing units as of right
- The minimum unit capacity applicable to each MBTA community category is a specified percentage of the total number of housing units within the community  
*(see chart to the right)*

Category	Minimum multi-family units as a % of total housing stock
Community rail community	15%
Adjacent community	10%

## 2. Determining “Reasonable Size”

### b. Minimum Multi-Family Unit Capacity (continued)

- As of 2020, Millbury has 5,987 housing units, therefore the district must have a multi-family unit capacity of **5,987 x 0.10 = 598 multi-family units**
- When communities estimate how many units could be constructed on each parcel of developable land within the district, the estimate should take into account the amount of developable land, height limitations, lot coverage limitations, maximum floor area ratio, set backs, and parking space requirements, and other restrictions or limitations in other bylaws
- The boundaries of the multi-family district, or the dimensional regulations applicable to the district, may need to change to accommodate the minimum unit capacity
- Unit capacity is **not** a mandate to construct a specific number of housing units, nor is it a housing production target

# 3. Minimum Gross Density

Section 3A states that a compliant multi-family district must 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.

## Gross Density defined in the Zoning Act:

A units-per-acre density measurement that includes land occupied by public rights-of-way and any recreational, civic, commercial and other nonresidential uses.

### a. District-wide gross density

- Zoning must legally and practically allow for a district-wide gross density of 15 units per acre, *including* land occupied by public rights-of-way and any recreational, civic, commercial, and other non-residential uses
- For example: In a 50-acre multi-family district, the community must show at least 15 existing or potential new multi-family units per acre, equaling a total of at least 750 existing or potential new multi-family units

### b. Achieving district-wide gross density by sub-districts

- An MBTA community may establish sub-districts within a multi-family district with different density requirements and limitations for each sub-district, provided that the gross density for the whole district meets the 15 multi-family unit per acre requirement

# Size and Density Requirements

- Each multi-family zoning district must satisfy *both* the unit capacity and the gross density requirement
- In some cases, the minimum number of units will be equal to the minimum unit capacity. In other cases, the minimum number of units allowed by-right will be determined by the gross density requirement
- **750 units is the floor for all communities** under the draft guidelines (50 acres x 15 units/acre)
- In Millbury, while the unit capacity calculation is 598 units, the gross density requirement is 750 units under the draft guidelines

## 4. Determining Suitability for Families with Children

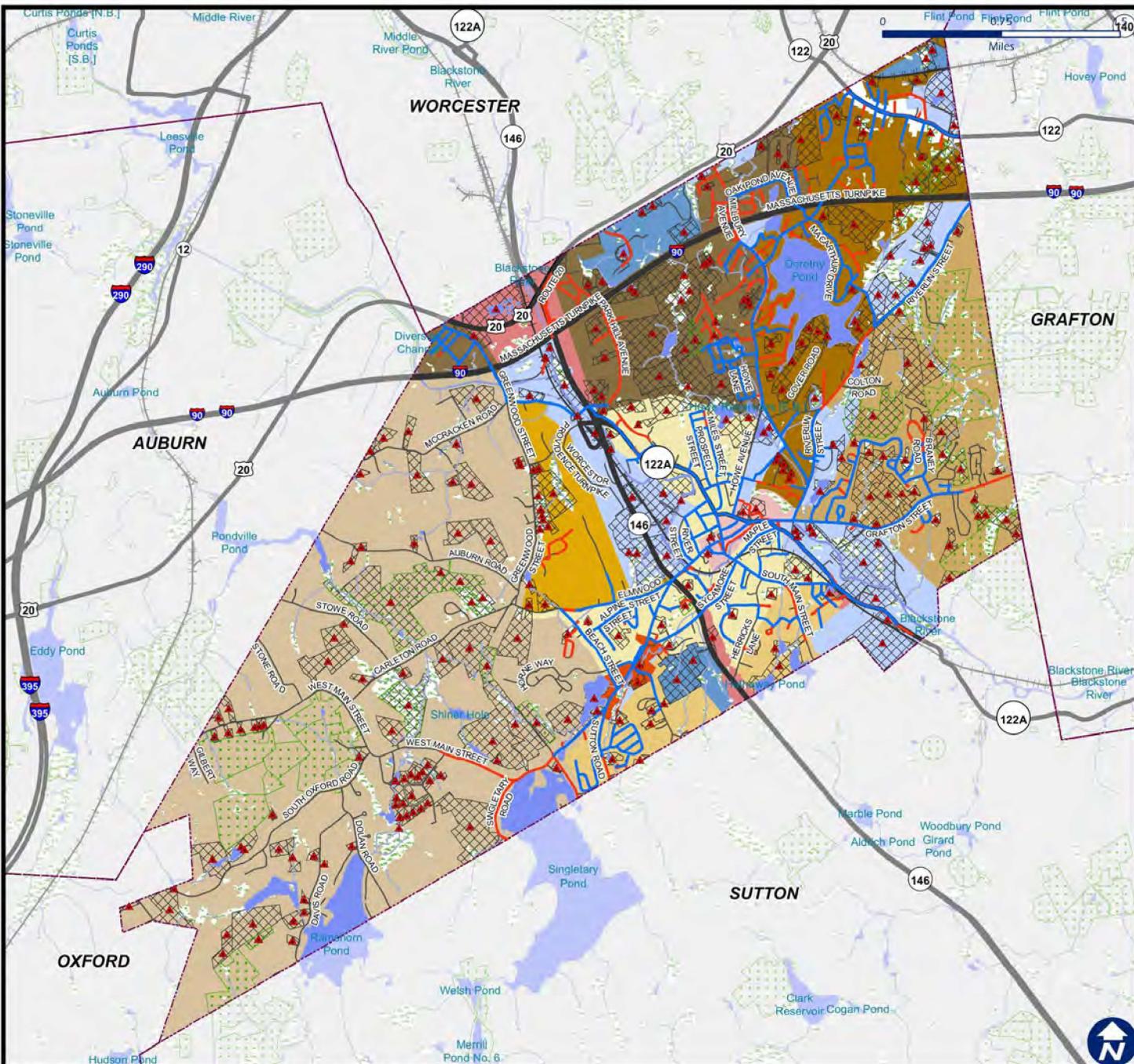
- The multi-family district zoning cannot include units with age restrictions and cannot place and limits or restrictions on:
  - Size of units
  - Number of bedrooms
  - Size of bedrooms
  - Number of occupants



## 5. Location of Districts

General rule: The distance from a transit station may be measured from the boundary of any parcel of land owned by a public entity and used for purposes related to the transit station, such as an access roadway or parking lot.

- **MBTA communities with some land area within 0.5 miles of a transit station**
  - Require at least half of the land area of the multi-family zoning district to be located within the prescribed distance, with exceptions only in unusual cases
- **MBTA communities with no land area within 0.5 miles of a transit station**
  - The multi-family district should be located in an area with reasonable access to a transit station based on existing street patterns, pedestrian connections, and bicycle lanes, or in an area that otherwise is consistent with Massachusetts sustainable development principles
  - For example: Near an existing downtown or village center, near a WRTA bus stop or line, or in a location with existing under-utilized facilities that could be redeveloped into new multi-family housing



# Community of MILLBURY Review Map

**MBTA COMMUNITY ZONING BYLAW**

### Legend

- Town Boundary
- River, Stream
- Lake, Pond
- MassDEP Wetlands
- Vacant Land 1+ Acre (FY2023) (186)
- Sewer Line
- Water Line
- Water/Sewer
- Active Rail Service
- Roads
- Major Road
- Local Road
- Protected Open Space

### Zoning Districts

- Residential I
- Residential II
- Residential III
- Suburban I
- Suburban II
- Suburban III
- Suburban IV
- Bramanville Village
- Business I
- Business II
- Industrial I
- Industrial II



Information depicted on this map is for planning purposes only. This information is not adequate for legal boundary definition, regulatory interpretation, or parcel-level analysis. Use caution interpreting positional accuracy.

Produced by the Central Massachusetts Regional Planning Commission (CMRPC)  
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 Worcester, MA 01608



Source: Data provided by the Town of MILLBURY, CMRPC and the Office of Geographic Information (MassGIS), Commonwealth of Massachusetts, Information Technology Division.



# Compliance

## Full Compliance

- An MBTA community may receive a determination of full compliance when a multi-family district meets all the requirements of the law. For communities seeking a determination of full compliance, a community must provide DHCD with certain information on the multi-family zoning district that the community has already enacted or amended.

## Interim Compliance

- A community may receive a determination of interim compliance for a limited amount of time to allow the community to plan for and pass a multi-family district to achieve full compliance. The MBTA Community must notify DHCD that it is not yet compliant and create a proposed action plan and timeline for activities it intends to undertake in order to adopt a multi-family district.

# Next Steps for Compliance in 2022

- Town official will submit the MBTA Community Information Form before May 2
- Comments on the Draft Guidelines will be reviewed by the State and the final Guidelines will be released in late spring/ early summer 2022
- Work with CMRPC to start identifying potential areas for a new multi-family zoning district or overlay district
- By December 31, 2022 Millbury must either
  - a) submit a request for determination of compliance or
  - b) notify DHCD that there is no existing district that complies with the guidelines and submit a proposed action plan

# Resources

## Learn more:

- [Housing Toolbox – MBTA Zoning Technical Assistance](#)
  - [Frequently Asked Questions](#)
  - [8 steps MBTA communities can take while guidelines are being finalized](#)
  - [Video: MBTA communities zoning webinar \(1/12/22\)](#)
  - Coming soon:
    - GIS mapping tool to help explore possible configurations for multi-family zoning districts and confirm that zoning districts will meet State guidelines
    - MHP is completing a project to map every parcel in MA and all existing housing densities on every parcel so communities will be able to align proposed new districts with existing densities and development patterns

## Technical assistance:

- [Mass Housing Partnership](#): MHP will be regularly updating the Housing Toolbox above and have staff dedicated to answer questions. They are also operating the Complete Neighborhoods Partnership to complement the zoning requirement for 12 selected communities
  - Technical Assistance: MHP Senior Planner, Katy Lacy, [klacy@mhp.net](mailto:klacy@mhp.net)
  - Mapping & analysis: Matija Jankovic, MHP's Center for Housing Data, [mjankovic@mhp.net](mailto:mjankovic@mhp.net)
- [CMRPC and DLTA](#): CMRPC has been allocated District Local Technical Assistance funding for 2022 to help designated MBTA Communities within the region be well-positioned to meet Section 3A compliance
- [EEA Planning Assistance Grant Program](#): Up to \$50,000 per proposal to implement land use regulations consistent with land conservation and development objectives, and provision of sufficient and diverse housing
- [FY23 Community One Stop for Growth](#): Programs like Housing Choice Grant Program, Community Planning Grants, and the Rural and Small Town Development Fund are resources that MBTA Communities can apply for



**Opportunity for questions &  
comments**