



HOUSING
PARTNERSHIP
NETWORK

Policy Notes

Zoning for Transit-Oriented
Development in Massachusetts



Transit-Oriented Development in Massachusetts

The Commonwealth of Massachusetts utilizes a collection of laws, all variations of “Chapter 40”, to dictate development in relation to zoning and land use. These laws cover several different topics including Zoning (40A), Regional Planning (40B), Smart-Growth Zoning (40R), and Starter Home Zoning Districts (40Y).¹

Massachusetts added a new Section 3A to the Zoning Act (Chapter 40A) in January 2021. The new law, generally referred to as the MBTA Communities Law, requires multifamily zoning as-of-right in areas served by the Massachusetts Bay Transportation Authority (MBTA).² The law requires that all the towns and cities served by MBTA must designate “at least 1 district of reasonable size” where multifamily housing is permitted as of right and without age restriction. The law requires that local zoning allow for the development of multifamily housing, but it does not require that any specific number of multifamily housing units be built.

3A was passed in response to a housing crisis in Massachusetts and intended to help address the rising cost of housing while allowing more of the workforce to remain in the state.³ Per capita housing production in Massachusetts is 40 percent below the national average, and housing costs are among the highest of any state in the U.S. In order to increase housing production and lower housing costs, the law removes some of the barriers to high-density transit-oriented development to create better-connected communities, allowing residents access to transit, jobs, and education. These zoning districts are intended to create a better-connected community for residents through proximity to transit, work, shopping, and education.

HPN Members Based in Massachusetts

HPN members based in Massachusetts as of November 2023:



Status of Implementation

The state Department of Housing and Community Development (DHCD) released draft guidelines in late 2021, allowed the public to comment in Spring of 2022, and finalized guidelines in August 2022. Additional state guidance was issued in October 2022 and August 2023 to further encourage affordability and mixed-use development. (Note that in 2023 DHCD was replaced by a cabinet-level Executive Office of Housing and Livable Communities, or EOHLC). MBTA communities were required to provide DHCD (now HLC) with an action plan, timeline for community outreach, and studies to adopt a multi-family district by early 2023.⁴ As of October 2023, only one community, Holden, has failed to submit an Action Plan.

How it Works in Massachusetts

At present, 177 MBTA communities are subject to Section 3A.⁵ There are a few main parameters of compliance outlined in the guidance:

- Cities and towns with higher levels of transit service have an increased obligation to zone for multifamily housing. Communities with subway and light rail stations must have zoning that allows a number of multifamily housing units equivalent to 25 percent of the community's current housing stock. That obligation is reduced to 15 percent for communities with commuter rail stations, 10 percent for communities adjacent to those with rail service, and 5 percent for adjacent small-town communities.
- Approved multifamily districts must comprise at least 50 acres (except in small towns) and may be non-contiguous. The percentage of the district that must lie within a half mile of rail stations ranges from 10 percent to 90 percent and depends on the amount of developable land within that half-mile radius.
- Subway and light rail communities must have compliant zoning that is locally adopted and approved by EOHLC by the end of 2023, commuter rail and adjacent communities by the end of 2024, and adjacent small towns by the end of 2025.
- Communities have been provided with mapping tools, free third-party technical assistance, and a compliance model that calculates housing development capacity based on specific zoning inputs.
- Municipalities that do not comply will lose access to more than 13 funding programs, such as the Housing Choice Initiative, the Local Capital Projects Fund, the MassWorks Infrastructure Program, and the Community and Land Use Planning Grants.

When all cities and towns comply with 3A, it will result in zoning capacity for at least 300,000 multifamily housing units while rezoning only a fraction of one percent of the land area in the region.⁶ MHP's Center for Housing Data supports compliance through GIS support, technical skills, and tools.

While the new law is silent on affordability, state guidelines allow an inclusionary zoning requirement in MBTA zoning districts for up to 10 percent of units at 80 percent of area median income (AMI). Inclusionary requirements up to 20 percent of the units and/or requirements for deeper affordability are allowed on a case-by-case basis if the community demonstrates that the requirements are economically feasible. Note that Massachusetts has a companion law, Chapter 40B, enacted in 1969 that allows for an override of local zoning in certain cases where at least 20 to 25 percent of their units in a development are affordable.

In March 2023, the Attorney General of Massachusetts issued a legal advisory that she would consider enforcement action for any MBTA community not in compliance with Section 3A. The Attorney General declared that “failure to comply may result in civil enforcement action or liability under federal and state fair housing laws”, emphasizing that it is also not possible for an MBTA community to opt out of compliance by accepting to forego state funding. That has already been evidenced in the Town of Holden which has been sued by the Central Massachusetts Housing Alliance for refusing to comply with the new law.⁷ Both former Governor Charlie Baker and current Governor Maura Healey have also characterized 3A in public comments as a state mandate that does not give cities and towns the option of non-compliance.

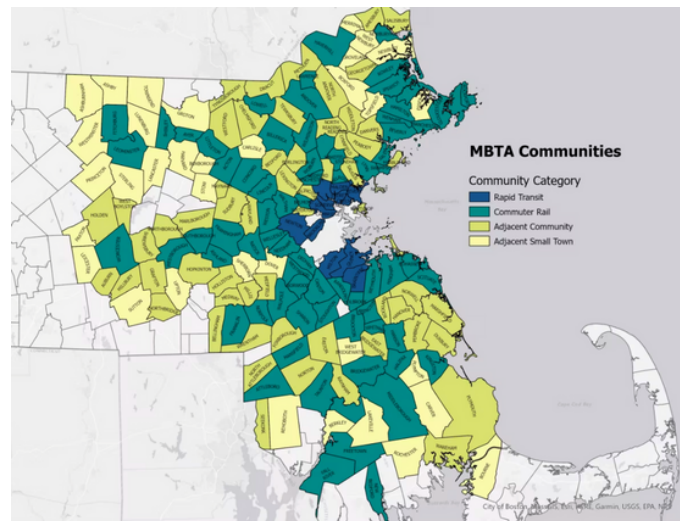
On the Ground Perspective: Massachusetts Housing Partnership

Legislative Background

The Massachusetts Housing Partnership (MHP) has been a close collaborator and actively engaged with the HPN member network since our founding. MHP has been working since 2013 to mandate multifamily zoning in all cities and towns in the Commonwealth. That vision was laid out in a housing policy blueprint for the Governor and Legislature in 2014 and then went through several iterations during three biennial legislative sessions. In 2019, housing advocates narrowed the scope of the mandatory multifamily zoning proposal to affect only communities served by the MBTA. Later that year, MHP developed a research brief finding that the average housing density around MBTA rail stations was extremely low, averaging about 6 units per acre, and that increasing that density to 10 units/acre would result in the creation of about 253,000 new housing units with good access to transportation.⁸ These findings furthered support for the development of Section 3A.

Community Efforts and Political Environment

Clark Ziegler, Executive Director of MHP, said that efforts to mandate multifamily zoning did not initially attract broad support from housing advocates, who had been part of a coalition seeking more, rather than less, local control over land use and zoning. That tide turned for a couple of reasons.



Massachusetts Demographic and Housing Data

Population (2020): 7,029,917¹⁰

Racial Composition:

- White: 69.6%
- Black: 7%
- Asian: 7%
- Hispanic or Latino: 12.6%

Population in Poverty: 10.29%¹¹

Share of Households that Rent: 27.7%

Homeownership Rate: 62.38%

Cost Burdened:

- Homeowners: 26.61%
- Renters: 46.68%

Severely Cost-burdened:

- Homeowners: 10.68%
- Renters: 23.2%

Median Income:

Owner-occupied: \$107,223

Renter-occupied: \$45,195

First, the housing supply and affordability problem in Massachusetts became noticeably worse. Second, environmental and smart growth advocates recognized that higher-density housing in smart locations was the best way to increase affordability, preserve open space, lower auto-dependence, and reduce energy consumption and carbon emissions. By 2019, all those organizations were in alignment with a shared message to the legislature.

Mr. Ziegler emphasized that the bill became law during a period of divided government in Massachusetts, with a Republican governor and Democratic supermajorities in the House and Senate. Governor Charlie Baker had not been a proponent of 3A -- and had been devoting support only to his own modest Housing Choice legislation -- yet he signed the provision into law and embraced it wholeheartedly. The governor's support was particularly remarkable since Republicans traditionally support local control, and 3A represented a major departure from the hyper-local approach to land use that had existed in Massachusetts for centuries. The Massachusetts Municipal Association, representing city and town governments, opposed enactment of 3A but has subsequently played a very constructive role in helping its members comply.

Early Outcomes

The Massachusetts Housing Partnership (MHP) has engaged a pool of land use consultants and aided communities by:

- Identifying district boundaries and locations
- Estimating unit capacity and gross density using EOHLC's compliance model
- Developing and/or evaluating proposed use and intensity requirements
- Drafting zoning amendments
- Developing informational material for public distribution
- Assisting with the preparation of compliance application for submittal to EOHLC⁹

Additionally, MHP hosted a series of [ten free webinars](#) on topics that MBTA communities should consider when planning the new districts.

To help communities think about existing and future housing density as they comply with section 3A, MHP also launched [Residency](#) in early 2023. Residency is an online visualization tool that includes data on each of more than 2 million residential parcels in Massachusetts and allows land use analysis at the community, neighborhood, and street level.

To date, EOHLC and MHP have provided over \$2 million in free technical assistance to more than a hundred MBTA communities working to comply with the law.

Endnotes

[1] <https://www.mass.gov/info-details/massachusetts-law-about-zoning>

[2] The MBTA is Massachusetts' transit agency that provides transportation services via its rapid transit system, commuter rail service, bus service, ferry routes, and other transit services (i.e. for people with disabilities). [https://www.mass.gov/info-details/overview-of-the-massachusetts-bay-transportationauthority#:~:text=The%20Massachusetts%20Bay%20Transportation%20Authority%20\(MBTA\)%20was%20created%20in%201964,service%20for%20people%20with%20disabilities.](https://www.mass.gov/info-details/overview-of-the-massachusetts-bay-transportationauthority#:~:text=The%20Massachusetts%20Bay%20Transportation%20Authority%20(MBTA)%20was%20created%20in%201964,service%20for%20people%20with%20disabilities.)

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

[4] <https://www.mass.gov/doc/draft-guidelines-for-mbta-communities/download> (page 9)

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

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

[7] <https://www.mass.gov/news/ag-campbell-issues-advisory-on-requirements-of-mbta-communities-zoning-law>

[8] <https://www.mhp.net/news/2019/todex-research-brief>

[9] <https://www.mhp.net/community/complete-neighborhoods-initiative>

[10] <https://www.census.gov/library/stories/state-by-state/massachusetts-population-change-between-census-decade.html> (source for Population and Racial Composition)

[11] <https://www.policymap.com/newmaps#/> (source from Population in Poverty through Median Income)

Acknowledgements

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