



A Robinson+Cole Legal Update

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Multi-Family Zoning Requirement for MBTA Communities

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On December 15, 2021, the Massachusetts Department of Housing and Community Development (DHCD) released [draft guidelines](#) for the Commonwealth's recently-adopted Multi-Family Zoning Requirement for MBTA Communities. A public comment period is now underway, and comments may be submitted via the online comment form available [on DHCD's website](#). The deadline for submitting public comments is **March 31, 2022**. DHCD is expected to issue final guidelines by Summer 2022.

The new Multi-Family Zoning Requirement for MBTA Communities, codified as Section 3A of M.G.L. c. 40A (the [Zoning Act](#)), was part of the economic development bill enacted in January 2021. The new law requires that any city or town that either hosts MBTA transit services itself or abuts a city or town that hosts such services (an [MBTA Community](#)) must have at least one zoning district of "reasonable" size in which multi-family housing is permitted as of right. The district must be located within a half mile of public transit (i.e., commuter rail station, subway station, ferry terminal, or bus station) "if applicable." The multi-family housing units permitted as of right must be suitable for families with children and cannot be age-restricted.

Under DHCD's draft guidance, to comply with the new law each MBTA Community must create a zoning district that has a minimum land area of 50 acres and a minimum gross density of 15 units per acre (subject to any further density limitations imposed by state wetlands or on-site wastewater treatment regulations). The district must have a minimum multi-family unit capacity (the number of units that could be built as of right) equal to at least a given percentage of the community's total housing stock (ranging from 10 percent to 25 percent depending on the type of transit service available within that community). The draft guidance specifies that the district unit capacity must be based on a parcel-by-parcel calculation, taking into account: restrictions and limitations of other municipal bylaws or ordinances; limitations on development resulting from inadequate water or wastewater infrastructure; state or local septic regulations; known title restrictions; and physical conditions such as waterbodies and wetlands. If necessary, the community must increase the size of the district or change applicable local regulations in order to ensure that the district will accommodate the required minimum number of units. The draft guidelines acknowledge that a multi-family district that is "reasonable" in one community may not be reasonable in another, and that the intent is to provide flexibility so cities and towns can create districts that fit with the unique characteristics of their communities.

DHCD's draft guidance notes that the new law does not mandate new housing production goals or require that any new units actually be built. It also states that districts may be created where multi-family housing units already exist.

There are 175 MBTA Communities subject to the new requirements of Section 3A. The City of Boston, while served by the MBTA, has its own zoning enabling statute and is exempt from the Zoning Act, and therefore is not subject to the new law. A map of the affected communities can be found [here](#).

The draft guidelines require that an MBTA Community receive a determination of full compliance from DHCD by 2024 or 2025, depending on the type of transit service available within that community. An MBTA Community that fails to comply with Section 3A will not be eligible for funding from Housing Choice Grants, the Local Capital Projects Fund, the MassWorks Infrastructure Program, or other grant awards as may be determined by DHCD. The draft guidelines do not provide any direct enforcement by the Commonwealth or any private right of action against MBTA Communities that fail to comply with Section 3A.

In the interim, to remain in compliance while DHCD collects public comment on the draft guidelines, an MBTA Community must hold a local briefing on the draft guidelines and submit an Information Form to DHCD by **May 2, 2022**.

If you have questions on Section 3A of the Zoning Act, the new Multi-Family Zoning Requirement for MBTA Communities, or the draft guidelines, please reach out to any author listed above.

FOR MORE INFORMATION

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