

Marblehead

MBTA 3A Zoning Requirement

Q&A

(1) What is the MBTA Communities Law and what does it require?

The MBTA Communities Act was adopted in January 2021, as part of legislation to strengthen the state's economy. It was passed by broad bipartisan majorities in the legislature — the Senate voted unanimously in favor of the Act, and the House voted 143 in favor to 4 against. Governor Baker signed the Act into law on January 14, 2021. [Source: [H.5250](#) (2020)]

The MBTA Communities Act requires 177 Cities and Towns to establish “at least 1 district of reasonable size in which multi-family housing is permitted as of right.” Where possible, the district must be within a half mile from public transportation (commuter rail, bus station, ferry terminal or subway). MBTA Communities must permit the development of housing suitable for families with children, and may not impose age restrictions, within the district.

The state agency with responsibility for housing issues, known as the Executive Office of Housing and Livable Communities (or EOHLC), has detailed materials available to address questions about this law and help communities understand their obligations. Those materials are available [here](#).

(2) Is compliance with the law mandatory?

Yes. The law states clearly that 177 communities covered by the MBTA Communities Law “shall have a zoning ordinance or bylaw that provides for at least 1 district of reasonable size” that permits multi-family housing as of right.

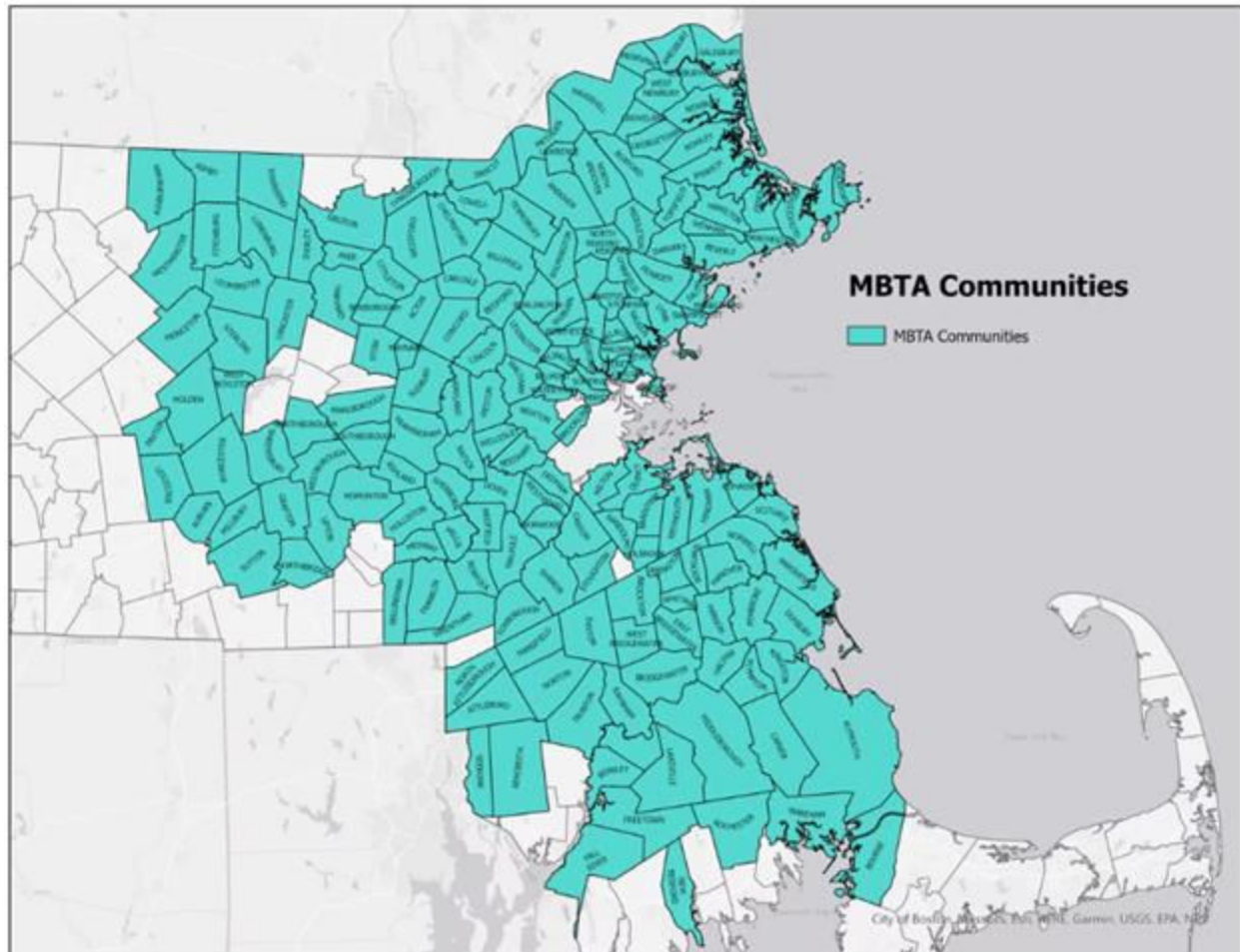
The Attorney General's Office has issued an advisory on this issue, which is available [here](#).

(3) What Cities and Towns are subject to the law?

Communities that are served by the MBTA are subject to the law, including:

- 84 communities that host MBTA service, including rapid transit, commuter rail, ferry or bus.
- 93 communities that abut — that is, share a border with — a City or Town that is served by the MBTA.

The following map demonstrates the location of MBTA Communities throughout the Commonwealth:



(4) Is the MBTA Communities Act constitutional?

Yes, it is. Under the state constitution, our state legislature has the power to pass laws about municipal zoning. Mass. Const. Art. Amend. art. 60. In the words of our state supreme court, this gives the state the “supreme power” in zoning matters.

In many cases, the legislature has passed laws that empower local communities to make their own decisions about zoning. In some cases, though, the legislature has determined that local discretion should be limited in order to allow development that will further state

or regional interests. For example, the legislature has set statewide standards when it comes to housing development for low- and moderate-income residents (under Chapter 40B); as well as schools, churches and other religious institutions, certain agricultural uses, child care centers, congregate care for those with disabilities, and solar power installations (under G.L. c. 40A, § 3).

Litigation has challenged Chapter 40B based on an argument that the state cannot require communities to allow low- and moderate-income housing developments that would otherwise violate local zoning. But those challenges have failed because the constitution gives the state the authority to restrict local zoning. The state supreme court has consistently required municipalities to comply with state law that allows educational, religious, childcare, and solar developments, over community objections.

The state legislature had the authority to pass the MBTA Communities Law to require multi-family housing districts in 177 communities where public transportation is accessible. The state is particularly interested in such development because Massachusetts is facing a housing crisis that is crowding out people who wish to live and work here, hurting our communities and limiting our economic growth. The legislature also chose to preserve significant local discretion to determine where that housing may be allowed in order to meet the particular needs of each community.

(5) Does the MBTA Communities Law allow for municipal discretion?

Yes. The MBTA Communities Law and Compliance Guidelines established by the state require that multi-family housing districts must be of reasonable size and, where feasible, located near mass transit; they must allow housing suitable for families with children; and they cannot be age-limited.

As long as they meet those requirements, communities have considerable discretion as to where to locate multi-family districts and how big those districts may be.

(6) Are there resources available to assist covered communities with compliance?

Yes. The Attorney General's Office and the Executive Office of Housing and Livable Communities (EOHLC) have collected materials [here](#) and [here](#). Municipal planners may seek EOHLC's assistance and communities may be eligible for (or may already have received) grant funding to help design compliant districts. In addition, Massachusetts Housing Partnership (MHP) offers consultant services to assist with technical aspects of compliance and Citizens' Housing and Planning Association (CHAPA) provides assistance to municipalities around public education and engagement. Regional Planning Agencies also provide technical assistance to their municipalities. Taken together, over \$6 million in

technical assistance has been provided to 156 of the 177 municipalities since August 2022.

Municipal counsel are encouraged to reach out to the Attorney General's Municipal Law Unit with questions on compliance. Both EOHLC and the Attorney General's Office have offered pre-review for proposed districts to give municipalities guidance as to whether the district is likely to be approved.

(7) Does the MBTA Communities Law impermissibly limit local control?

No. The state legislature has the power to enact zoning laws with which communities must comply. The power is set forth in Article 60 of the Amendments to the state constitution. That power is specifically preserved by the Home Rule Amendment, which requires municipalities to follow state law, like the MBTA Communities Law. Mass. Const. Art. Amend. art. 89, § 8.

In addition, the MBTA Communities Act ensures communities can determine where the required district is (or districts are) located and how large they are, within certain parameters.

(8) Are the Guidelines adopted by the state binding on my community?

Yes, they are. State law requires the state — and, specifically, the Executive Office of Housing and Livable Communities, known as EOHLC — to “promulgate guidelines to determine if an MBTA Community” is in compliance with its obligations.

These guidelines are binding. We are aware of suggestions that guidelines are somehow non-binding because they are not “regulations.” But our state supreme court has recently rejected an argument that EOHLC guidelines are nonbinding. *See Fairhaven Hous. Auth. v. Commonwealth*, 493 Mass. 27 (2023).

(9) How can zoning that is compliant with the MBTA Communities Law be adopted?

One or more zoning districts that are consistent with the MBTA Communities Act may be adopted through the typical municipal process for adopting zoning ordinances or bylaws. That means in certain towns, an approval of Town Meeting or Representative Town Meeting will be required (in an annual or specially-called meeting), following action by the appropriate municipal board (e.g., the Select Board or the Planning Board). In cities, approval by the City Council is required. A few municipalities may have existing zoning that complies with the Guidelines in which case they should submit a complete application to EOHLC for a determination of compliance.

(10) What do MBTA Communities have to do, and by when?

The MBTA Communities Act simply required cities and towns to “have” a zoning ordinance or by-law that provides for at least one district of reasonable size in which multi-family housing is permitted as of right and meets the other requirements of the Act. However, EOHLC recognized that many communities would need time to craft and pass an appropriate district, and therefore created a process by which communities can be treated as being in compliance by taking concrete steps towards adopting the necessary zoning ordinance or by-law.

Communities served by MBTA rapid transit (the subway, trolley, or Silver Line buses) were required to submit a zoning ordinance or bylaw to EOHLC for approval by December 31, 2023. Of the 12 communities subject to that deadline, only Milton has failed to submit a zoning ordinance or bylaw for approval.

Most of the remaining communities covered by the law—those served by commuter rail, bus, or ferry, or adjacent to such a community—must submit their zoning ordinance or bylaw for EOHLC approval by December 31, 2024. Certain smaller adjacent communities are allowed until December 31, 2025.

The deadline applicable to each community can be located in the EOHLC Guidelines, which are available [here](#).

The zoning ordinance or bylaw that a community adopts must comply with EOHLC Guidelines. However, if they submit by their deadline, MBTA Communities will be treated as compliant with the law while EOHLC is reviewing their submission.

(11) What happens if my City or Town fails to comply with the MBTA Communities Law?

Communities that fail to comply with the MBTA Communities Act automatically lose certain state funding, including funding: for local infrastructure generally, such as road, bridge, water and sewer improvements (known as MassWorks); for local infrastructure projects that support housing (known as HousingWorks); for EOHLC grants to communities with a “Housing Choice” designation; and state funding under the Local Capital Projects Fund.

In addition, the Healey-Driscoll Administration has notified communities that compliance with the MBTA Communities Act will be considered when dispensing certain discretionary local aid. Several programs potentially affected by that consideration are catalogued [here](#).

In addition, intentional or persistent non-compliance may result in an enforcement action against the municipality by the Attorney General. Any such action would seek a court order requiring the community to comply with the law. Such a lawsuit is currently pending in the state supreme court against the Town of Milton.

(12) The following questions might be asked by residents preparing to attend a Town Meeting where a new zoning district will be considered:

1.

a. How did my community settle upon the district presented for Town Meeting consideration?

This answer will vary for each community. At a minimum, each community held a public Planning Board hearing on the proposed district, at which residents could participate. After the hearing the Planning Board was required to issue a report to Town Meeting or City Council with a recommendation concerning whether or not the zoning district should be adopted.

Many communities also held preliminary workshops or public comment meetings on proposed MBTA Communities zoning districts. In many cases, proposed zoning districts are drafted with help from planning consultants, often hired with grant money provided by Commonwealth agencies. Like every other zoning bylaw, the zoning district is drafted with input from the Town/City Planner, the Planning Board, and the Select Board or City Council.

- **What vote is required in order for the new district to pass?**

A simple majority vote.

- **What happens if the proposed zoning district passes?**

It is submitted to the Executive Office of Housing and Livable Communities (EOHLC) to ensure that the district is compliant with the MBTA Communities Act. EOHLC offers an optional “pre-adoption” review of proposed districts before they are voted on, in which case the community will have some indication as to whether the zoning district is likely to be approved.

As with all other town zoning bylaws, a town’s MBTA Communities zoning bylaw also will be submitted to the Attorney General’s Office for review and approval as required by statute. Once the zoning bylaw is approved, it will take effect, and multi-family housing will be permitted in the new zoning district. Please note that EOHLC determinations of compliance are separate from the bylaw review by the Attorney General’s Office and that a bylaw approved by the Attorney General will be in effect even if EOHLC makes a determination that the bylaw does not comply with the Guidelines and the Act.

- **What happens if the proposed zoning district does not pass?**

This answer will depend on the time of the Town Meeting or City Council vote and whether the community will be able to come into compliance in advance of the applicable deadline (which, for many communities, will be December 31, 2024). If the vote renders the community out of compliance, the community will face the consequences set forth in response to question 11, above.

(13) Does passage of an MBTA compliant zone require changes to existing properties?

No. The passage of a zoning district to comply with the MBTA Communities Law does not require existing property owners to alter their properties or to change otherwise lawful restrictions in leases or home owner association contracts. It merely allows that multifamily housing can be developed as of right should a property owner choose to develop it.