

Section 3A “Multi-Family Zoning Requirement for MBTA Communities”

M.G. L Chapter 40A (the “Zoning Act”) Section 3A Overview

This new law requires that an “MBTA community” shall have at least one zoning district of reasonable size in which multi-family housing is permitted by right and which meets other criteria set forth in the statute:

- Minimum gross density of 15 units per acre;
- Located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal, or bus station, if applicable; and
- No age restrictions and suitable for families with children.

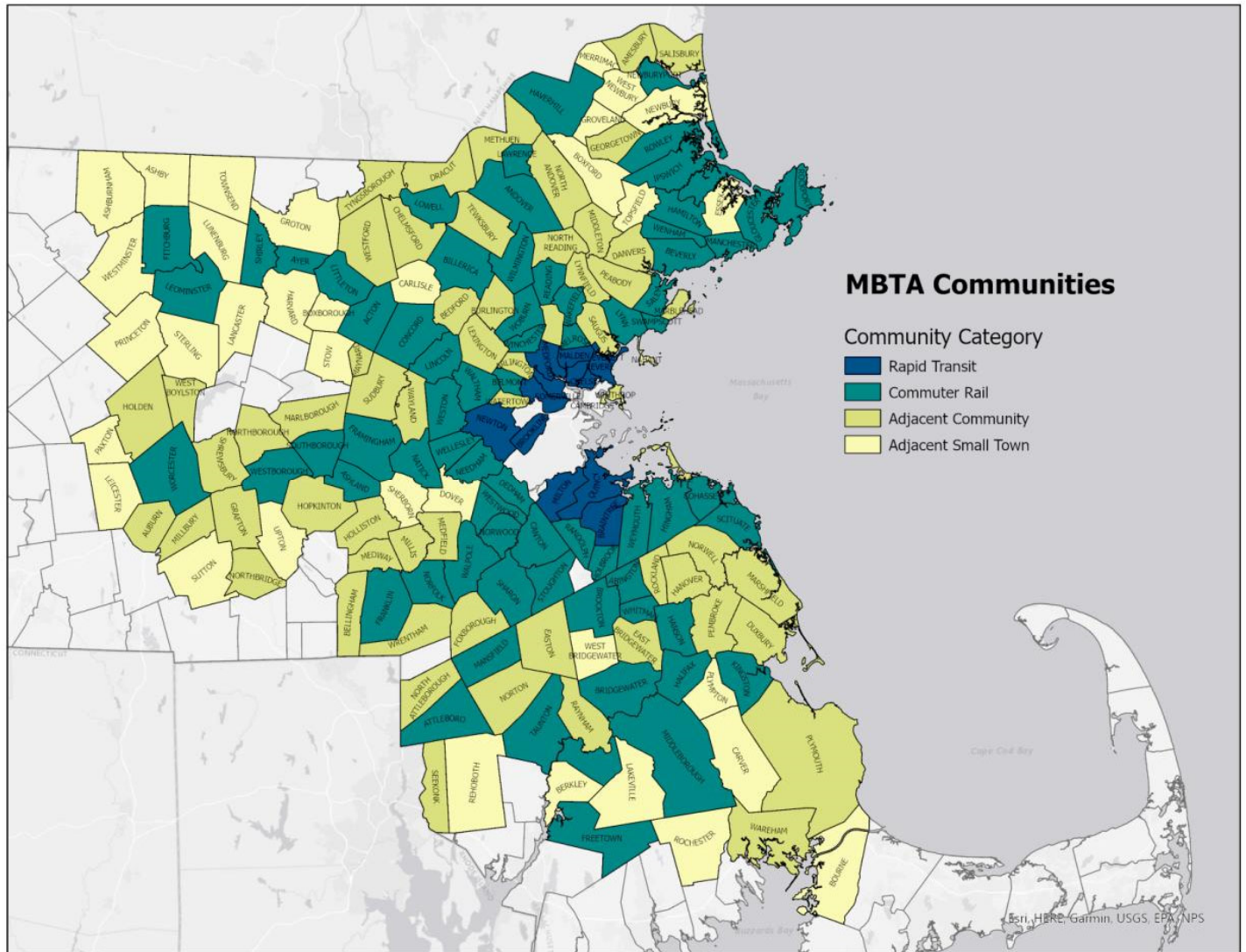
The SRPEDD Region’s MBTA Communities and their associated requirements are:

Community	Community category	2020 Housing Units	Minimum multi-family unit capacity ¹	Minimum land area ²	Developable station area ³	% of district and unit capacity to be located in station area
Taunton	Commuter Rail	24,965	3,745	50	269	40%
Attleboro	Commuter Rail	19,097	2,865	50	467	50%
Middleborough	Commuter Rail	9,808	1,471	50	260	40%
Mansfield	Commuter Rail	9,282	1,392	50	327	40%
Freetown	Commuter Rail	3,485	750	50	346	40%
Wareham	Adjacent community	12,967	1,297	50	-	0%
North Attleborough	Adjacent community	12,551	1,255	50	-	0%
Norton	Adjacent community	6,971	750	50	-	0%
Raynham	Adjacent community	5,749	750	50	-	0%
Seekonk	Adjacent community	6,057	750	50	-	0%
Carver	Adjacent small town	4,701	235	-	-	0%
Lakeville	Adjacent small town	4,624	231	-	30	0%
Rehoboth	Adjacent small town	4,611	231	-	-	0%
Berkley	Adjacent small town	2,360	118	-	79	0%
Rochester	Adjacent small town	2,105	105	-	-	0%

¹ Minimum multi-family unit capacity for most communities will be based on the 2020 housing stock and the applicable percentage for that municipality's community type. In some cases, the minimum unit capacity is derived from an extrapolation of the required minimum land area multiplied by the statutory minimum gross density of 15 dwelling units per acre. In cases where the required unit capacity from these two methods would exceed 25% of the community's housing stock, the required unit capacity has instead been capped at that 25% level.

² Minimum land area is 50 acres for all communities in the rapid transit, commuter rail and adjacent community types. There is no minimum land area requirement for adjacent small towns. Where 50 acres exceeds 1.5% of the developable land area in a town, a cap has been instituted that sets minimum land area to 1.5% of developable land area in the town.

³ Developable station area is derived by taking the area of a half-mile circle around an MBTA commuter rail station, rapid transit station, or ferry terminal and removing any areas comprised of excluded land.



Notable Changes within the Final Guidelines

While there were several changes, additional definitions, and clarifications added to the final Compliance Guidelines, the following are the most notable within SRPEDD's region:

- Addition of "Adjacent Small Town" transit category;
- Clarification of the final transit categories for communities affected by South Coast Rail;
- Guidance on the inclusion of affordability requirements within a multi-family zoning district;
- Guidance on water and wastewater infrastructure within a multi-family zoning district; and
- Updates to deadlines for interim and district compliance.

Addition of “Adjacent Small Town” Transit Category

The “Adjacent Small Town” transit category compromises any MBTA Community that:

- Has within its boundaries less than 100 acres of developable station area; and
- Either has a population density of less than 500 persons per square mile, or a population of not more than 7,000 year-round residents as determined in the most recently published United States Decennial Census of Population and Housing.

MBTA Communities classified as “Adjacent Small Town” have lessened requirements for total acreage and unit capacity, as well as extended deadlines to achieve district compliance, which are as follows:

- **No minimum land area requirement** for district size; “the multi-family district may comprise as many or as few acres as the community determines is appropriate;”
- Unit capacities **capped at 5%** of total housing units; and
- An extended deadline of **December 31, 2025** to submit a District Compliance Application.

“Adjacent Small Towns” must still achieve interim compliance and meet the requirement of a district-wide gross density of at least 15 units per acre where multi-family housing is permitted by-right. The affected communities are **Berkely, Carver, Lakeville, Rehoboth, and Rochester**.

Clarification of the Final Transit Categories for Communities Affected by South Coast Rail

While several communities in the SRPEDD region are affected by the construction of new commuter rail stations under the South Coast Rail project, only those communities that are currently identified as an “MBTA community” in Section 1A of the Zoning Act and section 1 of chapter 161A of the General Laws are subject to the requirements set forth in section 3A of the Zoning Act. Of those communities, transit categories were assigned to reflect certain MBTA service changes that will result from new infrastructure projects now under construction (e.g., South Coast Rail), as well as the elimination of regular commuter rail service at the existing Lakeville station. These changes are scheduled to take effect a year or more before any municipal district compliance deadline. The affected communities are as follows:

- **Freetown:** Adjacent > Commuter Rail
- **Lakeville:** Commuter Rail > Adjacent Small Town
- **Taunton:** Adjacent > Commuter Rail

Municipalities currently not identified as MBTA communities within the above statutes that may be identified as such in the future are not addressed within the final compliance guidelines. Instead, they will be addressed sometime in the future via revisions to the guidelines and with separate compliance timelines. These communities would include future Commuter Rail communities Fall River and New Bedford, as well as surrounding future Adjacent and Adjacent Small Town communities

Guidance on the Inclusion of Affordability Requirements Within a Multi-Family Zoning District

When determining compliance, DHCD will consider affordability requirements to be consistent with by right zoning so long as:

- Any affordable units required by the zoning are eligible to be listed on DHCD's Subsidized Housing Inventory (SHI);
- The zoning requires **not more than 10%** of units in a project to be affordable units; and
- The cap on the income of families or individuals who are eligible to occupy the affordable units is **not less than 80% of area median income**.

The percentage of affordable units **may be up to 20%** of the units in a project, only if:

- The affordability requirement applicable in the multi-family zoning district pre-dates the enactment of Section 3A and the MBTA community demonstrates to DHCD that the affordability requirement has not made and will not make multi-family housing production infeasible; or
- The multi-family zoning district requires DHCD review and approval as a smart growth district under **M.G.L. Chapter 40R**, or under another zoning incentive program administered by DHCD.

Guidance on Water and Wastewater Infrastructure Within a Multi-Family Zoning District

MBTA Communities are encouraged to consider water and wastewater infrastructure when selecting the location of a new multi-family zoning district; however, compliance with Section 3A does not require a municipality to install new infrastructure or to add capacity to existing infrastructure to accommodate future multi-family housing. While the zoning must allow for gross average density of at least 15 units per acre, there may be other legal or practical limitations, including lack of infrastructure or infrastructure capacity, that result in actual housing production at lower density than the zoning allows.

When calculating unit capacity, it will be assumed that housing developers will design projects that work within existing water and wastewater constraints, and that developers, the municipality, or the Commonwealth will provide funding for the infrastructure upgrades as needed for individual projects.

Updated Deadlines for Interim and District Compliance

In the draft guidelines, Commuter Rail and Adjacent Communities were required to receive DHCD approval of a **timeline and Action Plan** to achieve interim compliance by July 1, 2023. This deadline has been expedited to **January 31, 2023** for all MBTA Communities.

After this point, Commuter Rail, and Adjacent Communities must submit an application for district compliance by **December 31, 2024**.

Adjacent Small Town communities must submit an application for district compliance by **December 31, 2025**.

More Information and Upcoming Events

Please see www.mass.gov/info-details/multi-family-zoning-requirement-for-mbta-communities, where you will find:

- Detailed information about Section 3A and compliance.
- Links to the short form necessary to complete an **Action Plan** by **January 31, 2023** - www.mass.gov/forms/interim-compliance-action-plan-form.
- A video overview and technical assistance request from.
- Later this fall, links to an interactive Compliance Model - www.mass.gov/info-details/section-3a-guidelines#appendix-2:-compliance-model-overview.
- Links to Massachusetts Housing Partnership (MHP) Resources, including an upcoming 9-part webinar series entitled “3A-TA” - www.mhp.net/community/complete-neighborhoods-initiative; please note that SRPEDD will be hosting 2 sessions:
 - 10/26/22: Exploring Different Densities for Compliance
 - 11/2/22: Siting Districts in MBTA Adjacent Communities