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MEMORANDUM

DATE: January 7, 2022

TO: Councilor Deborah Crossley, Chair, Zoning & Planning Committee
Members of the Zoning & Planning Committee

FROM: Barney Heath, Director, Department of Planning and Development
Jennifer Caira, Deputy Director Department of Planning and Development
Zachery LeMel, Chief of Long Range Planning
Cat Kemmett, Planning Associate

RE: **#39-22 Requesting discussion on state guidance for implementing the Housing Choice Bill**
COUNCILOR CROSSLEY on behalf of the Zoning & Planning Committee requesting discussion on state guidance for implementing the Housing Choice element of the MA Economic Development legislation. (formerly #131-21)

MEETING: January 10, 2022

CC: City Council
Planning Board
Jonathan Yeo, Chief Operating Officer

Introduction

In January 2021, Governor Baker signed an omnibus economic development package, *An Act Enabling Partnerships for Growth* (the "Act"), which notably included the [Housing Choice zoning reforms](#). The Act included a new multi-family zoning requirement for MBTA communities (Section 3A), which Newton is one of, where at least one zoning district of reasonable size permits multi-family housing by-right meeting the following criteria:

- Minimum gross density of 15 units per acre
- Not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station
- No age restrictions
- Suitable for families with children

The Department of Housing & Community Development (DHCD) released [draft compliance guidelines](#) in December 2021 to Section 3A (Attachment A). The public comment period on these guidelines will be open through March 31, 2022 with final guidelines expected in summer 2022.

MBTA communities are not required to comply with these Housing Choice guidelines (Section 3A). However, MBTA communities that do not comply will no longer be eligible for funds from the following

grant programs: the Housing Choice Initiative, the Local Capital Projects Fund, and the MassWorks infrastructure program. Also, DHCD may, in its discretion, take non-compliance into consideration when making other discretionary grant awards.

The City of Newton has received both Massworks and Housing Choice grant funding in recent years and would anticipate seeking future funding under these programs to further economic development and affordable housing. These funding grants include:

- \$7 million in Massworks funding for Route 9 improvements (2012-2014)
- \$1.6 million in Massworks funding for Oak Street/Needham Street Intersection (2019)
- \$400,000 in Masswork funding for design of Pettee Square (2021)
- \$220,000 in Housing Choice funding to undertake affordable housing feasibility study for West Newton Armory
- \$75,000 in Housing Choice funding to examine zoning options for California Street manufacturing area

This memo is meant to provide the City Council with information as it begins its discussion of the draft compliance guidelines specifically for Section 3A.

Relevant Elements of the Guidance for Newton

- Newton is considered a *rapid transit community* (an MBTA community with a subway station within its borders, or within 0.5 miles of its border).
- The new multi-family zoning district in *rapid transit communities* must allow, by-right, for a minimum of 25% multi-family units as a percentage of total housing stock to comply with the “reasonable size” requirement (i.e. unit capacity). For Newton, the minimum unit capacity means that a multi-family district must allow for 8,330 units; it does not require that 8,330 units must be built. “It is important to understand that a multi-family district’s unit capacity is not a mandate to construct a specific number of housing units, nor is it a housing target.” Currently, Newton has 33,320 housing units according to the 2020 Census.
- The zoning can either be for one multi-family district that allows for 8,330 units or for any number of districts proximate to transit that add up to 8,330 units.
- Site plan review and approval is defined very specifically. “Site plan review and approval may be required for multi-family uses allowed by-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 may not be used to deny a project that is allowed as of right, nor may it impose conditions that make it infeasible or impractical to proceed with a multi-family use that is allowed as of right.”
- There are also size requirements. “To comply with Section 3A’S ‘reasonable size’ requirement, multi-family districts must comprise at least 50 acres of land – or approximately one-tenth of the land area within 0.5 miles of a transit station.” The requirement is that there is a multi-family district that is at least 50 contiguous acres, or an overlay district could be utilized with at least one area of 25 contiguous acres and additional areas would need to each be at least 5 contiguous acres. An overlay district may have subdistricts with different densities as long as the overall gross density is at least 15 units per acre. Newton is 11,622 acres.

- Newton does not currently have a multi-family district of a size that complies with all of the requirements.

Additional Analysis

The following analyses would be helpful to decide whether to pursue compliance with Section 3A:

Build Out Analysis

Although Newton does not currently have any zoning district that allows multi-family housing by-right, our Zoning Ordinance does allow multi-family development by special permit. Planning Staff will present a build out analysis of the number of units that could be built under the current Zoning Ordinance by special permit to understand the delta between what is allowed already and the unit capacity requirement within the DHCD guidelines.

District Size/Distribution of Density Scenarios

There is a lot of flexibility in the draft guidelines in how Newton could create and map a complying zoning district or districts. When determining the size required, the City must take into consideration the minimum acreage and the minimum unit requirement the guidelines set. There is an inverse relationship between the district size and allowed units or density per acre, see below:

Smaller Zoning District

Larger Zoning District



Higher Density Required

Lower Density Required

Additional analysis would be helpful to determine what may be appropriate for Newton. Multiple zoning districts with a range of allowable densities may be better (i.e. higher density districts immediately adjacent to public transit/village centers and tiered lower density districts surrounding them).

Newton Development Lookbook (units per acre)

As a whole, the gross density allowed for the compliant zoning district must meet the statutory requirement of not less than 15 multi-family units per acre. Thinking about actual buildings or developments in units per acre can be abstract and confusing. To better understand what this density actually looks like on the ground, staff have begun compiling a *Newton Development Lookbook*. The intent of this analysis is to see if allowing a variety of building types already common in Newton, many with small footprints, could bring Newton into compliance if allowed by-right.

Timeline for Compliance

According to the draft guidelines, Rapid Transit communities like Newton, must adopt a zoning amendment or amendments by December 31, 2023 to comply with the Act. The draft guidelines also lay out interim steps that must be taken leading up to the adoption of zoning:

- March 31, 2022 – State public comment period ends
- May 2, 2022 –
 - Submit the MBTA Community Information Form
 - Hold a briefing with the City Council on the Draft Compliance Guidance
- December 31, 2022 –

- Notify DHCD that there is no existing multi-family district that fully complies with these guidelines
- Submit a proposed action plan as described in section 9.b of the draft guidelines
- March 31, 2023 – Receive approval of the action plan by DHCD
- December 31, 2023 – Adoption of zoning amendments for MBTA communities

Other Components of the Act

The Act has changed the required vote from two-thirds to a simple majority for certain types of zoning amendments and special permits. The City of Newton's Law Department provided a [Housing Choice Zoning Amendments memo](#) in February 2021 summarizing these key changes related to voting thresholds. If the Committee would like further discussion on this, the Planning and Law Staffs are happy to do so in a future meeting.

Looking Ahead

Staff can return with additional analysis at upcoming ZAP meetings for the Committee's review. Also, staff recommend scheduling a Committee of the Whole meeting by the beginning of March 2022 to remain in compliance with the DHCD guidelines and ensure enough time for submitting public comment, if desired.

Attachments

Attachment A Draft Compliance Guidelines for MBTA Communities