

Summary of Compliance Guidelines for Multi-family Zoning Districts for MBTA Communities

According to the new Compliance Guidelines for Multi-family Zoning Districts for MBTA Communities:

- A multi-family zoning district must allow multi-family housing "as of right" -- no need for any type of discretionary approval like a special permit or variance.
- Site Plan approval will be permitted to regulate issues such as vehicular access, circulation, architectural design, and screening but may not unreasonably delay or make the project infeasible.
- While no express requirement that affordability is built into these multi-family zoning districts, affordability requirements will be allowed as long as:
 - Any affordable units required by zoning are eligible for listing in DHCD's Subsidized Housing Inventory (SHI),
 - The zoning does not require more than 10% of the units in a project to be affordable and the cap on the income eligibility is not less than 80 percent of the Area Median Income (AMI).
 - An exception to this exists and allows up to a 20% requirement only if the requirement predates this Act and the community demonstrates that it does not make multi-family housing development infeasible, or the zone is under Chapter 40R or another zoning incentive program administered by the State.

Other requirements that would not be permitted include:

- Requirements to meet energy efficiency standards higher than other uses;
- Requirements that the development achieves a third-party certification not required for other uses in the district, and
- Requirements that the multi-family use be combined with commercial or other uses on the same lot or part of a single project. Mixed-use projects may be allowed as of right as long as multi-family housing is also separately allowed as of right.

The rules require a minimum land area in Rapid Transit Communities of 50 acres or 1.5% of the developable land in an MBTA Community, whichever is less. At least half of the multi-family zoning district land area must consist of contiguous lots.

The new rules require the calculation of the minimum multi-family unit capacity and provide a methodology to determine a multi-family zoning district's multi-family unit capacity. This minimum unit capacity is a measure of whether a multi-family zoning district is of a reasonable size, not a requirement to produce housing. **The rules emphasize that "Nothing in Section 3A or these guidelines should be interpreted as a mandate to construct a specified number of housing units, nor as a housing production requirement."** If a community has two or more zoning districts in which multi-family housing is allowed by right, then the two or more districts can be considered cumulatively to meet the minimum land area and minimum multi-family unit capacity requirement as long as each district independently complies with all other requirements.

While the zoning must allow for gross average density of at least 15 units per acre, DHCD recognizes that there may be other legal or practical limitations, including lack of infrastructure or infrastructure capacity that result in actual housing production at a lower density than the zoning allows and assumes that housing developers will design projects that work within existing water and wastewater constraints and that developer, the municipality or the Commonwealth will provide funding for infrastructure upgrades as needed for individual projects.

To meet the district-wide gross density requirement, the dimensional restrictions and parking requirements for the multi-family zoning district must allow for a gross density of 15 units per acre of land within the district. Sub-districts within the multi-family zoning district may have different density limits as long as the gross density as a whole meets the not less than 15 multi-family units per acre requirement and any multi-family housing produced is subject to and must comply with the state wetland protection act and title 5 - even if that results in a project less than 15 units per acre.

A compliant multi-family zoning district must be suitable for families with children and allow multi-family housing as of right and without age restrictions, or restrictions on the size of the units, cap of the number or size of bedrooms or the number of occupants.

A compliant multi-family zoning district shall “be located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable.” DHCD will require more or less of the multi-family zoning district to be located within transit station areas depending on how much total developable station area is in that community and a community with multiple transit stations may locate its multi-family district in any or all of its transit station areas.

Two ways to comply with Section 3A:

- Interim compliance: - Create and submit an action plan - which provides information about current zoning, past planning for multi-family housing, if any, and potential locations for a multi-family zoning district and establishes a timeline for various actions needed to create a compliant district. After DCHD approval - the community must implement the action plan and to be eligible for grants made through the 2023 One Stop Application, action plans must be submitted by January 31, 2023. DHCD will also provide assistance to communities.
- District compliance: Submit a certified copy of the municipal zoning ordinance or by-law and zoning map, including all provisions that relate to uses and structures in the district, an estimate of multi-family unit capacity using the compliance model, GIS shapefile for the district.

As part of its ongoing obligations, an MBTA Community must notify DHCD of any changes to the zoning that may impact the approved compliant multi-family zoning district or any other by-law, ordinance, rule, or regulations that would limit the development of multi-family housing in multi-family zoning districts

DHCD may rescind a community’s compliance or require changes to the district to remain in compliance if they determine that:

- Inaccurate info was provided in the community’s application

- Notification was not provided about zoning changes impacting the multi-family zoning district
- Any by-law or ordinance was enacted that would materially alter the minimum land area and/or the multi-family unit capacity in the multi-family zoning district
- Permits were not issued by any permitting body or authority to allow construction of a multi-family housing project
- The community took other action causing the district to no longer comply with the Act
- The community changed the transit category as a result of a newly opened or decommissioned transit station or established a new permanent service at a transit station where intermittent or event-based service previously existed.

Changes to MBTA Service may be considered. When MBTA service changes, the list of MBTA Communities and/or the transit category assignments of those MBTA Communities in Appendix 1 may change as well. Changes to other bus routes, including the addition or elimination of bus stops or reductions or expansions of bus service levels, do not affect the transit categories assigned to MBTA Communities and will not affect location requirements for multi-family zoning districts.

--prepared by Amy Sangiolo, 8/23/2022