

City of Newton  
Zoning & Planning Committee



# Village Center Rezoning Phase 4: MBTA Communities Update

March 29, 2023

## Agenda

1. Overview of new regulation
2. Current analysis
3. Strategies for compliance
4. Next Steps

# Introduction to the Statute

- Also known as “Section 3A” (*Mass. General Laws c.40A §3A*)

- Requires communities with MBTA access to have at least one zoning district which permits

**3+ units** ← **multi-family** development **as of right** →

*“development may proceed without the need for a special permit, variance, amendment, waiver, or other discretionary approval”*

- Site plan review may be required ... within the parameters established by the applicable case law. 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 should not unreasonably delay a project nor impose conditions that make it infeasible or impractical to proceed with a project that is allowed as of right and complies with applicable dimensional regulations. (<https://www.mass.gov/info-details/section-3a-guidelines>)

# What this means for Newton

### District(s) size

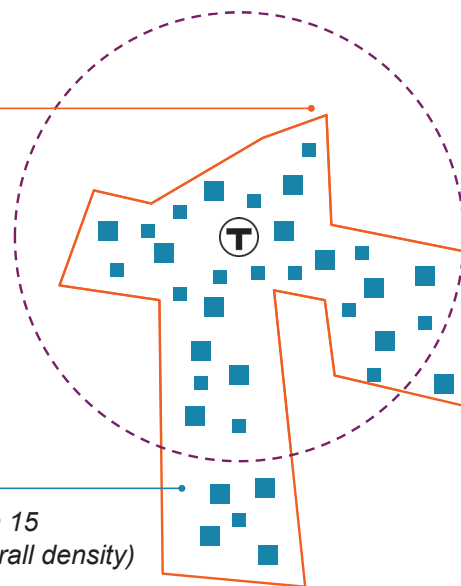
- ≥ 50 acres (*can be split across multiple districts*)  
(*regardless of the size, 50% of the total district needs to be in one contiguous district*)

### District location(s)

- ≥ 90% of district land area within ½ mile of Commuter Rail or Green Line stations
- Up to 10% of district(s) land area(s) can be outside the station areas

### District density

- ≥ 15 units per acre (*subdistricts can be less dense than 15 units/acre as long as the districts as a whole hit this overall density*)



# Criteria for compliance

## 1A. District Shape, Size, and Density

- Contiguity standards- 50% of land area in one contiguous district, all districts at least 5 acres
- Minimum district(s) area
- Gross Density requirement

## 1B. Zoning Standards

- Setbacks, height limits, parking requirements, etc. allowed
- No age restrictions
- No *required* ground floor commercial
- No restrictions on # of bedrooms, size of bedrooms, # of occupants

## 2. Multi-Family Unit Capacity

8,330 unit capacity

This is simply a zoning capacity - not a requirement to *build* a certain number of units

# Clarifying information

## 1. Can we still require a Special Permit?

As long as a multi-family district meets the minimum requirements of by-right unit capacity (8,330 multi-family units), minimum gross density (15 units per acre), and minimum district size (50 acres), there is nothing prohibiting requiring a special permit above a certain unit threshold. Version 1 of this zoning requires a special permit for development on parcels greater than 30,000 square feet. Raising this threshold accordingly would increase the unit capacity.

## 2. Is a district that allows or requires mixed use acceptable?

Commercial and other uses can be permitted and encouraged, *but not required* in a multi-family zoning district that counts toward the unit capacity requirements. Version 1.0 of this zoning incentivized ground floor commercial in the VC3 district. Planning is proposing instead in version 2.0 to require ground floor commercial along designated mixed-use priority streets. These areas would no longer count towards unit capacity.

## 3. How would historic districts or landmarks within a multi-family district be impacted?

The statute does not make any changes to existing historic protections. Local historic districts and the Newton Historical Commission currently have jurisdiction over by-right development and will continue to do so.

## 4. Can we still require affordable housing in a by-right district?

DHCD issued updated guidelines in October 2021 allowing communities to require more than 10% affordability that income levels less than 80% AMI, as long as economic feasibility is demonstrated. This should permit Newton to apply existing affordability requirements (generally 17.5% at an average of 65% AMI). (<https://www.mass.gov/info-details/summary-of-1021-revisions-to-section-3a-guidelines>)

Overview of new regulation

# Attorney General's Advisory

## Town and City Obligations Under State Law

*"Compliance with the MBTA Communities Zoning Law is not only mandatory, it is an essential tool for the Commonwealth to address its housing crisis along with our climate and transportation goals," said AG Campbell.*

Failure to comply with the Housing Choice Law may result in:

- Civil enforcement action or liability under Federal and State fair housing laws, as well as State antidiscrimination law
- Loss of funds from the Housing Choice Initiative
- Loss of funds from the Local Capital Project Fund
- Loss of funds from the MassWorks Infrastructure Program

## Current Analysis

- Calculation Methods & Definitions
- Citywide Map
- Total Unit Capacity & Land Area
- Aggregate Gross Density

Current Analysis

# Calculation Methods & Definitions

**“Gross Density”** =  $\frac{\text{Zoned Unit Capacity}}{\text{Gross Density Denominator}}$

- Zoned Unit Capacity** → Determined by compliance model using size of districts, size of parcels, and zoning requirements (building heights, building footprints, open space requirements, parking, etc.)
- Gross Density Denominator** → Total District Area **MINUS** the area of any of the following: *Hydrology, wetlands, Title 5 setbacks, Surface Water Protection Zone A areas, and Wellhead Protection Zone 1 areas*

### How did the State calculate our minimum multi-family unit capacity?

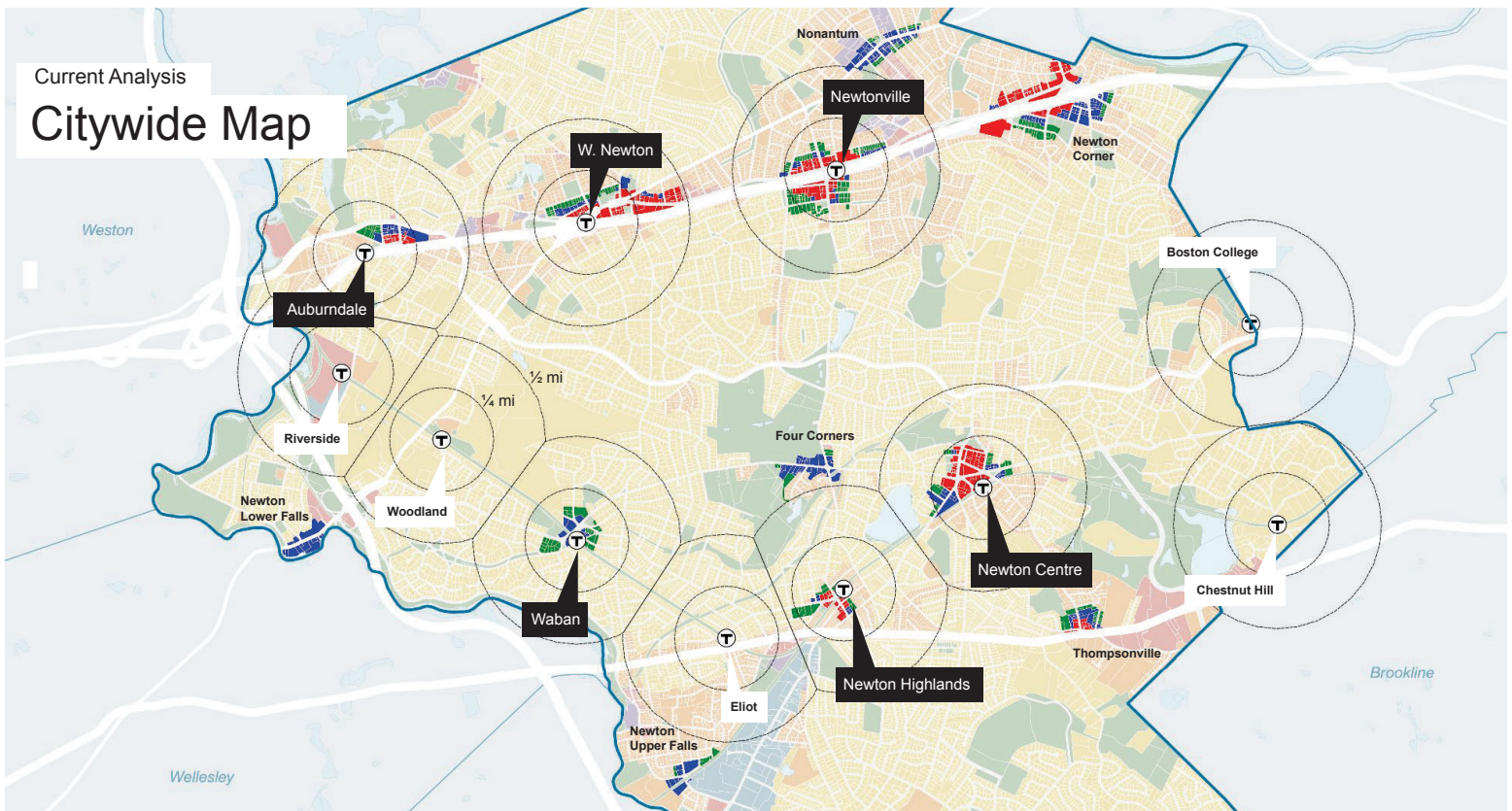
- “Minimum multi-family unit capacity for most communities will be based on the 2020 housing stock and the applicable percentage for that municipality’s community type. In some cases, the minimum unit capacity is derived from an extrapolation of the required minimum land area multiplied by the statutory 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.”
   
<https://www.mass.gov/info-details/multi-family-zoning-requirement-for-mbta-communities>

### How did the State calculate our minimum district size?

- “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.”
   
<https://www.mass.gov/info-details/multi-family-zoning-requirement-for-mbta-communities>

### What is “developable” vs. “excluded” land?

- “Developable land” means land on which multi-family housing can be permitted and constructed. For purposes of these guidelines, developable land consists of: (i) all privately owned land except lots or portions of lots that meet the definition of excluded land, and (ii) developable public land.
- “Excluded land” means land areas on which it is not possible or practical to construct multifamily housing. For purposes of these guidelines, excluded land is defined by reference to the ownership, use codes, use restrictions, and hydrological characteristics in MassGIS and consists of the following:
  1. All publicly-owned land, except for lots or portions of lots determined to be developable public land.
  2. All rivers, streams, lakes, ponds and other surface waterbodies.
  3. All wetland resource areas, together with a buffer zone around wetlands and waterbodies equivalent to the minimum setback required by title 5 of the state environmental code.
  4. Protected open space and recreational land that is legally protected in perpetuity (for example, land owned by a local land trust or subject to a conservation restriction), or that is likely to remain undeveloped due to functional or traditional use (for example, cemeteries).
  5. All public rights-of-way and private rights-of-way.
  6. Privately-owned land on which development is prohibited to protect private or public water supplies, including, but not limited to, Zone I wellhead protection areas and Zone A surface water supply protection areas.
  7. Privately-owned land used for educational or institutional uses such as a hospital, prison, electric, water, wastewater or other utility, museum, or private school, college or university. (<https://www.mass.gov/doc/compliance-model-user-guide/download>)



Current Analysis

# Total Unit Capacity

|                      | Newtonville<br>(District 1) |     |     | West Newton<br>(District 2) |     |     | Newton Highlands<br>(District 3) |     |     | Waban<br>(District 4) |     | Auburndale<br>(District 5) |     |     | Newton Centre<br>(District 6) |     |     |                 |
|----------------------|-----------------------------|-----|-----|-----------------------------|-----|-----|----------------------------------|-----|-----|-----------------------|-----|----------------------------|-----|-----|-------------------------------|-----|-----|-----------------|
|                      | VC3                         | VC2 | VC1 | VC3                         | VC2 | VC1 | VC3                              | VC2 | VC1 | VC2                   | VC1 | VC3                        | VC2 | VC1 | VC3                           | VC2 | VC1 | Total           |
| Unit Capacity        | 300                         | 300 | 350 | 650                         | 200 | 100 | 150                              | 100 | 40  | 200                   | 100 | 100                        | 200 | 40  | 400                           | 250 | 50  | ~3,500<br>units |
| Land Area<br>(acres) | 60                          |     |     | 40                          |     |     | 10                               |     |     | 20                    |     | 10                         |     |     | 30                            |     |     | 170 acres       |

➔ **8,330**  
units req'd

Notes:

- VC1 is capped at 4 units/lot
- VC2 and VC3 do not have a unit cap per lot
- Development is only allowed as-of-right on lots less than 30,000 sq. ft. Lots larger than this limit have been removed from this analysis because only development permitted as-of-right may be counted toward the MBTA Communities requirements

Current Analysis

# Total Land Area (50% must be contiguous)

|                      | Newtonville<br>(District 1) |     |     | West Newton<br>(District 2) |     |     | Newton Highlands<br>(District 3) |     |     | Waban<br>(District 4) |     | Auburndale<br>(District 5) |     |     | Newton Centre<br>(District 6) |     |     |                 |
|----------------------|-----------------------------|-----|-----|-----------------------------|-----|-----|----------------------------------|-----|-----|-----------------------|-----|----------------------------|-----|-----|-------------------------------|-----|-----|-----------------|
|                      | VC3                         | VC2 | VC1 | VC3                         | VC2 | VC1 | VC3                              | VC2 | VC1 | VC2                   | VC1 | VC3                        | VC2 | VC1 | VC3                           | VC2 | VC1 | Total           |
| Unit Capacity        | 300                         | 300 | 350 | 650                         | 200 | 100 | 150                              | 100 | 40  | 200                   | 100 | 100                        | 200 | 40  | 400                           | 250 | 50  | ~3,500<br>units |
| Land Area<br>(acres) | 60                          |     |     | 40                          |     |     | 10                               |     |     | 20                    |     | 10                         |     |     | 30                            |     |     | 170 acres       |

**85 acres must be contiguous**

Notes:

- VC1 is capped at 4 units/lot
- VC2 and VC3 do not have a unit cap per lot
- Development is only allowed as-of-right on lots less than 30,000 sq. ft. Lots larger than this limit have been removed from this analysis because only development permitted as-of-right may be counted toward the MBTA Communities requirements

# Aggregate Gross Density

- The VC2 and VC3 districts' high gross density make up for the lack of density in VC1.
- Adjusting the district boundaries to ensure contiguity and including corresponding rights-of-way may reduce the overall density.
- These preliminary calculated densities suggest that with some refinement, we can get the zoning districts to an overall gross density of 15 units/acre.

|                      | VC1            | VC2            | VC3            | Total          |
|----------------------|----------------|----------------|----------------|----------------|
| Land Area (acres)    | 55             | 55             | 50             | 160 acres      |
| Total Units          | 680            | 1250           | 1600           | 3,530 units    |
| Gross Density (est.) | ~12 units/acre | ~23 units/acre | ~32 units/acre | ~22 units/acre |

Some districts can be less dense than 15 units/acre as long as all districts, in total, meet 15 units/acre

# Version 1.0 VCOD Does Not Meet MBTA Compliance

## MBTA Compliance Summary (rounded)

|  | MBTA Requirements (min.) | Version 1.0 VCOD Results | MBTA Compliant |
|--|--------------------------|--------------------------|----------------|
| Unit Capacity  | 8,330 units              | 3,500 units              | NO             |
| Aggregate Gross Density                                  | 15 units/acre            | 22 units/acre            | YES            |
| Total Land Area  | 50 acres                 | 170                      | YES            |
| % of District to be Located in Station Area              | 90%                      | 100%*                    | YES            |
| % of Contiguous Land for Multi-Family Zoning District(s) | 505%                     | 35%**                    | NO             |

Notes:  
 \* Only VCOD zones within station area were tested  
 \*\* Newtonville is the largest contiguous VCOD and is used as the contiguous percentage

Must meet every requirement to reach compliance

# Strategies for Compliance

Potential next steps to explore

## Potential strategies to consider for compliance

- Reduce or eliminate parking minimums
- Raise SP threshold to add more sites to the by-right inventory
- Add additional area to the VC1 district, potentially with another commercial by-right option
- Remove all city-owned and other unwieldy sites that are depressing the density counts
- Remove or adjust rules on priority streets where commercial ground floor is highly desired