

**DRAFT Compliance Guidelines for Multi-family Districts
Under Section 3A of the Zoning Act**

SOUTH HANSON VILLAGE - MBTA ZONING DISTRICT

(Working Title)

Overview of Section 3A of the Zoning Act

- On January 14, 2021, Governor Baker signed an omnibus economic development package into law, which is now known as Chapter 358 of the Acts of 2020.
- Section 18 of chapter 358 of the Acts of 2020 added a new section 3A to chapter 40A of the General Laws (the Zoning Act) applicable to MBTA communities.
- The purpose of Section 3A is to encourage MBTA communities to adopt zoning districts where multi-family zoning is permitted as of right, and that meet other requirements set forth in the statute.



Section 3A provides:

- An MBTA community shall have a zoning ordinance or by-law that provides for at least 1 district of reasonable size in which multi-family housing is permitted as of right;
- provided, however, that such multi-family housing shall be without age restrictions and shall be suitable for families with children.
- **For the purposes of this section, a district of reasonable size shall:**
 - (i) have a minimum gross density of 15 units per acre, subject to any further limitations imposed by section 40 of chapter 131 and title 5 of the state environmental code established pursuant to section 13 of chapter 21A; and
 - (ii) be located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable.



Definitions

- “Commuter rail community” means an MBTA community with a commuter rail station within its borders, or within 0.5 mile of its border, and no subway station within its borders, or within 0.5 mile of its border.
- “Developable land” means land on which multi-family housing units have been or can be permitted and constructed. Developable land shall not include land under water, wetland resource areas, areas lacking adequate water or wastewater infrastructure or capacity, publicly owned land that is dedicated to existing public uses, or privately owned land encumbered by any kind of use restriction that prohibits residential use.
- “Multi-family housing” means a building with 3 or more residential dwelling units or 2 or more buildings on the same lot with more than 1 residential dwelling unit in each building.
- “Multi-family district” means a zoning district, including an overlay district, in which multi-family uses are allowed by right.
- “Reasonable size” means not less than 50 contiguous acres of land with a unit capacity equal to or greater than the unit capacity specified in section 5 of the guidelines.

General Principles of Compliance

- The guidelines specifically address:
- How to determine if a multi-family district has a minimum gross density of 15 units per acre, subject to any further limitations imposed by section 40 of chapter 131 and title 5 of the state environmental code;
- Section 3A's mandate that "such multi-family housing shall be without age restrictions and shall be suitable for families with children
- The extent to which MBTA communities have flexibility to choose the location of a multi-family district.

- The following general principles have informed the more specific compliance criteria that follow:
- MBTA communities should adopt multi-family districts that will lead to development of multi-family housing projects of a scale, density and character that are consistent with a community's long-term planning goals.
- To the maximum extent possible, multi-family districts should be in areas that have safe and convenient access to transit stations for pedestrians and bicyclists. 4. Allowing Multi-Family Housing "As of Right" To comply with Section 3A, a multi-family district must allow multi-family housing "as of right,

Allowing Multi-Family Housing “As of Right”

- To comply with Section 3A, a multi-family district must allow multi-family housing “as of right,” meaning that the construction and occupancy of multi-family housing is allowed in that district without the need to obtain any discretionary permit or approval. Site plan review and approval may be required for multi-family uses allowed as of right.
- Site plan review is a process by which a local board reviews a project’s site layout to ensure public safety and convenience.
- 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. 5.



Determining “Reasonable Size”

- DHCD will take into consideration both the area of the district and the district's multi-family unit capacity.
- *Minimum land area:*
- 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 mile of a transit station.
- *An overlay district is an acceptable way to achieve compliance with Section 3A, provided that:*
 - such an overlay district should not consist of a collection of small, non-contiguous parcels.
 - At least one portion of the overlay district land areas must include at least 25 contiguous acres of land.
 - No portion of the district that is less than 5 contiguous acres land will count toward the minimum size requirement.

Determining “Reasonable Size”

- Minimum multi-family unit capacity:
- A compliant district's multi-family unit capacity must be equal to or greater than a specified percentage of the total number of housing units within the community.
- The required percentage will depend on the type of transit service in the community.
- Hanson is a Commuter rail community:
15% Minimum multi-family units as a percentage of total housing stock.
- Minimum multifamily district unit capacity requirement for Hanson = 750 Units
2020 Housing Units = 3960 x 0.15 = 594 (750 Units Minimum
- It is important to understand that a multi-family district's unit capacity is not a mandate to construct a specified number of housing units, nor is it a housing production target. Section 3A requires only that each MBTA community has a multi-family zoning district of reasonable size. The law does not require the production of new multi-family housing units within that district. There is no requirement nor expectation that a multi-family district will be built out to its full unit capacity.

Minimum Gross Density

- DHCD will deem a zoning district to be compliant with Section 3A's minimum gross density requirement if the following criteria are met.
- **District-wide gross density;** —must have a minimum gross density of 15 units per acre.
- Include[ing] land occupied by public rights-of-way and any recreational, civic, commercial and other nonresidential uses.”
By way of
- **Achieving district-wide gross density by sub-districts;** - To comply with the statute's density requirement, an MBTA community may establish sub-districts within a multi-family district, with different density requirements and limitations for each sub-district, provided that the gross density for the district as a whole meets the statutory requirement of not less than 15 multifamily units per acre.

Determining Suitability for Families with Children

- Section 3A states that a compliant multi-family district must be without age restrictions and must be suitable for families with children. DHCD will deem a multi-family district to comply with these requirements as long as the zoning does not require multi-family uses to include units with age restrictions and does not place any limits or restrictions on the size of the units, the number of bedrooms, the size of bedrooms, or the number of occupants.



Location of Districts

- A compliant multi-family 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 interpret that requirement consistent with the following guidelines.*
- a. - **General rule for measuring distance from a transit station.** - distance from a transit station may be measured from the boundary of any parcel of land owned by a public entity and used for purposes related to the transit station, such as an access roadway or parking lot.
- b. - **MBTA communities with some land area within 0.5 miles of a transit station** -In unusual cases, the most appropriate location for a multi-family district may be in a land area that is further than 0.5 miles of a transit station. Where none of the land area within 0.5 mile of transit station is appropriate for development of multi-family housing—for example, because it comprises wetlands or land publicly owned for recreation or conservation purposes—the MBTA community may propose a multi-family use district that has less than one-half of its land area within 0.5 miles of a transit station. To the maximum extent feasible, the land areas within such a district should be easily accessible to the transit station based on existing street patterns, pedestrian connections, and bicycle lanes.
- c. - **MBTA communities with no land area within 0.5 miles of a transit station** - When an MBTA community has no land area within 0.5 mile of a transit station, the multi-family district should, if feasible, be located in an area with reasonable access to a transit station based on existing street patterns, pedestrian connections, and bicycle lanes, or in an area that otherwise is consistent with the Commonwealth’s sustainable development principles—for example, near an existing downtown

Determinations of Compliance

- DHCD will make determinations of compliance with Section 3A upon request from an MBTA community, in accordance with the following criteria and schedule;
- a. **Requests for determination of compliance:** - In either case, such request shall be made on a form required by DHCD and shall include, at a minimum, the following information;

General district information

Location of districts

Reasonable size metrics

District gross density

Housing suitable for families

Attestation



Determinations of Compliance

- **b. Action plans and interim compliance**—New or amended district
- To achieve interim compliance, the MBTA community must, by no later than the dates specified in section 9.c, send to DHCD written notice that a new multi-family district, or amendment of an existing multi-family district, must be adopted to come into compliance with Section 3A.
- The MBTA community must then take the following actions to maintain interim compliance:
 - *1.- Creation of an action plan. Each MBTA community must provide DHCD with a propose*
 - *2. - Implementation of the action plan.*
 - *3. - Adoption of zoning amendment.*

For commuter rail communities and adjacent communities, DHCD will not approve an action plan with an adoption date later than December 31, 2024.
 - *4. - Determination of full compliance.*
- **c. Timeframes for submissions by MBTA communities** - To remain in interim compliance with Section 3A, an MBTA community must take one of the following actions by no later than December 31, 2022:

Renewals and Rescission of a Determination of Compliance

- a. - Term and renewal of a determination of compliance:
- A determination of compliance shall have a term of 10 years. Each MBTA community shall apply to renew its certificate of compliance at least 6 months prior to its expiration.

- b. - Rescission of a determination of compliance
- DHCD reserves the right to rescind a determination of compliance if DHCD determines that
- (i) the MBTA community submitted inaccurate information in its application for a determination of compliance,
- (ii) the MBTA community amended its zoning or enacted a general bylaw or other rule or regulation that materially alters the Unit capacity in the applicable multi-family use district.

Effect of Noncompliance

- If at any point DHCD determines that an MBTA community is not in compliance with Section 3A, that MBTA community will not be eligible for funds from the following grant programs:
 - (i) the Housing Choice Initiative as described by the governor in a message to the general court dated December 11, 2017;
 - (ii) the Local Capital Projects Fund established in section 2E EEE of chapter 29; or
 - (iii) the MassWorks infrastructure program established in section 63 of chapter 23A. DHCD may, in its discretion, take noncompliance into consideration when making other discretionary grant awards

