



Commonwealth of Massachusetts

DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT

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PRELIMINARY GUIDANCE FOR MBTA COMMUNITIES REGARDING COMPLIANCE WITH SECTION 3A OF CHAPTER 40A (BY RIGHT MULTIFAMILY ZONING)

Section 18 of chapter 358 of the Acts of 2020 adds a new section 3A to the Zoning Act (Chapter 40A of the General Laws) applicable to MBTA communities. The purpose of section 3A is to encourage MBTA communities to adopt zoning districts where multifamily zoning is permitted as of right, and that meet other requirements set forth in the statute.

The Department of Housing and Community Development (the “Department”), in consultation with the Massachusetts Bay Transportation Authority and the Massachusetts Department of Transportation, is required to promulgate guidelines to determine if an MBTA community is in compliance with section 3A. This preliminary guidance is to (1) inform MBTA communities about the process the Department will undertake to establish compliance criteria for section 3A, and (2) notify MBTA communities that they will remain eligible for grant programs administered by the Executive Office of Housing and Economic Development or its agencies until more detailed compliance criteria and guidelines have been issued.

What is an MBTA community?

The Zoning Act was amended to add the following definition of “MBTA Community”: a city or town that is: (i) one of the 51 cities and towns as defined in section 1 of chapter 161A; (ii) one of the 14 cities and towns as defined in said section 1 of said chapter 161A; (iii) other served communities as defined in said section 1 of said chapter 161A; or (iv) a municipality that has been added to the Massachusetts Bay Transportation Authority under section 6 of chapter 161A or in accordance with any special law relative to the area constituting the authority.

What does the new section 3A of Chapter 40A require of MBTA communities?

New section 3A of the Zoning Act provides that each 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.” The statute further provides “that such multi-family housing shall be without age restrictions and shall be suitable for families with children,” and that each such district “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.”

What happens if an MBTA Community does not comply?

If an MBTA community does not comply with section 3A, it 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 of chapter 29; or (iii) the MassWorks infrastructure program established in section 63 of chapter 23A.

How does an MBTA community know if it is in compliance?

The Department intends to issue more detailed guidelines on compliance criteria and timelines after consulting with the Massachusetts Bay Transportation Authority and the Massachusetts Department of Transportation, as required by the statute. The Department expects to seek and consider input from affected MBTA communities as well. The Department will begin this consultation process promptly and expects to have more complete guidance available as soon as possible.

Based on information currently available, the Department expects that some MBTA communities already have zoning districts that meet the statutory criteria, while others will need to enact new zoning. The Department anticipates that its compliance guidelines will account for the fact that different communities have different needs and that communities considering the adoption of new zoning will, in many cases, require time for a planning process and community input.

Can an MBTA community apply for grant funding while compliance criteria are under development?

Yes. All MBTA communities will be deemed to be in compliance with section 3A until more specific guidance is developed and made available to affected MBTA communities.