



Multi-family Zoning Requirement for MBTA Communities An Introduction to the Section 3A Program

**Home Builders and Remodelers Association of MA
Board Meeting
April 18, 2023**

Presentation Overview



- **Background and Resources**
- **What is an MBTA Community?**
- **Zoning for What and Whom**
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 - As of Right Zoning
 - District Location
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Background and Resources



- **Most multi-family housing is subject to an unpredictable, time-consuming process.**
 - It often requires a special permit, rezoning, or 40B.
 - *Only 14% of multi-family units in the greater Boston area were permitted as of right from 2015-2017.*



[Mass.gov/mbtacommunities](https://www.mass.gov/mbtacommunities)

- **Section 3A establishes a new paradigm** for removing zoning barriers to allow multi-family development.
- **We can create new housing in walkable neighborhoods**, by allowing multi-family housing near transit.



Background and Resources: Timeline



January 14, 2021
Governor signs
new section 3A
into the Zoning Act

**December 15,
2021** Draft
Guidelines
Issued

**August 10,
2022**
Final
Guidelines
issued

**November
2022**
Compliance
Model
available

**January 29,
2021**
Preliminary 3A
Guidance
issued

**March 31,
2022**
End of public
comment
period

**October 21,
2022**
Guidelines
revised for
affordability

**January
31, 2023**
Action
Plans due

Action Plan summary: 171 municipalities submitted Action Plans (98%).

- Many of the submitted Action Plans demonstrate careful thinking about future 3A districts.
- The four municipalities that did not submit Action Plans are the towns of: Berkley, Holden, Marshfield and Middleborough.
- The cities of **Fall River** and **New Bedford** became MBTA Communities on 1/1/23 and have Action Plans due on 3/31/23 and are expected to submit them on time.

Background and Resources: Section 3A of the Zoning Act



Section 3A. (a)(1) 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.

(b) An MBTA community that fails to comply with this section shall not be eligible for funds from: (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 2EEEE of chapter 29; or (iii) the MassWorks infrastructure program established in section 63 of chapter 23A.

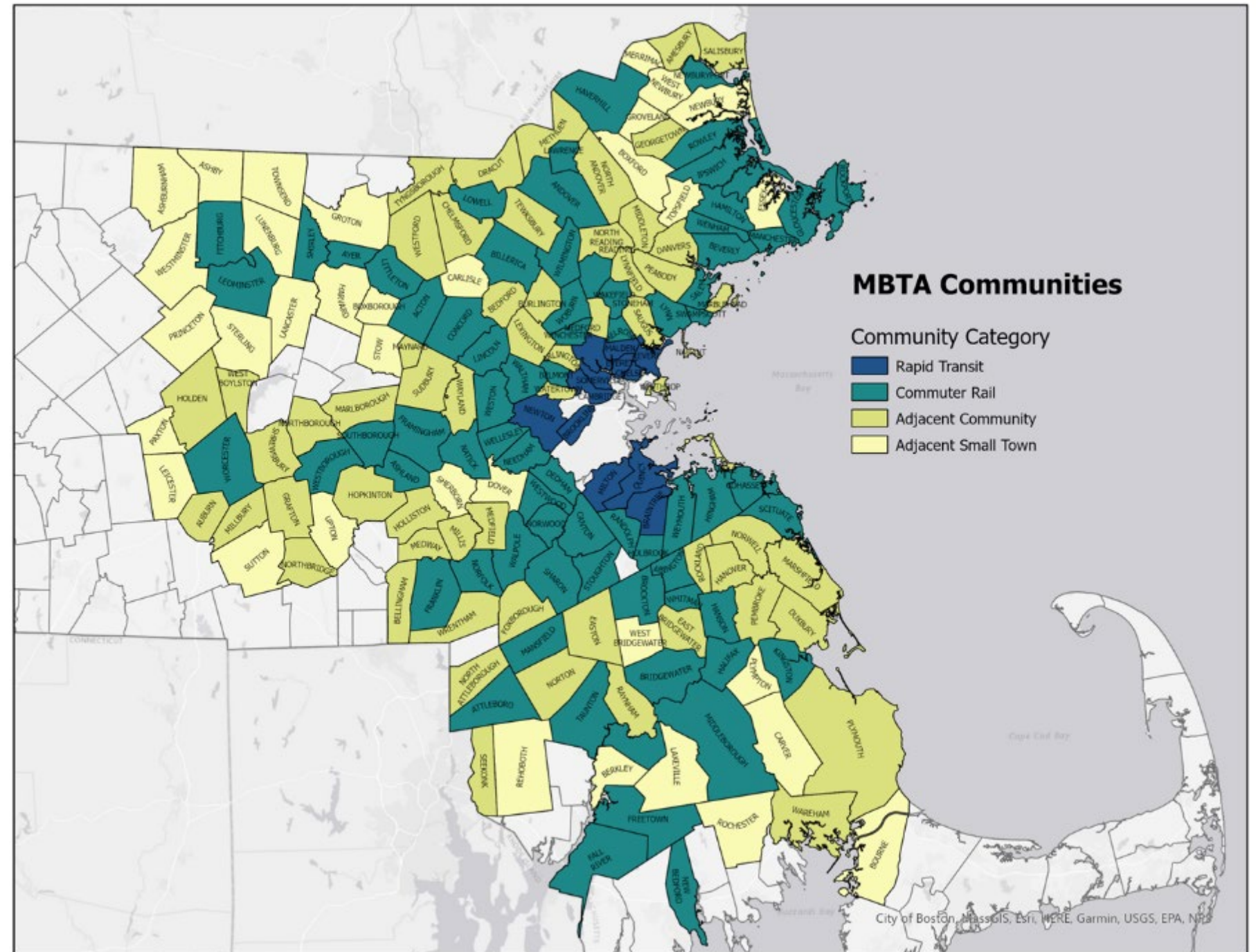
(c) The department of housing and community development, in consultation with the Massachusetts Bay Transportation Authority and the Massachusetts Department of Transportation, shall promulgate guidelines to determine if an MBTA community is in compliance with this section

What is an MBTA Community?



177 Cities and Towns named in MGL c. 161A or added by other action

- Guidelines define 4 Community categories based on fixed transit assets for each community
 - Rapid Transit (12)
 - Commuter Rail (71)
 - Adjacent (59)
 - Adjacent Small Towns (35)
- Categories are a factor for determining local “reasonable size” requirements
- Each category has its own formula to determine minimum unit capacity



Zoning for What and Whom: Missing Middle

Multi-family housing: “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”
– MGL c. 40A §1A

“Missing middle” housing types represent what Section 3A zoning requires



Zoning for what *kind of* *multi-family* *development*



Zoning for whom?



Basic Requirements



- **Zoning district** that allows Multi-family as of right
- **Minimum gross density** of 15 units per acre
- **Housing suitable for families with children** (no age restrictions, bedroom limitations, or occupancy caps in zoning)
- **Transit Orientation:** Within ½ mile of a commuter rail station, subway station, ferry terminal or bus station, if applicable and where development is possible
- **Minimum land area:** 50 acres (some are less)
- **Unit capacity:** what the zoning allows, based on community category and existing housing units
- **Non-compliance:** ineligible for MassWorks, Housing Choice Grant program and the Local Capital Project Fund. AGO Advisory (3/15/23).



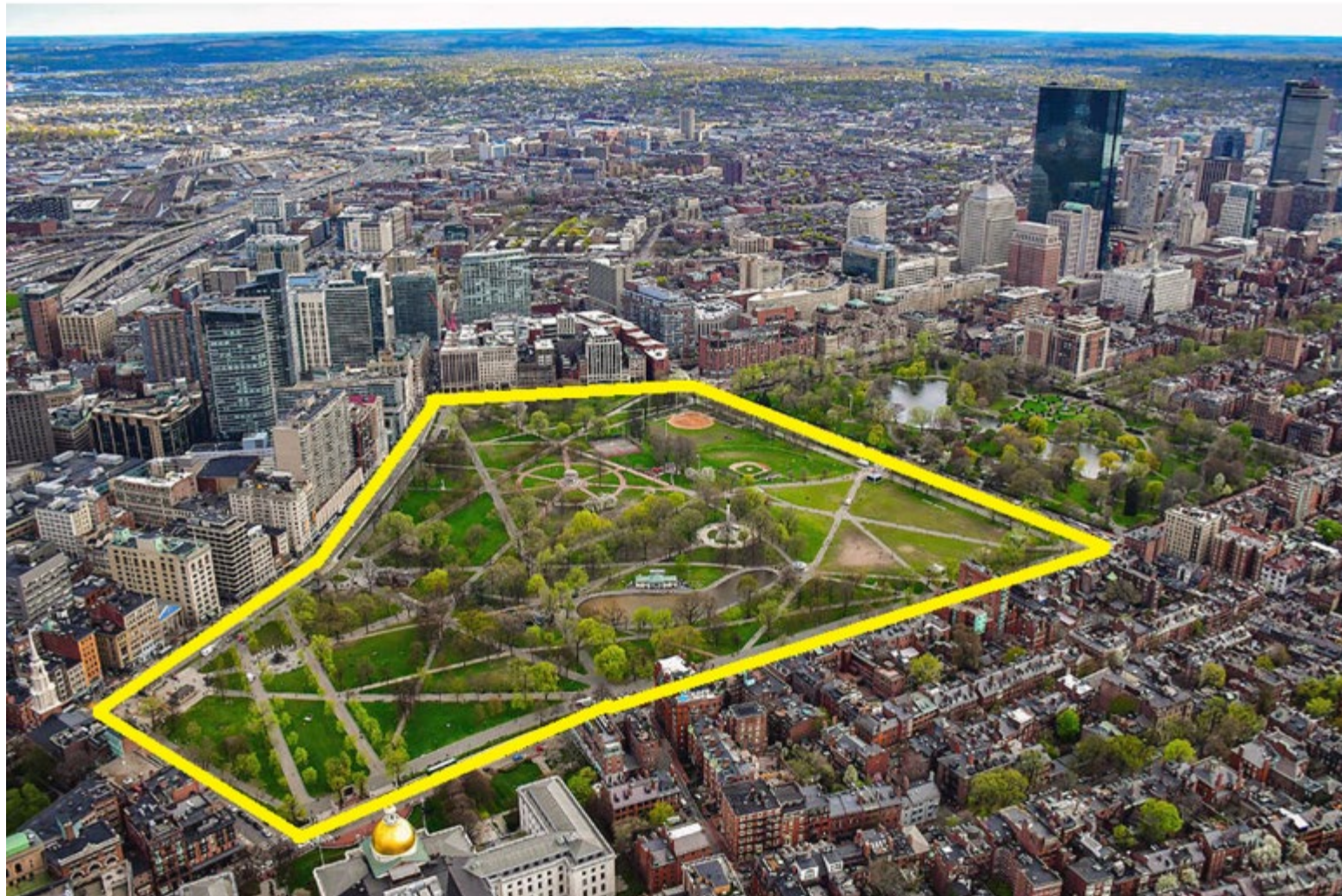
Basic Requirements



	Rapid Transit	Commuter Rail	Adjacent	Adjacent Small Town
Land Area	50 Acres	50 Acres	50 Acres	n/a
Unit Capacity ¹	25%	15%	10%	5%
Location	Near Transit ²	Near Transit ²	n/a	n/a
Deadline	12/31/2023	12/31/2024	12/31/2024	12/31/2025

1. Unit Capacity is expressed as percentage of 2020 Housing Stock. For example, Rapid Transit Unit Capacity = Housing Stock x 0.25
2. Percentage of district located near transit depends on developable land near stations

Land Area: Visualizing 50 acres



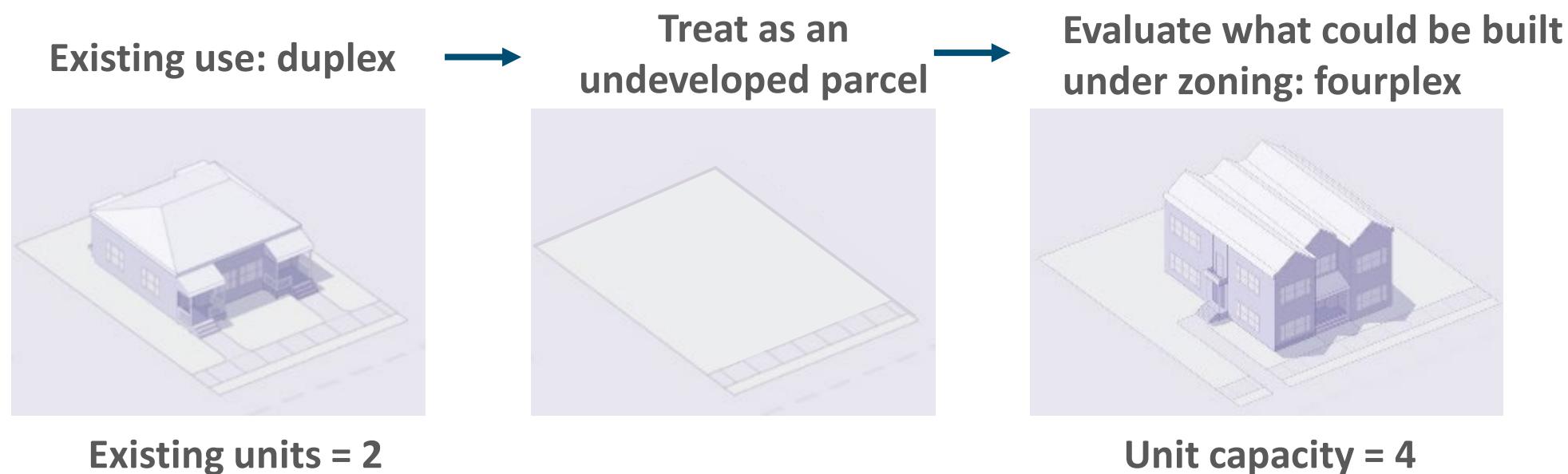
Multi-family Unit Capacity

- Communities with higher levels of fixed transit have higher requirements to zone for multi-family housing
- Requirement is based on existing housing stock

Reasonable Size: Unit Capacity as a measurement of zoning

“Unit capacity” is a measure of the number of multi-family units that the zoning allows as of right in the district. Although some units may already exist, unit capacity for any given parcel may be higher or lower than existing development on the site.

The unit capacity of each parcel is measured as if that parcel was undeveloped:



District Location



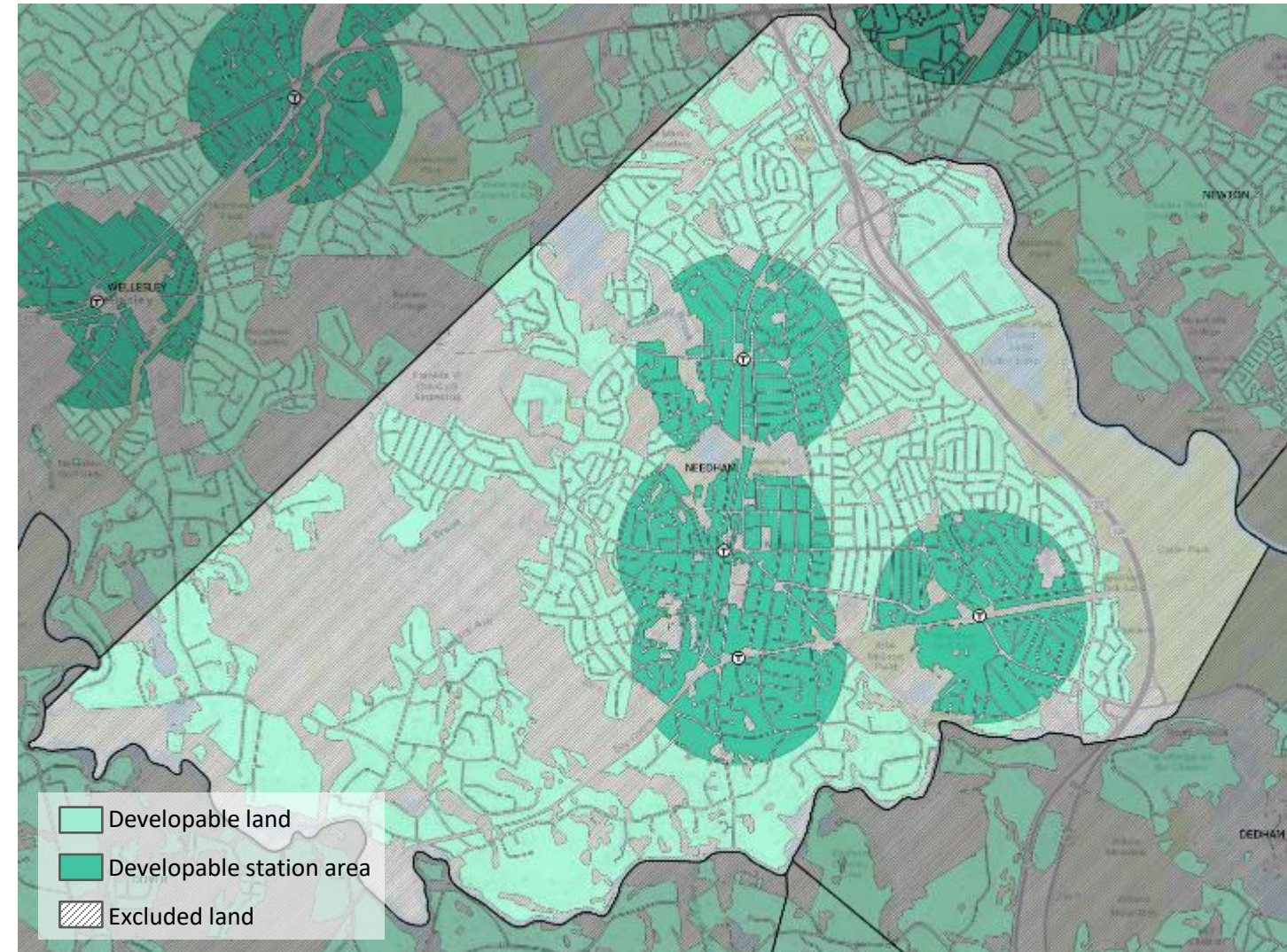
“located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable.”

Guidelines Table 2: A sliding scale

Acres of Developable Station Area	Portion of MF District that must be in station area	Municipalities
0-100	0%	94
101-250	20%	17
251-400	40%	25
401-600	50%	16
601-800	75%	13
801+	90%	10

This scale requires MBTA communities with more than 100 acres of developable station area to locate some of their districts within those station areas. Communities with more developable station area offer more opportunity for housing near transit.

Example: Needham



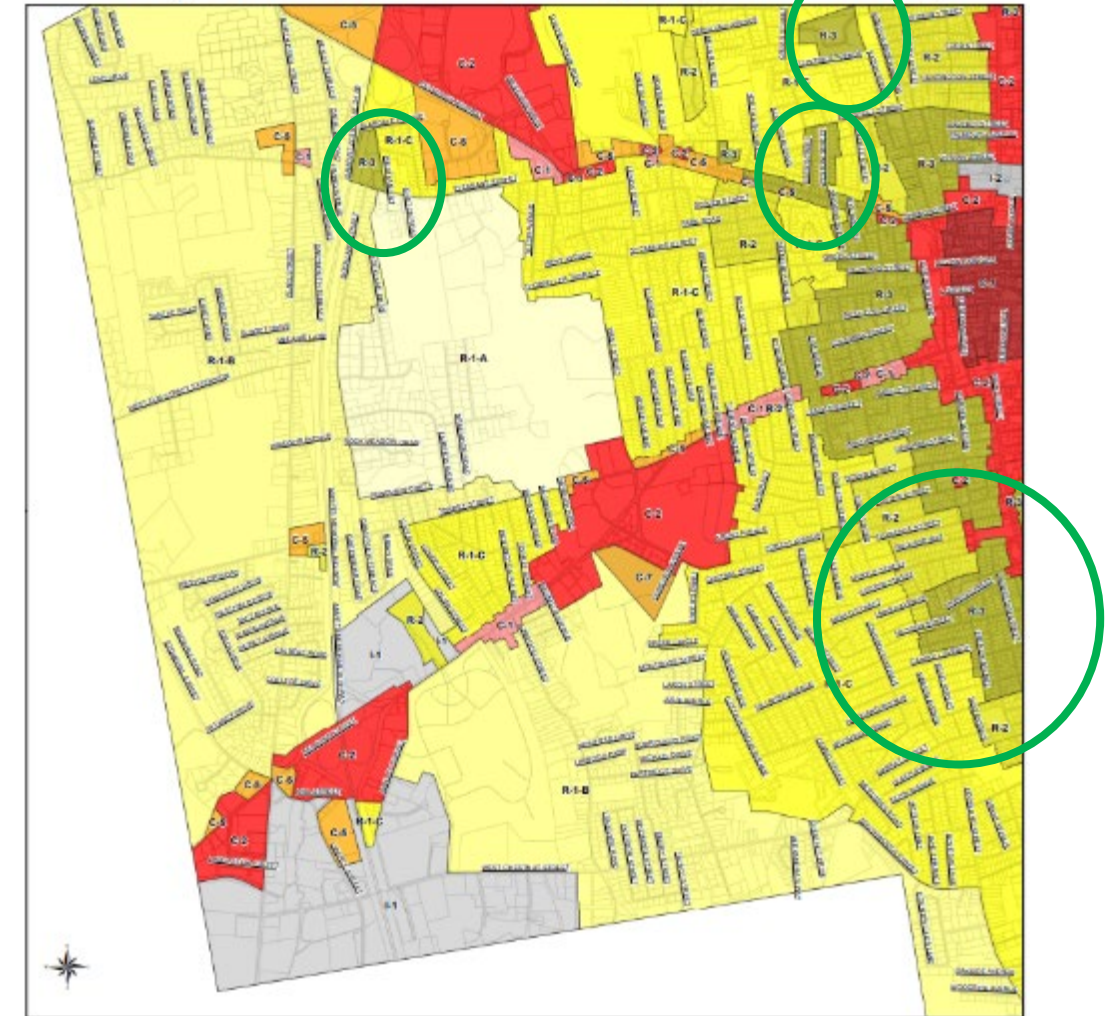
1,233 Total acres of developable station area

90% Percentage of minimum district land area and unit capacity that must be in developable station area



- Section 5 has Location and Contiguity requirements**
 - 50% of the total district size must be contiguous (this is **not** the same as 50% of the minimum land area).
 - For example: if a municipality has a 50 acre minimum land area but designs an 80 acre district that will meet unit capacity/density requirements, then one part of the district must have 40 contiguous acres.
- If district has multiple locations, there is a 5 acre minimum size in order to count towards the minimum land area**
 - Purpose: Allow district to be located in multiple locations, and create neighborhoods, not just “project sites”
 - Exception: if a municipality can meet unit capacity in less than 5 acres, then entire district must be contiguous

City of Brockton - Zoning Map - Section 3



SWITCH TO: **Section 1** | **Section 2** | **Section 3** | **Section 4** | **Section 5**

Brockton		Accurate as of 2014	
Zone Designation			Please Contact Brockton Building Department for Zone Boundary Confirmation
R-1-A (Single-Family Residential)	R-3 (Multi-Family Residential)	C-7 (Sports & Convention)	I-1 (Industrial Park)
R-1-B (Single-Family Residential)	C-1 (Neighborhood Commercial)	C-8 (Highway Commercial)	I-2 (General Industrial)
R-1-C (Single-Family Residential)	C-2 (General Commercial)		I-3 (Heavy Industrial)
R-1-C (Single-Family Residential)	C-3 (Central Business)		
R-2 (Multi-Family Residential)	C-4 (Office Commercial)		

Compliance Model: a required element



A **geospatial (GIS) database** for each municipality that includes existing parcel boundaries, any excluded or sensitive land, and additional information such as owner name, address, and existing use.

Dimensional Standards	Value	Notes
Minimum Lot Size (in square feet)		
Base Minimum Lot Size (in square feet)		
Additional Lot Square Footage by Dwelling Unit (in square feet)		
<i>Restricted space is allowed as part of open space requirement.</i>		
Building type and density	Value	Notes
Two-family?		
Three-family?		
Four-family?		
Five or more dwelling units per lot?		
Accessory Dwelling Unit (ADU)?		

A **zoning checklist**, which will walk users through a series of questions and prompts in order to collect relevant dimensional and regulatory elements of the proposed zoning bylaw that will impact unit capacity.

Metric	Compliance Model Estimates	Town-specific Requirement	Compliant?
District acreage	62.4	50.0	Y
Estimated unit capacity	955.0	900.0	Y
Estimated gross district density	15.3	15.0	Y
% of unit capacity within station areas	63.2%	50.0%	Y

A **unit capacity estimator** that will use the imported parcel information and the information collected in the zoning checklist to derive an estimate of the unit capacity on each lot in the district as well as district-level summary information such as total district unit capacity, gross density of the district, and other helpful statistics.

- **Site Plan Review**
 - Can be required for as of right multi-family uses but cannot impose unreasonable requirements or undue delay on proposed project
- **Mandatory Mixed-Use Development**
 - Mixed use development may be allowed, and encouraged, but cannot be a mandatory pre-requisite to develop multi-family housing
- **Energy Efficiency**
 - Multi-family housing cannot be required to meet higher standards than other uses in the municipality





On October 21, 2022, DHCD announced limited revisions to the Section 3A Guidelines to address the extent to which MBTA communities may require affordable units in compliant multi-family zoning districts.

- **Inclusionary Zoning (IZ) may require up to 10% of units at 80% Area Median Income (AMI) in all districts, in all communities**
- **DHCD programs exception (i.e., c. 40R or UCH-TIF):**
 - **Up to 20%, and below 80% AMI if reviewed and approved by DHCD**
 - **Up to 25%, and below 80% AMI if the 40R district is pre-existing (8/10/2022)**
- **Economic Feasibility Analysis exception:**
 - **Up to 20% affordable units and/or AMI below 80%**
 - **Requires MBTA community to submit an independent third-party feasibility study supporting feasibility of MFH in the district**
- **Units may be, but are not required to be, eligible for SHI (allows AMI over 80%)**



- **Goal: Provide TA to every municipality that wants it. This goal will be achieved through a multi-year effort starting FY23 and carrying out over the next several years.**

- Assistance will be provided to communities through collaboration and coordination:
 - Massachusetts Housing Partnership (MHP): Leveraging a variety of resources MHP is developing a comprehensive technical assistance program available to all interested MBTA Communities.

<https://www.mhp.net/community/complete-neighborhoods-initiative>

- DHCD: Via the Community One Stop, the following grant programs are available: Housing Choice Grant Program, Community Planning Grants, and the Rural and Small Town Development Fund. MBTA compliance activities eligible for bonus points.
- EEA: Land Use Planning Grant program will also prioritize MBTA municipalities.
- Regional Planning Agencies: Support from eight Regional Planning Agencies through prioritization of Commonwealth-provided District Local Technical Assistance (DLTA) funding.



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Important Clarifications



Section 3A and the Compliance Guidelines do **NOT**:

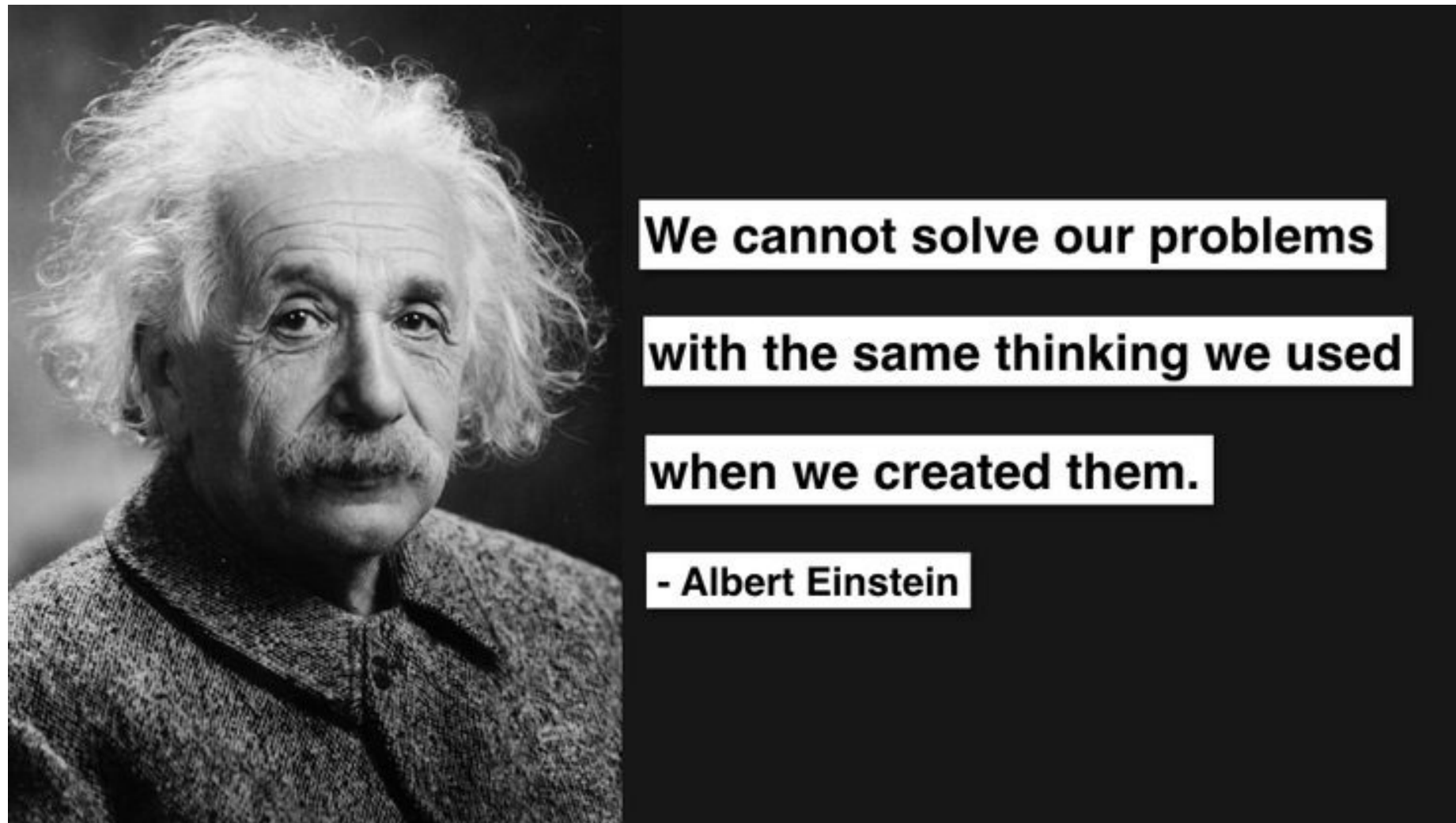
- Require that multi-family housing be built (compliance is based on zoning that meets standards)
- Compel communities to design nor pay for new infrastructure to accommodate future multi-family development in a 3A district
- Mean that districts have to have uniform density (subdistricts can have areas of higher and lower density as long as the entire district area averages 15 units/acre)
- Supersede MA Wetlands Protection Act nor Title V of MA Environmental Code
- Allow municipalities to get a waiver or exemption from the requirements



Important Clarifications

- 3A zoning will remove zoning barriers – but 3A districts may not see development for years. As with most zoning, it “sets the table” for future actions
- Many cities and towns are rolling up their sleeves to work on districts (over 100 municipalities have technical assistance)
- Press coverage may leave the public with the impression that negative reactions are more widespread
- The capacity analysis conducted by local governments does not mean that production of all the units will follow





If you need more information to help others in your community to understand this legislation, please let us know! You can email program staff at:

DHCD3A@mass.gov

mass.gov/mbtacommunities will continue to have information and resources

