

# The MBTA Communities Act, Three Years Later:

## How Massachusetts Towns and Cities are Implementing (or Resisting) Multi-Family Zoning Provisions

By Andrew Mikula



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## Executive Summary

First passed into law in January 2021, the MBTA Communities Act (“Section 3A”) is a state mandate that requires 177 municipalities in eastern and central Massachusetts to create at least one district of “reasonable size” where multi-family housing is permitted “as-of-right” at a gross density of at least 15 units per acre. The law also preempts municipalities from restricting housing development in this district by age or family type.

The Executive Office of Housing and Livable Communities (EOHLC) is the state agency responsible for interpreting Section 3A for administrative purposes and assisting localities with implementation. As directed in the legislation, the EOHLC has promulgated guidelines to define “reasonable size” and “as-of-right” and establish other compliance standards to implement the law. Under the guidelines, different municipalities are subject to different district size requirements and compliance deadlines depending in part on the type of transit that serves their communities, and some communities subject to the law don’t contain any transit stops within their borders. While the statute implicitly didn’t allow localities to enact affordability or mixed-use requirements related to the new zoning district, the EOHLC guidelines created some limited allowance for these policies.

A series of case studies yield insights for local implementation efforts. Building on existing planning and zoning work can make finding consensus easier, as can conducting frequent, early, and meaningful community outreach and engagement events. In addition to residents, non-resident property and business owners in the community also are valuable stakeholders in Section 3A’s implementation.

Disagreements over how or whether to comply are common, including among elected officials. Many communities concentrated their 3A zoning districts in areas with existing commercial development or multi-family housing complexes, thus avoiding encroachment on low-density neighborhoods and minimizing the number of net new units able to be created. Others, notably Lexington, went far beyond the unit capacity requirements imposed by the EOHLC.

In October 2024, the Massachusetts Supreme Judicial Court will hear a challenge to the law’s enforceability brought by the Town of Milton. Several municipalities have staked their 3A compliance approach on the outcome of that litigation. Enforcement of Section 3A through judicial means is controversial,<sup>1</sup> but historically state housing and zoning programs that don’t have a mandatory component are less impactful in terms of production.

The letter of the law specifies that the state will withhold certain grant funding opportunities from communities that fail to comply. The EOHLC has declared that many other grant programs will take 3A compliance under consideration when awarding funds. Both Governor Maura Healey and Attorney General Andrea Campbell have repeatedly said the state will go as far as necessary to force all 177 MBTA communities to comply. There will likely be a series of special Town Meeting votes in November and December 2024 that determine whether certain communities are subject to enforcement action.

By giving communities the ability to make up-front decisions on how to comply, Section 3A is a middle ground between full local control and previous state zoning reforms like Chapter 40B. In fact, unlike Chapter 40B, Section 3A contains no mechanism for waiving local septic system standards, wetlands protections, or other local health-related and environmental regulations.<sup>2</sup> The Act doesn’t require housing construction, population increases, or zoning for “high-rise” or “urban-style” buildings at all.

Where it is necessary, the burden of new physical infrastructure provision associated with Section 3A will fall mostly on developers and the state, not local governments. Several academic studies have concluded that additional property tax and other revenues from new multi-family development usually fully compensate for the additional costs truly borne at the local level, such as expanded emergency services.<sup>3</sup>

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Credible estimates from local officials and housing experts suggest that only a small fraction of the total housing unit capacity allowed under the law will actually be built in the first few years of full implementation.<sup>4</sup> This pace reflects Section 3A's deliberately incremental and long-term approach to addressing Massachusetts' housing crisis, but it also means that 3A alone will not solve the state's housing affordability and availability challenges.

That said, once the Act is fully implemented, it could help improve housing affordability, facilitate better access to economic opportunities and services via transit, and minimize the environmental impact of new development.<sup>5</sup> Section 3A aims to alleviate upward pressure on home prices at a broad scale by expanding the housing stock overall, which is a necessary component of a comprehensive strategy to improve housing affordability in Massachusetts.<sup>6</sup>

Transparency from the state regarding compliance efforts of individual communities and the volume and typology of new housing resulting from Section 3A would help inform the future efforts of policymakers to alleviate the housing shortage in Massachusetts. Policymakers should focus on creating more effective ways of tying state mandates to a level of service or funding being provided to localities, and also targeting such efforts to communities with development-ready sites.

## Introduction

In January 2021, as part of a sweeping economic development package, the Massachusetts legislature imposed a requirement on more than half the state's communities to create a zone where multi-family housing is permitted by-right, without requirements for special permits or other discretionary review processes that could impede construction.<sup>7</sup> Formally known as Massachusetts General Law Chapter 40A Section 3A ("Section 3A"), and sometimes as The MBTA Communities Act, implementation of this legislation has proven to be as complex as it is controversial.

The state agency in charge of interpreting the Act for administrative purposes and assisting localities with implementation is the Executive Office of Housing and Livable Communities (EOHLC), formerly the Department of Housing and Community Development. Since 2021, EOHLC staff have amended the Act's guidelines twice in response to various concerns from municipalities. At the same time, they are faced with the unenviable task of integrating a diverse array of local zoning paradigms into a single model that demonstrates whether a given community is compliant.

Meanwhile, local officials have worked just as hard to conduct community engagement activities; amend zoning ordinances, bylaws, and maps; weigh related technical considerations; and usher those zoning reforms through the political process. In fact, the MBTA Communities Act is different from prior state zoning reforms like Chapter 40B in that administrative guidelines create a substantial grace period between the law's enactment and its full implementation.

This paper offers a survey of compliance approaches that communities subject to Section 3A are taking. It documents the efforts of local leaders to comply with the law as well as the political and technical challenges that sometimes delay or derail those compliance plans. It examines the state's approach to enforcing the law and makes recommendations regarding enforcement action against communities that do not comply. Lastly, it discusses the structure, timing, and potential impact of the MBTA Communities Act relative to prior state zoning reforms in Massachusetts, which in turn offer lessons for future reform efforts. The next section provides details of the zoning mandate included in the MBTA Communities Act, which will allow the reader to better understand the varying approaches to implementation featured later in the paper.

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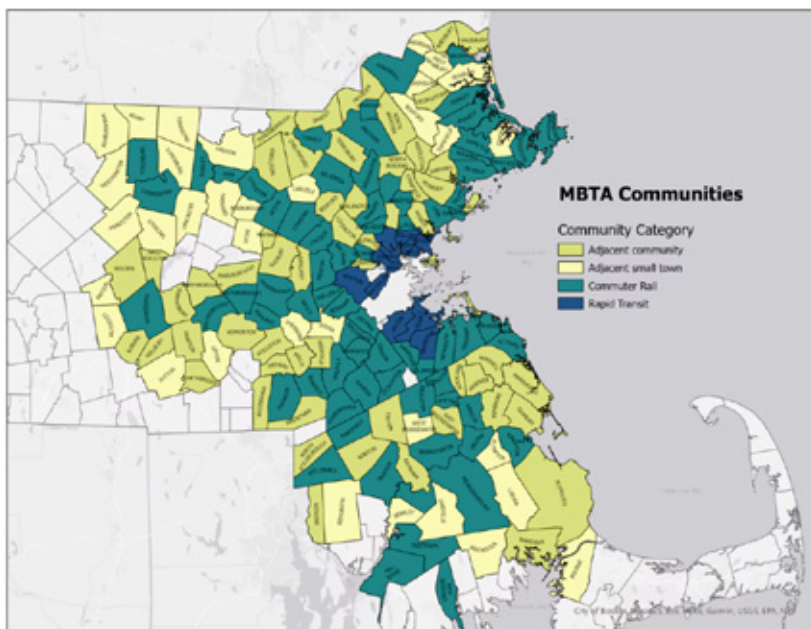
## Overview of the MBTA Communities Act

### The Impetus

In recent years, there has been an increasingly prevalent trend in federal, state, and local policy encouraging private investment around transit-rich areas as a means of both improving access to jobs and reducing the carbon footprint of new construction.<sup>8</sup> At the same time, it has been well-documented that housing production in Greater Boston has not kept up with either job growth or family formation rates in recent decades, leaving home buyers and renters facing prohibitively high prices and a lack of housing availability that threatens the region's future prosperity. From 2002 to 2022, the region added 3.3 jobs for every housing unit permitted.<sup>9</sup> From 2010 to 2020, household growth in the region was the fastest since the 1970s, while housing stock growth barely increased from the previous decade.<sup>10</sup>

In passing the MBTA Communities Act, the Commonwealth has essentially set parameters around local zoning decisions to both capitalize on the opportunity of transit-oriented development and attempt to alleviate the housing supply shortage. "MBTA communities" are, by definition, the 178 cities and towns in eastern and central Massachusetts that the state has deemed to benefit from access to public rail transit,<sup>11</sup> either because there is a transit station in the community itself or nearby (see Figure 1).<sup>12</sup> Section 3A essentially compels cities and towns to allow private value (in the form of new housing) to make better use of the public value (in the form of transit) that has already been created. Thus, while the legislation's stated goals are to address housing affordability challenges, accelerate job growth, and improve environmental sustainability, it could also help use public infrastructure more efficiently.

Figure 1: Map of MBTA Communities by Category<sup>13</sup>



### The Letter of the Law

Ultimately, the Commonwealth aims to achieve its transit-oriented development goals by requiring MBTA communities to designate at least one area "of reasonable size" within half a mile of a transit station where multi-family housing with a gross density of at least 15 units per acre is allowed to be built as of right. In this context, "built as of right" means a project proposed under the MBTA Communities Act cannot require a special permit or otherwise be subject to discretionary local zoning approval. Rather, the density and typology of the buildings are explicitly permitted in advance of any particular project proposal.

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Zoning, by definition, is a regulatory framework that only covers the dimensions, density, and typology of buildings.<sup>14</sup> The EOHLIC will continue to allow reviews of development projects that cover topics outside of zoning, such as traffic flow, drainage infrastructure, and landscaping, but such reviews may not allow local authorities to deny projects outright. In terms of density, Section 3A loosens zoning by dictating that municipalities must have some areas that allow developments of at least 15 units per acre, more or less the density of a row of triple-deckers with room for driveways in between (see Figure 2). It also explicitly adds more flexibility to housing typologies in these areas by preventing municipalities from restricting housing to seniors or enacting other restrictions that could limit access for families with children.<sup>15</sup>

Figure 2: Clockwise from Top Left: Triple Deckers in Worcester, Townhomes in Plymouth, and a Five-Unit Apartment Building in Melrose That Exceed the MBTA Community Act's Minimum Density Requirement<sup>16</sup>



As a point of emphasis, the MBTA Communities Act merely prevents municipalities from enacting certain restrictions on new housing in a “reasonably sized” district of their choosing. The law does not require any housing to be built, but rather requires cities and towns to *legally allow it to be built* in the new district. This legal allowance will be referred to as “zoning capacity” or “unit capacity” for the remainder of the paper. The distinction between units built and zoning capacity is important because it remains uncertain how much housing production will occur under Section 3A, and some communities will likely see much more development activity than others.

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## Timing and Variability of Compliance

In converting Section 3A's vague phrases like “districts of reasonable size” into specific enforceable criteria, the EOHLC has created a series of rules aimed at tailoring the legislation to the capacity and geography of individual communities. The clearest example of this is how the timeline for compliance and total unit counts allowed vary by MBTA community category.

For the purposes of complying with Section 3A, the EOHLC has split MBTA communities into four categories: those with access to subway and bus rapid transit lines (“Rapid Transit Communities”), those with access only to the commuter rail (“Commuter Rail Communities”), metropolitan communities that are adjacent to but do not contain transit stations (“Adjacent Communities”), and relatively small and sparsely populated communities that are adjacent to other MBTA communities (“Adjacent Small Towns”).

In general, Rapid Transit Communities are expected to zone for relatively more housing and on a condensed timeline relative to the others (see Table 1). The EOHLC guidelines state that a “reasonably-sized” zoning district is just as much about how many units can be legally built there as it is about the physical acreage. Thus, they require that each MBTA community allow a certain number of units to be built in their new districts proportional to their pre-existing housing stock, from 5 percent in Adjacent Small Towns to 25 percent in Rapid Transit Communities. In fact, as of this writing the EOHLC has fully approved the zoning districts of most of the Rapid Transit Communities that successfully submitted their compliance application, as required, by December 31, 2023.<sup>17</sup>

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**Table 1: Criteria for MBTA Communities Act Compliance that Differ by Community Subtype<sup>18</sup>**

Community Subtype	Zoning Capacity Required (as a share of 2020 housing stock)	Deadline to Submit Final District Compliance Application
Rapid Transit	25%	December 31, 2023
Commuter Rail	15%	December 31, 2024
Adjacent	10%	December 31, 2024
Adjacent Small Town	5%	December 31, 2025

As for the physical size of the districts, other than Adjacent Small Towns, MBTA communities must include in their new zoning districts either 50 acres of land or 1.5 percent of the total developable land in the municipality, whichever is less.<sup>19</sup> A minimum acreage requirement could make housing production more likely because a given piece of land may take many years to change owners. However, the EOHLC did not apply the 50-acre minimum requirement in communities with substantial undevelopable or “excluded” land, which mostly consists of public resources that are undesirable to develop into housing, such as wetlands, conservation land, and institutions like hospitals and schools.<sup>20</sup> In fact, publicly owned land generally doesn't count towards MBTA Communities Act compliance, although the EOHLC will consider municipal requests to allow public lands to be included in particular 3A districts on a case-by-case basis.<sup>21</sup>

The EOHLC also takes this concentration of excluded land into account when it calculates how much of a community's new zoning district has to be located within half a mile of a transit station (see Table 2). Communities with less than 100 acres of developable (i.e., not excluded) land within half a mile of its transit stations (the “station area”) don't have to have any multi-family zoning within that half-mile. Communities with more than 800 acres of developable land in the station area have to have at least 90 percent of the new district area there. A circle with a radius of half a mile includes about 503 acres, but because many MBTA communities have multiple transit stations, there are several communities that have 800 acres of developable land in the station area, including Cambridge, Brockton, Quincy, and others.<sup>22</sup>



**Table 2: Required Share of Multi-Family Zoning District Within the Station Area by Acreage of Developable Land<sup>23</sup>**

Total Developable Area Within Half a Mile of a Transit Station (Acres)	Portion of the Multi-Family Zoning District that Must be Within Half a Mile of a Transit Station
0–100	0%
101–250	20%
251–400	40%
401–600	50%
601–800	75%
801+	90%

### Revisions to the EOHLC Guidelines

In the process of facilitating MBTA Communities Act compliance, the EOHLC has amended its guidelines twice. The first amendment allowed municipalities to apply more stringent inclusionary zoning rules to the new districts, and the second allowed municipalities to offset 3A zoning capacity requirements with mandatory mixed-use development on some parcels.

In the original 3A guidelines, the EOHLC allowed municipalities to require only up to 10 percent of the new housing units created by the MBTA Communities Act be income-restricted at 80 percent of the area median income.<sup>24</sup> Section 3A aims to create housing that, while not deemed as affordable, will help moderate market price increases by expanding the overall supply of housing. In October 2022, the EOHLC compromised on this approach, such that affordability requirements on up to 20 percent of the units may be accepted upon the EOHLC’s discretion. The agency simultaneously released an economic feasibility analysis template to help municipalities demonstrate that their affordability requirements wouldn’t prove cost-prohibitive for developers.<sup>25</sup>

This was likely a welcome change for communities with inclusionary zoning, which typically requires developers of otherwise market-rate housing projects to include some deed-restricted affordable units. In fact, 9 out of the 11 Rapid Transit Communities that submitted district compliance applications by December 2023 have inclusionary zoning — only Revere and Braintree do not.<sup>26</sup> And 7 of the 11 communities, including Revere, included affordability restrictions beyond the 10 percent baseline in their new 3A zoning districts.<sup>27</sup>

In August 2023, the EOHLC further amended its 3A guidelines to allow municipalities to offset some of their unit capacity obligations under the law by zoning for multi-family housing with non-residential uses required on the ground floor.<sup>28</sup> Specifically, pieces of land subject to a non-residential use requirement can contain up to 25 percent of the zoning capacity (in terms of units, not land) that is required by Section 3A, which in turn reduces the zoning capacity needed under Section 3A by the equivalent amount.<sup>29</sup> The EOHLC gave municipalities this added zoning power because, in their words, “existing village-style or downtown development is essential to preserve pedestrian access to amenities” in many of the region’s areas served by transit.<sup>30</sup> However, the mandatory mixed use parcels are subject to the same state preemptions as the purely residential multi-family zoning district under the MBTA Communities Act — no age restrictions on the housing, no discretionary zoning approvals, etc.

The August 2023 revision also established that the state would consider a municipality’s compliance with the law as a factor in applications for 13 different grant programs.<sup>31</sup> Previously, the law simply barred non-compliant communities from consideration for MassWorks, HousingWorks Infrastructure Program, Housing Choice, and Local Capital Projects Fund grants in their entirety.<sup>32</sup> It remains unclear how much of a deciding factor compliance with Section 3A will be in obtaining funds from one of the 13 additional grant programs.

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## Case Studies of Implementation Efforts

### Everett

A traditionally blue-collar urban enclave just across the Mystic River from Boston, Everett has attracted an enormous amount of commercial and residential development activity in recent years. Most notably, between 2016 and 2019 Wynn Resorts transformed the site of a former chemical plant into a 5-star hotel and casino called Encore Boston Harbor.<sup>33</sup> And more recently, the Kraft Group proposed to replace a natural gas power plant in Everett with a soccer stadium.<sup>34</sup>

Between 2015 and 2021, Everett built more housing than any other community in Greater Boston as a percentage of its 2010 housing stock.<sup>35</sup> Much of this new residential development is concentrated just south of Route 16 and north of the Newburyport/Rockport Commuter Rail line, a historically industrial area called the “Everett Commercial Triangle.”<sup>36</sup> The Commercial Triangle was rezoned in 2018 to accommodate additional density and prohibit noxious uses like fuel stations and slaughterhouses.<sup>37</sup>

This furious pace of development may imply that Everett was more than ready to comply with the MBTA Communities Act, but there’s a catch: the 2018 reforms required new Commercial Triangle developments to have 12.5 square feet of commercial space for every residential unit.<sup>38</sup> Meanwhile, municipalities can only use mandatory mixed-use districts to offset up to 25 percent of their 3A unit capacity. The EOHLC has described the 25 percent figures as “a compromise” between the need to “maintain the commercial character in historic downtowns/village centers” and allow multi-family housing to be “built as-of-right” as specified in Section 3A itself.<sup>39</sup>

Also complicating matters is that Everett is the only Rapid Transit Community that doesn’t currently have a rapid transit station within its borders. It is categorized as a Rapid Transit Community largely because much of Gateway Plaza, a mall in Everett, falls within the station area of an Orange Line stop in neighboring Medford. Instead, Everett’s compliance plan relies on the fact that the station area of a Silver Line stop in Chelsea clips the Commercial Triangle (see Figure 3).

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Figure 3: Map of Everett’s Zoning District Used to Comply with the MBTA Communities Act<sup>40</sup>

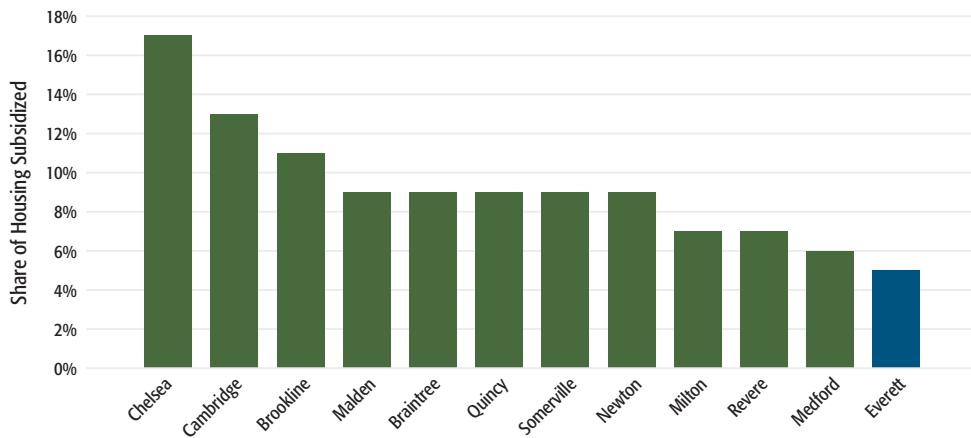


Everett also resolved the mandatory mixed-use issue by giving developers the option to build single-use residential buildings in the Commercial Triangle up to 35 feet tall. But because the underlying zoning still allows them to build mixed-use buildings up to 85 feet tall, city staff believe that few developers will find it economical to propose projects under this shorter, all-residential paradigm.

Matt Lattanzi, the city’s director of planning and development, cited the concept of “15-minute cities,” in which residents are in close proximity to urban amenities, as the impetus for the existing mixed-use requirement.<sup>41</sup> He also pointed to the immense number of housing units in the development pipeline in Everett as evidence that mandatory mixed-use zoning in the Commercial Triangle does not hinder housing production.

While Everett is clearly all-in on housing production, its relationship with housing affordability is more complicated. Between 2000 and 2024, home values in Everett nearly tripled, and the median home value now tops \$660,000, more than eight times the city’s median household income.<sup>42</sup> And as of June 2023, Everett had just 4.5 percent of its housing stock in the state’s Subsidized Housing Inventory, the lowest share among Rapid Transit Communities (see Figure 4).<sup>43</sup> The city has also relaxed its inclusionary zoning requirements for projects that involve mitigating environmental contamination, of which there is plenty south of Route 16.<sup>44</sup>

**Figure 4: Share of Housing Stock in the Massachusetts Subsidized Housing Inventory among Rapid Transit Communities, June 2023<sup>45</sup>**



At the same time, Everett has leveraged linkage fees from commercial development and private negotiations with individual developers to invest more in affordable housing.<sup>46</sup> The Kraft Group’s soccer stadium, for example, would come with a \$10 million payment to the city earmarked for affordable housing, according to a preliminary community benefits agreement.<sup>47</sup> And the city’s pro-development policies have also helped attract nonprofit builders such as The Neighborhood Developers, which is currently constructing a project in the Commercial Triangle where all 126 units are income-restricted.<sup>48</sup>

In many communities, this pace of change would be overwhelming for existing residents. But importantly, the vast majority of current Everett residents are far removed from the Commercial Triangle. As of 2020, the census tract that includes the Commercial Triangle (and the rest of Everett south of Route 16) has 41 percent of the city’s land area but just 7.5 percent of its population.<sup>49</sup> Matt Lattanzi has said the paradigm of residents accusing developers of transforming their neighborhood beyond recognition simply doesn’t apply in the Commercial Triangle. Apartment projects with 400–800 units often sail through the approvals process there, whereas project proposals with fewer than 20 units can meet fierce resistance in the city’s densely populated neighborhoods north of Route 16.<sup>50</sup>

Compliance with the MBTA Communities Act involved “a little bit of community engagement” in the form of required public hearings and advertising, but once the compliance plan was finalized, elected officials were quick to pass it into law. The Everett City Council referred the plan to the Planning Board in October 2023, and the Planning Board and Legislative Affairs Committee both formally recommended the plan a week apart from each other. By late November, the City Council instructed the City Clerk to prepare the plan for adoption into a legal ordinance, and on December 11, 2023 the ordinance passed the City Council unanimously.<sup>51</sup>

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The final piece of the puzzle came in March 2024: the MBTA announced plans to extend the Silver Line from Chelsea into Everett.<sup>52</sup> While Everett has not necessarily depended on transit connections for its building boom of the past decade, it has meticulously secured easements and enforced a transportation demand management system in new development to prioritize future transit access in the Commercial Triangle. The transportation demand management system mostly involves incentivizing developers to limit parking in their projects and provide new residents with alternative transportation options besides private cars.<sup>53</sup> As of this writing, the city is also negotiating with Wynn Resorts to secure private funding for an infill Commuter Rail station at the edge of the Commercial Triangle that would take passengers to Boston's North Station in about 15 minutes.<sup>54</sup>

A major premise of the MBTA Communities Act is that most municipalities in eastern Massachusetts have underbuilt housing and other private-side investments relative to the public transit investments provided by the MBTA. Everett is a rare breed of Boston suburb where the amount of transit infrastructure needs to catch up with the level of housing development. Or, as Matt Lattanzi puts it, “transit is going to assist in our efforts with housing production, and it’s going to help us reach our full potential.”<sup>55</sup>

On October 1, 2024, the EOHLC conditionally approved Everett’s Section 3A zoning.<sup>56</sup>

### Newton<sup>57</sup>

One of Boston’s immediate western suburbs, Newton was already a decade deep in a comprehensive rezoning initiative before the MBTA Communities Act’s passage. This decade of community engagement, planning and design studies, and policy debate translated into an ambitious above-and-beyond 3A compliance plan that was scaled back significantly after political backlash led to significant turnover on its City Council.

Housing development has been at the forefront of Newton politics for at least 10 years. To summarize, a 2013 effort to house nine formerly homeless people in a decommissioned fire station fell apart,<sup>58</sup> multiple apartment and mixed-use buildings remade the village of Newtonville,<sup>59</sup> voters approved an 800-unit Northland apartment complex in a contentious 2020 referendum,<sup>60</sup> and the city struggled (ultimately successfully) to achieve the 10 percent subsidized housing threshold that would shield it from comprehensive permits under Chapter 40B.<sup>61</sup> In terms of transit-oriented development in particular, the city also debated a proposal to turn Riverside Station’s 13-acre parking lot into a new urban neighborhood, the most recent iteration of which has yet to appear before the Newton City Council.<sup>62</sup>

Newton’s development pattern is somewhat distinct from that of neighboring cities like Boston and Waltham in that it doesn’t have one centrally located downtown, but instead a significant number of smaller commercial villages. Newton’s 13 villages vary widely in their size, density, and connection to transit. However, for both proponents of new housing and those who are wary of it, the village-like character of Newton has become a notable touchstone. Community groups like the Newton Villages Alliance and Save Newton Villages have brought up concerns that development projects could displace local businesses and compromise the villages’ historic charm.<sup>63</sup> Meanwhile, pro-housing advocacy group Engine 6, named after the decommissioned fire station once slated to house the homeless, argues that housing and other amenities from new development would make Newton’s villages more vibrant, walkable, and sustainable.<sup>64</sup>

Newton has undergone an iterative rethinking of its zoning code since 2011, when the city’s Zoning Reform Group recommended overhauling the code to align better with Newton’s Comprehensive Plan (see Figure 5).<sup>65</sup> That said, until 2023 holistic and substantive zoning reform in Newton had been elusive. After years of community engagement efforts and the publication of intermediate materials, the first draft of the new zoning code was released in 2018. But work on the residential aspects of the new zoning was tabled in December 2020 to focus on reforms to village centers, given concerns about both the capacity of the City Council to take on comprehensive reform and the tricky politics of zoning changes in existing residential areas.<sup>66</sup> The following

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month, the MBTA Communities Act was passed, and given that most transit stations in Newton are located in village centers, a village-based compliance paradigm seemed all but inevitable.

In April 2021, planning consultant Utile began conducting community engagement and data analysis activities to establish how Newton’s village centers were used as gathering spaces, transit nodes, and commercial districts.<sup>67</sup> These early efforts also used qualitative research methods like focus groups, online forums, and surveys to identify goals and priorities for the rezoning among community members.<sup>68</sup>

By March 2022, City of Newton staff and Utile were exploring “tangible design scenarios” for new zoning in the village centers that would “facilitate desirable and financially feasible development projects.”<sup>69</sup> Subsequent rounds of community engagement occurred between April 2022 and February 2023,<sup>70</sup> and by October 2022 city staff had presented a new Village Center Overlay District (VCOD) proposal to the City Council’s Zoning and Planning Committee (ZAP). The crux of VCOD was a series of Village Center districts—VC1, VC2, and VC3—allowing for between 2.5 and 4.5 stories of development, with up to two additional stories permitted if a given project met certain affordability criteria (see Figure 6).<sup>71</sup> In VC2 and VC3, the maximum heights of 3.5 stories and 4.5 stories, respectively, were only allowed in mixed-use buildings, and there were special height restrictions for parcels in VC3 that abutted an existing residential use. The original VCOD paradigm also included an explicit overlay category to facilitate the redevelopment of existing residential properties, called Multi Residence Transit (MRT), located in “transition zones” between village centers and suburban neighborhoods.<sup>72</sup>

From 2021 to 2023, ZAP meetings regularly featured VCOD working sessions with city councilors and various city boards and commissions. City councilors also led some of the early community engagement events whenever possible, and had access to a bevy of public comments that were either posted online or presented by staff at ZAP meetings.<sup>73</sup> Representatives from established community groups were also invited to give testimony on VCOD at ZAP meetings in January and February 2023.<sup>74</sup>

For both proponents of new housing and those who are wary of it, the village-like character of Newton has become a notable touchstone.

Figure 5: Timeline of Newton’s Zoning Reform Efforts since 2011<sup>75</sup>

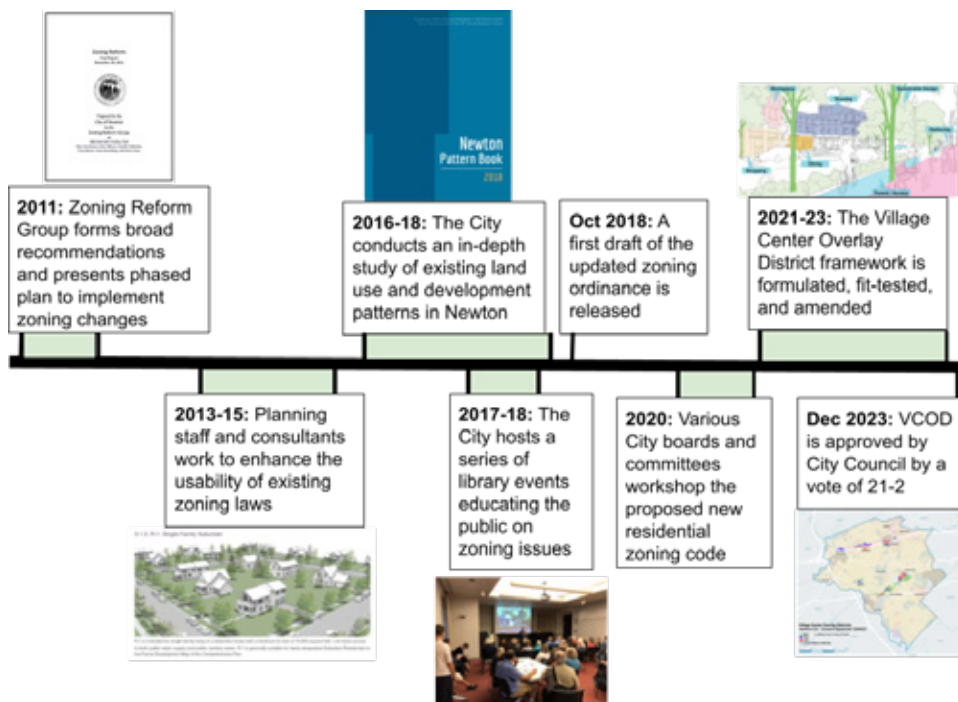


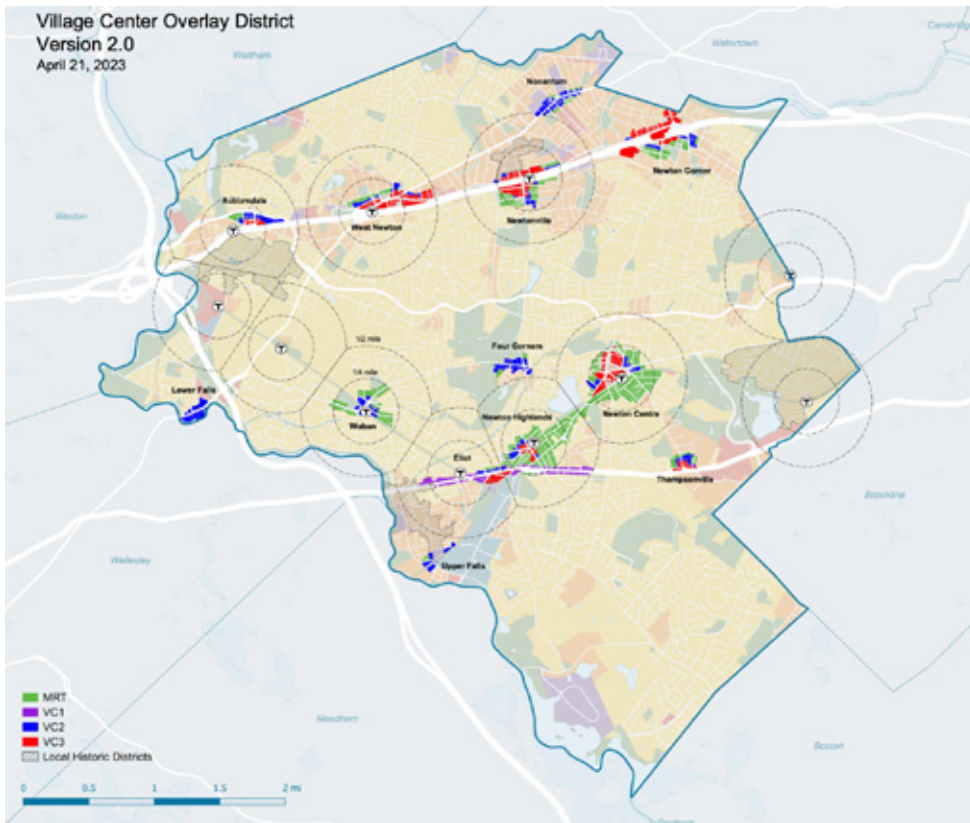


Figure 6: Renderings of Potential Projects Allowed Under VC1, VC2, and VC3 Zoning<sup>76</sup>



The final phase of the village center rezoning effort kicked off in February 2023, with city staff, consultants, and ZAP all participating in guided discussions over compliance details, parking and affordability requirements, and design-related concerns with the new districts. City officials and consultants released drafts of the proposed zoning map and ordinance in April and May, respectively, in preparation for a public hearing on June 26, 2023 (see Figure 7).<sup>77</sup>

Figure 7: Draft Map of Newton's Village Center Overlay Districts as Presented by City Staff in April 2023<sup>78</sup>



Between the City Council chamber and the Zoom meeting room, more than 400 people attended the public hearing.<sup>79</sup> Many of the early speakers were members of Newton's Economic Development Commission, who argued that the VCOD proposal would be good for local businesses, increase housing choices, and improve environmental sustainability. Others argued that VCOD struck a good balance between preserving the existing character of the city and accommodating new growth. Several residents bemoaned that service workers and former residents have been priced out of Newton over the last several decades, and viewed VCOD as a way to help retain more such residents in the community. Many other speakers emphasized the ability of VCOD to facilitate a low-emissions and more affordable lifestyle for a larger share of Newton residents.<sup>80</sup>

Those who spoke against the proposal raised many concerns, including the potential worsening of traffic congestion and traffic safety, as well as the potential loss of open space and commercial uses. Many speakers criticized VCOD's supposed reliance on larger, for-profit developers to help improve affordability in Newton, and said that VCOD should prioritize owner-occupied arrangements in smaller buildings. Others expressed concern that the city would lose the ability to secure exactions from developers as part of a special permit process, and still others questioned why the zoning capacity was 10,000 housing units under VCOD when the EOHLC only required 8,330. Speakers also sowed doubt about the ability of dense new development to "get people out of their cars," especially given what they viewed as insufficient transit infrastructure in the city.<sup>81</sup>

Those in favor of VCOD often thanked planning staff and elected officials for their work on the plan, while those opposed to it often criticized the community engagement process as insufficient or even tokenistic. In a particularly prescient speech, one resident called for Newtonians to "vote out any Newton elected official who supports any upzoning in Newton beyond the minimum required by the state."<sup>82</sup>

In fact, the April 2023 VCOD proposal had several district locations that weren't included in the proposal's already above-and-beyond 10,000 unit capacity. The inclusion of these districts, located in villages without train stations like Newton Corner and Nonantum, meant that VCOD would allow thousands of additional housing units beyond the 10,000 that officially were used for 3A compliance. Ostensibly, this situation merely reflected the fact that Newton's longstanding comprehensive zoning reform efforts had been adapted to comply with Section 3A. But some observers interpreted it as an effort to "provide political cover for [some elected officials] to do something they wanted to do anyway, knowing it wasn't likely to be popular," as one Google Groups commenter put it.<sup>83</sup>

The Zoning and Planning Committee continued to debate VCOD's technical details throughout the summer and fall. By September 2023, a third version of the plan instituted stricter design standards for projects adjacent to residential areas, scaled back the affordability incentives so that no more than 5.5 stories could be built in VC3, established open space requirements in the MRT district, and eliminated the VC1 district (the least dense of the Village Center districts) entirely.<sup>84</sup> The official zoning capacity of this updated plan was 9,320 units, and took advantage of the new allowance for mandatory mixed-use offsets under the EOHLC's August 2023 guidelines update.<sup>85</sup>

On September 26, a public hearing on the updated VCOD design featured an overwhelmingly negative response from residents of Nonantum, a historic and densely populated village with relatively few transit resources. Multiple kids approached the microphone to say that more development in the neighborhood would worsen traffic safety. Other speakers cited a September 14 community meeting in which city officials were purportedly "condescending" and "disrespectful" to Nonantum residents.<sup>86</sup> Another speaker expressed concerns about gentrification and displacement of existing residents in what is traditionally a working-class village.<sup>87</sup> As a result, by October the overlay district in Nonantum had been scaled back substantially, and no longer included any VC3 parcels.<sup>88</sup>

**Between the City Council chamber and the Zoom meeting room, more than 400 people attended the public hearing.**

**The April 2023 VCOD proposal had several district locations that weren't included in the proposal's already above-and-beyond 10,000 unit capacity.**

Later in October, ZAP voted to send the most recent VCOD edition to the full City Council. Before the City Council could meet to debate the plan, a municipal election replaced several of the body’s pro-housing voices. In particular, candidates endorsed by anti-VCOD community group Save Newton Villages won five of the six City Council seats with contested races, and three of those races unseated incumbents who had been supportive of VCOD.<sup>89</sup> Among the uncontested races, most candidates who opposed VCOD also received many more votes than those in favor of it.<sup>90</sup>

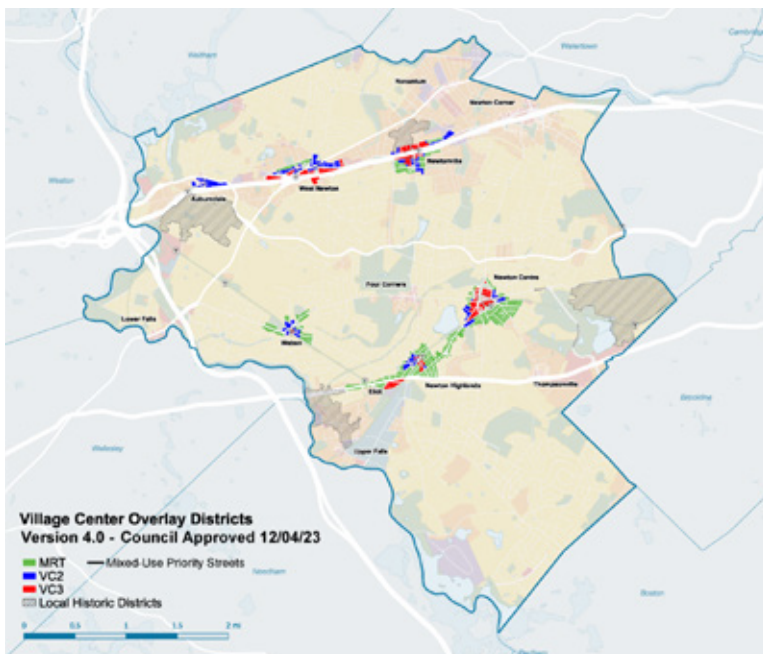
While the new City Council wouldn’t officially take office until after Section 3A compliance deadline,<sup>91</sup> the November election seemed to suck all the energy out of the VCOD proposal. In an informal vote on November 15th, only 5 of the 24 councilors indicated their support for the version of VCOD presented by planning staff the previous month.<sup>92</sup> Councilors were also facing pressure from VCOD opponents who threatened to gather signatures for a referendum, much like the Northland vote nearly four years earlier, if the Council moved forward with the “above-and-beyond” plan.<sup>93</sup>

In the ensuing weeks, VCOD was downsized greatly in its geographic scope, so as to cover just 6 of the original 12 villages included in the plan (see Figure 8).<sup>94</sup> Most of the parcels that wouldn’t have counted towards 3A compliance were eliminated, and the new zoning capacity was 8,745 units, still 5 percent more than required by Section 3A, but a far cry from the original VCOD proposal.<sup>95</sup> On December 4, 2023, the City Council passed the overlay districts into law by a vote of 21-2, with both dissenting votes coming from councilors who supported the higher-capacity plan instead.<sup>96</sup> In a statement from its president, the Charles River Regional Chamber, which serves Newton, expressed concerns that the EOHLC wouldn’t accept the final VCOD plan at all, and that Newton would have to “reopen the [compliance] process.”<sup>97</sup> On October 1, 2024, simultaneously as it fully approved the district compliance applications in eight other Rapid Transit Communities, the EOHLC deemed Newton “conditionally compliant” with Section 3A pending further review.<sup>98</sup>

In the meantime, other observers have been more satisfied with the compliance plan for various reasons—either because it avoided a more far-reaching and disruptive rezoning paradigm, or because it is the most significant increase in legal capacity for new housing in Newton in decades.<sup>99</sup>

Candidates endorsed by anti-VCOD community group Save Newton Villages won five of the six City Council seats with contested races.

Figure 8: Final Version of Newton’s Village Center Overlay Districts as Passed by the City Council in December 2023<sup>100</sup>



## Milton

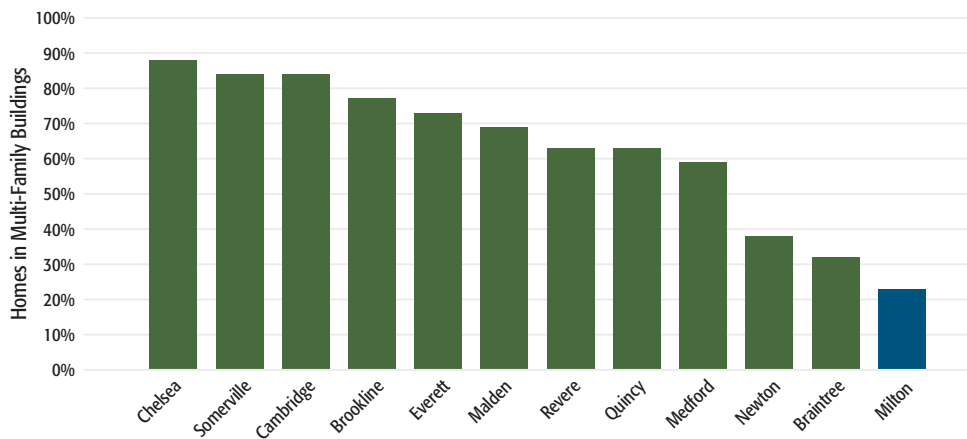
Perhaps more has been written about Milton’s MBTA Communities compliance plan than that of any other municipality. As of this writing, Milton is one of two communities that are out of compliance with Section 3A, and the only out-of-compliance town for which the final compliance deadline has passed.

Milton has several attributes that make it unique among Rapid Transit Communities. First, it is mostly suburban in character, with older homes on small lots quickly giving way to large estates, golf courses, and conservation land in the southern and western areas of the town. Second, the transit stations that make it subject to the December 2023 compliance deadline are part of the Mattapan Trolley line, a 2.6-mile appendage to the MBTA Red Line that uses nearly 80-year-old light rail vehicles and, even before the COVID-19 pandemic, had fewer than 7,000 riders per day on average.<sup>101</sup> The trolleys are also subject to a 30-mile-per-hour speed limit, even slower than the Green Line,<sup>102</sup> and getting to major job centers like Boston and Cambridge from Milton requires transferring vehicles at Ashmont Station in Dorchester. Much of the Mattapan Trolley line, especially in Milton, serves an area that is mostly residential, with stops like Capen Street and Valley Road shrouded in the Neponset River Reservation to the north and mostly single-family homes to the south.

Debate over whether Milton should be classified as a Rapid Transit Community characterized much of the discussion around implementing Section 3A in town. Without the Mattapan Trolley considered to be rapid transit, Milton would likely fall in the Adjacent Communities category, reducing its required zoning capacity under the law from 2,461 units to 985.<sup>103</sup> Early on, town officials recognized the difficulty of putting this unit capacity entirely within the half-mile radius around the Mattapan Trolley stations, and pushed the EOHLC to allow more of the required unit capacity under Section 3A to be located outside the station area. A March 2022 letter from the Milton Select Board expressed what they viewed as the limitations on redevelopment potential in the station areas, and specifically mentioned East Milton Square as an “amenity-rich” location served by several bus lines and with “multiple potential redevelopment sites.”<sup>104</sup> East Milton Square is a modestly scaled commercial district located nearly a mile and a half from any of the trolley stops. Noisy and congested Interstate 93 bisects the commercial district, a reminder of how much the neighborhood has already sacrificed to accommodate regional needs.

Milton is one of two communities that are out of compliance with Section 3A, and the only out-of-compliance town for which the final compliance deadline has passed.

**Figure 9: Share of 2020 Housing Stock in Multi-Family Buildings among Rapid Transit Communities<sup>105</sup>**



Town officials considered it undesirable to rely solely on additional unit capacity in the station area because most of the area consisted of small lots with few commercial uses nearby, which town staff said would be conducive to “teardowns and out-of-character developments.”<sup>106</sup> Also, attempts to redevelop those lots would probably not add enough units to trigger the town’s inclusionary zoning rules, limiting the potential for adding income-restricted housing.



In the final version of its 3A guidelines, the state loosened its requirements on concentrating potential development within the station areas, allowing up to half of Milton's new zoning district to be located elsewhere.<sup>107</sup> When it came time to identify particular locations for districts in Milton, the Planning Board took the lead, holding meetings and receiving public comments on various iterations of the compliance plan throughout the summer and fall of 2023.<sup>108</sup>

By August 2023, the Board was, broadly speaking, considering two plans, one including East Milton Square and the other placing the equivalent capacity along Randolph Avenue, a sparsely populated corridor of mostly single-family homes and Town-owned land.<sup>109</sup> Ultimately, the Planning Board advanced the plan that included East Milton Square, partly because the neighborhood was already slated to include a mixed-use zoning overlay district,<sup>110</sup> an idea that predates Section 3A but, as of this writing, has yet to be implemented.<sup>111</sup>

One Planning Board member simultaneously said development on Randolph Avenue would be “a departure” from the intent of Section 3A and expressed concern that residents of East Milton would be “really upset” over the East Milton Square zoning.<sup>112</sup> Another Board member raised a concern that the commercial uses in the East Milton Square district would be replaced with residential uses. Notably, in the previous couple of years, multiple controversial residential developments were proposed in the neighborhood, including one 92-unit apartment building over which abutters sued both the developer and the local elected body that approved the project.<sup>113</sup> Amidst such concerns and historical context, the Planning Board subsequently reduced the East Milton Square district height limit from 4 stories to 2.5 stories.<sup>114</sup>

Ultimately, Milton's 3A compliance plan also added zoning capacity in the residential areas along the trolley line to allow for up to three homes on lots as small as 7,500 square feet, and permitted larger buildings up to six stories on the few commercial lots around the stations (see Figure 10).<sup>115</sup> Other changes included allowing denser residential development on relatively isolated parcels on Granite Avenue in East Milton near Exit 11 of Interstate 93 and along the section of Blue Hills Parkway closest to Boston.

The Planning Board advanced the plan that included East Milton Square, partly because the neighborhood was already slated to include a mixed-use zoning overlay district.

Figure 10: Map of Milton's Proposed MBTA Communities Act Overlay Districts and Mattapan Trolley Stations<sup>116</sup>



At the same time as they moved this plan forward, however, the Planning Board did not support the warrant article at Town Meeting that would implement the new zoning. Instead, they wanted more time to amend the new districts and rehash the debate over whether Milton should be classified as a Rapid Transit Community in the first place.<sup>117</sup> In September 2023, the Milton Select Board had sought clarification from the EOHLC on the town's classification as a Rapid



Transit Community, arguing that the MBTA itself regards the Mattapan Trolley to be “a unicorn that is separate from the MBTA Red Line, Green Line, Orange Line, or Blue Line.”<sup>118</sup> The EOHLC countered that it considers the Trolley to be “a branch of the Red Line” and that “the guidelines cannot take into consideration the quality of service or type of equipment used on any given line.”<sup>119</sup>

After town attorneys advised the Select Board in an executive session of a November 2023 meeting, the Select Board declined to further appeal the EOHLC’s classification of Milton as a Rapid Transit Community,<sup>120</sup> and later sponsored the Section 3A compliance plan warrant article at Town Meeting.<sup>121</sup> Both the Planning Board and the town’s Warrant Committee voted to send the warrant article back to the Select Board for further study,<sup>122</sup> but the Select Board continued to support the article in its original form on the warrant.<sup>123</sup> The EOHLC also had denied the Planning Board chair’s request to extend Milton’s compliance deadline into 2024,<sup>124</sup> making it possible that, if the Select Board hadn’t sponsored a Section 3A compliance plan at Town Meeting, the town would have missed the compliance deadline.

The Section 3A compliance plan article came up for discussion at Town Meeting on December 11, 2023. Speakers raised a diverse array of concerns regarding the proposed zoning changes, including the lack of affordability requirements, the potential loss of commercial space, and, especially, the town’s controversial categorization as a Rapid Transit Community.<sup>125</sup> District-specific concerns also focused on the Granite Avenue district, which previously barred residential development, and would suddenly allow as many as 700 housing units in a location with poor access to transit and substantial traffic congestion.<sup>126</sup> All told, the plan would permit up to 1,124 units either in East Milton Square or along Granite Avenue, about 46 percent of the town’s total required zoning capacity under Section 3A.<sup>127</sup> After more than two and a half hours of debate, the new zoning, including in East Milton, was approved by a margin of 68 percent to 32 percent.<sup>128</sup>

But the battle over Milton’s initial 3A compliance plan was far from over. By the end of December 2023, a coalition of residents opposed to the plan had gathered almost 3,000 signatures, enough to force a voter referendum on the new zoning paradigm the following February.<sup>129</sup> While this action technically put Milton out of compliance with Section 3A, the EOHLC later agreed to delay any related punitive measures until after the referendum vote.<sup>130</sup>

The referendum campaign was hard-fought on both sides, but those opposed to the initial compliance plan were especially well-organized before the December Town Meeting vote. A community group called “Milton Neighbors for Responsible Zoning” made it its mission to “seek alternatives” to the initial 3A compliance plan as early as August 2023.<sup>131</sup> Just three days after the Town Meeting vote, a “Residents for Thoughtful Zoning” ballot committee formed.<sup>132</sup> These groups both broadly criticized Section 3A’s perceived top-down and one-size-fits-all nature<sup>133</sup> and argued that the current iteration of the compliance plan substantially overburdened East Milton in particular.<sup>134</sup> They also claimed that the EOHLC guidelines were unenforceable and that the town should take the time needed to come up with a better compliance plan.<sup>135</sup>

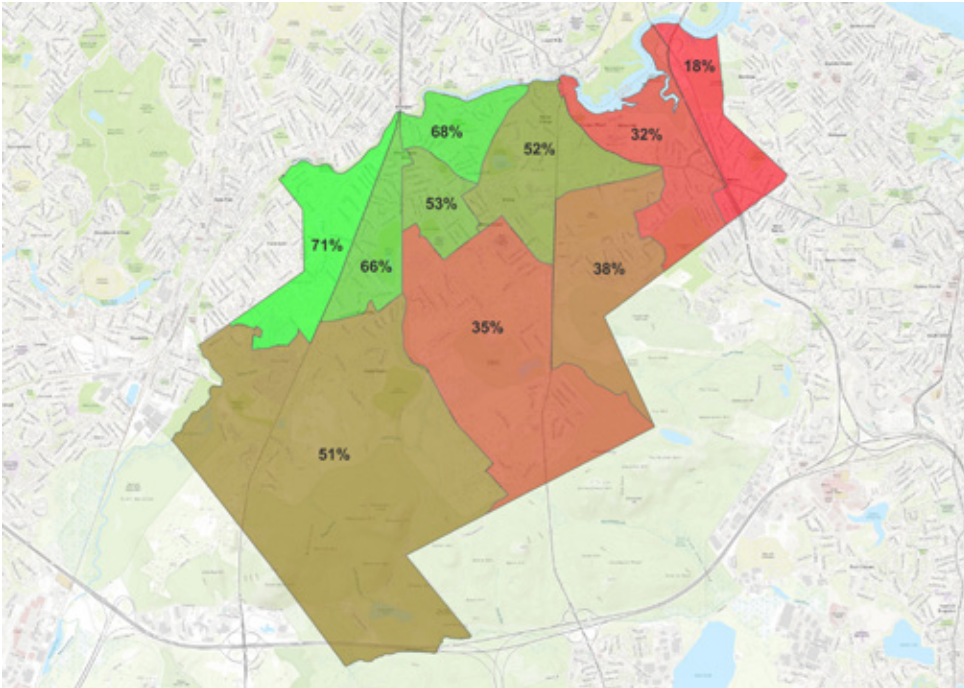
A “Yes for Milton” coalition also surfaced in mid-December,<sup>136</sup> with their website touting the Section 3A compliance plan as expanding region-wide housing choice and affordability and helping better house downsizing seniors, town employees, and people who grew up in Milton.<sup>137</sup> The “Yes for Milton” ballot committee also emphasized that the EOHLC had already rejected previous efforts to change Milton’s categorization and deadlines under the law and that passing the current zoning plan would not preclude coming up with a better one in the near future.<sup>138</sup>

On February 14th, 2024, Milton voters rejected the MBTA Communities Act compliance plan by a margin of 54 percent to 46 percent. A precinct map of the vote tally highlights some stark internal divisions in the town (see Figure 11). In precinct 2, which contains three of the town’s four trolley stops, 68 percent voted yes.<sup>139</sup> In precinct 7, which is located almost entirely east of I-93, 82 percent voted no.

**The Select Board declined to further appeal the EOHLC’s classification of Milton as a Rapid Transit Community, and later sponsored the Section 3A compliance plan warrant article at Town Meeting.**

**On February 14th, 2024, Milton voters rejected the MBTA Communities Act compliance plan by a margin of 54 percent to 46 percent.**

Figure 11: Share of Referendum “Yes” Votes on Milton’s MBTA Communities Compliance Plan by Precinct<sup>140</sup>



The aftermath of Milton’s no-vote will likely take years to play out. Attorney General Andrea Campbell has sued the town over its failure to comply with Section 3A, and the town has responded by challenging the validity of the law itself, arguing in particular that the EOHLC’s guidelines are “arbitrary and capricious” and “unconstitutional.”<sup>141</sup> While the power to create and amend zoning in the Commonwealth ultimately originates from Chapter 40A of state law,<sup>142</sup> Milton attorneys claim that the EOHLC overstepped its authority by establishing exacting standards not directly included in the law.<sup>143</sup> The Attorney General’s court case is scheduled to be heard by the Massachusetts Supreme Judicial Court in October 2024, by which time Milton could be well on its way to complying with the law under a new plan. Even so, the EOHLC will likely need several months thereafter to approve the plan, and any lingering questions regarding the bounds of the EOHLC’s authority will still have implications for the 34 towns that don’t have to comply with Section 3A until the end of 2025. In the meantime, Milton has already lost a previously-awarded \$140,800 grant dedicated to seawall infrastructure improvements due to its failure to comply with Section 3A.<sup>144</sup>

### Fitchburg

Fitchburg is a post-industrial urban enclave at the end of the commuter rail line that roughly parallels Route 2 through Boston’s northwestern suburbs. The city suffered a period of deindustrialization in the late 20th century after the closure of its once-prominent paper mills, but in the past few decades it has also served as a mecca for Latino immigrants.<sup>145</sup> In recent years, enrollment at Fitchburg State University has declined markedly,<sup>146</sup> but the university and city alike have continued to make substantial revitalization efforts, from arts and cultural initiatives to new downtown housing development.<sup>147</sup>

Fitchburg is considered a “gateway city,” a state designation given to mid-size urban communities whose residents have below-average incomes and education attainment.<sup>148</sup> The city also has the lowest median home value — \$388,269 as of July 2024 — among the 178 MBTA communities.<sup>149</sup> Thus, attracting market-rate housing development to Fitchburg is particularly challenging.

Attorney General Andrea Campbell has sued the town over its failure to comply with Section 3A, and the town has responded by challenging the validity of the law itself.

Fitchburg has the lowest median home value — \$388,269 as of July 2024 — among the 178 MBTA communities.

Fitchburg laid the groundwork for transit-oriented multi-family housing in 2019, when it passed its Downtown Smart Growth Zoning District (DSGZD).<sup>150</sup> The DSGZD was Fitchburg's second zoning overlay district approved under Chapter 40R, a state program that pays municipalities to facilitate the private development of dense housing in areas with existing development.<sup>151</sup> Unlike Fitchburg's first smart growth district,<sup>152</sup> which was approved in 2010, the DSGZD is located entirely within a mile of the city's downtown commuter rail station (see Figure 12).<sup>153</sup> Fitchburg has also since participated in the state's Housing Development Incentive Program under Chapter 40V, which subsidizes market-rate home production in gateway cities.<sup>154</sup>

In March 2023, the city enlisted DREAM Collaborative, a Boston-based architecture firm, to provide technical assistance for its 3A compliance efforts. Given the location and pre-existing conditions of the DSGZD, the firm recommended using it to take full advantage of the EOHLC's allowance for offsetting 3A requirements by mandating mixed-use development on some parcels. Specifically, it identified most of the properties in the Intown Business District, within a block of Main Street in Downtown Fitchburg, as appropriate for use in complying with Section 3A (see Figure 13).<sup>155</sup> The properties included in DREAM's potential mandatory mixed use district cover a wide swath of typologies, including office, residential, retail, restaurant, and institutional.

The Mandatory Mixed Use subdistrict is flanked by two smaller subdistricts, also entirely within the DSGZD, which allow all-residential buildings by right. Besides a few parcels on Boulder Drive, including the Fitchburg Public Library and a city-owned parking garage, all of the DSGZD land is part of the city's 3A compliance proposal.

DREAM Collaborative also indicated that the Fitchburg State University (FSU) zoning district would be a good candidate for facilitating 3A compliance, even though the district has many state-owned properties, which cannot count towards a municipality's unit capacity requirement. The FSU district extends well north of the commuter rail station, but most of its privately owned parcels are within a five-minute walk, a straight shot down North Street.

In the FSU district, the city had to remove special permit requirements for multi-family development to facilitate compliance with Section 3A. At the same time, they raised the maximum height for development in the district from 36 feet to 55 feet and reduced the minimum lot area required to build.<sup>156</sup>

Meanwhile, the compliance team quickly ruled out using the parcels near Wachusett Station in the southwest corner of Fitchburg for 3A compliance. Such parcels consist mostly of city- and state-owned land and light industrial uses. Liz Murphy, executive director of community development & planning at the City of Fitchburg, described the area as "both industrial and rural." Unlike in the DSGZD, "you couldn't get a lot of housing there without really changing the zoning."<sup>157</sup> Thus, in a city with urban, suburban, and rural neighborhoods alike, concentrating zoning capacity within a small area downtown may have been the path of least resistance.

Fitchburg's total zoning capacity requirement under Section 3A is 2,618 units, an ostensibly daunting number to fit within just one of its commuter rail station areas. But because the DSGZD allows for multi-family development of up to 70 feet high and 50 units per acre, the 52-acre DSGZD alone could theoretically fulfill 99 percent of the zoning capacity requirement, although this figure does not take "excluded" (often public) land into account. In fact, to facilitate compliance despite the excluded land, Fitchburg's 3A proposal seeks to raise the maximum residential density in the DSGZD from 50 units per acre to 85, all while maintaining a *minimum* density of 20 units per acre.<sup>158</sup>

Fitchburg is far from the only community to use pre-existing 40R districts to facilitate compliance with Section 3A. In municipalities as diverse as Grafton, Revere, and Wellesley, the bulk of the zoned capacity in their 3A compliance plan comes from a 40R district,<sup>159</sup> and similar plans have been discussed in Amesbury and Middleborough.<sup>160</sup> Notably, the EOHLC grants an exception to Section 3A's limits on municipal affordability mandates for pre-existing 40R districts, effectively allowing communities to require up to 25 percent of the new units to be income-restricted.<sup>161</sup>

**To facilitate compliance despite the excluded land, Fitchburg's 3A proposal seeks to raise the maximum residential density in the DSGZD from 50 units per acre to 85.**



Fitchburg’s 40R district in particular has already produced results — 112 units of new housing in its first five years — giving city officials a good reason to double down on downtown density in its new 3A overlay district.<sup>162</sup>

Figure 12: Fitchburg’s Downtown Smart Growth Zoning District (Outlined in Red) and Commuter Rail Station (Purple Dot)<sup>163</sup>

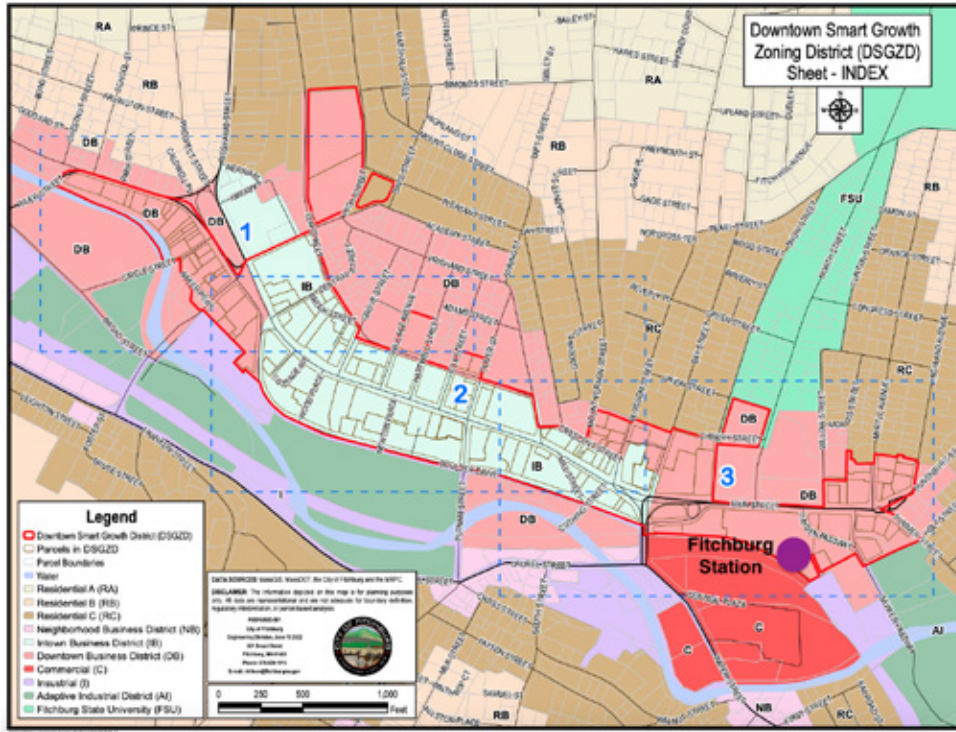
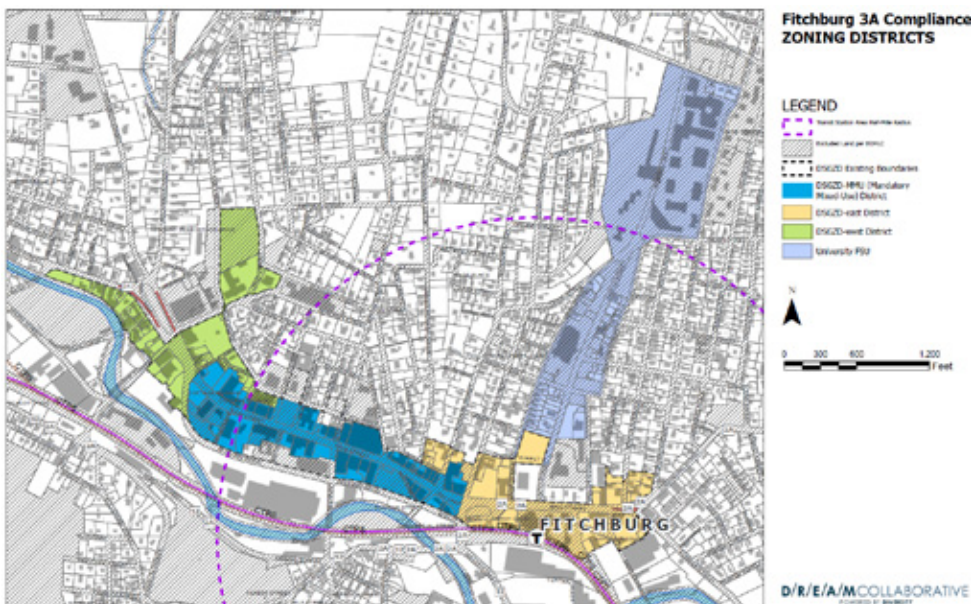


Figure 13: April 2024 Draft of Section 3A-Compliant Zoning Districts in Fitchburg<sup>164</sup>



Fitchburg submitted its draft compliance plan to the EOHLC for an initial review in June 2024. Liz Murphy said that, once city officials hear back from the EOHLC, they will workshop the plan further with the Planning Board, open a public hearing, and hopefully bring it to a City

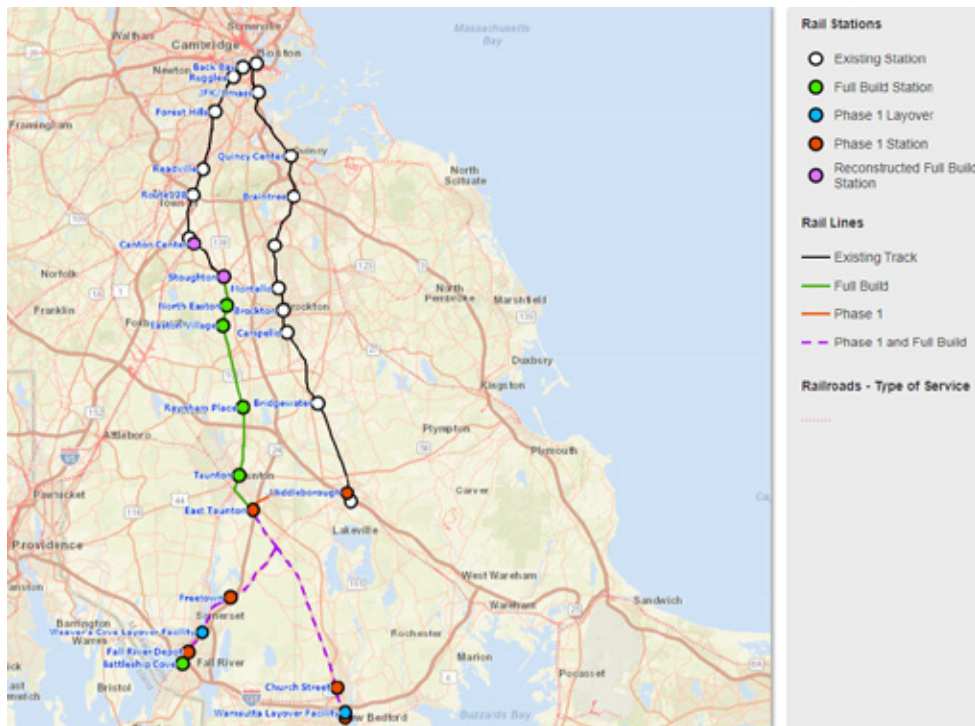
Council vote this fall. “I don’t feel like there’s going to be much pushback,” said Liz. “We’re already incentivizing denser housing here.”<sup>165</sup>

## Freetown

This sleepy town of just over 9,000 is one of four municipalities that are classified as Commuter Rail Communities solely because of a planned extension of rail service that will directly connect Boston with New Bedford and Fall River. The first phase of the extension project, called South Coast Rail, was originally planned to be fully operational by 2023, but safety concerns delayed the extension’s opening, first to the summer of 2024,<sup>166</sup> and then to the spring of 2025.<sup>167</sup> Thus, Freetown’s December 2024 deadline for achieving compliance with the MBTA Communities Act will come and pass before it even has rail service.

Notably, phase 2 of South Coast Rail will also give the far-flung suburbs of Raynham and Easton new train stations (see Figure 14), but the EOHLC declined to include phase 2 of South Coast Rail in its classification of MBTA communities for the 2024 deadline.<sup>168</sup> Thus, Raynham and Easton will, as Adjacent Communities, have a lesser zoning capacity obligation than Freetown as a share of their existing housing stocks until at least 2030, despite the fact that they are both larger and closer to Boston than Freetown. Meanwhile, as a share of its existing housing stock, Freetown has the same zoning capacity requirement as Taunton, Fall River, and New Bedford, the other communities served by South Coast Rail phase 1. Freetown was considered an Adjacent Community as late as the spring of 2022,<sup>169</sup> before the EOHLC updated its guidelines to reflect the South Coast Rail project.

Figure 14: Map of the MBTA’s South Coast Rail Expansion Project<sup>170</sup>



And rail service is not the only metric by which the MBTA Communities Act requirements are at odds with the status quo in Freetown. The Metropolitan Area Planning Council’s (MAPC’s) DataCommon database makes it clear just how rare multi-family housing development is there. Between 1980 and 2023, the town issued building permits for 1,384 new single-family homes and just 28 multi-family homes, most of which are duplexes. As of this writing, Freetown hasn’t issued a building permit for a project containing more than two housing units in one building since 1990.<sup>171</sup>

Freetown’s December 2024 deadline for achieving compliance with the MBTA Communities Act will come and pass before it even has rail service.

Freetown hasn’t issued a building permit for a project containing more than two housing units in one building since 1990.

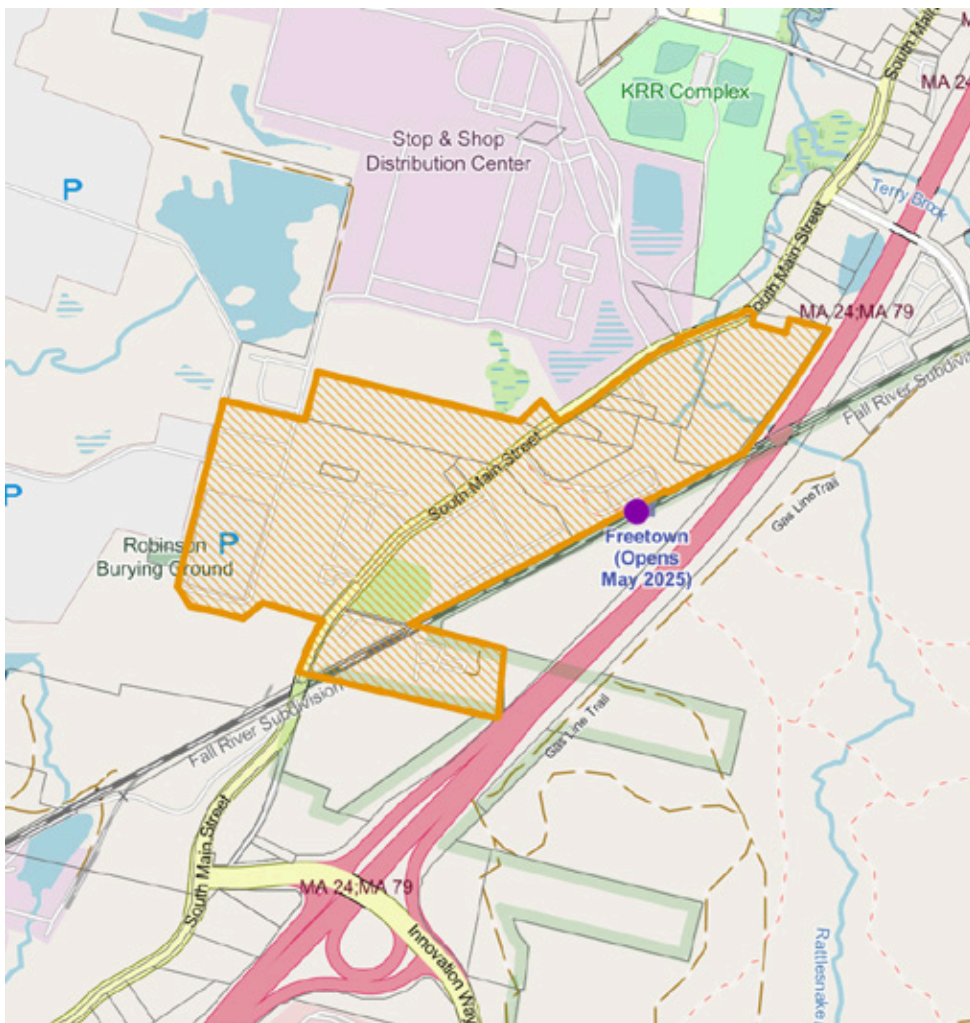


All this background may suggest that Freetown residents and officials might be either unprepared for or resistant to the MBTA Communities Act. In practice, Freetown promptly partnered with the Southeast Regional Planning and Economic Development District (SRPEDD), a regional planning agency, in May 2023 to help determine a viable pathway to compliance. By September 2023, SRPEDD recommended meeting Section 3A's requirements either by amending or replacing Freetown's Planned Mixed-Use District, or PMUD.<sup>172</sup>

The PMUD is a 91-acre overlay district wedged between the rail line and a Stop & Shop distribution center that was first approved at Town Meeting in 2012.<sup>173</sup> This overlay district was designed to facilitate mixed-use development in a village-like atmosphere, and it gave a special density bonus for housing restricted to older adults.<sup>174</sup> It's also located adjacent to Freetown's future commuter rail stop, to which the state has planned to restore service since at least 2007.<sup>175</sup>

But the initial iteration of the overlay district did not result in any new development activity.<sup>176</sup> Almost all the allowed uses in the PMUD required a special permit, creating a lot of uncertainty for the developer, and the density limits on residential uses in particular were also potentially prohibitive.<sup>177</sup> Today, the district is rife with vacant commercial land, industrial uses, and a handful of older, single-family homes. In 2019, a 72-unit senior living facility was proposed, but was never built.<sup>178</sup> The only building in the district constructed since 2012 is a one-story office for an online car auction company,<sup>179</sup> which would have been allowed under the pre-existing zoning.<sup>180</sup>

Figure 15: Map of Freetown's Proposed Planned Development District (in Orange), with its Future MBTA Station (Purple Dot)<sup>181</sup>



The newly constituted overlay district, called the Planned Development District or PDD, would maintain the same boundaries as the PMUD (see Figure 15). Regulatory changes include increasing the maximum allowed residential density from 7 units per acre to 16, removing special permit requirements for residential and mixed-use projects, and adding a height restriction of three stories.<sup>182</sup> The Town of Freetown also worked with a private law firm to review the zoning amendments for clarity, consistency, and feasibility, and the Planning Board adopted four of the firm's five recommendations in April 2024.<sup>183</sup>

Both the Planning Board and Select Board hosted public meetings on the PDD proposal between March and April 2024, at which concerns from residents surfaced. One resident described the 750-unit capacity of the new overlay district required under Section 3A as “an awful lot,” and another asked whether Freetown's school and public safety departments had the capacity to serve the potential new residents.<sup>184</sup> Regardless, Select Board members and SRPEDD staff were confident that the units would be unlikely to be built in large increments that could overburden town services. Ultimately, the Planning Board submitted the warrant article that amended the PMUD to become the PDD to Town Meeting, and both the Planning Board and the Select Board recommended its approval.<sup>185</sup>

On June 3, 2024, the PDD proposal came up for discussion at Town Meeting. Freetown has an open town meeting government structure, which makes the results of a given vote especially hard to predict, as essentially any adult resident of the town can vote. About 450 residents showed up, and the response to PDD was overwhelmingly negative, with 84 percent voting against adopting the proposal.<sup>186</sup>

In a discussion leading up to the vote, several speakers were concerned that PDD projects would be built as or become low-income housing, despite the fact that the PDD proposal didn't include any affordability provision.<sup>187</sup> Residents brought up other concerns, from parking in the new development to the capacity of firefighters, police, and the school system to service it. Others expressed a desire to preserve the small town character of Freetown and avoid “overpopulation,” with one speaker using the phrase “don't Fall River my Freetown” and warning of the possibility of increased crime.<sup>188</sup> Multiple speakers also derided what they saw as the state forcing their agenda on the town, while another speaker warned that the state is going to seek to punish the town for resisting Section 3A.<sup>189</sup>

In theory, Freetown made Section 3A compliance process significantly easier for itself by acting to facilitate transit-oriented development with the PMUD overlay district more than a decade before it had any transit service. In practice, amending the overlay district to comply with Section 3A was a political non-starter, both because of the higher density and looser regulations of the PDD proposal and the loss of local control Section 3A engendered.

As of this writing, town officials have expressed an unwillingness to work on a new compliance plan. “Residents at Town Meeting said they don't want to see this again in October,” said Victoria Alfaro, Freetown's planning and land use administrator, referencing the special Town Meeting this fall. “People want to see what the state is going to do and then go from there.”<sup>190</sup>

### Lexington

In December 2023, this historic Adjacent Community was, along with Salem, the first to achieve full compliance with the MBTA Communities Act, well ahead of the EOHLC's December 2024 deadline.<sup>191</sup> What makes this proactive compliance effort particularly notable is that, demographically, Lexington doesn't necessarily fit the mold for enthusiasm about multi-family housing. It's one of the most affluent communities in the state and largely suburban in character, with 73 percent of the housing stock in single-family homes and a homeownership rate of 82 percent as of 2022.<sup>192</sup>

Lexington also went far beyond the minimum requirements in terms of zoning capacity. Required to designate 50 acres for multi-family zoning, it instead applied the zoning to 227 acres.<sup>193</sup> The

Select Board members and SRPEDD staff were confident that the units would be unlikely to be built in large increments that could overburden town services.

Amending the overlay district to comply with Section 3A was a political non-starter, both because of the higher density and looser regulations of the PDD proposal and the loss of local control Section 3A engendered.

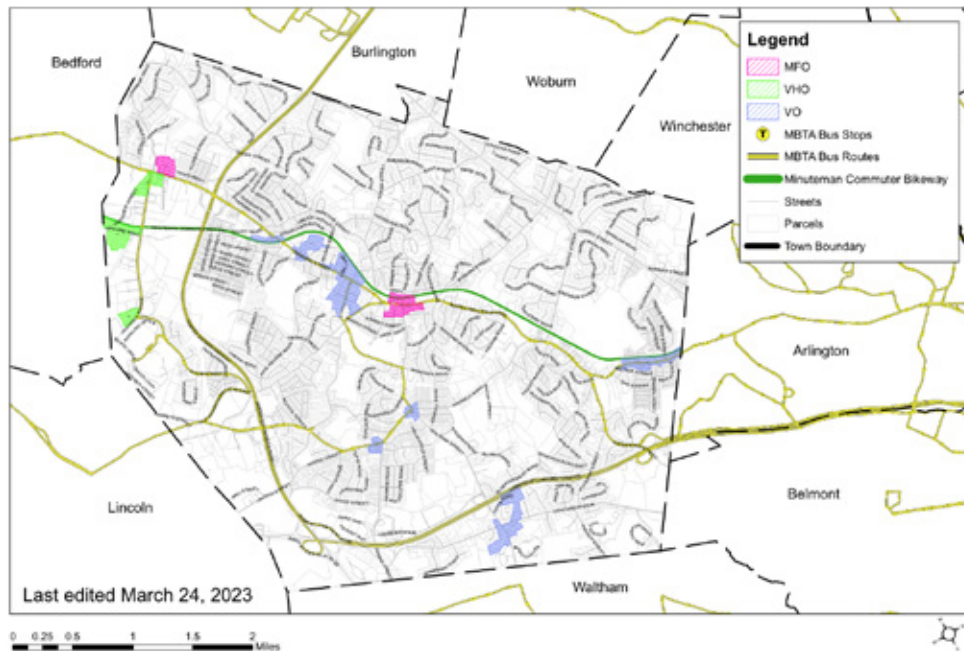
total zoning capacity in Lexington's new overlay districts includes more units than would have been required if Lexington was a Rapid Transit Community.<sup>194</sup>

Lexington's elected leaders had already given a lot of attention to housing issues in the recent past, including forming a committee in 2018 to study ways to incentivize the construction of smaller homes in new subdivisions.<sup>195</sup> Town Meeting members overwhelmingly approved the new incentives recommended by the committee two days before they approved the MBTA Communities zoning overlay paradigm.<sup>196</sup> The Lexington Planning Board had also approved a comprehensive plan in 2022 that included a strong endorsement of increasing housing options in the town.<sup>197</sup>

The political will to implement this comprehensive plan translated nicely into compliance with the MBTA Communities Act. Lexington had an early and extensive public outreach effort for Section 3A that involved an in-person housing workshop in October 2022, attended by about 100 residents.<sup>198</sup> While many other towns limited community engagement to a required public hearing before a town board or committee, Lexington's workshop allowed residents to collaborate in small groups to directly identify potential locations for the new zoning. According to Planning Director Abby McCabe, this approach to public engagement "made residents think like town officials, where they know they have to do something and look for solutions to the problem."<sup>199</sup> There were also 10 "public work sessions" between October 2022 and January 2023, in which residents could ask questions and provide comments to the Planning Board on the zoning's locations and general parameters.<sup>200</sup> The goal of the public work sessions was for the Planning Board to consolidate the proposed districts and finalize the zoning details and bylaw text.

In advance of its annual Town Meeting in 2023, Lexington prepared a proposal for adding new zoning overlay districts (see Figure 16). All 12 locations of the new zoning overlay districts abut an MBTA bus line, and this is no accident. The October 2022 housing workshop featured maps identifying existing bus routes as a way of encouraging residents to think about transit connections when proposing locations. The Planning Board later prioritized proximity to bus routes and the Minuteman Commuter Bikeway when narrowing down those locations.<sup>201</sup>

Figure 16: Map of Lexington's MBTA Communities Act Overlay Districts<sup>202</sup>



Other Planning Board criteria included proximity to retail and civic services and ensuring a relatively even distribution of the districts throughout the town. Most of the districts include existing commercial districts with suburban-style office parks or retail strips and ample parking. A couple

While many other towns limited community engagement to a required public hearing before a town board or committee, Lexington's workshop allowed residents to collaborate in small groups to directly identify potential locations for the new zoning.

Most of the districts include existing commercial districts with suburban-style office parks or retail strips and ample parking. A couple have both existing commercial and residential uses.



have both existing commercial and residential uses. The section of Lexington located to the east of both the Minuteman Bikeway and Route 4, which has few bus lines or commercial amenities, only has one of the 12 districts.

The 12 districts come in three categories: a Multi-Family Overlay (MFO), Village Overlay (VO), and Village High-Rise Overlay (VHO).<sup>203</sup> The VO district allows for a height of up to 40 feet, MFO allows for 52, and VHO allows for 70. Additionally, VO and VHO districts allow for even taller buildings (60 and 115 feet, respectively) when a substantial amount of the floor area of the development is taken up by non-residential uses.<sup>204</sup>

These height allowances quickly became one of the most contentious aspects of Lexington's compliance plan. Before the MBTA Communities overlay districts passed Town Meeting, the maximum height permitted in residential districts was 40 feet for privately owned, non-institutional buildings.<sup>205</sup> Some of the VO overlay districts include existing residential uses, such that the Town's 3A compliance plan would allow heights of up to 60 feet (typically five stories) near residential neighborhoods in some contexts.<sup>206</sup>

A complicating factor is that Lexington proposed allowing these taller buildings to incentivize mixed-use development, which was another priority consideration for town officials and residents. The town's compliance plan came up at Town Meeting before the EOHLIC amended its guidelines to give MBTA communities the option of including a "mandatory mixed-use" district along with the new zoning. Thus, Lexington's work-around was the "height bonus" for adding commercial uses to projects in the VO and VHO districts. Still, some Town Meeting members openly questioned whether it was necessary to allow 60-foot-tall buildings to get developers to build first-floor retail in new projects.<sup>207</sup>

Lastly, some residents were concerned that the town was moving through the compliance process too quickly to address all the plan's potential adverse impacts. However, at Town Meeting, this sentiment was somewhat tempered by speakers who expressed the urgency of solving the regional housing crisis and envisioned Lexington playing a leading role in that solution. Notably, Mike Kennealy, former Massachusetts Secretary of Housing and Economic Development and a Lexington resident, told Town Meeting members that Lexington should want to "be out there early and show what's possible."<sup>208</sup>

An amendment at Town Meeting that would have reduced the maximum building heights and removed 5 of the 12 proposed overlay districts failed to pass by a margin of five votes.<sup>209</sup> Additionally, almost two-thirds of Town Meeting members rejected another amendment that would have implemented a layer of discretionary review over the proposed zoning district in historic Lexington Center.<sup>210</sup> Still other elected officials wanted to postpone voting on the new zoning entirely, saying that community input on the plan had been insufficient.<sup>211</sup>

Ultimately, the article to establish the 12 new zoning districts passed Town Meeting by a margin of 63 percent to 37 percent on April 12, 2023.<sup>212</sup> Importantly, just a few years earlier, this margin would have been a failing vote due to the two-thirds supermajority required to approve local zoning changes, including the allowance of by-right multi-family housing. As part of the state's Housing Choice Initiative, this threshold was reduced to a simple majority in 2021.<sup>213</sup>

The EOHLIC approved Lexington's new districts in November 2023, but rejected Lexington's inclusionary zoning plan for the districts, alleging it would be economically infeasible to build some projects with the affordability mandate in place.<sup>214</sup> The inclusionary zoning would have required that developments with at least eight housing units reserve 15 percent of them for households making no more than 80 percent of the area median income.<sup>215</sup> At its 2024 Town Meeting, Lexington amended the inclusionary zoning proposal to require 10 percent income-restricted units in projects with 10-13 units and 15 percent income-restricted units in projects with at least 14, conforming to the findings of an updated feasibility study.<sup>216</sup>

**Some Town Meeting members openly questioned whether it was necessary to allow 60-foot-tall buildings to get developers to build first-floor retail in new projects.**

Figure 17: Renderings of Developments at 5–7 Piper Road (Left) and 89 Bedford Street (Right) in Lexington, Proposed under the Town’s New Overlay Districts<sup>217</sup>



As of August 2024, Lexington has received six project proposals under the new zoning totaling 129 for-sale units and 512 rental units, although the final unit counts of individual projects may change during the planning board permit process (see Figure 17).<sup>218</sup> Two of the project proposals are in the southernmost overlay district near the Route 2 interchange at Waltham Street, and another three are located along the Minuteman Bikeway, on either Bedford Street or Massachusetts Avenue. The largest one is in the Hartwell Avenue industrial park, about half a mile from the Route 128/Route 4 interchange. On August 14, 2024, one of the condominium developments along the Bikeway, 30 units at 89 Bedford Street, was approved,<sup>219</sup> and it will likely become one of the first developments built under the MBTA Communities Act.

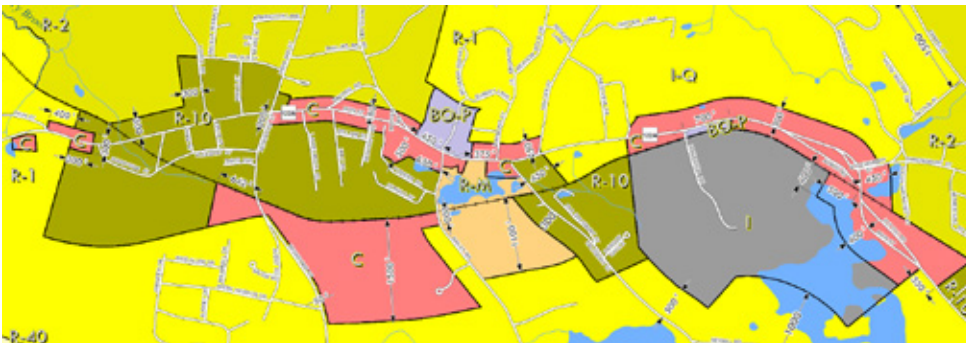
### Holden

A fast-growing town just west of Worcester, Holden is notable as the only MBTA community that has failed to create an “action plan” for complying with Section 3A as required under EOHLC guidelines.<sup>220</sup> Instead, town officials have publicly and avidly defended local control over planning and zoning decisions at every turn, rhetorically going far beyond Milton’s quibble over its classification as a Rapid Transit Community.

Town Manager Peter Lukes has been the de facto spokesperson for Holden’s opposition to the law, saying that “the type of structure required by MBTA Communities legislation would demand construction of high-rise buildings that don’t fit the town’s character.”<sup>221</sup> Section 3A requires zoning for 15 units per acre — not literally high-rise in most contexts, but certainly enough to challenge the status quo in Holden. The highest residential density allowed by current zoning in Holden is 8.7 units per acre, as the multi-family “R-M” district requires at least 5,000 square feet of lot area for each unit (see Figure 18).<sup>222</sup>

Holden is notable as the only MBTA community that has failed to create an “action plan” for complying with Section 3A as required under EOHLC guidelines.

Figure 18: Current Zoning Map of Holden Center, Including a Sizable Multi-Family (“R-M”) Residential District<sup>223</sup>



Holden also may have insufficient access to transit to contribute to the state’s transit-oriented development goal. Most Holden residents would have to drive more than five miles to get to the nearest rail station, Union Station in Worcester. Holden contains neither an MBTA bus stop nor



a Worcester Regional Transit Authority bus stop.<sup>224</sup> From 2020 to 2022, the most recent years for which data is available, the American Community Survey has found that the number of Holden residents taking public transportation to get to work is within the margin of error, meaning it could very well be zero.<sup>225</sup>

Further, the vast majority of Holden residents don't have to rely on transit to get around. As of 2022, 86 percent of Holden workers ages 16 or older lived in households with access to at least 2 personal vehicles, and only 0.2 percent didn't have access to one at all (see Figure 19).<sup>226</sup>

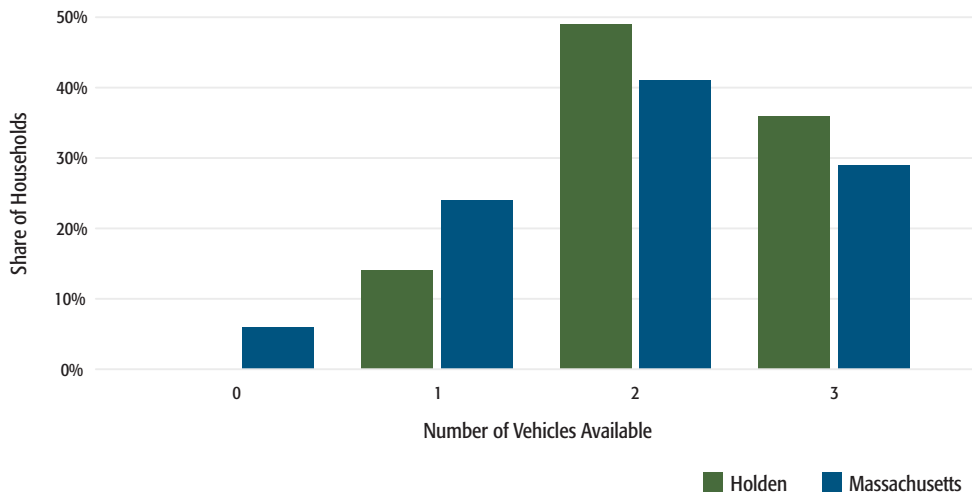
But the rhetoric of 3A opponents in the town doesn't necessarily depend on the suitability of Holden in particular for dense, transit-oriented housing. "Holden continues to encourage developers to build multi-unit housing," said Lukes. But he added that "the potential cost of surrendering our local control of zoning to Beacon Hill political agendas is greater than the potential benefit."<sup>227</sup> Similarly, as early as March 2023, it was reported that Holden Select Board members "are open to multi-family homes, but are not open to being strong-armed by the state."<sup>228</sup>

Drilling down on the benefits of local control, Lukes expressed concern that Section 3A is insensitive to the long-term service obligations of small towns like Holden, ultimately creating a financial burden for the Town that it is ill-prepared to meet. "The density requirement in this legislation is untenable for many smaller towns that must consider the traffic impact to our smaller road networks, school capacity, infrastructure (water/sewer/electric) overload, aesthetics, etc.," Lukes wrote in an email. "There is no consideration of these factors in the legislation and no financial support for the massive and unmanageable fiscal impact to smaller communities that the imposition of 3A will bring."<sup>229</sup> Many residents and officials in other small towns share Lukes' concern about Section 3A's effect on local government fiscal health (see the Wrentham case study below).

**"The potential cost of surrendering our local control of zoning to Beacon Hill political agendas is greater than the potential benefit."**

- Peter Lukes,  
Holden Town Manager

**Figure 19: Share of Workers Ages 16+ by Number of Vehicles Available in the Household in Holden and Massachusetts, 2022<sup>230</sup>**



Meanwhile, some observers have claimed that the paradigm of local control in planning and zoning in Massachusetts also has adverse consequences, namely a contribution to the state's harrowing housing shortage.<sup>231</sup> Purportedly, many suburban Massachusetts towns have regulated development on their own terms for decades in a way that has ignored regional housing needs. One organization accountable to those regional housing needs in the Worcester region is the Central Massachusetts Housing Alliance (CMHA), a nonprofit that provides housing counseling and homelessness prevention services, but also does "policy ed and advocacy" work.<sup>232</sup>

The CMHA has been particularly assertive in advocating for localities to "maximize every available tool to keep central Massachusetts families housed in their communities of choice," including Section 3A.<sup>233</sup> When Holden failed to submit an action plan for complying with Section 3A by the January 2023 deadline, and town officials made it clear they had no intention of complying at

**Purportedly, many suburban Massachusetts towns have regulated development on their own terms for decades in a way that has ignored regional housing needs.**

all, the CMHA viewed Holden as a litmus test for the law's enforceability more broadly.<sup>234</sup>

In August 2023, the CMHA sued the town over its threatened noncompliance.<sup>235</sup> The plaintiffs in the case included both a Holden resident concerned by the potential loss of grant funding and tax base if the town failed to comply, as well as a low-income Westborough resident, currently living in a temporary shelter, who had struggled to find housing she could afford in the region. A judge dismissed the lawsuit in December, saying that the plaintiffs did not have legal standing to bring the case because any harm they suffered was of a general nature, and not specifically attributable to Holden's impending non-compliance with Section 3A.<sup>236</sup> Lawyers for Civil Rights, which represented the CMHA in the Holden case, has expressed interest in appealing that ruling.<sup>237</sup>

The quick dismissal of the case was a victory for Holden officials who not only prefer local control over state mandates, but also doubt that the state's 3A enforcement efforts will withstand legal scrutiny. According to Peter Lukes, the Town of Holden "does not believe the law as it is written forces mandatory compliance." He has even called the state's lawsuit against Milton over its non-compliance with Section 3A "an assault on democracy."<sup>238</sup>

Legal experts have said that the state "has a strong case" in its lawsuit against Milton, citing the precedent for state restrictions on local zoning decisions embodied in laws like Chapter 40B, which allows developers to ignore local zoning if a town's housing stock is not sufficiently affordable.<sup>239</sup> At the very least, unlike the CMHA case in Holden, the Milton case probably won't be dismissed on procedural grounds.

And despite his earlier remarks, Peter Lukes has left the door open to facilitating compliance with Section 3A depending on how the Milton lawsuit is resolved. If a judge rules that the EOHLG guidelines are enforceable in all 177 communities subject to Section 3A, it "would force the town to re-evaluate its position," he has said.<sup>240</sup> In the meantime, state Attorney General Andrea Campbell has declined to pursue legal action against the Town of Holden until the December 2024 compliance deadline has passed.<sup>241</sup>

## Wrentham

This semi-rural town on the southwestern edge of the MBTA service area is notable for requesting a waiver from the MBTA Communities Act in February 2024. The fallout from this request brought issues to the fore over how small towns would fund infrastructure improvements needed to accommodate the kind of multi-family development proposed under the Act.

Early in the compliance process, the Wrentham Select Board (then called the "Board of Selectmen") publicly referred to Section 3A as an "unduly onerous unfunded mandate."<sup>242</sup> In a March 2022 letter to the then-DHCD commenting on a draft of Section 3A guidelines, the Board took issue with the law's scope, criticized the agency's failure to consider impacts on infrastructure, and—much like Milton—accused the agency of overstepping its authority on enforcement.<sup>243</sup> In particular, Board members emphasized that the guidelines interpreted the law in a way that would result in more exacting requirements on cities and towns, such as the minimum size of 50 contiguous acres for the new zoning district. They also argued that Section 3A may violate the Local Mandate Law, which prohibits the state from "imposing any direct service or cost obligation on a city or town" without providing equivalent state aid.<sup>244</sup>

By early 2023, the state had allocated funding to provide communities with technical assistance necessary to comply with Section 3A as needed.<sup>245</sup> Additional aid was available through quasi public agencies like the Massachusetts Housing Partnership, through which the Town of Wrentham was able to hire consultant Bohler Engineering to evaluate different compliance scenarios.<sup>246</sup> The town used Bohler's services until February 2024, and that same month opened Planning Board meetings to public comments on the draft compliance proposal.<sup>247</sup>

Many other MBTA communities avoided rezoning residential land to minimize disruptions to existing residents. Instead, Wrentham initially ruled out rezoning many commercial areas so it could take full advantage of its higher tax rate on commercial properties. In locating its

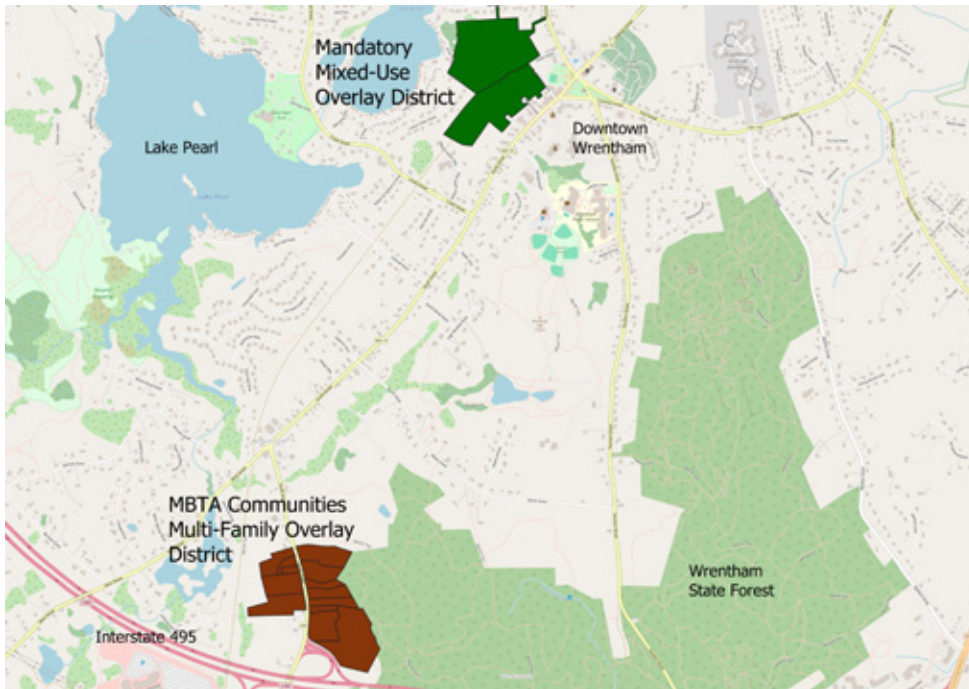
**Attorney General Andrea Campbell has declined to pursue legal action against the Town of Holden until their December 2024 compliance deadline has passed.**

**Wrentham initially ruled out rezoning many commercial areas so it could take full advantage of its higher tax rate on commercial properties.**

new districts, it also prioritized proximity to existing commercial centers, protection of natural resources, and suitability for children and families.<sup>248</sup>

By early February 2024, Wrentham was considering two areas for inclusion in its compliance plan. One was a vacant stretch of land immediately behind its main downtown commercial block, the site of a former steam valve manufacturer.<sup>249</sup> The other area was a part-residential, part-vacant series of parcels between the town's I-495 interchange and a small commercial area known as Wampum Corner (see Figure 20).<sup>250</sup> In the initial iteration of the new zoning overlay, the downtown district would only allow eight units per acre, but because it mandated mixed-use development, it didn't count towards the EOHL's district acreage requirement and thus didn't affect the overall gross density.<sup>251</sup> Instead, the Wampum Corner district would ensure that the overall gross density met the 15 units per acre required for 3A compliance. Another version of the compliance plan relied solely on a larger, denser Wampum district to facilitate compliance without mandating mixed-use development, and the Planning Board seemed to prefer this plan before the public hearing began later in February.<sup>252</sup>

**Figure 20: February 2024 Draft of Wrentham's Proposed Downtown Zoning Overlay District (in Green) and Wampum Corner Overlay District (in Brown)**<sup>253</sup>



A February 27 joint meeting of the Wrentham Select Board, Economic Development Committee, and Planning Board MBTA Housing Subcommittee was a watershed moment. It became clear that many Wrentham residents were dissatisfied with the compliance options identified by the town's elected officials. Some residents wanted the plan to include certain parcels on Route 1, which hugs the eastern edge of town, despite earlier concerns that housing development along the highway would not be a good environment for the new families.<sup>254</sup>

At the same meeting, Select Board members signed a letter to Governor Healey that both asked for more "support and guidance" with 3A compliance and expressed interest in "obtaining a waiver or modifications to" the law's requirements.<sup>255</sup> Select Board members asserted to the governor that Section 3A "requires us to increase our population by as much as 13 percent without any state funding" and "would overload our infrastructure, fire, police, and schools."<sup>256</sup> The letter also identifies Wrentham's efforts to facilitate housing development outside of Section 3A requirements, and claims that those requirements "do not align with the goals of our residents and will lead to

The selectmen signed a letter to Governor Healey that both asked for more "support and guidance" with 3A compliance and expressed interest in "obtaining a waiver or modifications to" the law's requirements.

the destruction of the small-town New England charm we've come to love."<sup>257</sup>

The letter garnered significant media attention and helped motivate officials from other small towns—including Rockland, Newbury, Scituate and Littleton—to publicly raise concerns over the infrastructure capacity needed to comply with Section 3A.<sup>258</sup> Clark Ziegler, executive director of the Massachusetts Housing Partnership, the organization that funded the technical assistance for Wrentham's compliance efforts, then avidly defended Section 3A's seeming negligence of the need for infrastructure funding.

In a lengthy LinkedIn post, Ziegler pointed out that Section 3A doesn't require municipalities to expand their infrastructure at all, and asserted that developers, not municipalities, will thus often be responsible for providing additional sewer and water capacity for new housing built under Section 3A.<sup>259</sup> And even in towns without existing public wastewater services, Title 5 of state law allows developments of up to 90 bedrooms (10,000 gallons of wastewater per day at 110 gallons per bedroom) to use septic tanks.<sup>260</sup> Stricter septic standards than exist under state law are common in small towns, but according to Ziegler "rarely have any environmental or scientific basis."<sup>261</sup> Joe Peznola, Director of Engineering at Hancock Associates in Marlborough, has said that under state standards, it's possible for septic systems to support residential development of up to 20 units per usable (i.e., not wetlands or floodplain) acre of land (see Table 3).

**Table 3: Hancock Associates Standards for Maximum Residential Density in Developments Served by Septic Tanks and Sewers, by Housing Typology<sup>262</sup>**

Housing Typology	Density with Septic System	Density with Sewer System
Single Family Home	6 units per acre	10 units per acre
Duplex	8 units per acre	12 units per acre
Townhouse	12 units per acre	18 units per acre
Garden-Style Apartments (surface parking; max. 3 stories)	20 units per acre	28 units per acre
Mid-Rise Apartments (garage parking; 3–5 stories)	N/A	100 units per acre

Regardless, some small town local officials argued that Section 3A's efforts to facilitate development in areas without public sewer systems would merely push more infrastructure costs onto the developers, thus undermining the affordability goals of Section 3A.<sup>263</sup>

EOHLC Director of Livable Communities Chris Kluchman participated in a March Wrentham Select Board meeting, at which Kluchman and the Board expressed their disagreements over how Section 3A would affect Wrentham's infrastructure, schools, fiscal health, and control over the development process.<sup>264</sup> Board members expressed doubt that property and excise taxes from the new development would cover the cost of public safety, education, and other town services, even if the developer paid to install utilities and wastewater infrastructure. Kluchman referenced a number of studies that show that new multi-family housing development is typically fiscally positive for localities.<sup>265</sup>

Ultimately, the Wrentham Select Board, Economic Development Commission, and Planning Board subcommittee decided to delay the Town Meeting vote on the MBTA compliance plan until the fall. This delay would both give town officials more time to reconsider alternative compliance plans and give Governor Healey's office time to respond to the Select Board letter.

In the meantime, the public hearing took place over a series of Planning Board meetings starting in February. Some residents echoed the language of the Select Board that Section 3A was an "unfunded mandate" and even "unconstitutional."<sup>266</sup> Concerns about school capacity and other burdens on town services continued to crop up.<sup>267</sup> Other speakers seemed supportive of the law as a whole, but had reservations about including the downtown site, at which a lower-density project

**A number of studies show that new multi-family housing development is typically fiscally positive for localities.**



has been proposed, in the town's new overlay district.<sup>268</sup> Notably, no one made public comments at any of the March or April public hearings, apparently because no members of the public wished to speak.<sup>269</sup>

On May 1, Town officials made it clear that they were considering a number of previously tabled compliance options, including rezoning a number of parcels along Route 1 or at the Wrentham Village Premium Outlets, a shopping mall near downtown.<sup>270</sup> On May 15, one resident emphasized the urgency of settling on a location for the zoning overlay district so the EOHLC would have the full three months needed to vet the compliance plan in advance of fall Town Meeting.<sup>271</sup> The Planning Board also emphasized the importance of requiring 10 percent of the new units be deed-restricted as affordable to help maintain the town's compliance with Chapter 40B.

The public hearing continued into June, with the spring Town Meeting coming and passing. At one point, the town's website stated that "the MBTA communities zoning district that is ultimately identified by the town will need to be approved at Annual Town Meeting in May 2024 in order to meet [the] state's compliance deadline."<sup>272</sup> However, no 3A-related item was placed on the warrant article for this Town Meeting,<sup>273</sup> leaving the fall Town Meeting as the last chance for Wrentham to comply with Section 3A before facing penalties.

As of this writing, the Wrentham Planning Board has shifted their compliance approach to rely on a large tract of wooded land near Route 1 as well as an active gravel pit near the Franklin city line.<sup>274</sup> The Planning Board is still reviewing the draft bylaw before bringing the proposal to Town Meeting in December, and if the vote fails to pass then, there may not be adequate time to arrange another vote before the town's 3A compliance deadline.

## Topsfield

This historic North Shore town was one of the first Adjacent Small Towns to pass zoning required to comply with the MBTA Communities Act, along with Newbury and Harvard.<sup>275</sup> At 118 units, Topsfield's zoning capacity requirement under Section 3A is among the lowest in the region,<sup>276</sup> but in the initial rendition of the EOHLC guidelines, before the 50-acre minimum area requirement was eliminated for Adjacent Small Towns, Topsfield was facing a 750-unit zoning capacity requirement.<sup>277</sup>

In March 2022, the Topsfield Select Board and Planning Board sent a strongly-worded letter to then-Housing and Economic Development Secretary Mike Kennealy criticizing the guidelines.<sup>278</sup> The letter included an exhaustive list of concerns with the 750-unit capacity requirement, including its potential impact on traffic congestion, town services and infrastructure, schools, finances, and the environment. The letter also stated that placing such a large zoning obligation on small towns like Topsfield runs counter to the EOHLC's stated goal of transit-oriented development, as the nearest MBTA station (Hamilton/Wenham) is nearly three miles from the residential part of Topsfield.

Despite its unwillingness to reclassify or modify requirements on a town-by-town basis, the EOHLC relented to the unit capacity concerns raised by Topsfield and other small towns by establishing the "Adjacent Small Town" category in the final version of the guidelines. In Adjacent Small Towns, instead of applying the 15 unit per acre density to a minimum acreage, the capacity requirement is based solely on a flat percentage (5 percent) of the community's pre-existing housing stock.<sup>279</sup> This formula change greatly lessened the unit capacity obligations for dozens of communities.

With a more feasible zoning capacity requirement in place, many town officials were highly motivated to comply with Section 3A, in part because of the negative impact of non-compliance. In fiscal year 2022, when the EOHLC's draft guidelines were released, Topsfield received \$500,000, more than 2 percent of its annual operating budget,<sup>280</sup> from state grant programs reserved for 3A-compliant municipalities.<sup>281</sup>

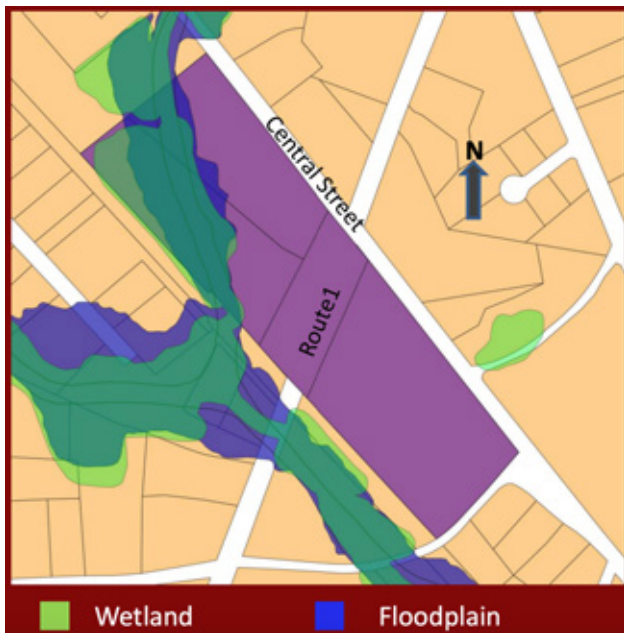
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The EOHLC relented to the unit capacity concerns raised by Topsfield and other small towns by establishing the "Adjacent Small Town" category in the final version of the guidelines.

There was also a sense of momentum around housing issues in Topsfield that predated Section 3A. Similar to Lexington, Topsfield had already conducted a significant number of community engagement activities and housing needs assessments in the recent past as part of a comprehensive planning process, which culminated in the 2024–2034 Master Plan.<sup>282</sup> The Master Plan includes an explicit goal to “encourage the development of multi-family housing” in certain zoning districts,<sup>283</sup> a significant vision given that, as of 2022, only 12 percent of Topsfield households lived in a multi-family building.<sup>284</sup>

The Planning Board, working closely with its consultant, initially considered both Topsfield’s downtown business district and parcels along U.S. Route 1, a major regional highway that bypasses the downtown, for 3A compliance.<sup>285</sup> By August 2023, however, Planning Board members had identified several adjacent underutilized parcels along Route 1, totaling nearly 16 acres, that soon became the focus of the compliance plan (see Figure 21).<sup>286</sup> Current uses on the Route 1 land include a pair of auto services and repair garages, one of which is vacant, and a heating oil supplier. But there was also a large swath of wetlands on two of the parcels, constraining the development potential of the sites. Consultants took these wetlands into account when calculating the unit capacity of the sites under the state’s compliance model, such that, at 15 units per acre, the unit capacity was much closer to 118 than the 240 or so implied by the size of the lots alone.<sup>287</sup>

Figure 21: Map of Topsfield’s MBTA Communities Act Overlay District (in Purple) and Surrounding Wetlands<sup>288</sup>



The one parcel in the proposed district that doesn’t include wetlands, on the east side of Route 1, is owned by the Essex Agricultural Society, which runs the annual Topsfield Fair, the town’s principal tourist attraction. At a September 2023 Planning Board meeting, the Topsfield Fair’s General Manager spoke out against the inclusion of the Route 1 parcels in the new zoning district, saying it could “negatively impact operation of the Fair” and “reduce available parking.”<sup>289</sup> A Planning Board member then emphasized that no one is forcing the Agricultural Society to sell some of their land for development or use it for anything other than parking. The Topsfield Fair manager then countered that he also has a stake in the rezoning of other properties, as rezoning could raise the price of properties he would like to buy and use as parking.<sup>290</sup>

Nevertheless, further public debate about the implications of rezoning in this particular location was sparse until the Planning Board opened a public hearing on the matter in March 2024. At a public information session on March 6, Planning Board Chair Martha Morrison gave a

**The Topsfield Fair’s General Manager spoke out against the inclusion of the Route 1 parcels in the new zoning district, saying it could “negatively impact operation of the Fair” and “reduce available parking.”**

presentation on the MBTA Communities Act.<sup>291</sup> A couple of residents had questions about the impetus for choosing this particular location for the new zoning district, including a site that the owner did not want rezoned. In response, the chair emphasized the ease of fitting the state’s requirements at this location and the long-term potential of the site. Later on, she also emphasized that the wetlands and the shape of the lots in the vicinity provide a “natural buffer” between the new multi-family district and existing residences, whereas some other parcels along Route 1 immediately abut single-family homes.<sup>292</sup>

On March 20, 2024, the Planning Board unanimously voted to recommend the three-parcel overlay district for approval at Town Meeting.<sup>293</sup> At Town Meeting, some residents brought up the concern that the state or town could force housing production to occur on the sites used to comply with Section 3A, either via eminent domain or a legislative mandate, and thus the town should take more time to consider the location of the new district. Other speakers questioned whether the town could handle the additional traffic, utilities infrastructure needs, and school capacity that come with the development. Chair Martha Morrison then commented that the town services can much more reasonably accommodate the current unit capacity requirement of 118 compared to the initial requirement of 750. A member of the Select Board said she expects that the new district’s developments will not be much larger than those allowed under pre-existing zoning, partially because of septic system constraints and partially because of the district’s three-story height limit.<sup>294</sup>

After Town Meeting members were asked to raise colored index cards to indicate their vote, the Town Meeting moderator declared that the zoning district was adopted into law by at least a two-thirds majority.<sup>295</sup>

At every stage—Planning Board debate, public hearing, and Town Meeting—the reduced capacity of 118 units was crucial to making 3A compliance politically feasible for Topsfield. In a little more than a year, Topsfield officials went from openly censuring the Section 3A draft guidelines to facilitating an early and largely smooth-sailing compliance effort.

## Enforcement

### Right Goal, Wrong Method?

Housing advocates and state officials cite many reasons why they want to concentrate new housing around train and bus stations—it uses existing public infrastructure more efficiently, it’s better for the environment, and it improves access to job opportunities. And adding to the multi-family housing stock in general could help improve affordability and accommodate the needs of a wide variety of family types.

Another matter entirely is whether and how the MBTA Communities Act should be enforced. Throughout the case studies listed above, there are examples of local officials and residents who expressed support for the goals of the law, but criticized the state’s method of achieving them: what they saw as heavy-handed mandates with overly punitive enforcement mechanisms. Some said they shouldn’t be compelled to comply at all. But would a “voluntary” state zoning law have the same impact as a mandatory one? And is the state’s current approach to enforcement truly unacceptable in the eyes of the public?

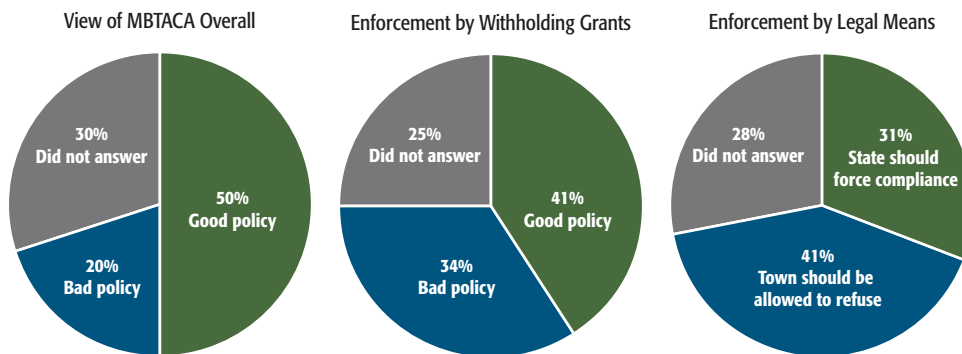
As of this writing, Section 3A is enforced in two ways: first, by withholding grant funds from communities that do not comply and second, with litigation aimed at forcing communities to comply. Eligibility for four state grants is explicitly dependent on 3A compliance, as indicated in the letter of the law.<sup>296</sup> In August 2023, the EOHLIC added an additional 13 grants to that list under its own authority, but in that case the relevant grant-making authorities have discretion to award funding to localities that are non-compliant.<sup>297</sup> In June 2024, Governor Healey announced the creation of an additional “MBTA Community Catalyst fund” grant opportunity that would be available exclusively to 3A-compliant communities.<sup>298</sup>

**Section 3A is enforced in two ways: first, by withholding grant funds from communities that do not comply and second, with litigation aimed at forcing communities to comply.**

In March 2023, Attorney General Andrea Campbell issued an advisory warning communities that she could pursue “civil enforcement action” against non-compliant cities and towns.<sup>299</sup> She also argued that failing to meet Section 3A requirements could leave communities liable for a violation of state and federal fair housing laws. In February 2024, Milton became the first municipality to be sued by the state for being out of compliance.<sup>300</sup>

A MassINC poll from March 2024 yields great insight into public opinion on Section 3A’s enforcement. While a slim plurality of respondents approved of the state restricting grant funding as a means of enforcement, by a wider margin respondents disapproved of the state using litigation to facilitate compliance (see Figure 22).<sup>301</sup> An analysis of the poll results by CommonWealth Beacon, a publication affiliated with research organization MassINC, noted that demographic groups that have been disproportionately affected by the housing crisis—renters, youth, and non-white and low-income people—tend to be more supportive of the Act than the general population. Only 28 percent of the homeowners in the poll said the state “should force towns to comply through legal means.”<sup>302</sup>

**Figure 22: Results from March 2024 MassINC Poll on MBTA Communities Act Enforcement Mechanisms**<sup>303</sup>



Relatedly, some of the case studies above demonstrate a hesitance to take proactive action to comply, with officials in communities like Freetown and Holden waiting for more clues on how far the state will go to enforce the law, or whether the law is enforceable at all. As of September 2024, 12 communities have rejected a zoning proposal at Town Meeting that would have facilitated compliance with Section 3A, and all of them have December 2024 compliance deadlines.<sup>304</sup>

While this level of resistance to Section 3A in some communities isn’t ideal, merely using positive reinforcement to encourage municipalities to adopt zoning reforms on their own often yields underwhelming results. Perhaps the best example of this is Chapter 40R, the 2004 state law that gives localities monetary incentives to zone for dense, multi-family housing in close proximity to transit, and its sister law Chapter 40S, which reimburses localities for education-related expenses associated with that new housing. Among other issues, state payments to localities under Chapter 40S have been underfunded, and some observers have complained that the development that does occur under 40R is seldom truly “transit-oriented.”<sup>305</sup> In the first 15 years of its existence, only 3,750 homes statewide were created under 40R, a figure dwarfed by the more than 20,000 Chapter 40B units created over the same timeframe.<sup>306</sup> More recently, the pace of production under 40R has accelerated, such that 7,253 units were either built or under construction as of July 2024.<sup>307</sup> Still, Chapter 40B produced more units in the five years from 2019 to 2023 than 40R has produced in 20 years.<sup>308</sup>

Chapter 40B is the 1969 state law that allows developers to seek exemption from local zoning laws in communities that don’t have at least 10 percent of their housing stock in the state’s subsidized housing inventory (SHI). With some 84,000 units produced since the early 1970s,<sup>309</sup> it’s perhaps the most successful legislative effort to increase housing production in the state’s history, but like Section 3A it also can feel too punitive and top-down to please many local officials and residents.

**As of July 2024, 12 communities have rejected a zoning proposal at Town Meeting that would have facilitated compliance with Section 3A, and all of them have December 2024 compliance deadlines.**



Chapter 40B even survived a 2010 ballot measure that aimed to repeal the law on the grounds that it is “abused by developers” and inadequately regulated by the state.<sup>310</sup>

Meanwhile, other state incentives for housing production at the local level have created a paltry amount of housing. Under Chapter 40V, the EOHLC can give tax breaks to developers to build market-rate homes in older urban enclaves, which resulted in 3,257 new homes in the law’s first 14 years on the books.<sup>311</sup> Chapter 40Y, a 2022 law that encourages localities to adopt zoning for small, family-oriented “starter homes,” has resulted in no new housing production in the two years since its enactment (see Table 4).<sup>312</sup>

**Table 4: Comparison of State Residential Zoning Initiatives in Massachusetts by Production, Enforcement, and Subsidy<sup>313</sup>**

Program Name	Average Units Built per Year Since Enactment	Mandatory for Localities to Implement?	Directly Subsidizes Localities?	Directly Subsidizes Developers?*
Chapter 40B	1,540	Yes	No	No
Chapter 40R	363	No	Yes	No
Chapter 40V	233	No	No	Yes
Chapter 40Y	0	No	Yes	No

\* Direct subsidies refer to funds created by the statute itself, and don’t include the many financing options available to private developers from quasi-state agencies like MassDevelopment and MassHousing.

Further, some of these programs, including Chapter 40V and Chapter 40R, involve generous statutory subsidies to make the underlying development both financially feasible for developers and politically palatable for municipalities. As 40B has demonstrated, ongoing public outlays shouldn’t be necessary to increase housing production, and in some cases income-restricted units can be created in mixed-income properties without public subsidies as well.

The upshot is that it will be difficult to both efficiently leverage state resources to substantially increase housing production and avoid state mandates that alienate local officials and residents. Perhaps the ugliest manifestation of this alienation will involve contentious lawsuits from towns like Milton, in which, regardless of the political consequences, the state almost certainly has the upper hand.

**Is Additional Enforcement Necessary?**

While the letter of the law says that an MBTA community “shall” create a multi-family zoning district, meaning they are legally required to do so, the state still must make a proactive effort to enforce the law to ensure its full implementation. Given Milton’s recalcitrant attitude towards Section 3A, some observers may be under the impression that the state’s current enforcement mechanisms are ineffective. It’s also true that some communities are not particularly reliant on the grant programs that the state has threatened to withhold from non-compliant municipalities.

That said, the legal enforcement mechanisms, including the Milton lawsuit, are likely to be effective eventually. This is because some communities that haven’t complied, like Holden, are doing so because officials there don’t believe the law is enforceable.<sup>314</sup> If the SJC makes it clear it is enforceable with the Milton case this fall, more communities will probably take proactive steps towards compliance.

The timing of the SJC’s ruling in the Milton case will be important in this regard, as communities operating under the impression of unenforceability may not have enough time to approve new zoning by the December 2024 deadline. Aggressively punishing such communities will likely not create good optics for the state, but arguably it is more important that the law is enforced similarly in every community subject to Section 3A. In other words, given that the state sued Milton for non-compliance shortly after it rejected Section 3A zoning, it may be unfair to treat other communities preferentially by giving them more time to comply after their deadlines have

**It will be difficult to both efficiently leverage state resources to substantially increase housing production and avoid state mandates that alienate local officials and residents.**

passed. Regardless, most communities will almost certainly comply before their respective deadlines. As of September 2024, more than 40 percent of MBTA communities have already passed zoning ordinances or bylaws to be used to comply with Section 3A.<sup>315</sup> On October 1, 2024, the EOHLHC announced that 33 communities are fully compliant with Section 3A, including eight Rapid Transit Communities, while the other three Rapid Transit Communities that submitted 3A district applications (Newton, Malden, and Everett) are conditionally compliant pending further review.<sup>316</sup>

If the state's lawsuit in Milton proves unsuccessful, it could still set up additional enforcement mechanisms that avoid court involvement. For example, beyond discretionary grant programs, the state could condition the availability of funds under formula-based local aid programs on 3A compliance.

In fact, Governor Healey has already threatened to do this. In a December 2023 radio interview, she implied that Chapter 70 (school aid) and Chapter 90 (road and bridge projects) funds for localities could be in jeopardy for non-compliant municipalities.<sup>317</sup> "If you don't comply with the act, then you're going to see us withholding...state money for any number of programs that you're used to receiving money for," Healey said in the interview. "That includes [money] for schools, it includes for roads and bridges, it includes for a whole host of things that are important to communities."<sup>318</sup> Such an enforcement approach may not be necessary for Section 3A, but it could be an appropriate enforcement mechanism for future policies that aim to avoid protracted and expensive legal battles.

## Impacts

### Positive Impacts: Production, Affordability, Job Access, and Environment

At the bottom of the EOHLHC's MBTA Communities Act guidelines is an eye-popping number: 296,806.<sup>319</sup> That's the total minimum multi-family unit capacity required among all MBTA communities as part of the legislation, enough to potentially increase the entire state's housing stock by almost 10 percent.<sup>320</sup> It's also substantially more than 200,000, the number of units state officials say must be built by 2030 to accommodate demand statewide, not just in the MBTA service area.<sup>321</sup>

This begs the question: how many of these 296,806 units will actually be created, and over what timeframe? While there's a lot of uncertainty over the exact number and location, specific estimates from housing experts suggest that only a small fraction of the zoning capacity created under Section 3A will actually be built in the near future.

Luc Schuster, executive director of the community foundation research center Boston Indicators, has estimated that 20,000–40,000 units will be built in the law's first 10 years of implementation.<sup>322</sup> This number is, in turn, based on an analysis by Boston Indicators and the Brookings Institution that found that between 5 and 10 percent of properties are typically redeveloped in the first five years after a major upzoning.<sup>323</sup> Schuster's estimate assumes that the above-and-beyond compliance efforts of communities like Lexington are tempered by the impulse of many other communities to locate their new zoning district in a way that greatly limits its potential for new development.

For example, Arlington has mostly used parcels with existing multi-family housing to comply. Of its 3,216-unit capacity, Arlington's overlay district includes 1,981 existing housing units, meaning that on net, only 1,235 new ones can be created.<sup>324</sup> And many individual parcels are very difficult to redevelop, as it's rarely financially feasible to tear down multi-family housing at, say, 12 units per acre and rebuild at 15 units per acre.

Town staff in Arlington have estimated that their 3A compliance effort, with a unit capacity of 3,216, will result in no more than 200 units of new housing (less than 1 percent of the town's existing stock) in 10 years.<sup>325</sup> In the first nine months after it achieved compliance, only one

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development project totaling two net new units sought site plan review under Arlington’s 3A zoning overlay district.<sup>326</sup>

Many other communities have used a compliance approach similar to Arlington’s. For example, by overlaying existing multi-family developments, Norwood’s 3A district has a unit capacity of more than 2,000 units, but a potential for net new homes of fewer than 800.<sup>327</sup>

Similar complications exist in communities that have overlaid multi-family zoning in places with commercial uses, as previously developed land may have unique challenges that make redevelopment difficult, like building around existing utilities and honoring leases of existing tenants. Almost all the above case studies display compliance approaches that involve at least some redevelopment, as opposed to building on vacant land.

But even places with 3A overlay districts covering empty lots may not have to change their zoning much to comply with the law. Salem, for example, became the first fully compliant municipality in large part because its zoning for multi-family development near its train station already met all of the EOHLA’s requirements under Section 3A.<sup>328</sup> And because of the restrictions on mandating mixed-use development, some communities, such as Everett, chose to comply by creating housing-only land use options with *less* residential density than would previously have been allowed by right.<sup>329</sup>

All this is to say that the number of housing units built because of Section 3A will remain far fewer in number than the guidelines’ unit capacity estimate, whether in a given community or overall, especially in the first few years after full implementation. Section 3A may have a larger impact in the long term, as more properties change ownership and rising land values make multi-family construction relatively more financially viable than single-family construction in more places. But a rapid pace of change in the housing stock, population, or scale of buildings in a community is far from an inevitable result in a community that is merely meeting 3A’s minimum requirements.

A separate issue is Section 3A’s impact on affordability. The state’s approach to improving housing affordability under Section 3A doesn’t depend on creating income-restricted units in new buildings, which usually require sizable public subsidies. However, the effect of additional construction as allowed under Section 3A could help moderate price increases among existing housing by reducing competition among buyers. Empirically, there is strong evidence for this “supply effect” on housing prices.<sup>330</sup>

That said, given the immense gap between historical building permit issuances and regional housing demand, 3A alone is unlikely to cause home prices to grow slower than inflation or incomes. Using the five-county Greater Boston region as a proxy for the MBTA service area, we observe anywhere from 5,000–15,000 housing units permitted in a given year since the Great Recession.<sup>331</sup> Meanwhile, the MAPC, a Boston-based regional planning agency, estimated in October 2023 that the region needs to build 154,000 homes by 2030, or 22,000 per year, to keep up with demand.<sup>332</sup> The UMass Donahue Institute came up with a very similar number (21,300 units per year) for keeping up with regional housing demand between 2010 and 2025.<sup>333</sup> But even after adding the high-end Luc Schuster estimate of 4,000 units created under Section 3A per year, the status quo pace of building is still well below what is needed to grow the region’s economy and achieve a healthy vacancy rate in the long-run (see Figure 23).

The fact that Section 3A alone is unlikely to spur enough housing production to substantially improve broad-based affordability is not a valid critique of the law. It just means that additional housing and zoning reform is required to achieve the kind of scalable housing affordability solutions that Massachusetts needs.

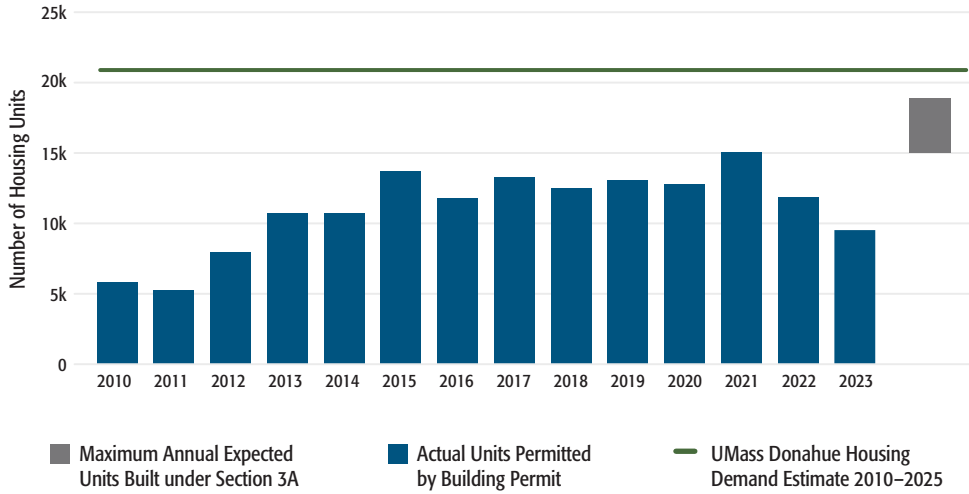
Other potential positive impacts of the law include improved access to economic opportunities and a cleaner environment. Both of these effects are a byproduct of the ability to build more housing around transit. As of 2022, some 13.5 percent of households in the five-county Greater Boston region don’t have access to a personal vehicle at home.<sup>334</sup> Giving car-free households more

Previously developed land may have unique challenges that make redevelopment difficult, like building around existing utilities and honoring leases of existing tenants.

Giving car-free households more housing options near transit could enable them to pursue a wider variety of jobs and also live in a wider variety of communities.

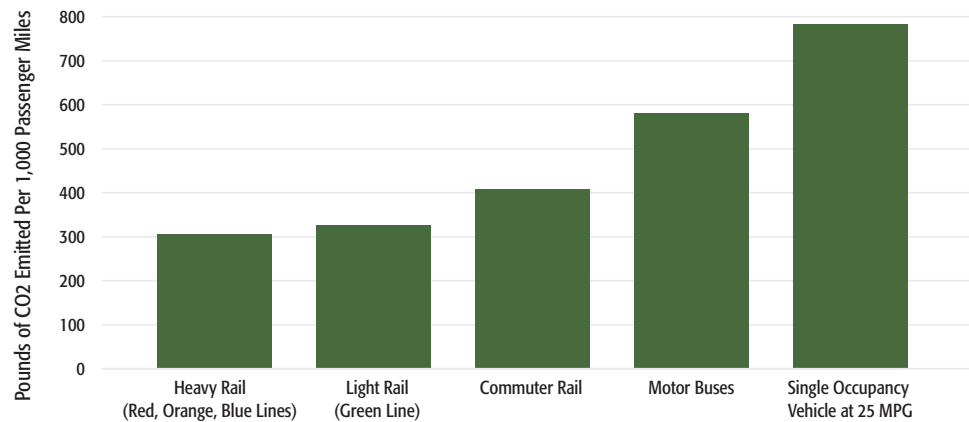
housing options near transit could enable them to pursue a wider variety of jobs and also live in a wider variety of communities.

**Figure 23: Housing Units Allowed by Building Permit and Units Needed to Meet Housing Demand in Greater Boston, 2010–2023, with a To-Scale Representation of Expected Section 3A Units Built Per Year at Right**<sup>335</sup>



Meanwhile, National Transit Database data shows that, depending on the line, switching from a single-occupancy car with typical fuel efficiency to an MBTA train reduces per-passenger, per-mile carbon emissions by between 48 and 61 percent (see Figure 24).<sup>336</sup> Even MBTA communities that don't have a rail station have the ability to zone for multi-family housing near traditional village centers, where vehicle trips to stores, schools, parks, and other amenities are shorter on average compared to trips originating in newer suburban subdivisions.<sup>337</sup> Thus, this transit- and village-oriented housing could make it substantially easier for MBTA communities to reduce household-level greenhouse gas emissions. While Section 3A itself does not require this neo-traditional housing to be built, it provides a legal allowance for such housing that previously didn't exist in many communities.

**Figure 24: Average Carbon Emissions Per Passenger-Mile By Transit Mode in Greater Boston and Single-Occupancy Vehicle National Average, 2016**<sup>338</sup>



**Negative Impacts: Schools, Infrastructure, and Traffic**

At public hearings and committee meetings, in local news articles, and on social media, it's common to hear concerns over how Section 3A will affect local services, quality of life, and government



budgets. Some of these impacts are abstract and subjective, like concerns over “aesthetics” or “neighborhood character.” But the impacts with technical implications are worth discussing, both to ensure towns are prepared for these impacts and to dispel common misconceptions about the local obligations that multi-family housing in general — and Section 3A in particular — create.

The idea that new housing will automatically overburden emergency services, roads, and other types of infrastructure is a common mantra among 3A detractors. But several academic studies have concluded that local tax revenue from multi-family development usually exceeds the public service obligations that it creates,<sup>339</sup> and the up-front costs of physical infrastructure improvements in Massachusetts are almost always borne by developers.<sup>340</sup>

Further, academic research has found that new construction in areas with existing development is, on average, more fiscally positive than development in previously undeveloped areas.<sup>341</sup> One 2016 study estimated the cost of infrastructure for infill development at about one-third the cost of infrastructure in greenfield development.<sup>342</sup> Both these studies suggest that municipalities can make choices regarding how they comply with Section 3A so as to more than justify the added costs that will truly be borne at the local level, like expanded fire and police services.

For other uses, especially roads, state aid under Chapter 90 will provide a substantial portion of the resulting costs. That said, the increment of multi-family housing development needed to justify major capital projects for roads is often larger in reality than in public perception because other development typologies besides multi-family housing generate an outsize portion of road usage. According to the 10th edition of the Institute of Transportation Engineers Trip Generation Report, multi-family homes typically generate seven vehicle trips per unit per day, compared to 10 trips per single-family home per day and 38 trips per 1,000 square feet of retail per day.<sup>343</sup> These figures have implications not just for road infrastructure needs, but also for traffic congestion.

Section 3A in particular could theoretically help alleviate traffic congestion by making it easier for more households to rely on trains for transportation. It’s true that any housing development will tend to increase congestion in the immediate vicinity, but if Section 3A creates more housing near major job centers and rail stations, it would likely moderate increases in regional travel demand relative to the status quo. Emblematic of that status quo is that Hopkinton, a community 25 miles from Boston that doesn’t have a rail station, was the fastest-growing municipality in Greater Boston between 2010 and 2020.<sup>344</sup> Notably, Hopkinton is also the location of the I-495/I-90 interchange. Thus, building in places like Hopkinton almost certainly induces more private vehicle travel demand than building in places with the highest zoning capacity obligations under Section 3A.

A related concern to road congestion is the idea that other types of public infrastructure — like sewer and water systems — will become overly strained if the new housing is built. One important consideration in this regard is that municipalities rarely bear the financial burden of ensuring adequate sewer and water service for new housing developments. In practice, developers pay most of these upfront costs, with state grants occasionally helping to finance them.<sup>345</sup>

Because cities and towns are only required to zone for housing under Section 3A, and not actually build it, there isn’t anything forcing them to provide that infrastructure if it is not financially viable for the developer to do so. Other regulations that control infrastructure capacity and quality, like Title 5 and state and local wetlands protections, will still apply. In fact, unlike Chapter 40B, Section 3A doesn’t provide a mechanism for waiving local Board of Health or Conservation Commission regulations that restrict development, potentially greatly limiting its impact in some communities.<sup>346</sup>

It’s worth noting that the guidelines prohibit MBTA communities from using site plan review to “impose conditions that make it infeasible or impractical to proceed with a project” permitted by right under Section 3A.<sup>347</sup> But officially, site plan review is not a regulatory process. Rather, the litmus test for unfair *regulatory* constraints under Section 3A is merely “if the zoning imposes requirements on multi-family housing that are not generally applicable to other uses.”<sup>348</sup> Thus, as

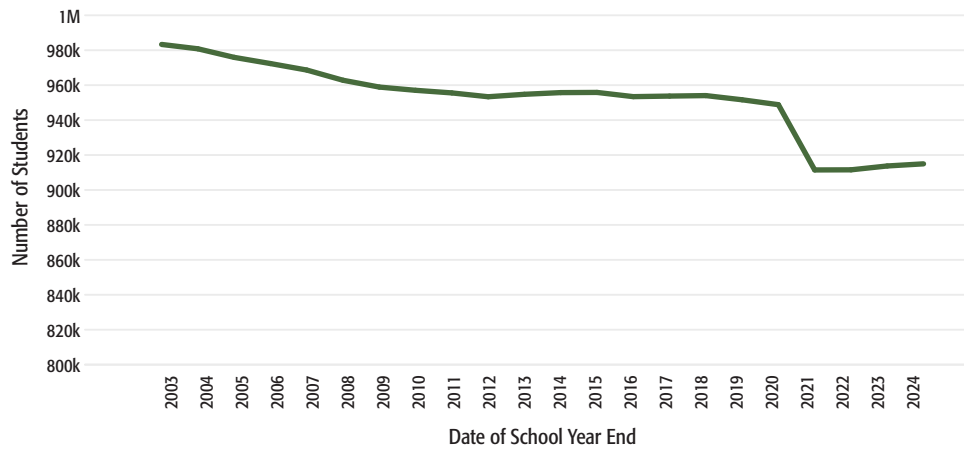
**Studies suggest that municipalities can make choices regarding how they comply with Section 3A so as to more than justify the added costs that will truly be borne at the local level.**

**Municipalities rarely bear the financial burden of ensuring adequate sewer and water service for new housing developments.**

long as a town’s septic system standards, wetlands protections, energy efficiency requirements for new construction, etc. apply equally to developments both inside and outside of Section 3A overlay districts, it’s entirely legal under Section 3A to have local infrastructure-related regulations that, in practice, greatly limit the potential for multi-family housing to be built.

Relatedly, new housing at the levels allowed by Section 3A is unlikely to cause school overcrowding or a decline in education quality, especially among public schools that are not operating at full capacity. In fact, 71 percent of traditional public school districts in Massachusetts that were in operation in both the 2013–14 and 2023–24 school years have seen declining enrollment over that period.<sup>349</sup> And at 66 percent, the corresponding figure for Greater Boston traditional public school districts is not much different.

**Figure 25: Total Public School District Enrollment in Massachusetts, 2002–2003 to 2023–2024<sup>350</sup>**



Further, the relationship between new housing development and enrollment growth in public schools is empirically very weak. A 2024 MAPC study, which updated data from a 2017 report entitled “The Waning Influence Of Housing Production On Public School Enrollment,” found “no significant association” between housing production rates and school enrollment change across localities.<sup>351</sup>

But even if new housing development under Section 3A does increase school enrollment in certain contexts, that won’t necessarily translate to increased spending for some budget items, like hiring new teachers. This is because, as school finance researcher Chad Aldeman has argued, school staffing levels in many K–12 U.S. schools have become unsustainably high since the COVID-19 pandemic.<sup>352</sup> This is especially true in Greater Boston, since 89 percent of traditional public school districts in the region for which staffing data is available saw student-to-teacher ratios decline between 2016 and 2023.<sup>353</sup> While it may be difficult to fire teachers under union labor agreements, moderate increases in student enrollment could better allow school districts to justify existing staff levels.

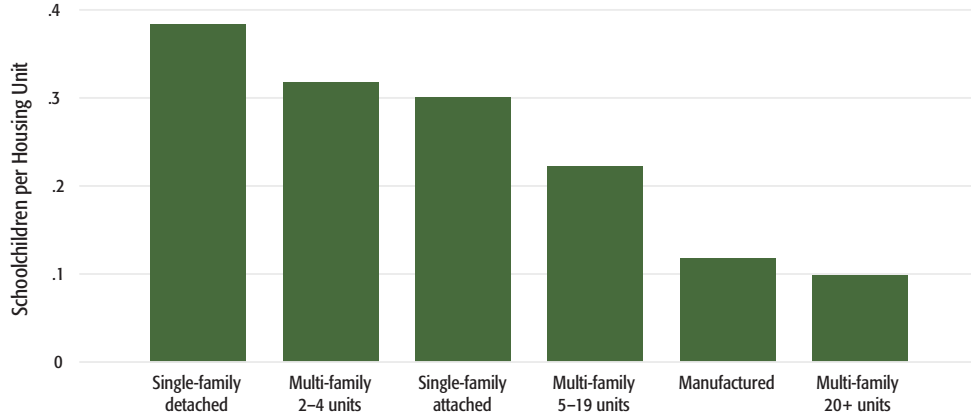
Further, the concentration of school-aged children in multi-family housing units in particular is, on average, much lower than it is in single-family homes.<sup>354</sup> Even in suburbs with good schools, it’s not uncommon for an apartment building to only have 15 or 20 public schoolchildren per 100 units,<sup>355</sup> and the larger the apartment building is, the less likely there is to be a school-aged child in a given unit (see Figure 26).

Other common complaints about Section 3A often hinge on the content of specific compliance proposals. For example, Section 3A won’t necessarily lead to a loss of open space if the zoning capacity is concentrated in areas that are already developed. Conversely, Section 3A won’t necessarily lead to the displacement of existing businesses if the zoning capacity is concentrated in vacant or residential areas, or at the very least areas with mostly owner-occupied businesses. There

**The concentration of school-aged children in multi-family housing units in particular is, on average, much lower than it is in single-family homes.**

are many such tradeoffs involved in crafting a 3A compliance paradigm, thus making it all the more valuable for local officials to solicit community input on the priorities of residents and other stakeholders.

**Figure 26: Average Number of Public Schoolchildren Per Housing Unit in Massachusetts by Building Typology, 2018**<sup>356</sup>



## Recommendations and Conclusion

State and local officials and policymakers alike have a role to play in facilitating a smooth and timely compliance process for the MBTA Communities Act that is best adapted to the needs of local residents. Future zoning reformers will also benefit from an in-depth understanding of how Section 3A is perceived by the public and how cities and towns are (or are not) implementing it. To this end, some recommendations follow.

### For Local Governments Seeking to Comply with Section 3A

- **Whenever possible, build upon existing work on transit-oriented development and/or planning for multi-family housing.** The compliance process in communities like Lexington and Topsfield went so smoothly in large part because they had momentum behind zoning reforms from recently completed master plans.
- **Conduct meaningful community outreach and engagement events early and often.** More than two years before its compliance deadline, Lexington held in-person community meetings that gave residents the first chance to identify potential zoning districts and set guardrails for the compliance process. It was an incredibly effective way of building consensus about how to implement the law. In many other communities, resident input was limited to reacting to the opinions of elected officials and consultants.
- **Involve a broad group of stakeholders in the compliance process.** In addition to the concerns of residents, those of property owners and business owners should also be addressed. Fears of displacing local businesses helped derail compliance efforts in Milton and eliminate the zoning overlay district in the Nonantum village of Newton.
- **Make sure different local boards and committees are on the same page.** As was the case in Wrentham, it's not uncommon for a Select Board and a Planning Board to have different preferences for how to comply with Section 3A. Joint meetings, public input, and communication with and among non-elected staff could help provide clarity and enrich the conversation in advance of a Town Meeting or City Council vote.
- **Consider the entire zoning code or bylaw when facilitating compliance.** A common concern the EOHLC identifies in interim compliance proposals is that their "as of right" provisions are negated by other sections of the municipality's zoning code.<sup>357</sup> The simplest way to solve this is to include language in the zoning that gives projects proposed under 3A-compliant zoning a separate set of approval criteria from others. For example, if all multi-family housing is required

The compliance process in communities like Lexington and Topsfield went so smoothly in large part because they had momentum behind zoning reforms from recently completed master plans.

to receive a special permit under Chapter X of the ordinance or bylaw, the chapter creating Section 3A overlay district (Chapter Y) could say something to the effect of “notwithstanding Chapter X, multi-family is allowed by right under the conditions set forth in Chapter Y.” Such an approach could both make it much easier for the EOHLC to evaluate 3A compliance and potentially save individual communities from the consequences of unintentional non-compliance.

- **Have a back-up plan.** As of this writing, 3A compliance plans have failed to pass at Town Meeting in a dozen communities.<sup>358</sup> Local officials should be prepared to organize a special Town Meeting close to the compliance deadline if necessary. Even if the local political climate is not conducive to facilitating 3A compliance at all, demonstrating a willingness to comply may lead to a more collaborative enforcement approach from the state.

### For State Officials Seeking to Enforce and Help Implement Section 3A

- **Strive for parity in enforcement tactics across communities.** Analogous forms of non-compliance should be treated equally across time and place. In other words, the state should not rely on “making an example of Milton” to enforce the law. It should enforce the law to the extent possible whenever and wherever it is intentionally and substantially violated. Likewise, in cases where the state does not enforce the law to the fullest extent, it should avoid enforcing the law in similar cases in other towns.
- **Clarify how Section 3A non-compliance will affect receipt of grant funding.** The August 2023 revision to the initial EOHLC guidelines adds a list of 13 grant programs that will “consider compliance with Section 3A in making grant awards.”<sup>359</sup> Public grant-making authorities generally have substantial discretion in how to distribute funding, based largely on political priorities. In this case, grant-making authorities should make it very transparent how exactly 3A compliance will affect funding decisions under these grant programs. This transparency will in turn help localities make informed decisions about their compliance efforts.
- **Give leniency on technical language to communities that made every effort to comply.** Even Lexington, in its above-and-beyond 3A compliance effort, was initially considered “conditionally compliant” with the law because of provisions in its pre-existing zoning bylaw that run afoul of Section 3A’s “as of right” building requirement.<sup>360</sup> While Lexington was informed of this technical error more than a year before its compliance deadline, other towns will not be so lucky, as the EOHLC will likely reach a determination of compliance after their deadline has passed. Even if the deliberate action of a majority of Milton voters to defy state law justifies a swift legal response, committing a technical error does not. The EOHLC should give a three-month grace period in communities where they discover inconsistencies in the zoning code that violate the Act, enough time to organize a special Town Meeting or a City Council vote.
- **Maximize transparency in communicating 3A compliance efforts and results.** Whether a given community is compliant with Section 3A should be readily available on the state’s website, including a link to EOHLC Secretary Ed Augustus’s district approval letter for each municipality. Upon full implementation, the state should also provide a list of development projects approved, under construction, and built under 3A zoning in each community. It is imperative that local residents, political leaders, and other stakeholders are well-informed about Section 3A’s effectiveness so they are prepared to make additional decisions to address Massachusetts’ housing shortage.

### For Future State-Level Zoning Reformers Seeking to Alleviate the Housing Shortage

- **Prioritize incremental reforms that build on local precedents.** If Massachusetts’ housing supply is going to grow to meet regional needs in the near future, it will be very difficult to avoid compelling change in communities that in some capacity are resistant to it. But this “forced change” could still be relatively politically palatable if it scales up existing reforms taking place in many local communities. For example, since the early 2000s, many communities in Massachusetts have legalized accessory dwelling units (ADUs), which are small rental units

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If Massachusetts’ housing supply is going to grow to meet regional needs in the near future, it will be very difficult to avoid compelling change in communities that in some capacity are resistant to it.



on the same property as single-family homes, for the first time.<sup>361</sup> In August 2024, a housing bond bill legalized ADUs statewide, passing both branches of the state legislature by a margin of more than 80 percent.<sup>362</sup>

- **More explicitly tie punitive actions against municipalities to a level of service or funding being provided.** In theory, Section 3A is smart policy in part because it tailors its zoning mandates to the amount of investment in transit the state has already made in a community. But in many contexts, it's hard to compare the level of investment in rail infrastructure across different communities. For example, many Adjacent Communities, like Holden, are miles away from fixed-route transit, while others, like Watertown, have good access to transit in other forms. Matching zoning requirements with an existing level of service is probably easier to do with monetary incentives—for example, adding requirements to various grant programs. While harsher, adjusting Chapter 70 school aid or Chapter 90 capital improvements funding based on housing and zoning policy may also be effective. After all, communities that don't create enough housing might need less money for school or road improvements. But that would still give cities and towns ultimate control over how much housing they allow to be built.
- **Build on existing programs where practical.** Adjusting requirements or incentives as part of existing zoning or housing production efforts will likely prove less costly than creating a new program—for state regulators, local governments, and the real estate industry alike. For example, some observers have suggested reforming the provision in Chapter 40B that counts some market-rate housing units in the subsidized housing inventory.<sup>363</sup> Such a reform could instantly increase the capacity for additional production under Chapter 40B in many communities.
- **Don't try to change local zoning. Instead, circumvent it.** One reason Chapter 40B is such a successful program is it allows developers in certain communities to ignore local zoning, rather than requiring a city or town to make a zoning change.<sup>364</sup> As the Section 3A implementation process demonstrates, zoning changes are inherently complicated, expensive, time-consuming, and contentious, involving Town Meeting or City Council votes and substantial input from town staff, consultants, and the public. Thus, future state mandates should probably seek to override local zoning under certain conditions rather than require zoning changes. For example, the state could allow developments up to a certain gross density to ignore local zoning laws if all of the units are income-restricted. A very similar law is already on the books in Cambridge.<sup>365</sup>
- **Target future legislation to communities that already have sewer and water infrastructure and development-ready sites.** There's a powerful precedent for tying zoning reforms to local sewer and water infrastructure in Vermont. In 2023, the Green Mountain State began requiring municipalities to allow up to four housing units to be built at a time on properties where public sewer and water service is available.<sup>366</sup> In the same vein as the MBTA Communities Act, such a reform approach in Massachusetts would help make more efficient use of public infrastructure. But even if the Commonwealth wanted to limit such a mandate to places with state services, the impact could be substantial: the Massachusetts Water Resources Authority, a quasi-state agency, is the main provider of sewer and water services in Boston and dozens of its suburbs.<sup>367</sup>

As a Wrentham Select Board member said at a March 2024 meeting, “there are many unknowns” with the MBTA Communities Act.<sup>368</sup> Implementation of the law is still underway, and litigation regarding how the law is enforced could drag on for years. Moreover, it's difficult for local officials or residents to predict the law's impacts on their community, both positive and negative, or even how many homes will be built at all. Section 3A is a law that inherently requires cities and towns to accept some uncertainty in their local affairs for the sake of addressing a region-wide problem.

That element of uncertainty in what gets built and where is challenging the status quo of planning and zoning across eastern and central Massachusetts, but at its best it will allow home builders to more readily respond to evolving market and regulatory conditions. To the extent that local zoning laws create a mismatch between market demands and what is allowed to be built, Section 3A is truly addressing the housing crisis at its roots.

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Pioneer Institute develops and communicates dynamic ideas that advance prosperity and a vibrant civic life in Massachusetts and beyond.

## Vision

Success for Pioneer is when the citizens of our state and nation prosper and our society thrives because we enjoy world-class options in education, healthcare, transportation, and economic opportunity, and when our government is limited, accountable, and transparent.

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