

DHCD Issues Draft Compliance Guidelines for “MBTA Communities” and Multi-Family Zoning Requirements

January 5, 2022

As you know, on January 14, 2021, Governor Charlie Baker signed into law House Bill 5250 – “An Act Enabling Partnerships of Growth.” Commonly referred to as the “Housing Choice Act,” this legislation made significant changes to the Zoning Act, G.L. c. 40A, and encourages municipalities to adopt “best practices” and zoning that supports sustainable housing production.

Of particular note, the Housing Choice Act amended the Zoning Act by inserting a new “Section 3A,” which regulates “MBTA Communities.” The new G.L. c. 40A, § 3A requires an MBTA Community to “have a zoning ordinance or by-law that provides for at least 1 district of reasonable size in which multi-family housing is permitted as of right . . .” The required multi-family housing district may not be subject to age restrictions, must be suitable for families with children, have a minimum gross density of 15 units per acre, and, if applicable, be located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal, or bus station.

Communities that fail to create a zoning district in which multi-family housing is allowed as of right will not be eligible for funds from the Housing Choice Initiative Program, the Local Capital Projects Fund, or the MassWorks Infrastructure Program.

To that end, on December 15, 2021, the Department of Housing and Community Development (“DHCD”) issued draft compliance guidelines applicable to MBTA Communities. The draft regulations can be accessed at: <http://www.mass.gov/mbtacomunities>. MBTA communities, interested stakeholders, and the public are invited to submit comment to DHCD by **March 31, 2022**. Final compliance guidelines will be issued in summer 2022.

To remain in compliance while DHCD is collecting public comment on the draft guidelines, MBTA communities must:

- Submit the [MBTA Community Information Form](#) by 5:00 p.m. on **May 2, 2022**.
- Hold a briefing of your City Council, Town Council or Select Board on the Draft Compliance Guidance no later than **May 2, 2022**, and attest to that on the MBTA Community Information Form.

Going forward, MBTA Communities that do not have a multi-family district of reasonable size that complies with all of the requirements set out in G.L. c. 40A, § 3A, should take time to review Section 9.b of the draft regulations (“Action plans and interim compliance – New or amended district”). “Rapid Transit Communities” and “Bus Service Communities” must obtain DHCD approval of an action plan no later than

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March 31, 2023. “Commuter Rail Communities” and “Adjacent Communities” must obtain DHCD approval of an action plan no later than **July 1, 2023.** Your municipality’s “MBTA Community” designation can be located at: [“What is an ‘MBTA Community’?”](#)

In the interim, if you have any questions regarding the draft compliance regulations, submitting comments to DHCD, or the Housing Choice Act in general, please do not hesitate to contact your KP Law attorney at 617-556-0007 or by e-mail following this convention: first initial last name@k-plaw.com.

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