

EOHLC Updates to Compliance Guidelines for MBTA Communities Prepared for the January 2024 MMA Business Meeting and Trade Show

On August 10, 2022, the Executive Office of Housing and Livable Communities (“EOHLC”) issued Compliance Guidelines for multi-family zoning districts under Section 3A of the Zoning Act. See our prior eUpdate [here](#). EOHLC revised these guidelines on August 17, 2023 and they can be accessed [here](#). These guidelines establish the standards which requires all municipalities with MBTA transit service to establish at least one district of reasonable size in which multi-family housing is permitted as of right and to meet other criteria set out in G.L. c. 40A, §3A.

Deadlines for Compliance

EOHLC required all MBTA Communities to submit an action plan by January 1, 2023. As of this eUpdate, all MBTA Communities have submitted and received approval for action plans, except for the town of Holden. Litigation was brought by private parties against Holden for noncompliance. See, Central Massachusetts Housing Alliance, et al. v. Town of Holden et al., Worcester Superior Court Civil Action No. 2385CV00918. Ultimately, the case was dismissed on the basis of standing, leaving the issue of interpreting §3A untouched.¹

Compliance is achieved when an MBTA Community either (1) submits a District Compliance Application that is approved by EOHLC or (2) receives a determination from EOHLC that the Community is compliant under existing zoning regulation. EOHLC required all MBTA Communities designated as Rapid Transit Communities to submit a District Compliance Application by December 31, 2023. Communities designated as Commuter Rail Communities and Adjacent Communities must submit a District Compliance Application by December 31, 2024. Finally, Adjacent Small Towns must submit their District Compliance Application by December 31, 2025.

Communities in Compliance

There are 177 MBTA Communities subject to §3A, 12 of which are designated Rapid Transit Communities. According to submitted and approved action plans, nine of these MBTA Communities planned to submit District Compliance Applications and three planned to seek a determination that compliance is already met with existing zoning by the December 31, 2023, deadline.² Similarly, it is anticipated that Commuter Rail Communities, Adjacent Communities, and Adjacent Small Towns all plan to submit applications or seek determinations by their respective deadlines.

¹ The dismissal issued by Worcester Superior Court has been appealed and said appeal is pending.

² EOHLC has not yet posted which MBTA Communities are compliant with §3A, but presumably will after each deadline passes, as it did with the action plans.

Consequences for Non-Compliance

As referenced in the [Holden](#) case, in March, 2023, the Attorney General issued an [advisory](#) regarding enforcement of the MBTA Communities Zoning Law. The advisory cautions MBTA Communities that failure to comply with the requirements will be subject to civil enforcement action. Additionally, the EOHLC Guidance provides that noncompliant Communities will be rendered ineligible for the following funding:

- Community Planning Grants, EOHLC
- Massachusetts Downtown Initiative, EOED
- Urban Agenda, EOED
- Rural and Small-Town Development Fund, EOED
- Brownfields Redevelopment Fund, MassDevelopment
- Site Readiness Program, MassDevelopment
- Underutilized Properties Program, MassDevelopment
- Collaborative Workspace Program, MassDevelopment
- Real Estate Services Technical Assistance, MassDevelopment
- Commonwealth Places Programs, MassDevelopment
- Land Use Planning Grants, EOEEA
- Local Acquisitions for Natural Diversity (LAND) Grants, EOEEA
- Municipal Vulnerability Preparedness (MVP) Planning and Project Grants, EOEEA

We will continue to monitor the status of compliant MBTA Communities.

For further information, please contact your KP Law attorney at 617.556.0007 with questions or contact Attorney Lauren Goldberg at lgoldberg@k-plaw.com.

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