

# Frequently Asked Questions About the MBTA Communities Multifamily Zoning Requirements

## 1. What are the costs of compliance and non-compliance?

- The MBTA Communities statute states that municipalities that do not comply with the law will not be eligible for three grant programs: MassWorks, Housing Choice, and the Local Capital Projects Fund.

Since 2011, \$2.8 million in MassWorks funds have been spent in Milton. In 2011, a DCR-sponsored project to improve Houghton's Pond won a \$1.8 million grant. In 2012, the Town received a \$1 million grant to implement public realm improvements in Milton Village and the Central Avenue business district.

Funds from the Local Capital Projects Fund are appropriated by the Legislature to provide subsidies to local public housing authorities. The Milton Housing Authority typically receives around \$25,000 a year in funding from this source.

The final compliance guidelines issued by the Department of Housing and Community Development also state: "Determinations of compliance also may inform funding decisions by EOHED, DHCD, the MBTA and other state agencies which consider local housing policies when evaluating applications for discretionary grant programs, or making other discretionary funding decisions."

There are also unknown legal and political consequences of noncompliance. Both Governor Maura Healey and Attorney General Andrea Campbell have issued strong statements about the necessity of compliance with the law. On March 15, 2023, the Attorney General's Office issued an advisory to cities and towns that read, in part:

"All MBTA Communities must comply with the Law. Communities that do not currently have a compliant multi-family zoning district must take steps outlined in the DHCD guidelines to demonstrate interim compliance. Communities that fail to comply with the Law may be subject to civil enforcement action. ... Importantly, MBTA Communities cannot avoid their obligations under the Law by foregoing this funding. The Law requires that MBTA Communities "shall have" a compliant zoning district and does not provide any mechanism by which a town or city may opt out of this requirement.

MBTA Communities that fail to comply with the Law's requirements also risk liability under federal and state fair housing laws. The Massachusetts

Antidiscrimination Law and federal Fair Housing Act prohibit towns and cities from using their zoning power for a discriminatory purpose or with discriminatory effect. An MBTA Community may violate these laws if, for example, its zoning restrictions have the effect of unfairly limiting housing opportunities for families with children, individuals who receive housing subsidies, people of color, people with disabilities, or other protected groups.”

In a February 15, 2023 interview with WBUR, Governor Healey said “Opting out is not an option. . . . This administration is really going to lean in here. . . . Because if we don’t drive down housing costs by creating more housing, we are going to lose as a state. We are going to see more people leave and go other places. That’s just not where we need to go. We will work carrots and sticks, we will work on compliance, we will work and collaborate with communities, but we’ve really got to get everyone to understand the value proposition of doing this and the risk if we don’t.”

## **2. Does this law mandate housing development?**

- No. The law only requires the Town to adopt zoning that allows multifamily development as-of-right. As-of-right means development that may proceed under a zoning ordinance or bylaw without the need for a special permit, variance, zoning amendment, waiver, or other discretionary zoning approval. In an as-of-right zoning scheme, if a proposed development complies with zoning requirements, only a building permit is necessary for construction to begin. A use is not considered as-of-right if zoning imposes requirements that are not generally imposed on other uses. The majority of land in Milton is zoned for single housing units, which means the only development that can happen as-of-right is building one house on one land parcel.

## **3. How is “unit capacity” calculated and what will be the net increase in units from new zoning?**

- “Multi-family unit capacity” means an estimate of the total number of multi-family housing units that can be developed as of right within a multi-family zoning district. According to the final DHCD compliance guidelines, Milton is responsible for creating a zoning district with a unit capacity equal to 25 percent of its existing year-round housing unit count, or 2,461 units.

To determine the unit capacity of a new or existing multi-family zoning district, you do not “count” existing units—you instead determine how many multi-family units

the zoning district would allow as-of-right on that parcel if it were undeveloped. The illustration below provides an example.



In the above example, the unit capacity of the parcel is four—because zoning allows four units to be built—but the net new units if that parcel were redeveloped is two—because there were already two existing units on the parcel prior to redevelopment. It is still unknown how many net new units would result from adopting compliant zoning, because we have still not chosen district boundaries or dimensional and density requirements. However, we do know that there are approximately 1,907 units already existing in the half-mile transit radius. This means that although the pace and nature of redevelopment are unpredictable, we know that the net new units produced by zoning in this area would max out at approximately 554 units. That number could change if the Town decided to create zoning districts in other areas.

#### 4. Can we mandate mixed-use development?

- The final compliance guidelines state that mixed-use development can be allowed but cannot be required. That is, other uses can be allowed, but a property owner must have a residential-only option. If the Town chooses, the zoning can provide dimensional or density bonuses, above the minimum 15 units/acre required by statute, to incentivize mixed-use development. The Milton Village

## 5. How will this affect housing affordability?

- The primary goal of the MBTA Communities law is to stabilize housing prices by increasing the supply of homes. On the vast majority of parcels in the region, a property owner can only legally build a single home. There is a tremendous demand for housing in eastern Massachusetts, but the supply of available housing is limited by relatively inefficient land use. Allowing for more multifamily development will increase the supply of housing, taking pressure off the price of the existing housing stock.

The Brookings Institution studied this issue in 2020, using the area around four suburban Boston commuter rail stations as examples. That report reads in part:

“Allowing more homes to be built on a single piece of land can substantially reduce the cost of new homes, especially in locations where **land is expensive**. An acre of land near the Wellesley Hills station is worth \$1.5 million, so the cost of acquiring a typical single-family lot is about \$850,000, even before construction begins. After adding in other **development costs** (e.g., materials and labor, financing, insurance, developer profits), a newly built single-family house near Wellesley Hills station can cost nearly \$2 million.

Building five townhouses on the same sized lot allows land costs to be spread across five homebuyers, who would pay around \$830,000 per home—a big discount from the single-family price. A low-rise condo building reduces per-unit costs even further, with land costs divided among 11 homebuyers, each paying \$500,000. While these prices would be out of reach for low- and moderate-income households, they represent substantial discounts over the homes currently available in these affluent communities.”

The Brookings report goes on to explain how new housing construction can have a direct impact on affordability for lower income households:

“This policy [of zoning for multifamily housing near transit] would not solve the affordability crisis for low-income households, although it would provide some help through two channels. Most directly, building multifamily housing in affluent suburbs could expand the ability of low-income households who receive federally subsidized vouchers to move into high-opportunity neighborhoods. By our calculations, the monthly costs associated with new condos in Wellesley and Needham fall below the Department of Housing and Urban Development’s **Small Area Fair Market Rents** in those communities, meaning that voucher holders could use vouchers to rent those condos. Currently, the lack of rental housing at almost any price point is a barrier to access in too many Boston suburbs.”

Allowing for multifamily development also opens opportunities for affordable housing developers. By and large, developers of deed-restricted affordable housing build multifamily projects because of the immense costs of single-family construction. As-of-right multifamily zoning reduces a barrier for entry in many suburban markets, allowing affordable developers to be competitive with market rate developers in purchasing land.

Specifically related to the MBTA Communities law, the final compliance guidelines allow for a 10 percent inclusionary zoning requirement, meaning that zoning can require 10 percent of all new units to be deed-restricted at a below-market price affordable to families earning not less than 80 percent of the area median income.

DHCD may, in its discretion, approve a greater percentage of affordable units, or deeper affordability for some or all of the affordable units, if the zoning is consistent with a Chapter 40R smart growth district, or affordability requirements are supported by an economic feasibility analysis.

## **6. How can this help us preserve or mandate greater open/green space?**

- Because the law requires multifamily development to be allowed as-of-right, the Town is limited in its ability to require public benefits like open space. According to DHCD's guidelines, zoning will not be deemed compliant "if the zoning imposes requirements on multi-family housing that are not generally applicable to other uses."

Similar to the issue of affordable housing and mixed-use development, as long as a compliant as-of-right option is provided, the Town can incentivize benefits like increased open space by offering height and density bonuses above the minimum requirements.

However, as a general matter, multifamily development uses land more efficiently than single family development and has the potential preserve more open space and direct development away from sensitive environments. Under Milton's current zoning, there are generally two options for development: subdivision of land for single family house lots, or 40B multifamily proposals. Subdivisions often require a significant amount of site clearing and regrading to accommodate a sufficient roadway. Today's homebuilders typically prefer a flat pad on which to build a house, rather than working with the existing topography, which leads to further site regrading. Creating individually owned lots means that the eventual property owners are under no obligation to maintain trees or landscape features on their lots.

When multifamily housing is developed in a 40B context, the developer's motivation is oftentimes to maximize density in order to create enough market-rate units to offset financial losses from the state-mandated affordable units in a project. This means large, dense projects that occupy significant portions of site and require significant tree removal and regrading.

A third alternative is thoughtfully considered multifamily zoning with density, setback, parking, and open space restrictions that respond to site context and reflect the Town's priorities for green space. Multifamily zoning in already-developed areas could result in less clearing of undeveloped land and give developers another option for building that does not require subdividing large, wooded sites.

## 7. What is the effect of increased density on property values?

- It is a common misconception that increased density has a negative effect on property values. In the context of increasing density via broad zoning changes, owners can anticipate an increase in property values because development potential is greater. All things being equal, a parcel where multiple housing units can be built is worth more than a parcel where only a single housing unit can be built.

The effect of density on nearby property values is a much-researched topic. [A 2012 study](#) of the Seattle area found that “the positive association of higher development density with the value of single-family residential properties detected in King County suggested that high development density might increase surrounding property values.” [A 2021 study](#) of home values in suburban Salt Lake County found that “homes located within 1/2 mile of a newly constructed apartment building experienced a 10.0% average annual increase in median value, while the value of those farther away increased by 8.6%.” [A 2022 analysis by the Urban Institute](#) of affordable housing developments in Alexandria, Virginia found that “multifamily affordable housing developments in Alexandria do not cause a decline in nearby property values, as some fear, but are actually associated with a small but statistically significant increase in nearby values.”

## 8. What is the current density of the area within a half mile of Milton’s transit stations?

- The area within a half mile of the Mattapan trolley stations is approximately 574 acres with approximately 1,907 housing units. This comes to a density of 3.32 units per acre. You can test density for different areas of Town using [this tool](#) from the Massachusetts Housing Partnership.

## 9. How will we address parking and traffic?

- Like Milton’s existing zoning, MBTA Communities zoning can include off-street parking requirements. As we move through the process of analyzing conditions and drafting zoning, it will be important to remember that one of the primary goals of encouraging development near transit is to reduce reliance on cars. By building more housing with convenient access to public transportation and commercial and civic amenities, we give more people more choice in how they get to work, school, shops, and leisure opportunities, reducing the need to drive for every trip.

We must think very carefully about how much parking MBTA Communities zoning will require. There is a significant body of research that shows the provision of on-site parking is a significant, if not the most significant, influence on the decision to

drive a car. [A 2015 paper](#) in the *Journal of the Transportation Research Board* concludes that “an increase in parking provision from 0.1 to 0.5 parking spaces per resident and employee is associated with an increase in commuter automobile mode share of roughly 30 percentage points.” [A 2012 paper](#) in the journal *Transport Policy* shows “a clear relationship between guaranteed parking at home and the greater propensity to use the automobile for journey to work trips,” even in areas where other transportation modes are viable. For its [Perfect Fit Parking report](#), MAPC studied the supply and utilization of parking in 200 multifamily buildings in the Boston Inner Core region, and found that on average 30 percent of on-site parking was going unused.

## **10. Are existing two-family homes considered multifamily?**

- No. “Multi-family housing” means a building with 3 or more residential dwelling units or 2 or more buildings on the same lot with more than 1 residential dwelling unit in each building.

## **11. What does “suitable for families” mean?**

- According to the DHCD guidelines: “Section 3A states that a compliant multi-family zoning district must allow multi-family housing as of right, and that ‘such multi-family housing shall be without age restrictions and shall be suitable for families with children.’ DHCD will deem a multi-family zoning district to comply with these requirements as long as the zoning does not require multi-family uses to include units with age restrictions, and does not limit or restrict the size of the units, cap the number of bedrooms, the size of bedrooms, or the number of occupants, or impose a minimum age of occupants. Limits, if any, on the size of units or number of bedrooms established by state law or regulation are not relevant to Section 3A or to determinations of compliance made pursuant to these guidelines.”

## **12. What are we considering for our impact assessment?**

- The Planning Board is still considering a scope of work for consultant services related to an impact analysis on municipal services. Some factors under consideration are impacts on emergency response capacity, school capacity, capacity and condition of existing infrastructure, and new potential tax revenue.

## **13. How can we ensure historic preservation is a part of this process?**

- New MBTA Communities zoning will have no effect on the Town's existing Demolition Delay bylaw. If the Town chooses to create a Local Historic District in an MBTA Communities zone, those regulations will still apply. Otherwise, in order to be considered as-of-right, MBTA Communities zoning cannot place any restrictions that are not placed on all other development in the district. Similar to the affordable housing and open space issues discussed above, the Town could incentivize historic preservation by offering height and density bonuses above and beyond the as-of-right minimums.

#### **14. How does this relate to Accessory Dwelling Units (ADUs)?**

- There is no relation between MBTA Communities zoning and an ADU bylaw.

#### **15. Who is involved in the planning and decision-making process?**

- The Department of Planning and Community Development is leading the Town's efforts to analyze impacts and draft zoning. The Department will be working closely with the Planning Board to supervise consultants, conduct public outreach, and draft zoning language. Like all zoning amendments, any MBTA Communities zoning bylaw will be subject to a Planning Board public hearing, a recommendation of the Warrant Committee, and a vote by Town Meeting.

#### **16. How will residents learn about continuing compliance efforts?**

- The Department of Planning and Community Development will continue to conduct public outreach throughout the spring and summer as the Town's consultants produce draft district boundaries and dimensional regulations and produce results of a municipal impact analysis. That outreach will take several forms, including public forums, educational materials, presentations, and surveys. The Department will continue to update its [MBTA Communities website](#) with information as it becomes available. We encourage you to take [an initial survey](#) and submit your e-mail address to be placed on our update mailing list.

#### **17. What happens after we put the zoning in place?**

- After zoning is adopted by Town Meeting and approved by DHCD and the Attorney General's Office, it becomes the governing law for land use in the district. It then becomes up to individual property owners to decide if they want to redevelop their property under the new zoning rules.