



# Multi-family Zoning Requirement for MBTA Communities

## An Introduction to the Section 3A Program

# Why This Law Is So Important

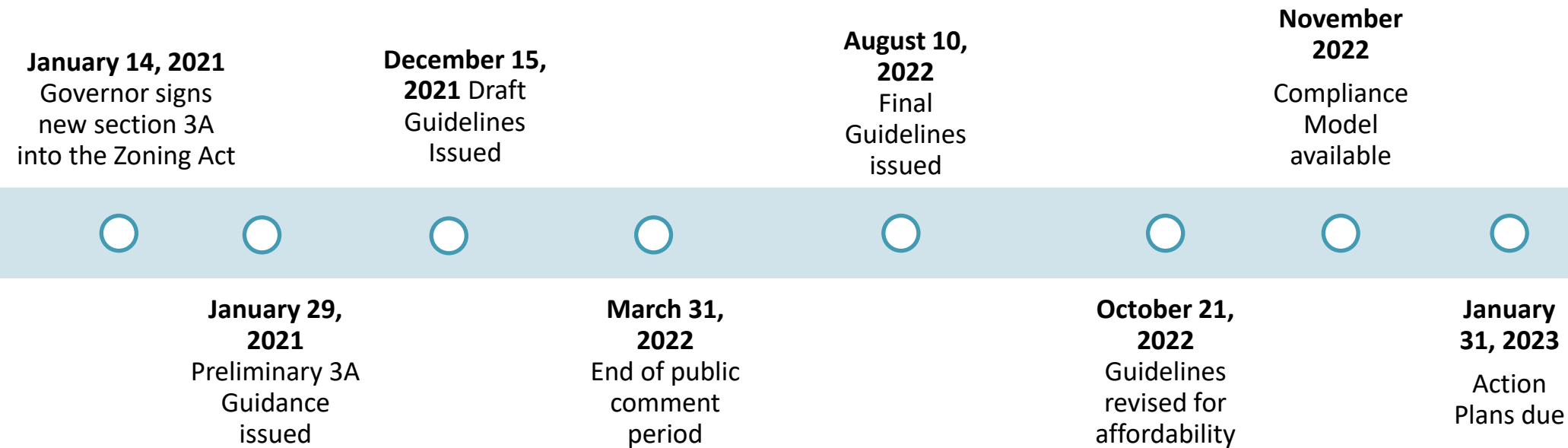


This new law removes barriers that exist in the local zoning for 175 Massachusetts communities by requiring communities to allow more transit-oriented multi-family housing in the years and decades ahead.

Communities that don't have transit stations must also allow for multi-family, but there are higher requirements for transit rich municipalities.

- **Most multi-family housing is subject to an unpredictable, time-consuming process.**
  - It often requires a special permit, rezoning, or 40B.
  - *Only 14% of multi-family units in the greater Boston area were permitted as of right from 2015-2017.*
- **This requirement establishes a new paradigm** for encouraging multi-family housing production.
- **We can create new housing in walkable neighborhoods**, by allowing multifamily housing near transit.

# Section 3A (MBTA Communities) Timeline



Outreach summary: 24 webinars, almost 400 comments in an online portal.

**Public Comments overall theme:** While policy advocates and the development community largely supported the approach outlined in the draft guidelines, municipal officials and members of the public largely submitted concerns and feedback relating to the statute, on-the-ground constraints, and the community category framework.

# Introducing Section 3A of the Zoning Act



Section 3A. (a)(1) An MBTA community shall have a zoning ordinance or by-law that provides for at least 1 district of reasonable size in which multi-family housing is permitted as of right; provided, however, that such multi-family housing shall be without age restrictions and shall be suitable for families with children. For the purposes of this section, a district of reasonable size shall: (i) have a minimum gross density of 15 units per acre, subject to any further limitations imposed by section 40 of chapter 131 and title 5 of the state environmental code established pursuant to section 13 of chapter 21A; and (ii) be located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable.

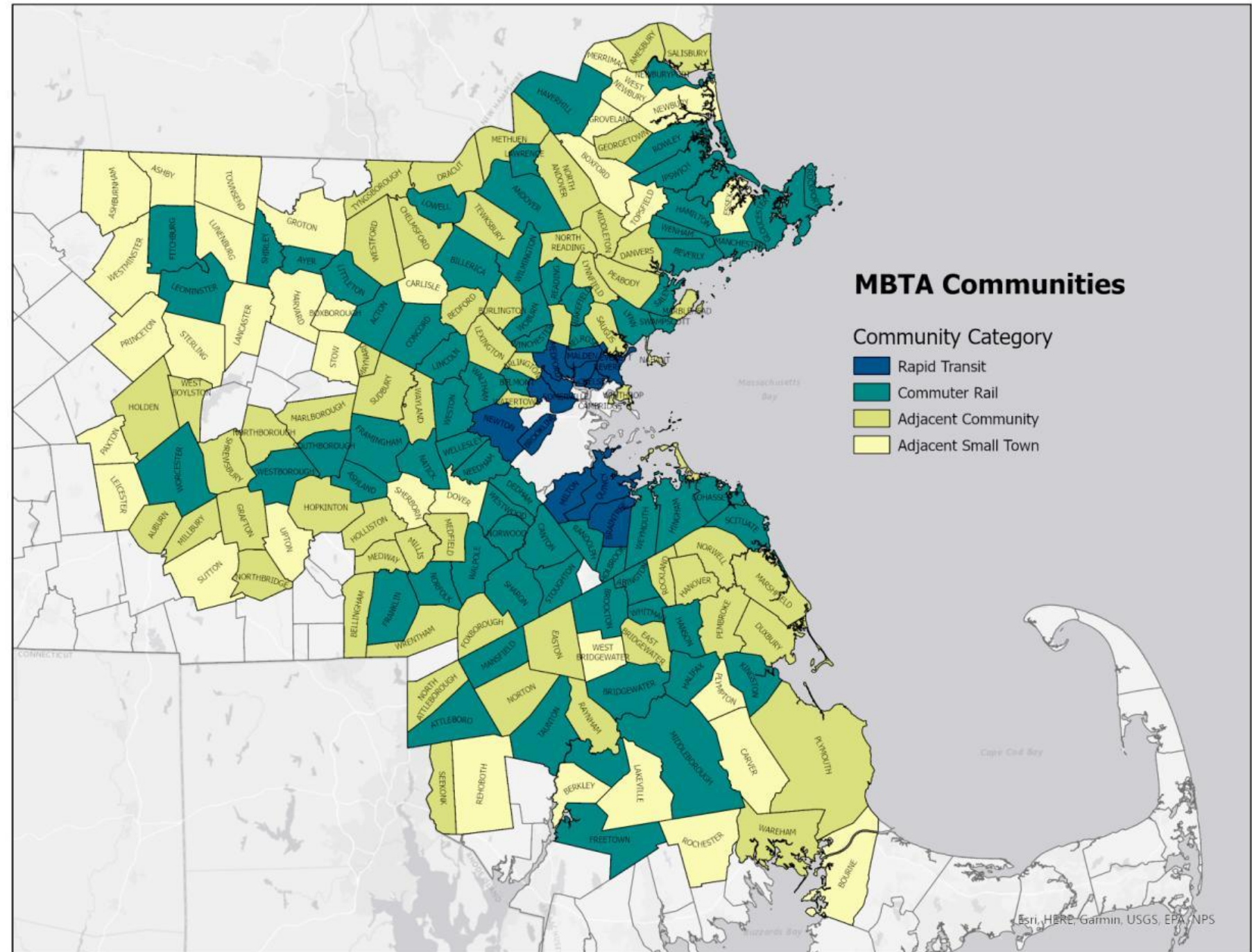
(b) An MBTA community that fails to comply with this section shall not be eligible for funds from: (i) the Housing Choice Initiative as described by the governor in a message to the general court dated December 11, 2017; (ii) the Local Capital Projects Fund established in section 2EEEE of chapter 29; or (iii) the MassWorks infrastructure program established in section 63 of chapter 23A.

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

# Four Community Categories



- Community categories are determined by fixed transit assets for each community
- Categories are a factor for determining local “reasonable size” requirements
- Each category has its own formula to determine minimum unit capacity





# Four Community Categories



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

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

# Unit Capacity as a measurement of zoning



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

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





# District Location



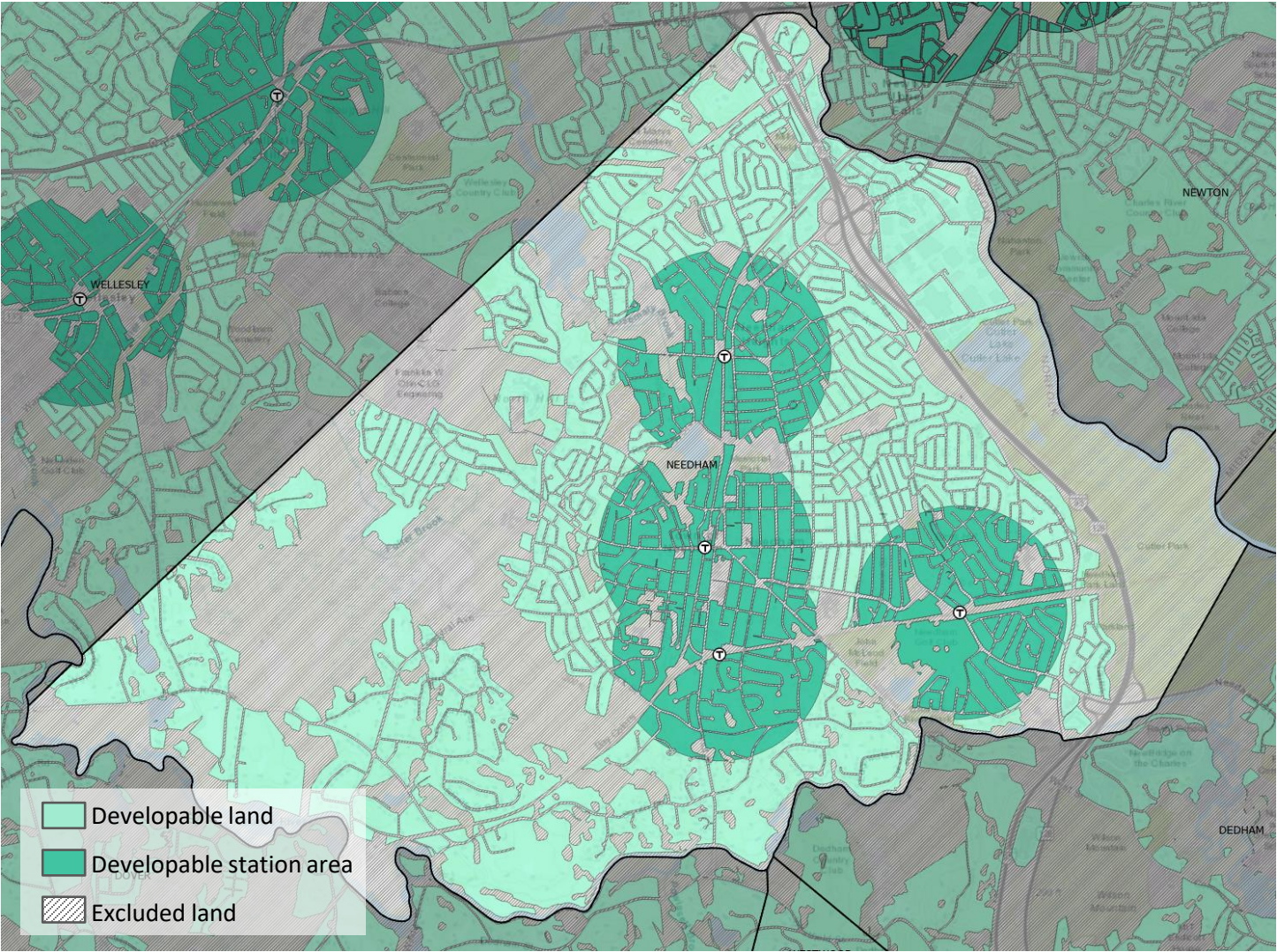
“located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable.”

Guidelines Table 2: A sliding scale

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

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

## Example: Needham



**1,233** Total acres of developable station area

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



# “Multi-family housing is permitted”



Multi-family housing: “a building with 3 or more residential dwelling units or 2 or more buildings on the same lot with more than 1 residential dwelling unit in each building”  
– MGL c. 40A §1A

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



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

# Affordability: Based on revisions made 10/21/2022



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

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



# Compliance Timelines



- **2022 Compliance:** All MBTA communities could achieve compliance for purposes of this year’s One-Stop by submitting a simple “Community Information Form” to DHCD. This form requested basic information about their current zoning, required a briefing of the select board/city council, and asked for feedback on technical assistance needs.
  - 166 of 175 communities are compliant for 2022 (~95% compliance).

- **Compliance Timelines for 2023 and Beyond:**

Transit Category (# municipalities)	Action Plan Submission Deadline (if applicable)	Full Compliance Submission Deadline
Rapid Transit (12)	January 31, 2023	December 31, 2023
Commuter Rail (69)	January 31, 2023	December 31, 2024
Adjacent (59)	January 31, 2023	December 31, 2024
Adjacent Small Town (35)	January 31, 2023	December 31, 2025

The Action Plan form and other materials are online at: [mass.gov/mbtacomunities](https://mass.gov/mbtacomunities)

# The Compliance Model:



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

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

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

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

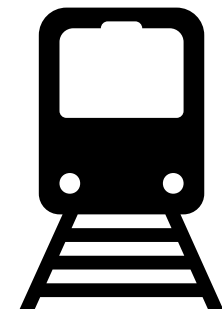
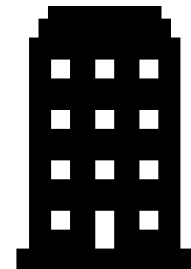
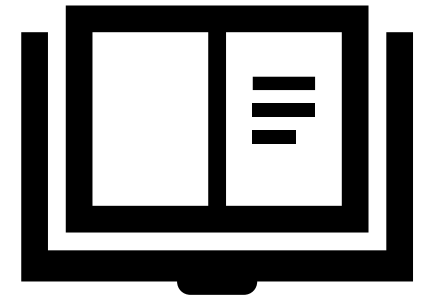
A **unit capacity estimator** that will use the imported parcel information and the information collected in the zoning checklist to derive an estimate of the unit capacity on each lot in the district as well as district-level summary information such as total district unit capacity, gross density of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

## Overview of MBTA Communities technical assistance (“3A TA”):

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

## Resources and TA Available to Help Municipalities Achieve Compliance:

- Upon the release of the final guidelines, HED/DHCD launched an online form to serve as an entry point for technical assistance requests from municipalities. The form requests basic information relative to the technical assistance needs which will help HED, DHCD, and MHP staff coordinate on guidance.
- How to fill out an Action Plan – MHP 10/19/22 webinar
- Sample Zoning By-Law/Ordinance
- “3A How To Guide” a narrative explanation of Guidelines





- An introduction to Section 3A, including what the legislation is and how DHCD is implementing the law with its Compliance Guidelines
- A preview of the tools being released to help MBTA communities comply with the law
- An overview of technical assistance resources available to MBTA communities

If you need more information to help others in your community to understand this legislation, please let us know!

[mass.gov/mbtacommunities](https://mass.gov/mbtacommunities) will continue to have information and resources



# Appendix

## RAPID TRANSIT COMMUNITY

## COMMUTER RAIL COMMUNITY

1. **Rapid transit community** means an MBTA community that has within its borders at least 100 acres of developable station area associated with one or more subway stations, or MBTA Silver Line bus rapid transit stations
2. **Commuter rail community** means an MBTA community that (i) does not meet the criteria for a rapid transit community, and (ii) has within its borders at least 100 acres of developable station area associated with one or more commuter rail stations.





ADJACENT COMMUNITY

ADJACENT SMALL TOWN

3. **Adjacent community** means an MBTA community that (i) has within its boundaries less than 100 acres of developable station area, and (ii) is not an adjacent small town.
4. **Adjacent small town** means an MBTA community that (i) has within its boundaries less than 100 acres of developable station area, and (ii) either has a population density of less than 500 persons per square mile, or a population of not more than 7,000 year-round residents as determined in the most recently published United States Decennial Census of Population and Housing.





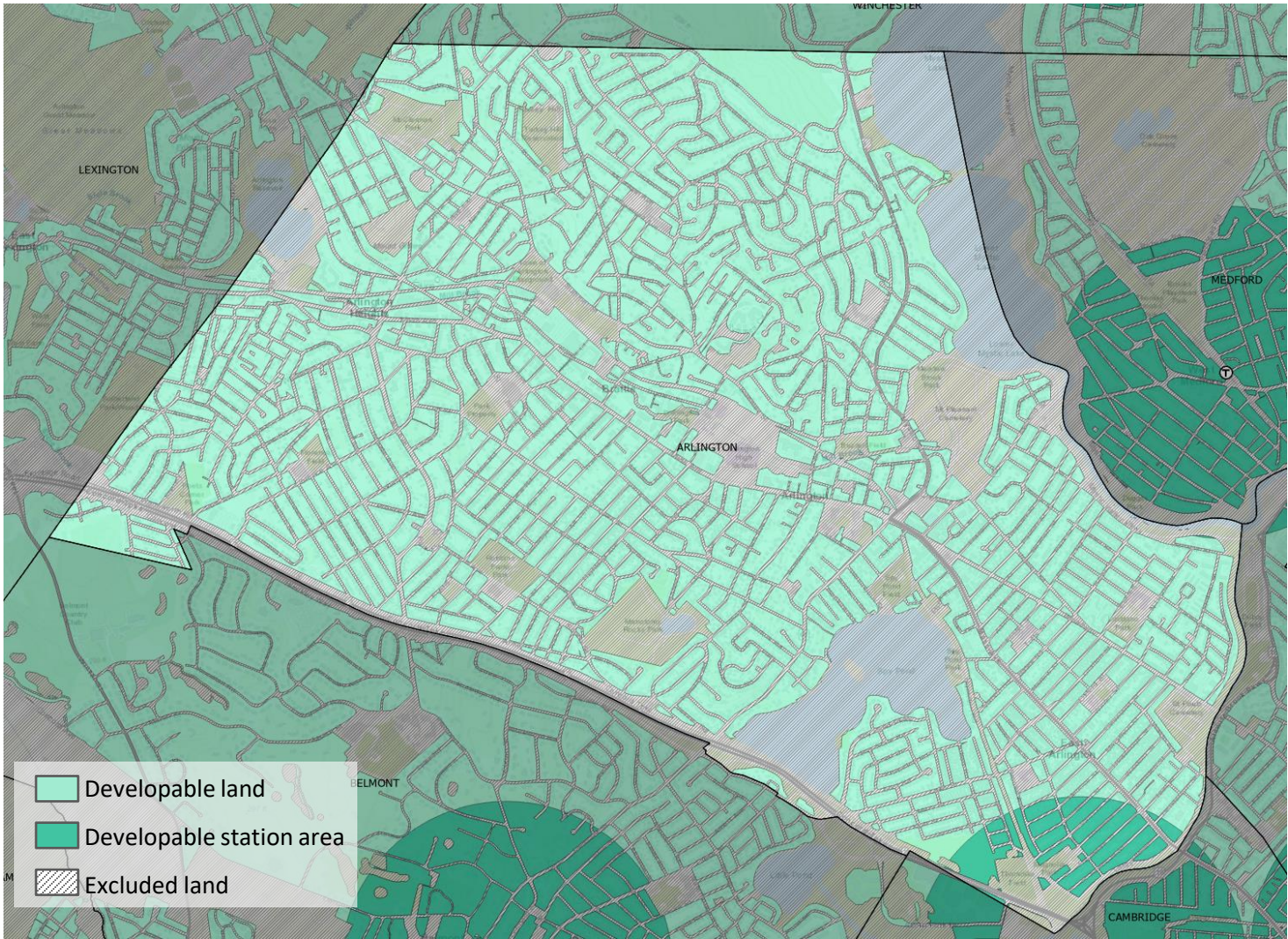
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## Example: Arlington



58

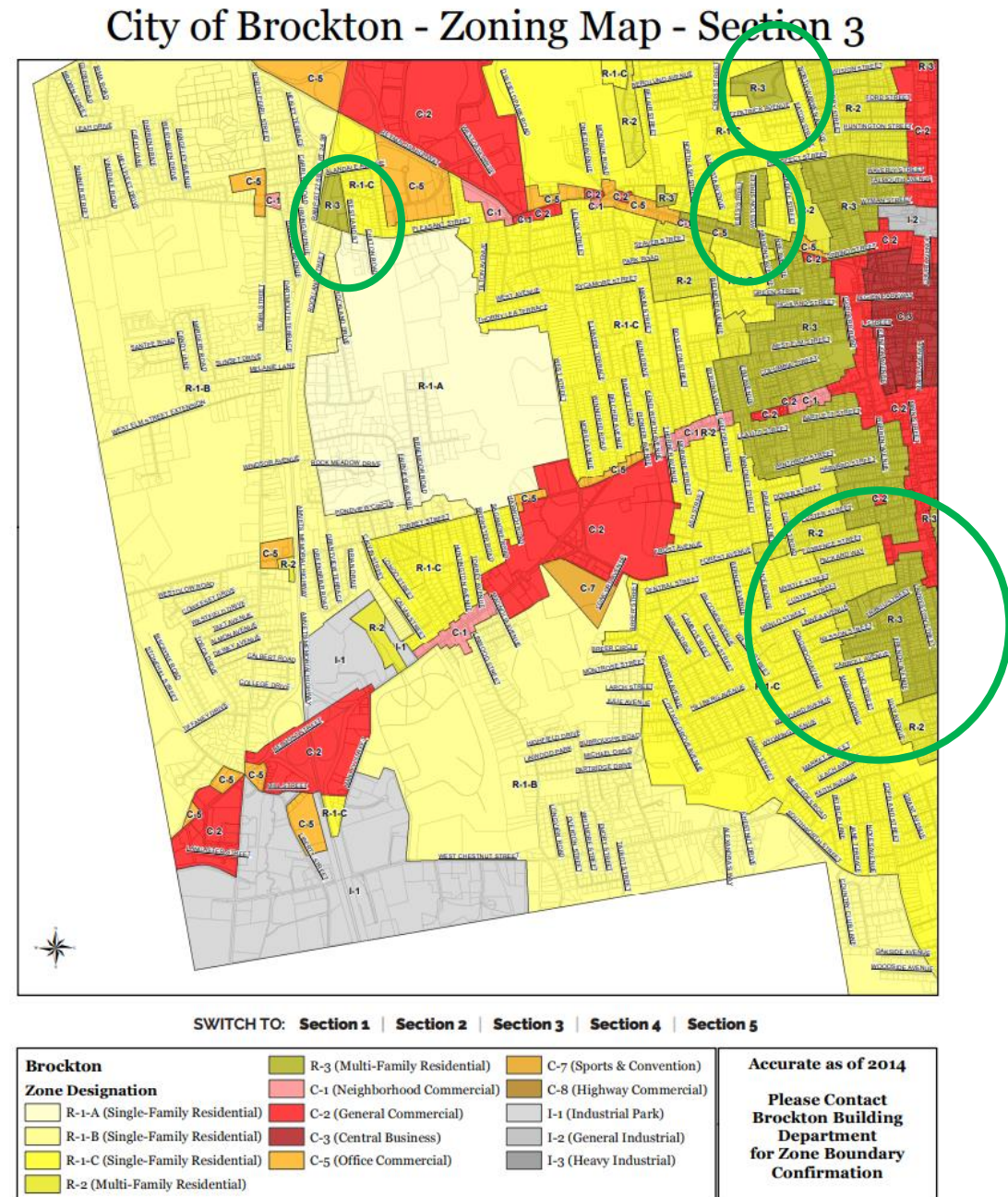
Total acres of developable station area

0%

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



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





# Technical Assistance (TA)



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

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

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

