

New MBTA zoning laws will help expand Mass. housing production, choice

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MASSACHUSETTS

Advocates say MBTA Communities Act will provide relief to Mass. housing crisis



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Wicked Local



Jason Korb, owner of Newton-based Capstone Communities, LLC, is in the business of developing market-rate, mixed-income and 100% affordable housing. He says many of his projects would have difficulty getting off the ground if it weren't for Chapter 40B, an affordable-housing program that allows developers to bypass some local planning and zoning regulations if at least 20% of the units in the development are deemed affordable.

The mere availability of 40B, however, doesn't necessarily speed up the process, because neighbors can file for an appeal to fight 40B projects, causing years of delay — and thousands of dollars in legal fees.



'By right': MBTA communities must have zone where multifamily housing can be built

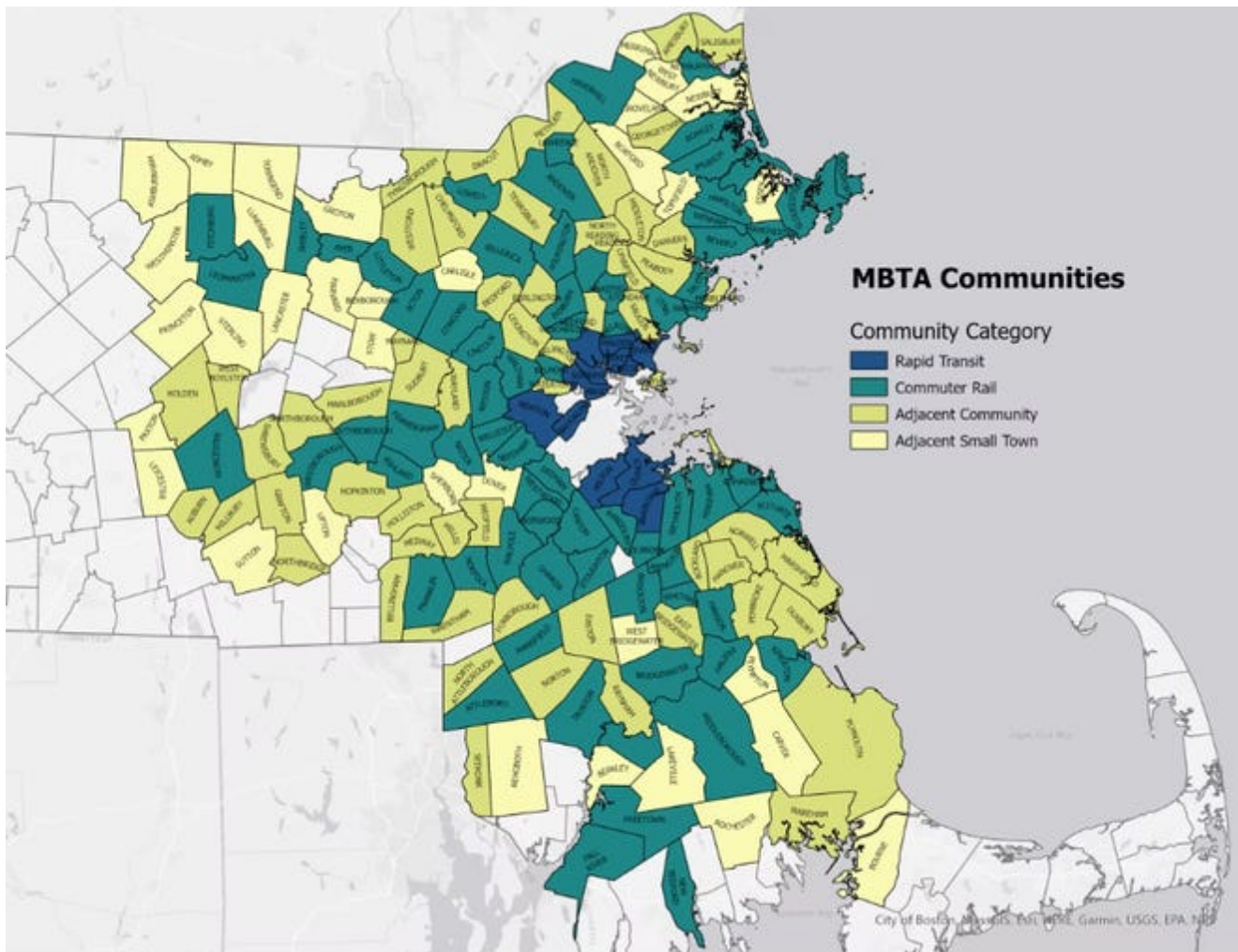
The MBTA Communities Act, (also known as Section 3A), passed by Massachusetts in 2021, allows developers like Korb to build multifamily projects near transit by right, without special permits and approvals needed by zoning and planning boards.

"You cannot build what is not allowed," said Rachel Heller, CEO of Citizens' Housing and Planning Association (CHAPA), a nonprofit umbrella organization for affordable housing and community development activities. "By putting multifamily zoning in place in communities and allowing for it, it actually becomes possible to produce the 200,000 homes we need over the next decade. It's a really important law and an important tool."

Why more multifamily housing closer to transit is needed

According to Chris Kluchman, acting director of the Community Services Division for the state Executive Office of Housing and Livable Communities, Massachusetts communities have permitted fewer new housing in recent years than at almost any point since the 1950s. In the 30-year period between 1960 and 1990, nearly 900,000 housing units were permitted in the state. But over the next 30-year period (1990-2020), that number was more than cut in half, to 434,685 new units.

The reason is that many communities changed their local zoning ordinances from allowing multifamily homes to allowing only single-family structures, said Heller.



'Really builds communities': Commercial real estate is vital to law encouraging new housing near public transit

"This did not happen overnight — it's a national issue," she said. "A whole variety of policies were put into place that have made it harder to replicate the kinds of (multifamily) homes we may already have," she said.

Housing costs in Massachusetts are among the nation's highest, according to Kluchman, and that makes it harder for the state to attract and retain talent. This, in turn, weakens the state's economy and its employers, and hurts long-term growth and prosperity.

Zoning that allows multifamily development gives people of all incomes an opportunity to live in communities they otherwise may not be able to afford, because they'll have more opportunities to rent or buy housing units that are more affordable than single-family homes, said Heller.

In addition to creating of more types of housing, the MBTA Communities Act will also reduce reliance on single-occupancy vehicles, helping the state in its effort to confront the climate crisis, state officials say.

What MBTA communities are required to do

There are 177 Massachusetts municipalities that are considered MBTA communities, which means they have public transportation or are located near it. There are four different categories, each with specific deadlines to submit:

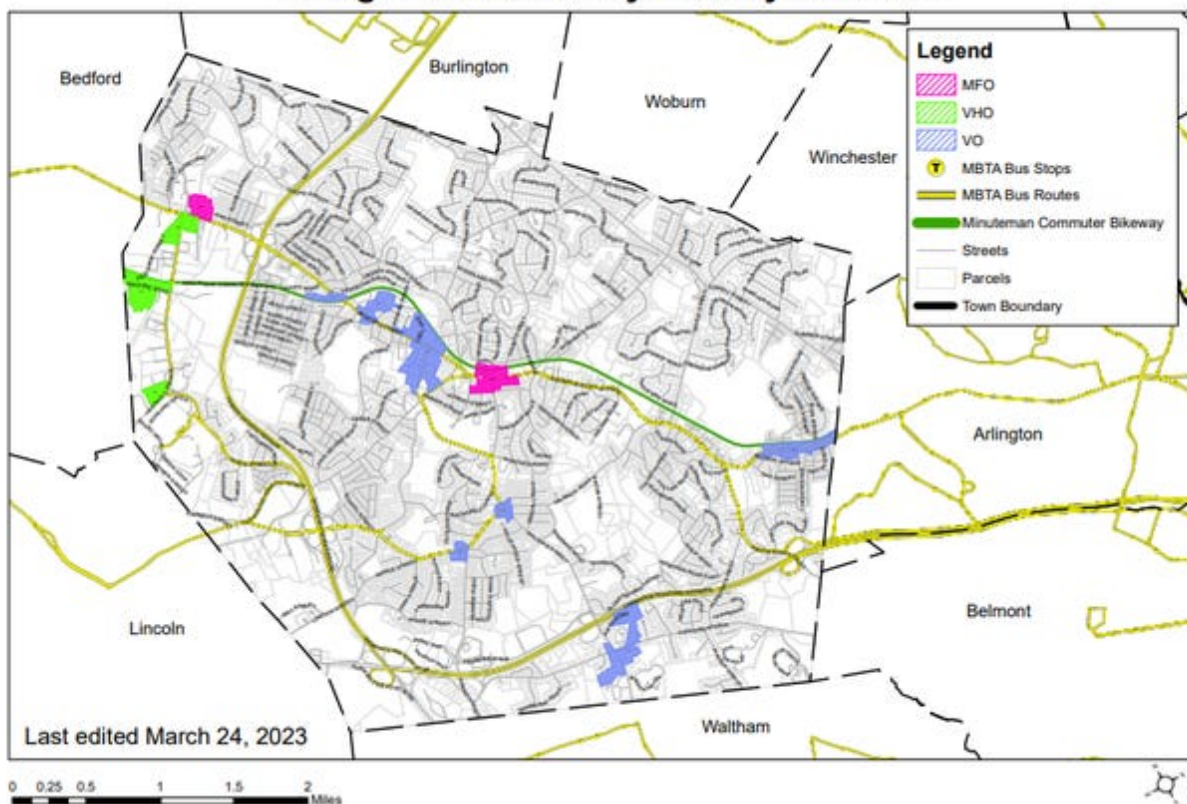
- Rapid transit communities, the 14 Greater Boston cities and towns (including Newton, Somerville and Cambridge) that initially hosted MBTA service, must submit their district compliance applications by Dec. 31.
- Commuter rail (the 51 communities that also host MBTA service but joined later) and adjacent communities (other served communities that abut a city or town that hosts MBTA service) must comply by Dec. 31, 2024.
- Adjacent small towns have until Dec. 31, 2025, to comply.

What are the basic requirements of the MBTA Communities Act?

The Act's basic requirements are that the zoning district meets a minimum gross density of 15 units per acre, with a minimum land area of 50 acres (less for some, depending on the type of MBTA community). Zoning for one-10th of the land area in the 50 acres must be within a half-mile of a commuter rail station, subway station, ferry terminal or bus station, if applicable and where development is possible.

Zoning also requires that housing is built to be suitable for families with children (no age restrictions, bedroom limitations or occupancy caps in zoning).

Village & Multi-Family Overlay Districts



Lexington submits compliance application more than a year before deadline

Lexington, which is considered an “adjacent community,” had to come up with a plan that met the 50-acre minimum and allowed for 1,231 total housing units.

In April, Town Meeting voted 107-63 to adopt new zoning overlay districts, which the town calls the Village Overlay (VO) and Village High Rise Overlay (VHO).

“We believe we are in compliance with the new law but we are still waiting for our official determination from the Executive Office of Housing and Community Development,” said Lexington Planning Director Abigail McCabe.



McCabe believes the reason the town was able to submit its application so far ahead of the deadline is because last year it completed and adopted a new updated comprehensive plan for land use development. Residents worked on it for five years, she said.

Planning Board Chair Robert Peters said town officials started early, given the magnitude of the task. The topic was discussed at more than 20 Planning Board meetings and numerous community outreach activities were held to make residents aware of the proposal and the law and build community support for the plan.

Peters said Lexington's plan not only meets the requirements of the state but also seeks to provide a solution to the housing challenges that have been long articulated by the community, including developing a diversity of housing stock that can meet the needs of young professionals, young families, seniors who wish to stay in the community and those who work in and for Lexington.

"The plan also is well positioned to support mixed-use development, which would help keep our business areas vibrant," wrote Peters in an email.

Pushback in communities against multifamily zoning requirements

Peters said his concern from the beginning was whether Lexington would opt to follow its often-stated goals and aspirations for allowing housing suitable to a wide range of income levels, family size and lifestyle.

“Listening to the community and adapting the plan to meet the concerns and needs of Lexington was critical to being successful, but did require many hours of work,” he said.

Andrea Harris-Long, manager of housing and neighborhood development and technical assistance program coordinator for the [Metropolitan Area Planning Council](#), a regional planning agency serving those who live and work in Greater Boston, said some MBTA communities are struggling more than others due to pushback from residents.

“Some towns have zoning that’s further away from what 3A zoning looks like,” she said. “They may have little multifamily already allowed, which is drastic from what the regulations say.”

Technical assistance for MBTA communities

The MAPC is among many organizations helping MBTA communities with compliance, such as Belmont, which is getting help with everything from visioning and community engagement to mapping and writing a new zoning bylaw.

Other communities need less help. The MAPC is helping Franklin with compliance model testing, which estimates how much multifamily housing a district allows.

The [Executive Office of Housing and Livable Communities](#) has provided more than \$2.5 million to more than 120 municipalities for technical assistance.

More: [MBTA communities, including Plymouth, must meet zoning requirements or risk state funding](#)

Penalties for communities that don’t comply with MBTA Communities Act

MBTA communities who don’t meet their compliance deadlines will be penalized by both the state and the attorney general.

Cities or towns that fail to comply will not be eligible for funds from many state grants including MassWorks, Housing Choice Initiative, the Local Capital Projects Fund and HousingWorks infrastructure program.

Communities cannot opt out of or avoid their obligations by choosing to forego state funding according to Attorney General Andrea Campbell.

“Failure to comply may result in civil enforcement action or liability under federal and state fair housing laws,” she said in a statement.