



Board of Directors March 31, 2022

President
Felicia Jacques

Vice Presidents
Andrew DeFranza
Leslie Reid

Treasurer
Aida Franquiz

Clerk
Rachana Crowley

Andrea Aldana
Kenan Bigby
Keith Fairey
Karen Frederick
Soni Gupta
Lizbeth Heyer
Wendell Joseph
Jason Korb
Dara Kovel
Gloria Leipzig
Angie Liou
Kathy McGilvray
Olivia Richard
Amarillys Rodriguez
Dr. Megan Sandel

Chief Executive
Officer
Rachel Heller

Secretary Michael Kennealy
Executive Office of Housing and Economic Development
1 Ashburton Place, Room 2101
Boston, MA 02108

Re: Comments on Draft Guidelines for MBTA Communities

Dear Secretary Kennealy,

On behalf of Citizens' Housing and Planning Association (CHAPA), I am writing to share CHAPA's comments on the draft guidelines to implement Section 3A of M.G.L. Chapter 40A, the state's Zoning Law.¹

CHAPA is pleased that the draft guidelines meet this historic moment by creating a path forward for producing the 200,000 homes the Commonwealth needs by 2030 and allowing for continued growth to meet our needs in the future. The draft guidelines prioritize the creation of new homes close to public transportation and ensure communities make decisions about where they will guide development. The draft guidelines also emphasize equity and fair housing by providing more choice through a diversity of housing types while requiring new housing to be suitable for families with children. These principles are critical to meet growing demand and plan for the homes we need at all income levels so that every community can prosper.

CHAPA respectfully submits the following comments to help ensure that the final guidelines remain as strong as possible for creating new opportunities for everyone to have an affordable home in the community they choose.

Prioritizing Affordable Housing

CHAPA asks that the final guidelines be amended to prioritize and emphasize housing affordability. CHAPA recognizes that zoning remains a key barrier to creating affordable housing. Section 3A will open up the opportunity for more affordable housing development by creating zoning in communities to allow multifamily housing as of right. However, the guidelines should be amended to

¹ Department of Housing & Community Development, *DRAFT Compliance Guidelines for Multi-family Districts Under Section 3A of the Zoning Act* (Dec. 15, 2021) <https://www.mass.gov/info-details/draft-compliance-guidelines-for-multi-family-districts-under-section-3a-of-the-zoning-act>.

state that housing affordability is a priority and to make it easier for MBTA communities to both comply with Section 3A and create affordable housing.

The Governor signed Section 3A into law to produce new, high-density, mixed-income housing near public transportation.² The guidelines should explicitly include this goal to create housing affordable across all incomes. In order to achieve this, CHAPA suggests that language be added to Section 3 of the guidelines, *General Principles of Compliance*. Specifically, the first bullet under Section 3(b) should be amended to:

- “All MBTA communities should contribute to the production of new, mixed-income housing stock.”

The third bullet under this same section should also be amended to:

- “MBTA communities should adopt multi-family districts that will lead to development of multi-family housing projects of a scale, density, character, and affordability that are consistent with a community’s long-term planning goals.”

This added language acknowledges that MBTA communities should take into consideration the creation of affordable and mixed-income housing when implementing the requirements of Section 3A.

The guidelines should also be amended to explicitly state that 40R affordable overlay districts will meet the requirements of Section 3A. Massachusetts is fortunate to have Chapter 40R as an existing zoning tool for MBTA communities to use that complies with Section 3A, provides additional resources to communities and their schools, and increases our supply of affordable housing.³

Many of the provisions of Section 3A parallel Chapter 40R. For example, 40R overlay districts must meet certain smart growth characteristics, including as of right densities of at least 20 units per acre for multifamily housing, and location requirements for the district to be, in most cases, within a ½ mile of a transit station.

Recognizing that a 40R district of the appropriate size will allow an MBTA community to comply with Section 3A would provide certainty and resources to these communities. Specifically, CHAPA suggests amending the guidelines in the first sentence of the second paragraph of Section 5(a) to: “An overlay district, including an overlay district for multifamily housing created under Chapter 40R, is an acceptable way to achieve compliance with Section 3A...”

Technical Assistance offered to communities to help implement Section 3A should also include information on all available tools and resources available to create affordable

² Office of Governor Charlie Baker and Lt. Governor Karyn Polito, *Governor Baker Signs Economic Development Legislation* (Feb. 9, 2021) (emphasis added) <https://www.mass.gov/news/governor-baker-signs-economic-development-legislation-o>.

³ For more information on Chapter 40R, see CHAPA’s report, *The Use of Chapter 40R in Massachusetts* (2018) https://www.chapa.org/sites/default/files/TheUseofCh40R_2018.pdf.

housing in these multifamily districts. For example, communities should be encouraged to adopt inclusionary zoning bylaws in order to ensure that some portion of any new multifamily housing created in these districts includes affordable housing. Technical assistance could include model inclusionary zoning bylaws and support drafting an inclusionary bylaw that meets the unique needs of each community.

Massachusetts has a variety of existing resources and funds that can help create affordable housing in these new zoning districts. These include, but are not limited to: American Rescue Plan Act Fiscal Recovery Funds; locally controlled funds from the Community Preservation Act or municipal affordable housing trusts; Chapter 40R; and capital resources dedicated to creating transit-oriented affordable housing. Information on these resources should also be provided to communities as they implement Section 3A.

Ensuring Compliance

CHAPA asks that the guidelines be amended to reflect that all MBTA communities must comply with Section 3A and that compliance is not optional.

As the law states, “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...”⁴ As the Department of Housing and Community Development (DHCD) recognizes, “the word ‘shall’ indicates that the legislature intended to require all MBTA communities to have a multi-family zoning district.”⁵

In order to achieve this, CHAPA asks that the third paragraph in Section 1 of the guidelines be amended to, “The purpose of Section 3A is to **require encourage** MBTA communities to adopt zoning districts where multi-family zoning is permitted as of right, and that meet other requirements set forth in the statute.”

Also, CHAPA asks that the third bullet in Section 3(b) of the guidelines be amended to:

- “MBTA communities **shall should** adopt multi-family districts that will lead to development of multi-family housing projects...”

The guidelines should also include that a potential effect of noncompliance may extend further beyond not being eligible for certain state grants and that a community could become subject to other legal liability. Specifically, CHAPA asks that Section 11 of the guidelines be amended to add, “**Section 3A indicates that the legislature intended to require all MBTA communities to have a multi-family zoning district. Failure to comply may result in other legal liability.**”

⁴ M.G.L. Ch. 40A, Sec. 3A(a) (emphasis added).

⁵ Department of Housing & Community Development, *MBTA Communities Frequently Asked Questions* (updated Mar. 10, 2022) <https://www.mass.gov/info-details/mbta-communities-frequently-asked-questions>.

CHAPA also asks that the guidelines be strengthened regarding the Governor's authority to withhold other state discretionary awards based on the compliance of an MBTA community with Section 3A. CHAPA appreciates that DHCD includes in the guidelines that DHCD may, in its discretion, take non-compliance into consideration when making other discretionary grant awards. However, these other grant awards should not be limited to only those administered by DHCD.

All state infrastructure and development-related funding should be prioritized for communities that zone for multifamily housing and that have effective inclusionary zoning in place, invest in affordable housing, establish 40R districts, or have additional policies in place that support long term affordable housing.

Under an existing Executive Order, the Governor has the authority to consider a city's or town's housing policies and practices when distributing development-related discretionary awards.⁶ According to Executive Order 215, "It should be the general policy of all state agencies not to award discretionary funds to cities or towns which have been determined to be unreasonably restrictive of new housing growth."

CHAPA asks that Section 11 of the guidelines be amended to include a reference to Executive Order 215 and to expand the list of state discretionary grants that an MBTA community may become ineligible for if it does not comply with Section 3A.

CHAPA suggests the following change to the last sentence of Section 11:

"Under Executive Order 215, all state agencies DHCD may, in their its discretion, take non-compliance into consideration when making other discretionary grant awards for development related assistance. Development related assistance may include, but is not limited to: economic development assistance; open space and recreation funds; technical assistance grants; municipal access improvements; transportation improvements; conservation land grants; elderly housing; sewer and water system grants; parking facility funds; convention center facility grants; federal grant funds for development-related activities; and the review of federal grant applications for development assistance."

Producing New Homes

CHAPA asks that the final guidelines be amended to evaluate the unit capacity of a district based on the number of new homes that could feasibly be built to determine compliance rather than allowing existing zoning capacity to lessen the impact Section 3A. While CHAPA applauds communities that have had multifamily zoning on the books for many years, our need for new homes continues to grow. Allowing already built-out districts to count toward satisfying the requirements of the new law, as

⁶ See Executive Order No. 215, *Disbursement of state development assistance* (Mar. 15, 1982) <https://www.mass.gov/executive-orders/no-215-disbursement-of-state-development-assistance>.

described in Section 5(b) of the guidelines, would undercut efforts to ensure every community is doing its part to meet demand and provide homes for current and future residents, and result in the guidelines falling far short of the intent of 3A, which is the creation of new homes.

Achieving Housing Choice, Equity, & Fair Housing

CHAPA asks that the guidelines be amended to remind and educate MBTA communities that the new zoning districts must advance housing choice, equity, and fair housing. The Legislature passed Section 3A to increase housing choices in MBTA communities, particularly for families with children. Any new zoning should also increase equity by creating homes accessible to persons of all races, ethnicities, abilities, and incomes. Section 3A should be used to redress the racial inequity and disparate impacts of longstanding housing practices that have excluded people from many communities in the Commonwealth, including policies that continue to this day. If new zoning enacted in accordance to Section 3A does not allow for this, then housing choice has not been achieved.

MBTA communities must also follow all federal and state fair housing laws. CHAPA hopes that communities will consider how any new multifamily zoning district will further fair housing goals and avoid displacement or other negative impacts. Communities could look to Boston's recently enacted affirmatively furthering fair housing zoning bylaw that requires an assessment of a development's impact on the community.⁷

To help achieve this, CHAPA suggests that the guidelines be amended to add the following bullet to Section 3(b):

- **“MBTA communities must adopt multi-family districts that are suitable for families with children. MBTA communities must follow all federal and state fair housing laws when implementing Section 3A in order to protect against housing discrimination and practices that disparately impact protected classes.”**

Creating Truly Accessible and Transit Oriented Housing

CHAPA asks that the guidelines be strengthened to ensure that new zoning districts are not simply transit-adjacent but truly transit-oriented. The core objective of Section 3A will not be met if new districts are functionally inaccessible because of distance, unsafe infrastructure, inaccessible entry points, or lack of sidewalks or safe crossing to transit stations. Through these guidelines, DHCD should aim to create “15-minute neighborhoods” that prevent sprawling patterns of development and encourage more compact village style development.⁸ Compactness is an essential element of successful

⁷ See Boston Planning and Development Agency, *Affirmatively Furthering Fair Housing Article 80* (Dec. 17, 2020) <http://www.bostonplans.org/housing/affirmatively-furthering-fair-housing-article-80>.

⁸ See Anne Calef, Luc Schuster, Tom Hopper, & Peter Ciurczak, *15-Minute Neighborhoods: Repairing Regional Harms and Building Vibrant Neighborhoods For All* (Sept. 29, 2021)

transit-oriented development, enabling residents to get to nearby amenities and the transit stop, and reducing reliance on cars in all aspects of daily life.

Partnering with MBTA Communities

CHAPA asks that the guidelines be amended to explicitly include that the state recognizes its role as a partner to support MBTA communities as they implement and comply with Section 3A. We appreciate that the state, through DHCD and the Massachusetts Housing Partnership, has already begun to offer technical assistance and guidance to MBTA communities.⁹

CHAPA hopes that the state continues to develop even more robust technical assistance that may include resources like model bylaws for a compliant multifamily zoning district, best practices, fair housing training, or more specific technical assistance for communities facing specific challenges such as sewer capacity.

In order to recognize this partnership between MBTA communities and the state, CHAPA asks that the guidelines be amended to add the following bullet to Section 3(b):

- **“DHCD and other state- and quasi-state agencies will, to the greatest extent possible, provide support through technical assistance for MBTA communities as they implement with Section 3A.”**

Preventing Loopholes

CHAPA asks that DHCD prevents communities from using loopholes that may frustrate the purpose of Section 3A. DHCD should, in its process of determining compliance, take into consideration whether an MBTA community may have unreasonably limited its multifamily zoning district. Examples of this may include, but not be limited to: the use of conservation or historic preservation districts; resident selection preferences; siting on brownfields; unduly burdensome parking requirements; or infeasible inclusionary zoning requirements.

Clarifying Questions

CHAPA also asks that the guidelines or other information provided by DHCD be updated to include answers to clarifying questions as MBTA communities implement Section 3A. These clarifying questions include, but are not limited to:

- The definition of “bus station” and whether the following would qualify as a bus station:
 - Bus depot or service facility; or

https://www.bostonindicators.org/-/media/indicators/boston-indicators-reports/report-files/15minfinal_lr_2021_11.pdf.

⁹ For more information on technical assistance programs from MBTA communities, see Massachusetts Housing Partnership, *MBTA Zoning & Complete Neighborhoods* (accessed Mar. 31, 2022) <https://www.mhp.net/community/complete-neighborhoods-initiative>.

- Bus shelter along a bus line with frequent service (i.e., 3–4 times per hour) express service to Cambridge, Boston, or other job center.
- Whether senior housing can be built in these districts.
- Who determines what “adequate wastewater infrastructure” is for the purposes of designating “Developable Land”.
- What is included under the term “Discretionary permit or approval” when it comes to determining whether the zoning is truly “as of right”.
- How DHCD will analyze proposed districts for compliance and economic feasibility.
- How sustainability features can be built into a project that is in a MBTA district, and through what process.
- Additional guidance on how Site Plan Review and Site Plan Approval can be incorporated.
- Whether a community may incentivize certain types of housing (i.e., larger 3+ bedroom units or senior housing), understanding that the underlying zoning cannot restrict housing that is suitable for families with children.
- How Section 3A will interact with Historic Overlay Districts and whether a zoning district will still be considered by-right if historic review or approval is required.

Offering additional clarity around these areas will make it easier for communities to understand and comply with the new law.

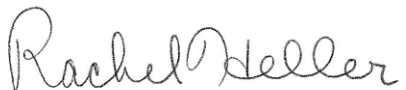
Conclusion

We know what is at stake if we do not meet this moment. Housing will continue to get more expensive. More people will be priced out of the neighborhoods they love. Embracing multifamily housing protects our environment, improves our overall health, and strengthens our local economies. It gives current and future residents more choice in where they want to live while remaining connected to their networks, their jobs, and essential resources. The new state law, together with these guidelines, provides the opportunity for our communities to grow stronger and healthier.

Thank you for the opportunity to comment and for your consideration. Please do not hesitate to contact me with any questions.

As always, thank you for your leadership in helping everyone in the Commonwealth have a safe, healthy, and affordable home in a community of their choice.

Sincerely,



Rachel Heller
Chief Executive Officer