

Tools and Strategies for Explaining the MBTA Communities Law

Massachusetts Housing Partnership

March 19, 2024





What does this law actually say?

Getting the basics straight



Housing Choice Legislation (2021)

- Encourages communities to provide for housing growth
- Amends the Zoning Act
 - Reduces the city council/town meeting voting threshold required for housing incentive zoning amendments
 - Requires "MBTA Communities" to zone for "as of right" multifamily housing development
- Why? Enlists help from cities and towns to:
 - Address the state's housing crisis
 - Provide more housing options
 - Boost the state's housing supply

MBTA Communities Law

- Broadly written legislation!
 - Multifamily “as of right,” at least 15 units/acre
 - No age restrictions or limits on unit sizes, number or size of bedrooms, or number of occupants
 - Within ½ mile of a commuter rail station, subway station, ferry terminal or bus station, where possible
 - District must be “of a reasonable size”
 - Penalties for non-compliance (ineligibility for three grant programs)
- Executive Office of Housing & Livable Communities (EOHLC) required to set guidelines and determine a community’s compliance with the law



What seems to make a difference ...

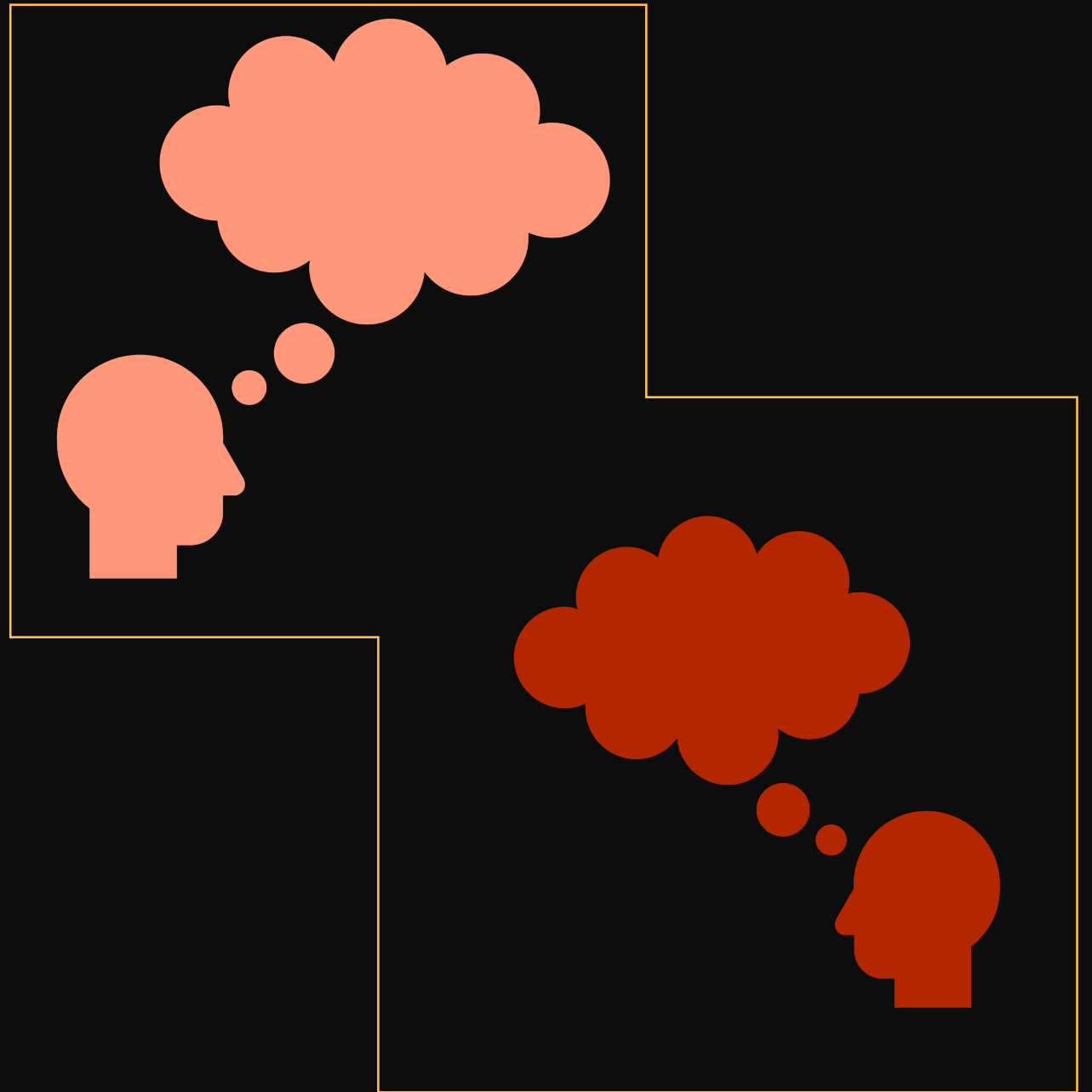
Do:

- Form a working group or steering committee and get residents involved in the planning process
- Maintain timely updates on the town website
- Use a variety of community outreach techniques to educate the public
- Counter scare tactics, mis(dis)information
- Be practical, factual, responsive, and helpful
- Be willing to change course in response to good ideas

Don't:

- Put the entire responsibility for figuring out MBTA Communities compliance on Town staff, consultants, or others not seen as part of the community
- Don't go into a huddle and forget to talk to your community!

Common Questions ... Some Answers





Massachusetts is a home rule state!

Hey! Zoning is up to cities and towns. How can the state require us to change our zoning?

- What does the state constitution really say?
Any city or town may, by the adoption, amendment, or repeal of local ordinances or by-laws, exercise any power or function which the general court has power to confer upon it, *which is not inconsistent with the [state] constitution or laws enacted by the general court ...*
- Zoning Act already identifies many uses communities must allow: farms, churches, schools, childcare centers, modifications to buildings to accommodate disability
- Many other laws apply to cities and towns ... laws enacted by the general court can and do override local land use policies



This means developers can do whatever they want!

No, not really ...

- The Massachusetts Wetlands Protection Act, Title V, and local non-zoning (general) bylaws **still apply**
- No public sewer system? On-site capped at 10,000 gallons per day (90 bedrooms)
- Wastewater treatment facility = can be at least 10 times the cost of on-site disposal system, if not more
- Not always feasible (and often, infeasible)

Good reference guide: Joe Peznola, P.E., “Sewage Rules Create Gap in Housing Supply in Massachusetts,” prepared for MHP, 2015.



It's going to cost the town a lot of money ...

Communities are not responsible for:

- Improving water service or extending water service to a proposed multifamily housing site
- Providing sewer infrastructure
- Building or improving roads to accommodate a proposed development
- Making land “construction ready”
- Clearing sites with existing development to make way for a proposed multifamily development



About age restrictions

The statute says: ... such multi-family housing shall be without age restrictions and shall be suitable for families with children.

Does this mean we can't have senior housing in our MBTA Communities district?

- No!
- Developers can propose age-restricted housing and communities can approve it.
- Communities can't *require* it.
- Statute allows the market, not zoning, to determine what should be built.





Isn't this law about public transportation?

We don't have a train station in our town. Why do we have to do this?

- Definition of “MBTA Community”
 - A city/town with a rapid transit station
 - A city/town with a commuter rail station, MBTA bus station, or ferry terminal
 - Other served communities
- Adjacent communities and adjacent small towns are “other served communities”
- Law encourages housing with reasonable access to public transportation
- EOHLC has not expanded the reach of the law beyond what the statute says.

**We only need
750 units. Why
is our “zoned
capacity” 802
units?**

The compliance model is ingenious and complicated!

- Potential issues:
 - Districts with small parcels and multiple streets, lots of excluded land
 - Needing more land to comply with district size/contiguous requirements
 - Manipulating dimensional requirements to stay close to the zoned capacity target
- Very difficult to meet all the major requirements and stay at minimum zoned capacity
- Showing maps can help!
- No substitute for continuous public education, community involvement, and response to community suggestions.
- However, responding to suggestions can increase the potential for a disconnect between requirements and final district modeling.

Andover's Approach

10+ public/working group meetings

“Conversation with a Planner” sessions

Planning Board meetings

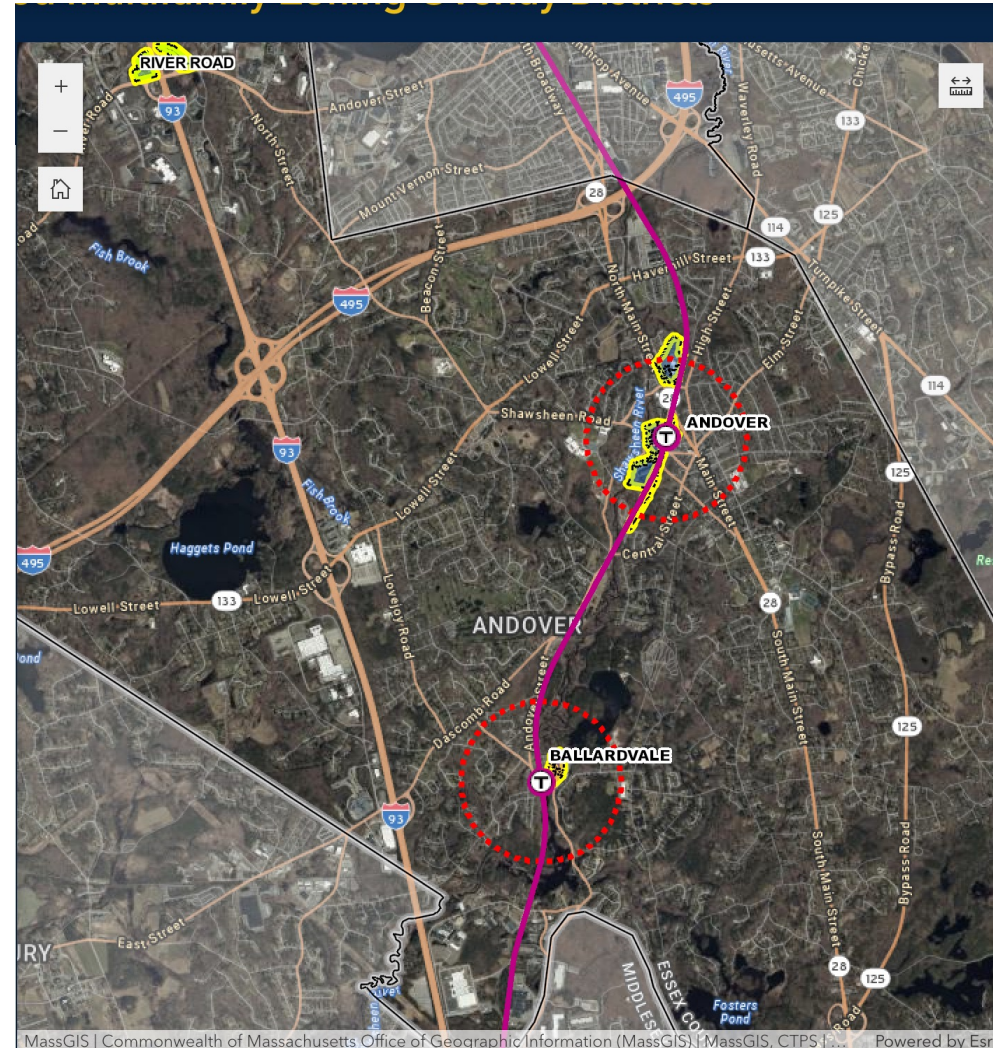
Historical Commission, Historic District Commission meetings

Staff/consulting meetings

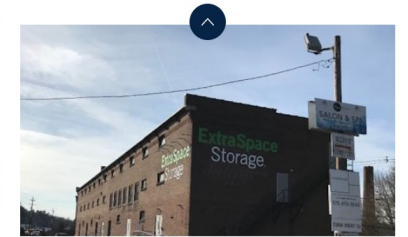
Website updates

Town master plan update

Already having an overlay district that almost complies ...



MBTA Communities Working Group Recommendation



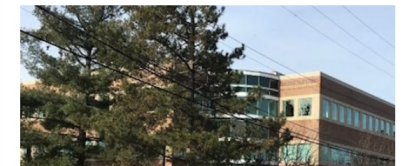
Downtown Station Zone

Capacity of 1,234 Units. Average Units per Acre: 23.3



Ballardvale Station Zone

Capacity of 119 Units. Average Units per Acre: 17



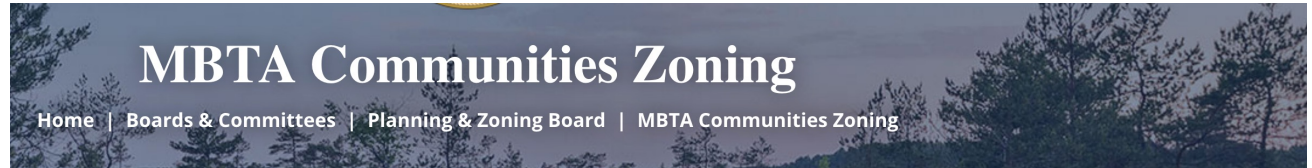
<https://andoverma.gov/1069/MBTA-Communities-Multi-Family-Zoning>

Easton's Approach

Where are the proposed zoning districts?

After receiving feedback from the public, Town staff, and other Town boards/committees, the Planning Board is proposing three zoning districts:

- *Washington North - 33.13 acres (Roche Brother's Way & 138/Washington St.),*
- *Washington Belmont - 9.69 acres (Belmont St. & 138/Washington St.)*
- *Foundry Eastman - 21.96 acres (Foundry St./Eastman St./106 & Robert Drive)*



PLANNING BOARD VOTED TO RECOMMEND MBTA ZONING DISTRICTS AND ZONING OVERLAY AMENDMENTS AT MARCH 12 MEETING

Beginning last September, the Planning Board held a series of meetings to receive comments and input from the public on the proposed MBTA Multi-Family Zoning district (Community Housing Overlay District). The Board considered several iterations of the proposed district taking into account the feedback received during the public hearing process. The final version proposes three subdistricts that take into consideration concerns about increased traffic volumes along Route 106 and the town's intent to create a district that is not substantially larger than can accommodate the minimum number of housing units required by the State. [These are the districts](#) voted by the Planning and Zoning Board for consideration at Town Meeting.

[Proposed Community Planning Overlay District - Final](#)

[Proposed Community Planning Overlay District Zoning Language - Final](#)

Timeline of Events

[2/12/24 Draft Zoning](#)

1/24 - 3/24 [Presentations to municipal boards and committees](#)

11/14/23 [Draft Zoning & Potential Areas Maps](#) Submitted to HLC for Feedback & Testing

10/11/23 Public Information Session

10/02/23 Public Hearing Scheduled to Open

09/05/23 [Planning Board Material & Draft Zoning Language](#) and [Potential Areas Maps for Further Consideration](#)

07/2023 Zoning Revisions [Potential Areas Maps for Further Consideration](#)

06/12/23 Planning Board begins [MBTA Communities Zoning Discussion](#)

01/2023 Town submits [Action Plan](#)

10/21/22 [DHCD issues final guidelines](#)

03/31/22 [Comments on Guidelines Submitted to DHCD](#)

03/28/22 [Review Team Report of Findings, Recommendations and Potential Areas Maps to Select Board](#)

02/22-03/22 Implementation Review Team meetings

01/24/22 [Select Board Appoint MBTA Communities Zoning Implementation Review Team](#) (Review Team)

01/24/22 [Easton's Select Board Briefing](#)

What about our schools?

Common answers:

- Studies have shown that new multifamily housing does not cause growth in school enrollments and school costs ...
- Multifamily households are smaller than single-family households ...
- Single-family homes cost more to serve than multifamily apartments ...

Right answers:

- Communities can't base housing policy decisions on who gets to live in a dwelling unit
- Familial status is a protected class under the federal Fair Housing Act

