



# Multi-Family Zoning Requirement for MBTA Communities

## Presentation on the Final Guidelines

**September 8, 2022**

- 1. The Housing Crisis & Importance of TOD Zoning**
- 2. Final Guidelines: Multi-Family Zoning Requirement for MBTA Communities**
- 3. The Compliance Model**
- 4. Technical Assistance**



# **The Housing Crisis & Importance of TOD Zoning**

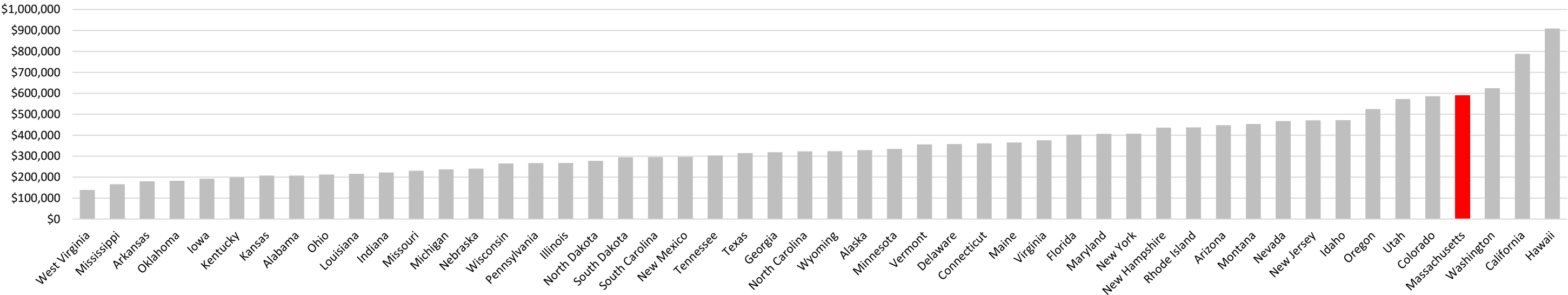
- Massachusetts faces a core challenge in creating adequate housing to support young families, workers, and an aging population.
- Massachusetts has among the highest, and fastest growing, home prices and rents of any state in the nation.
- Rising costs have dramatically increased financial pressures on low- and middle-income families, forcing them to sacrifice other priorities in order to pay housing costs. High housing costs are a primary driver of homelessness.
- The lack of housing production is an impediment to community development.
- These high costs are a disadvantage as we compete economically with peer states. Massachusetts is at risk of losing future job growth due to the high costs of living.

# Housing Costs Among the Highest in the Nation



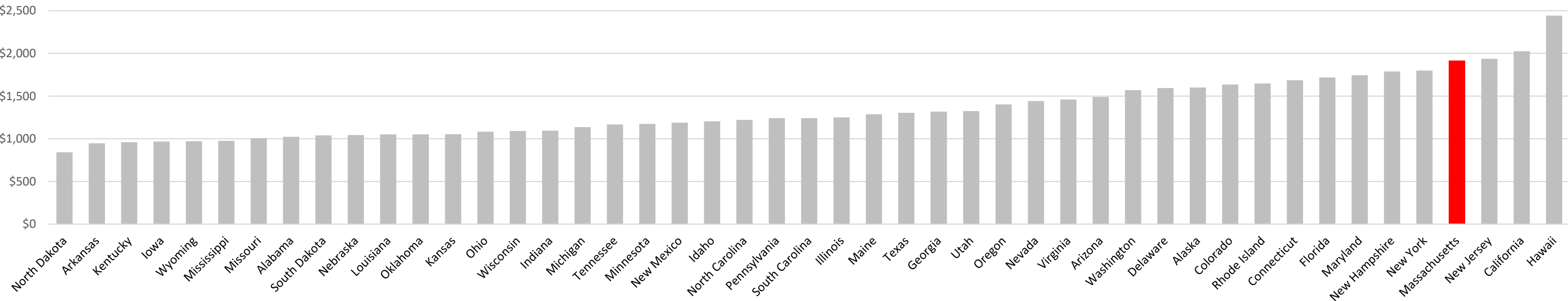
## Typical Home Value (July 2022)

Source: Zillow Home Value Index



## 2 Bedroom Rent Estimates (July 2022)

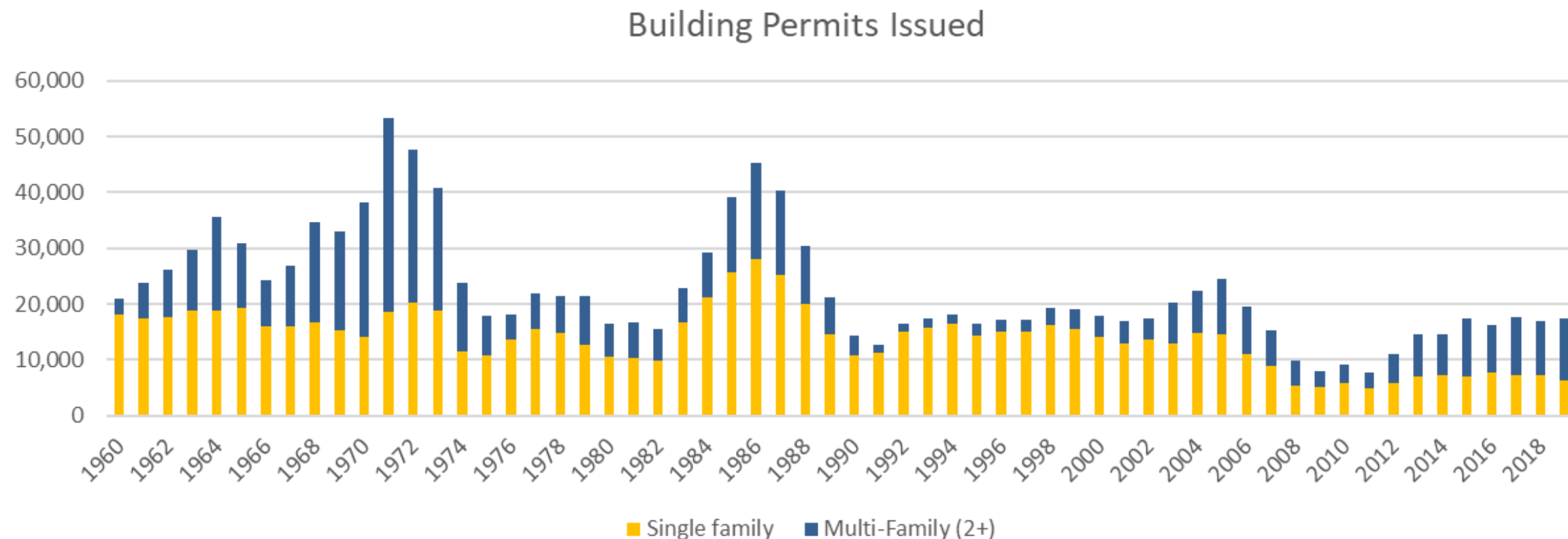
Source: Apartment List State-Level Historic Estimates



# Housing Production in Massachusetts



- Between 1960 and 1990, Massachusetts communities permitted almost 900,000 housing units. Since 1990, communities have permitted fewer than 490,000 new units.



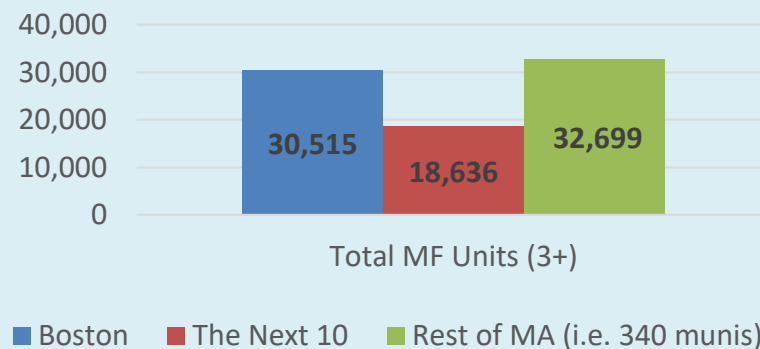
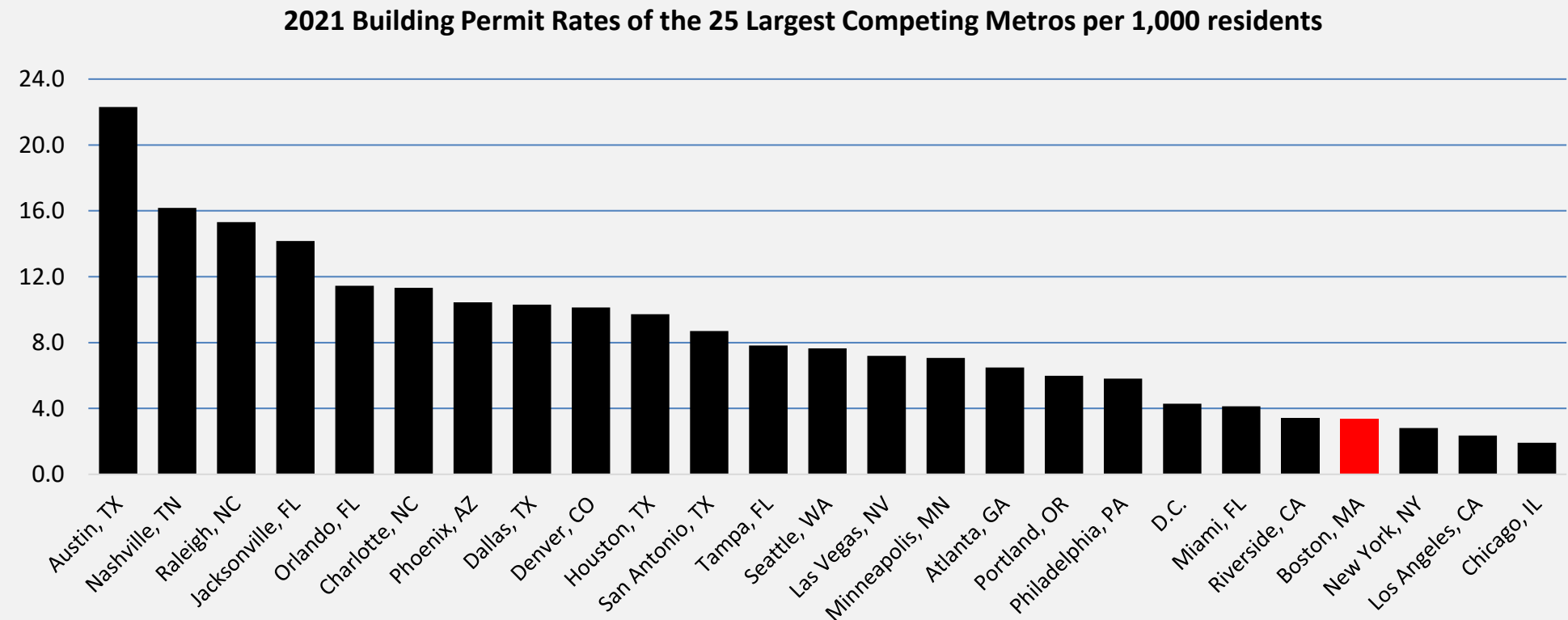
- As highlighted in the *Future of Work* study, there is an estimated shortage of up to 200,000 housing units.



# High Housing Costs Are a Competitive Disadvantage

Massachusetts' core competitive advantage is its highly skilled workforce. High housing costs will make it harder for us to attract and retain talent. This weakens our economy and our employers, and hurts our long-term growth and prosperity.

Many of the metro areas that we compete with are permitting a lot more housing than we are:



- Between 2010 and 2020, the City of Boston permitted over 30,000 multifamily units while more than 50 communities in the Greater Boston region permitted less than 50 units each during the same time period.
- Only 10 other communities permitted over 1,000 multifamily units during that time period in the state.

"The Next Ten" = Cambridge, Medford, Watertown, Weymouth, Everett, Chelsea, Somerville, Shrewsbury, Quincy, and Canton.

# Why This Law Is So Important



- Most multi-family housing is subject to an unpredictable and time-consuming process that requires a special permit, rezoning, or 40B.
  - In a 2019 study, researcher Amy Dain surveyed 100 municipalities in Greater Boston and concluded that just **14%** of multi-family units were permitted as of right from 2015-2017. Nearly **60%** of the permitted multi-family units required special permits.
- This requirement establishes a new paradigm for encouraging multi-family housing production.
- By allowing multifamily housing near transit, we can create new housing in walkable neighborhoods. The result of transit-oriented development is:
  - More housing closer to the places that we go every day, such as local shops, jobs, schools, restaurants, parks, etc.
  - Better access to work, services, and other destinations by increasing mobility and utilization of public transit
  - Reduced reliance on single occupancy vehicles, which helps in our larger effort to confront the climate crisis

**This new law removes the barriers that exist in the current zoning codes around Massachusetts by requiring local communities to set the table for more transit-oriented housing in the years and decades ahead.**

# Relevant Section from the Zoning Act (MGL Ch. 40A)



**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, 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.



# **Final Guidelines: Multi-Family Zoning Requirement for MBTA Communities**

The Baker-Polito Administration issued draft guidelines on December 15, 2021. HED, DHCD, and MHP conducted outreach during the public comment period, which ran 12/15/21 – 3/31/22.

## Engagement Sessions:

- Over the course of January through March, the Baker-Polito Administration held more than **two dozen engagement sessions** led by Secretary Kennealy, Chris Kluchman (DHCD), Clark Ziegler (MHP), and EOHED staff.
- These sessions typically included a half hour presentation on the draft guidelines followed by a half hour of Q&A with stakeholders, largely consisting of municipal officials and planning professionals.

## Public Comments:

- DHCD received nearly **400 comments** over the course of the public comment period. Among those that submitted comments include:
  - Roughly **240 individuals**
  - Approximately **90 municipalities**
  - **25 organizations**
  - **8 legislators**

**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.

# Notable Change #1: Revised Community Categories



## What the draft guidelines said

MBTA communities categorized based on service type as (i) subway community, (ii) bus service community, (iii) commuter rail community, (iv) adjacent community.

## What we heard

Several “bus service” communities offered concerns, questions, and/or challenged their categorization. Smaller and more rural communities submitted comments about their proximity to the urban core, density of development, and access to transit.

## What we did

**Revised Community Categories:** MBTA Communities are now categorized as rapid transit, commuter rail, adjacent, or adjacent small town.

- The final guidelines are centered on access to fixed transit assets, like the subway and the commuter rail.
- The “bus service” category has been eliminated.
- The new category for “adjacent small towns” incorporates additional considerations for small and rural towns with no transit stations.

# Notable Change #2: Adjustments for Small and Rural Towns with No Transit Stations



## What the draft guidelines said

Defined “adjacent community” as a town with no transit station within its border or within 0.5 mile of its border. These communities were subject to a minimum multi-family unit capacity of 10% of total housing stock; but density and minimum land area requirements resulted in a minimum unit capacity of 750 units for all communities, regardless of size.

## What we heard

Many smaller and more rural communities submitted comments relative to the minimum unit capacity and minimum land area requirements.

## What we did

### **Significant Adjustments for Small and Rural Towns with No Transit Stations.** The final guidelines:

- Create a new category of “adjacent small town”, which includes:
  - No minimum land area (i.e., eliminated the minimum land area requirement of 50-acres )
  - Minimum multi-family unit capacity is capped at 5% of current housing stock
  - An extra year to create a compliant district.
- Refine the definition of “adjacent community” based on the amount of developable station area in a town.

# Notable Change #3: Consideration for “Developable Station Area”



## What the draft guidelines said

The draft guidelines provided that multi-family districts must comprise at least 50 acres of land—or approximately 1/10 of the land area within 0.5 mile of a transit station. Half of the land area of a district had to be within 0.5 mile of a transit station, if applicable.

## What we heard

Many communities noted they did not have enough land area to create a district within 0.5 miles of a transit station.

## What we did

### **New Requirements for Location Consider the Amount of Developable Station Area.**

The final guidelines focus on the amount of developable land that is within ½ mile of a transit station when categorizing communities and establishing district location requirements.

- Developable land has a detailed definition, but in general means land on which it is feasible to develop multi-family housing.
- Community categories are based on the amount of developable station area within each community. Communities with less than 100 acres of developable station area are deemed to be adjacent communities.
- The percentage of each district that must be located within 0.5 miles of a station area varies depending on how much developable station area is within a community.

# Notable Change #4: Changes to the Reasonable Size Criteria



## What the draft guidelines said

Districts had to comprise at least 50 acres and meet a minimum unit capacity based on community category and number of existing housing units. All districts had to have a capacity of at least 750 units resulting from the minimum land area requirement coupled with the density requirement of 15 units per acre.

## What we heard

Many smaller and rural communities commented that they would not be amenable to creating a district with a minimum unit capacity of 750 units. Other communities acknowledged challenges with land area constraints.

## What we did

**Changes to the Reasonable Size Criteria:** The final guidelines incorporate new mechanisms within the reasonable size criteria:

- *Circuit Breaker:* Establishes a cap so that the minimum multi-family unit capacity requirement never exceeds 25% of a community's existing housing stock.
- *Safety Valve for Small Communities:* Creates a "safety valve" mechanism so that minimum land area never exceeds 1.5% of the total developable land area in a community.
- Eliminates minimum land area requirements entirely for adjacent small towns.

Combined, these changes affect 74 MBTA Communities that trigger these added considerations in the final guidelines relative to minimum land area.

# Notable Change #5: Tailored District Location Requirements



## What the draft guidelines said

Recognizing that it might not be possible to locate all of a district within ½ mile of a transit station, the draft guidelines provided that at least half of land area of the multi-family zoning district must be located within the station area.

## What we heard

Communities raised genuine questions related to on-the-ground dynamics that might affect a zoning district. Some municipalities raised concerns on their ability to meet the district location requirement because they did not have enough land or enough developable land within ½ mile of a transit station.

## What we did

**Tailored District Location Requirements:** The concept of “developable station area” is important in the location considerations. The final guidelines provide that the portion of a multi-family zoning district that must be located within a 1/2 mile of a transit station varies based on the amount of developable station area within each MBTA community.

- This is outlined in the final guidelines through a sliding scale based on how much transit station area is in each MBTA community.
  - The percentage requirement varies depending on how much developable station area is within the community.
- Communities with more developable station area are required to have more multi-family district land area and unit capacity within a half mile of transit stations.

# Tailored District Location Requirements, continued

## Overview of the Sliding Scale

Acres of 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

The final guidelines take into consideration on-the-ground land dynamics to ensure that the zoning will unlock housing in areas that make sense.

The scale is based on having at least 100 acres of developable station area, rather than having the station within 0.5 miles of the municipal border. This will help solve the “wedge” problem we identified in a handful of communities that have only a small “wedge” of the station area, including some that may be undevelopable.

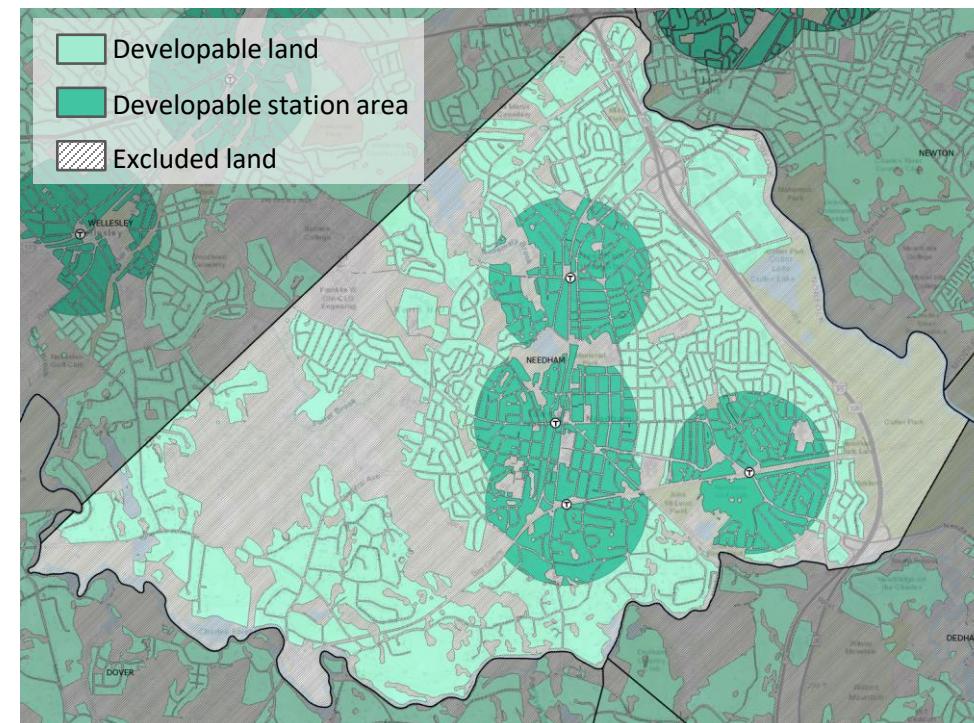


### Examples

#### Arlington

**58** Total developable acres within station area

**0%** of district must be within station areas



#### Needham

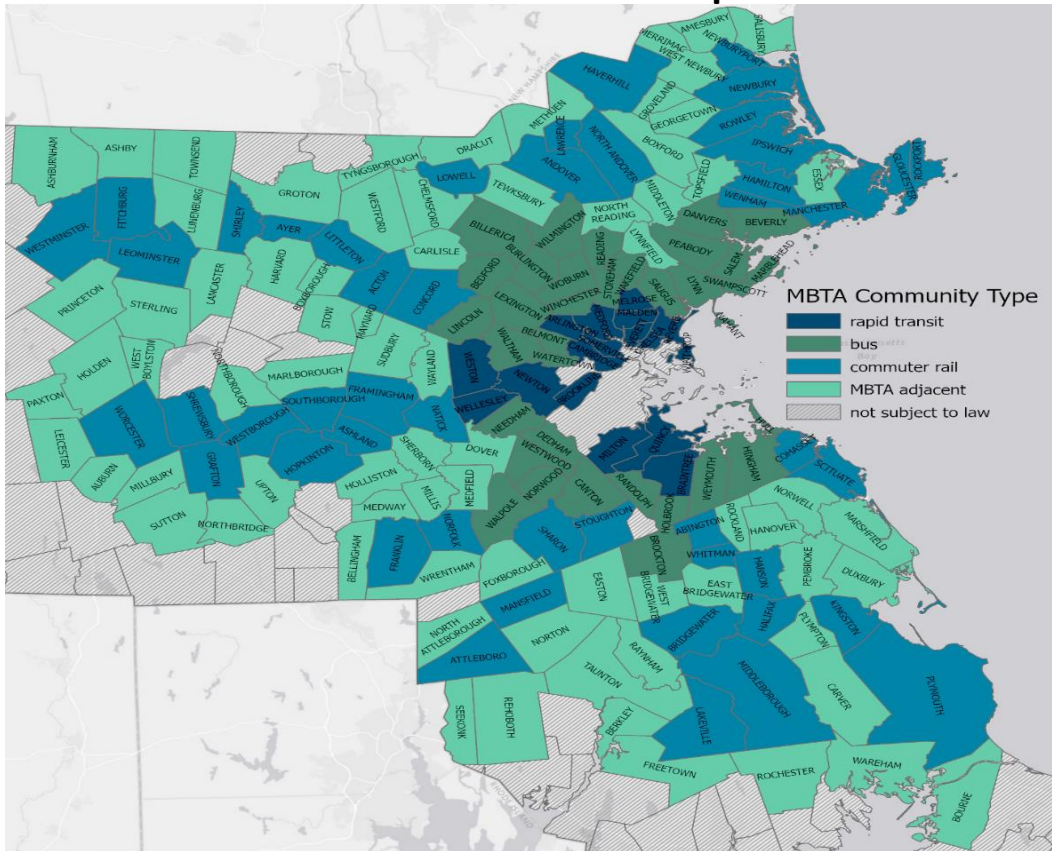
**1,233** Total developable acres within station area

**90%** of district must be within station areas

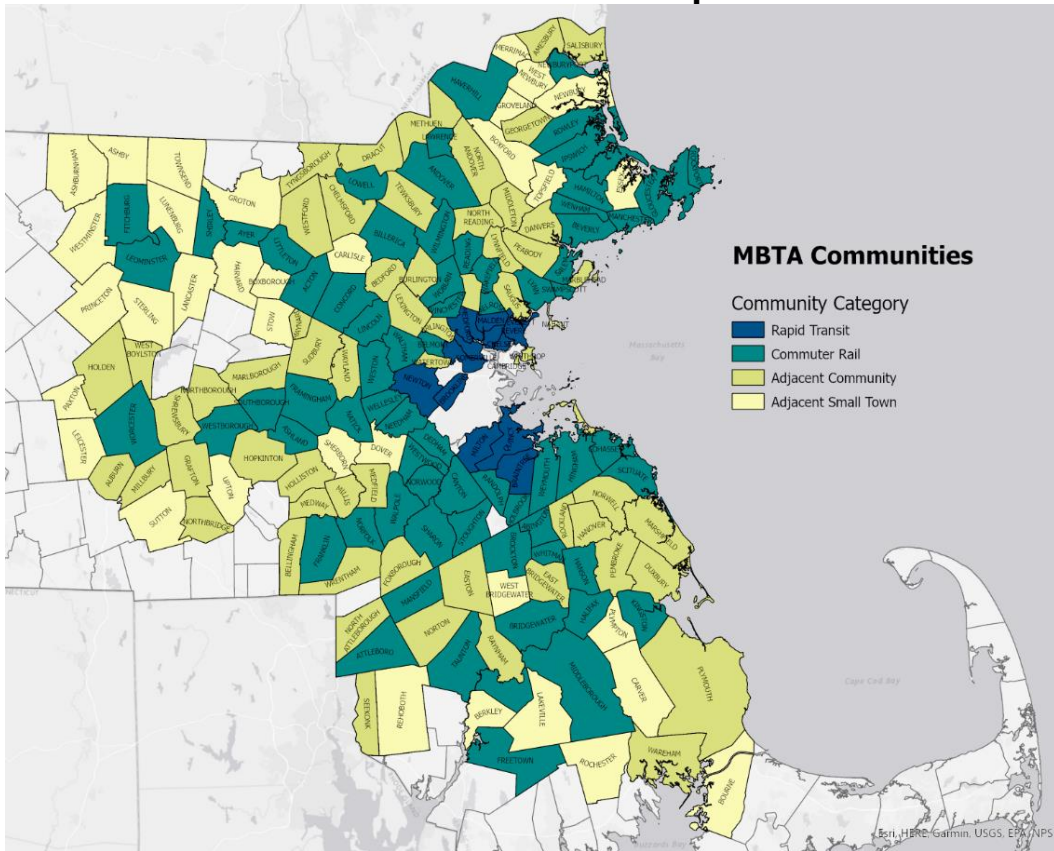
# MBTA Community Category Comparison: Draft vs Final



Draft Guidelines Map



Final Guidelines Map



Community Category	Draft Guidelines Muni Breakdown	Draft Guidelines Unit Capacity Requirement	Final Guidelines Muni Breakdown	Final Guidelines Unit Capacity Requirement
Subway/Rapid Transit	17	25%	12	25%
Bus Service	35	20%	--	--
Commuter Rail	48	15%	69	15%
Adjacent	75	10%	59	10%
Adjacent Small Towns	--	--	35	5%
Total	175		175	

# Other Notable Updates in the Final Guidelines



- **Site Plan Review:**
  - The final guidelines recognize site plan review can be required for as of right multi-family uses but should not impose unreasonable requirements or undue delay on proposed project.
- **Affordability:**
  - The final guidelines now explicitly permit municipalities to add affordability requirements to their MBTA Communities districts.
  - The guidelines provide for:
    - Up to 10% (at 80% area median income) in all districts, in all communities
    - Up to 20% for a zoning district approved under MGL chapter 40R or that otherwise goes through a DHCD approval process OR if local affordability requirements predate the enactment of Section 3A.
- **Additional Local Requirements:**
  - Zoning will not be deemed compliant with Section 3A's requirement that multi-family housing be allowed as of right if the zoning imposes requirements on multi-family housing that are not generally applicable to other uses. For example:
    - Multi-family housing cannot be required to meet higher energy efficiency standards than other uses; and
    - Zoning cannot require multi-family housing to be combined with commercial or other uses on the same lot or as part of a single project.
      - Mixed use projects may be allowed as of right in a multi-family zoning district, as long as multi-family housing is separately allowed as of right.



- **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.
  - 165 of 175 communities are compliant for this year (~95% compliance).
- **Compliance Framework in *Draft Guidelines*:** Under the draft guidelines, communities must work with DHCD to develop an action plan (by 12/31/22) and then achieve compliance by: 1) 12/31/23 for Subway and Bus Communities; and 2) 12/31/24 for Commuter Rail and Adjacent Communities.
- **Compliance Framework in Final Guidelines:**

Transit Category (# munis)	Action Plan Submission Deadline (if applicable)	District 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

## Submit an Action Plan for Interim Compliance

- An MBTA community that has not adopted a compliant zoning district and had that district approved by DHCD may complete an Action Plan that outlines its process and strategy for adopting a compliant district.
- When DHCD approves the Action Plan, then the community will achieve “interim compliance” with Section 3A and will be eligible for the funding sources that require compliance.
- Interim compliance is only available until the MBTA community’s deadline for District Compliance.
- The deadline to submit an Action Plan is January 31, 2023

**The Action Plan form is online at:  
[mass.gov/mbtacomunities](https://mass.gov/mbtacomunities)**



- DHCD will make determinations of compliance with Section 3A in accordance with these guidelines.
- When an MBTA community believes it has a multi-family zoning district that complies with Section 3A, it may request a determination of district compliance from DHCD. Such request shall be made on an application form required by DHCD. The full compliance application form will be released on November 1, 2022.
- The final guidelines outline in detail some of the information that will be required in order to apply. This includes:
  - A certified copy of the municipal zoning ordinance or by-law and zoning map, including all provisions that relate to uses and structures in the multi-family zoning district;
  - An estimate of multi-family unit capacity & GIS shapefile for the multi-family zoning district; and
  - In the case of a by-law enacted by a town, evidence that the clerk has submitted a copy of the adopted multi-family zoning district to the office of the Attorney General for approval.
- After receipt of a request for determination of district compliance, DHCD will notify the requesting MBTA community within 30 days if additional information is required to process the request.
- Upon reviewing a complete application, DHCD will provide the MBTA community a written determination either stating that the existing multi-family zoning district complies with Section 3A, or identifying the reasons why the multi-family zoning district fails to comply with Section 3A and the steps that must be taken to achieve compliance



# The Compliance Model

# The Compliance Model



## Overview and Background:

- The guidelines include several important quantitative requirements, two of which are relatively complex to estimate: multi-family unit capacity and gross density. The Compliance Model will ensure all MBTA communities are using a consistent approach to estimating and reporting these key metrics.
- The Model is an Excel Workbook that walks applicants through a zoning checklist and parcel information exported from a GIS file provided by DHCD. A copy of the completed Excel Workbook is a required part of an application for full compliance.
- The model was developed with guidance from an advisory group consisting of architects, engineers, planning professionals, local officials, geographic information systems (GIS) experts, data scientists and other experts.

## Goals and Objectives:

- The Compliance Model has been developed with a focus on creating a *reasonable estimate* of unit capacity. It includes many zoning inputs and constraints, but not all potential site conditions and contextual factors. The results of the model should be treated as estimates, not an absolute measurement of development potential.
- Technical assistance will be available to communities seeking expert help with utilizing the model and interpreting the estimates it produces.

### Who will use the model?

- Local planners
- Technical assistance providers
- People that they report to – e.g. planning board
- DHCD staff

### Who will need to understand the model outputs?

- Local planners
- Technical assistance providers
- Local decision-making bodies (e.g. planning board)
- Members of the public (to the extent it intersects with local approval process)
- DHCD staff

# The Compliance Model Includes:



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

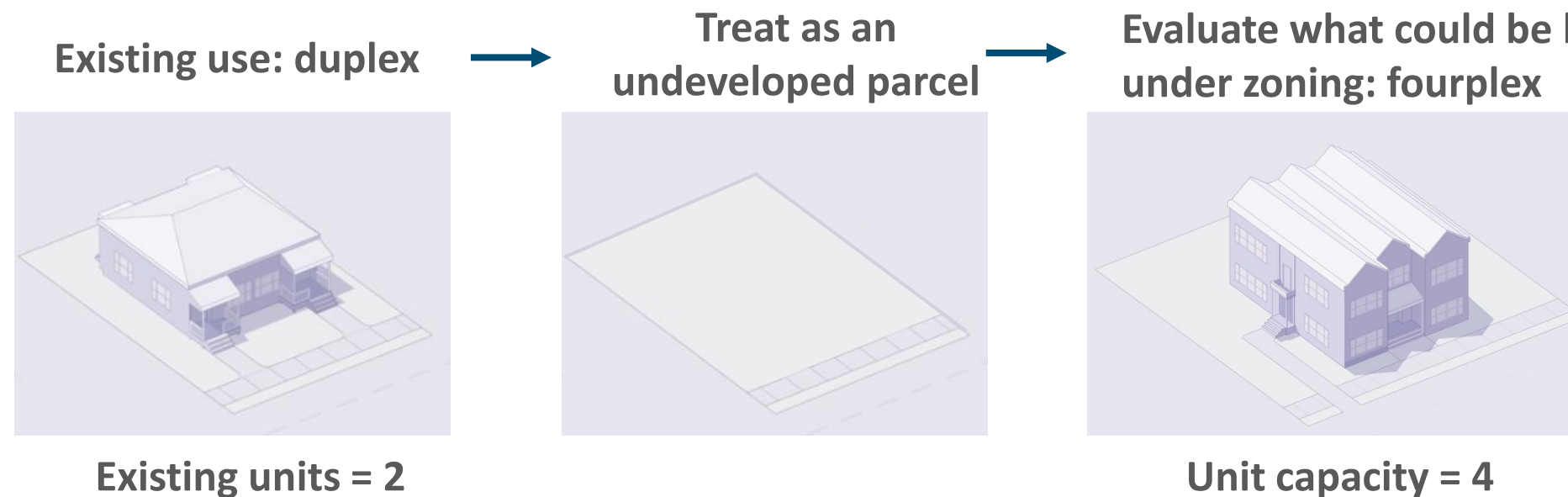
A **unit capacity estimator** that will use the imported parcel information and the information collected in the zoning checklist to derive an estimate of the unit capacity on each lot in the district as well as district-level summary information such as total district unit capacity, gross density of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

# Unit Capacity is a Core Concept



**“Unit capacity” is a measure of the number of multi-family units allowed by right in the district—some of which may already exist. Unit capacity for any given parcel may be higher or lower than existing development on the site.**

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 by right on that parcel if it were undeveloped.





# Technical Assistance

## 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, 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.
- 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.
  - 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.

- We must continue to leverage housing best practices to meet the state's housing needs.
  - Municipalities play a key role, through zoning and permitting, in determining whether or not housing is built. Cities and towns are therefore necessary partners if the Commonwealth is to solve our housing crisis.
  - Important to remember that this is about *capacity*—enabling production by expanding capacity through zoning. Actual unit production will depend on many factors.
- 
- Please continue to visit [mass.gov/mbtacomunities](https://mass.gov/mbtacomunities) for information and resources. It will be updated periodically.
    - This webinar will be posted on the website.