

# The State of Multi-Family Zoning in Massachusetts

Ben Chase

Land Use Planning

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## **Executive Summary**

Massachusetts' new law requiring multi-family zoning close to rail transit will be a help to combat the state's current housing crisis. This new law requires 175 of Massachusetts' 351 communities to provide multi-family zoning with a density of 15 units per acre, and within ½ mile of a transit station, if applicable. This will bring change to many communities, as these communities either heavily restrict or outright ban multi-family housing, defined as a building with three or more residential units. However, this new law does not go far enough, as it disregards the importance of the bus within a transit network, especially in places where the bus is the most frequent transit option.

## **The New Law**

In 2021, the Massachusetts Legislature passed a bill to amend Chapter 40A of the Massachusetts General Laws, commonly known as the "Zoning Act." The new section reads as follows:

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.

This new law is meant to combat the current housing crisis facing Massachusetts and promote transit-oriented development around the eastern half of the state's extensive public transportation network. The law is applicable to 175 out of the state's 351 municipalities which are considered "MBTA communities" due to their proximity to transit service operated by the Massachusetts Bay Transportation Authority (MBTA).

### **Diverse Guidelines in a Diverse State**

Enforcement of this law new is under the jurisdiction of the Department of Housing and Community Development (DHCD). Guidelines issued in late 2022 detail the exact requirements for a municipality to reach compliance with the law. These guidelines define "multi-family housing" as "a building with three or more residential dwelling units." In addition, "housing suitable for families" is "comprised of residential dwelling units that are not age-restricted housing, and for which there are no zoning restriction on the number of bedrooms, the size of bedrooms, or the number of occupants." Importantly, "as of right" is defined as "development that may proceed under a zoning ordinance or by-law without the need for a special permit, variance, zoning amendment, waiver, or other discretionary zoning approval."<sup>1</sup>

DHCD classifies all 175 communities into four different categories depending on size and transit access. 12 communities are classified as "rapid transit communities," and are directly served by the MBTA's Red, Green, Orange, and Blue Line trains, providing frequent rapid transit

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<sup>1</sup> Department of Housing and Community Development. *Compliance Guidelines for Multi-Family Zoning Districts Under Section 3A of the Zoning Act*. October 21, 2022. pp. 2-4

service close to the core of Boston. A further 71 communities are classified as “commuter rail communities,” which have at least one rail station served by the MBTA Commuter Rail providing hourly rail service to downtown Boston and other communities on 12 lines. 58 communities are classified as “adjacent communities” due to directly bordering a rapid transit or commuter rail community. The final 34 communities are classified as “adjacent small towns,” which like adjacent communities, directly border a rapid transit or commuter rail community, but have a full-time population less than 7,000.

The law also requires zoning districts of “reasonable size,” which vary from community to community. Due to the diverse nature of the 175 communities impacted, this “reasonable size” requirement takes into consideration the existing size and housing stock of each community to determine what needs to be zoned for full compliance. The diversity of these communities varies from the state’s biggest cities all the way to small rural towns. In the 141 communities classified as rapid transit communities, commuter rail communities, and adjacent communities, the area required to be zoned for multi-family housing is the lesser of 50 acres and 1.5% of the developable land area of the community. In adjacent small towns, there is no minimum land area, but these communities still need to allow adequate space to achieve their multi-family unit capacity and density requirements. The guidelines also state that “no portion of the district that is less than 5 contiguous acres land will count toward the minimum size requirement.”<sup>2</sup> In cases where the density and capacity requirements can be achieved with less than 5 acres of land, the district must be fully contiguous.

The multi-family unit capacity for each community also depends on which classification a community is in. The capacity depends on the total housing units located in each community

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<sup>2</sup> Department of Housing and Community Development. p. 8.

and is the greater of two calculations. The first is a percentage of total housing units in each community, which varies between 5% of total housing units in adjacent small towns up to 25% of units in rapid transit communities which must be in a multi-family zoning district. The other calculation takes the minimum land area (up to 50 acres) multiplied by the density requirement of 15 units per acre. In all cases, the multi-family unit capacity does not exceed 25% of the total housing units in each community.<sup>3</sup>

The final requirement for multi-family districts is to be within ½ mile of a transit station, known as the “transit station area,” which is either an MBTA subway or commuter rail station. However, only a portion of the district’s area and housing capacity must be within the transit station area and varies between each community. Communities with less than 100 acres of developable land within the transit station area do not have to put any part of the district in this area, while communities with over 801 acres of developable land within a transit station area are required to put 90% of the land area and unit capacity within the transit station area. Communities with multiple transit stations may put their district near either station or both stations.<sup>4</sup>

### **Massachusetts Transit Overview**

Massachusetts is served by 16 different transit agencies, which includes the MBTA and 15 other agencies known as regional transportation authorities (RTAs). According to State Rep. Natalie Blais (D-1<sup>st</sup> Franklin), State Sen. Susan Moran (D-Plymouth and Barnstable), and advocate Alexis Walls, the 15 RTAs “provide essential service to riders in over 250 cities and

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<sup>3</sup> Department of Housing and Community Development. p. 9

<sup>4</sup> Department of Housing and Community Development. pp. 12-13

towns beyond the reach of MBTA bus and subway service.”<sup>5</sup> A large portion of these 250 communities are not MBTA communities, meaning that this new multi-family zoning law does not apply to them, yet they still receive reliable public transit service. All the state’s RTAs serve smaller cities and nearby towns around the state and connect to other RTA or MBTA service if possible. However, service can vary a lot with these agencies. Like many transit agencies nationwide, RTAs are underfunded by the state, as “55 percent of Massachusetts residents live in an RTA community, RTAs currently receive less than 7 percent of state transit operations dollars.” Due to this limited funding, RTAs often cut back on service whenever necessary, with nights and weekends seeing extremely limited to zero service at all. It is noted that “40 percent do not have service seven days a week, and more than half lack service after 9 p.m. There are not enough routes, and there are no connections between RTA service areas, making it impossible for many residents to get where they need to go.”<sup>6</sup> These bus routes run every hour at best, and limited networks often mean that there are no direct and frequent routes between common destinations.

### **Importance of the Bus**

The bus is often seen as a lower form of transportation, only used by those who absolutely need it. Throughout Massachusetts, it is greatly underfunded, especially outside of Boston. This isn’t just a Massachusetts issue, as this issue is something cities nationwide, large and small, are all facing. This is mainly because “highways get roughly four of every five federal transportation dollars,”<sup>7</sup> so states and other local governments have plenty of funds to maintain

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<sup>5</sup> Blais, Natalie, Susan Moran, and Alexis Walls. *Time to address equity in public transportation*. Commonwealth Magazine. February 23, 2023.

<https://commonwealthmagazine.org/opinion/time-to-address-equity-in-public-transportation/>

<sup>6</sup> Blais, Natalie, Susan Moran, and Alexis Walls.

<sup>7</sup> Higashide, Steven. *Better Buses, Better Cities: How to Plan, Run, and Win the Fight for Effective Transit*. Island Press. 2019. p. 5

miles of roads and bridges yet compete for funds to maintain equally used public transit networks. Even when riders try to convince their local government to increase bus service, it is often hard to do so due to the limited reach of the bus network. One rider in Poughkeepsie, New York noted that “the buses stop running at 6:30, and the City Council meetings starts after the buses stop running, so there’s no way I would be able to get home.”<sup>8</sup> Throughout Massachusetts, limited funding means limited hours for bus service. The 15 RTAs are only offering service between the hours of 6 am and 7 pm on weekdays, unless there is extraordinary demand that they extend the service hours later than that. On weekends, service is typically one or two hours less if offered, and Sunday service typically starts at 11 am. There are many communities that don’t even see weekend service at all and have limited weekday options, due to low frequencies or bad routing. In transit planning, it is known that “bus and rail lines across the country attract riders under the same circumstances: when they are fast, frequent, and connect many destinations that can be walked to.”<sup>9</sup> The suburban bus routes offered by the RTAs manage to connect walkable destinations fast, only because their limited budgets only allow them to serve the main downtowns of any community that they provide service to. While bus speeds may be fast on these suburban roads, in the cities these RTAs serve, a lack of funding leads to a lack of investment. They are unable to invest in bus lanes or benches and shelters for passenger waiting. Many suburban bus stops don’t even have signs acknowledging that a bus even stops there, leading to potential customers being unaware of the existence of a bus route.

### **A Case Study: Four Diverse Communities**

There are 175 different communities affected by this new multi-family zoning law, each with a different set of by-laws, each with varying transit access, and each with a different size.

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<sup>8</sup> Higashide, Steven. p. 6

<sup>9</sup> Higashide, Steven. p. 18

I'll look at four different communities around the state to see how multi-family housing is currently handled, it's proximity to public transit options, and each community's plan to reach compliance with this law. Each community was required to submit an action plan to DHCD by the end of January 2023, detailing what they hope to do to reach compliance with the law, if they are not currently in compliance. I will also offer my own recommendations for potential steps to increase density near highly demanded public transit options.

### Spencer

With a population of 11,992 as of the 2020 U.S. Census, the town of Spencer is a standard New England town. While Spencer is not one of the 175 communities affected by the law, Spencer is a model for what other communities can accomplish. Spencer sees hourly bus service six days a week to downtown Worcester, New England's second-largest city with a population of 206,000. Spencer is one of the handful of towns that the Worcester Regional Transit Authority (WRTA) serves outside of Worcester city limits, and service follows the main road through the town's downtown area.

Spencer has its densest zoning district in the heart of downtown, with less dense districts going outward from there. This method of zoning allows for the densest of development to be located within a short walk of businesses and services in the downtown area, as well be close to the bus route running through the area. The WRTA is also able to attract passengers with the bus running alongside homes and businesses in Spencer. Spencer's Town Center Mixed Use district has regulations that "are designed to encourage a vibrant area where people can shop, eat, conduct business, and live in a pedestrian friendly environment."<sup>10</sup> This district is the only area

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<sup>10</sup> Zoning Bylaw, Town of Spencer § 3.1.

[https://www.spencerma.gov/sites/g/files/vyhlf1246/f/pages/zoning\\_by-laws\\_2022\\_newest\\_versing\\_12.28.2022\\_3.pdf](https://www.spencerma.gov/sites/g/files/vyhlf1246/f/pages/zoning_by-laws_2022_newest_versing_12.28.2022_3.pdf)

where multi-family housing, as defined by DHCD, is allowed by-right. In addition, single-family residences are not allowed within this district. This is surrounded by the Village Residential district with a substantial amount of duplex and multi-family housing, which allows two-family duplexes, but anything else must be approved with a special permit. Special permits for multi-family housing are quite common throughout the suburbs, which prevents higher-density housing from being built.

Spencer isn't perfect in making the most out of their accessibility to transit and walkability in the downtown area. The town should consider allowing multi-family development by-right in the Village Residential area, mainly due to its proximity to downtown and transit options, as well as extending this district along the entire length of the bus route.

### Milton

Adjacent to the state's capital city, Boston, is the town of Milton. Milton is currently served by multiple forms of transit operated by the MBTA, which include three bus routes and a trolley line connecting to the rest of the rapid transit system. Due to these connections, Milton is classified as a rapid transit community, and the new law requires zoning for 2,461 units of multi-family housing, half of which need to be within the transit station area.

The current zoning in Milton does not allow for multi-family housing at all, unless approved by a special permit. In addition, two-family residences are only allowed under certain circumstances and depend on the density of the block it is located on.<sup>11</sup> This zoning is extremely restrictive, due to the town's proximity to downtown Boston and easily accessible by transit to the rest of eastern Massachusetts.

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<sup>11</sup> Zoning Bylaws of the Town of Milton § III A.  
[https://www.townofmilton.org/sites/g/files/vyhlf911/f/uploads/zoning\\_bylaw.pdf](https://www.townofmilton.org/sites/g/files/vyhlf911/f/uploads/zoning_bylaw.pdf)



Milton does have a plan to increase density in town to comply with the law, which includes creating a new district paralleling the trolley tracks and allowing higher density uses to be built closest to transit. However, the town is ignoring the bus routes running through town, which all connect to other forms of transit at either end in neighboring communities. Milton also needs to make it easier for multi-family development to occur by making these types of development allowed without the need for a special permit.

### Marblehead

The seashore town of Marblehead is one of the handful of outer towns directly served by MBTA bus service connecting directly to the rapid transit system. Despite these bus connections, Marblehead is classified as an adjacent community due to not having any rail stations within its boundaries. Due to being served by MBTA buses, Marblehead sees bus service every 30 minutes or better every day of the week. These buses run along a major corridor from one end of town to the other, where the downtown area is located right alongside the harbor and offers a two-seat ride to downtown Boston.

Marblehead's zoning makes it difficult for multi-family housing to be built alongside this major bus corridor. A large portion of the downtown area is in the General Residence district, where only single-family residences are permitted by-right, and two-family residences are allowed by receiving a special permit.<sup>12</sup> Multi-family housing is only allowed by special permit in a small area of town with unrestricted zoning, which happens to be located near the downtown area. Outside of the downtown area, only single-family residences are permitted in all cases, even alongside the bus corridor.

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<sup>12</sup> Town of Marblehead Zoning Bylaw § 200-10.

Fortunately, the town has plans to allow these districts close to downtown to allow multi-family housing by-right and has identified potential sites for rehabilitating older buildings into new development.<sup>13</sup> This is a great start for the town, as it puts older, abandoned buildings to a new use, and are in a prime location close to the downtown area. Unfortunately, like Milton, Marblehead is also ignoring its bus corridor to achieve compliance with the law. Due to its classification as an adjacent community, Marblehead does not have any requirement to put multi-family zoning near transit, but it has a great bus corridor that it can make the most out of.

### Ashby

Located along the northern border with New Hampshire, the small, rural town of Ashby is only required to provide capacity for 62 units of multi-family housing. Due to its rural nature, Ashby does not have any public transit options within its boundaries, but borders the city of Fitchburg, home to a rail station and one of the two cities served by the Montachusett Regional Transit Authority (MART). Like many rural towns, Ashby does not allow for any other residential use besides single-family residences on large lot sizes.<sup>14</sup> Smaller lot sizes are allowed near the downtown area but are still large enough to not follow the law.

The town's plan notes that they are "currently considering potential overlay areas in the southeastern corner of the Town of Ashby near Ashby's municipal border with the City of Fitchburg."<sup>15</sup> These sites are located about halfway between Fitchburg's train station and the downtown area of Ashby, which are located approximately 8 miles apart. While there is a

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<sup>13</sup> Department of Housing and Community Development. <https://www.mass.gov/doc/submitted-section-3a-action-plans/download>. *Section 3A Submitted Action Plans*. February 8, 2023. p. 410

<sup>14</sup> Zoning By-Laws, Ashby, Massachusetts § 5, 6, 7. <https://www.ci.ashby.ma.us/document/Zoning%20Bylaw%20190504.pdf>

<sup>15</sup> Department of Housing and Community Development. *Section 3A Submitted Action Plans*. February 8, 2023. p. 34

considerable amount of open space in this area, it is not oriented towards the downtown area of Ashby, which could benefit from additional housing. Residents living in this area would still need to drive to reach town services or any businesses located in either Fitchburg or Ashby. One potential solution is to create a bus line between Fitchburg and downtown Ashby, where residents can quickly reach common destinations in either community, while still having transit-oriented development and reduce car dependency.

### **Future Expansion Needed**

While this new law is a great start in combating the housing crisis in Massachusetts, it does not go far enough. Most of Massachusetts' 351 communities are served by some form of public transportation, and a large chunk of these communities are not included within the law. Plenty of the 175 communities affected by the law have local bus service that is more frequent than rail service within their town or an adjacent town, which have frequencies as little as a train every two hours on weekends. The law should be further expanded to require dense, multi-family zoning along any local bus route statewide. Doing so would bring more housing to communities where people would like to live the most, bring more ridership to our public transportation network, and further reduce car dependency by promoting walkability and mixed-use development.

In addition, we should fund our public transportation network more. Doing so would allow for transit to reach more people in communities that currently are not served by transit. This would also allow for transit to run more frequently and for longer hours, especially during the weekends, when transit is currently at its worst.