



New multi-family housing in Sudbury, Mass. (Photo by Amy Dain)

HOUSING / OPINION

# Overcoming the restrictions on multi- family housing

# MBTA Communities law seeks to end all the end-arounds



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Jan 6, 2023

*Last in a series.*

**CITIES AND TOWNS** of Greater Boston have a long history of using zoning to restrict development of multi-family housing that might accommodate families with children. The systematic restrictions have disadvantaged multi-generational households seeking homes in condo or apartment buildings. The restrictions have also undermined the housing market's dynamism and its ability to meet the region's housing needs.

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In response to these problems, the Commonwealth of Massachusetts adopted the MBTA Communities zoning law requiring cities and towns served by the MBTA to zone for transit-oriented multi-family housing “without age restrictions” and “suitable for families with children.” Once implemented, the reform should enable the market to meet the needs of diverse households.

For decades, municipalities have been limiting development of family-suitable apartments and condos through a few zoning mechanisms, including age-restrictions for occupants (typically for residents who are at least 55 years old),

bedroom restrictions, and discretionary approval processes. I studied these practices in a 2018 survey of zoning bylaws and ordinances in 100 cities and towns across Greater Boston.

According to the survey, more than half of the region's municipalities have adopted zoning for age-restricted housing. Many municipalities zone more liberally for age-restricted multi-family housing than for unrestricted multi-family housing. It is common for municipalities to incentivize the use of age-restrictions, with offers of density bonuses.

At the time of my survey, Wenham only allowed multifamily housing if it was age-restricted. In Norwell, the only multi-family housing allowed without age-restrictions was conversions of existing two-family houses to three-family houses, under very limited circumstances. In Lynnfield, the only non-age-restricted multi-family district was already built-out to the capacity allowed.

Almost a quarter of the municipalities reported that they granted permits for age-restricted housing development from 2015 to 2017.

More than a quarter of the municipalities restricted the number of bedrooms that could be included in at least some kinds of multi-family housing. For example, in Duxbury's "planned developments," no multi-family dwelling units can have more than two bedrooms. Many families with children prefer homes with more bedrooms.

Even when there are no formally promulgated restrictions on age or bedrooms, the permitting process often implicitly promotes the restrictions. Most permitting of multi-family housing projects involves discretionary, political approval processes, including votes of the local planning board and/or the local legislative body (city council or town meeting.) To win votes, developers will often propose projects without three-bedroom units or with age restrictions, even if nobody explicitly

asked for this. Sometimes age restrictions or bedroom reductions get negotiated in the approval process, even where the zoning contains no mention of such restrictions.

These practices and policies go back a few decades. In 2004, I conducted a survey of zoning and local master plans and housing plans in 187 cities and towns in eastern Massachusetts. At that time, I found that more than a third of the communities had adopted age-restricted zoning. Nine municipalities only allowed multi-family housing to be built if it was age-restricted: Boxford, Carlisle, Lynnfield, Marshfield, Paxton, Plympton, Wenham, Hanover, and Medway. Since then, several of these communities have at least marginally liberalized their zoning.

Many of the local plans I reviewed in 2004 praised the benefits of age-restricted zoning. Plans pointed to the fiscal benefits of age-restricted zoning – specifically, the expectation of increased property tax revenues without commensurate spending on schools. As an example, Lynnfield’s master plan concluded: “Another means of increasing the tax base in Lynnfield is development of age-restricted housing.”

Many plans associated age-restrictions with reduced traffic generation. Ipswich’s 2003 Community Development Plan, for example, explained that “housing for seniors generally has much lower impacts (e.g., traffic and schoolchildren) than other single-family or multi-family housing, and therefore can be part of a comprehensive growth management strategy.” Several plans mentioned that age-restricted housing can specifically satisfy the need to accommodate a growing population of seniors.

Chelmsford’s master plan suggested that the “maturity of residents” of age-restricted housing makes such housing more acceptable to the town’s current residents, in comparison to regular multi-family housing.

Outside of the plans, I have heard concerns about the higher “churn rate” in school classes of students who live in rental housing. The concern is that renters move more frequently than owners.

Commonly cited concerns about multi-family housing for families with children, such as traffic, school capacity, fiscal constraints, and churn rates, at first seem like pragmatic, relatable, important, and even fundamental considerations in land use policy.

Yet, deliberately and systematically restricting development of multi-family housing for families with children is a fundamental injustice. The restrictions conflict with values of fairness on which our civic life is based. Indeed, federal law does not allow adoption of housing policies, including zoning, that discriminate against households based on “familial status.”

It does not matter how much it costs to educate children; it does not matter if some move in and out of the school district more quickly than others. We cannot discriminate against families with children who may live in apartments and condos. To address traffic, school capacity, and other impacts of municipal growth, we have to use other policy tools that do not include limiting housing options for multi-generational households.

The restrictions are also bad policy for pragmatic reasons, beyond discrimination. Diverse households need diverse housing. Home scarcity leads to escalating home prices, stress on household budgets, housing insecurity, concentrations of poverty, and even homelessness. The restrictions make our social fabric less resilient.

In the last 15 years, advocates, policy experts, and state-level housing officials have been educating key stakeholders about the issue and discouraging the use of such zoning restrictions. Local master plans and housing plans that I reviewed in my 2018 study frequently mentioned that age-restrictions and bedroom restrictions may be in conflict with fair housing laws. There has been a slow-down in adoption of age and bedroom restrictions in zoning, but they remain widespread on the

books. And as I mentioned, as recently as 2015-2017, a quarter of municipalities granted permits for age-restricted housing, likely because the region's regulatory system systematically favored age-restrictions for multi-family housing.

This leads to my worry that prohibiting age-restricted and bedroom-restricted zoning, as discriminatory against families with children, would result in less permitting of multi-family housing, as opposed to liberalization of family-suitable multi-family housing. Age-restricted and bedroom-restricted zoning has been a pressure valve for a system straining from over-restriction of multi-family housing development in general.

The MBTA Communities zoning law addresses my worry by requiring municipalities served by the MBTA to zone for multi-family housing, without the added restrictions. The law leaves no option for municipalities to close the zoning gates against all multi-family development.

It is in the context of the region's housing shortage and widespread multi-layered restrictions against multi-family housing that Massachusetts adopted the MBTA Communities zoning law in 2021. The new law mandates that municipalities zone to allow transit-oriented multi-family housing "suitable for families with children." The state-issued implementation guidelines for the law define suitability to mean that the zoning for multi-family housing in complying districts cannot "limit or restrict the size of the units, cap the number of bedrooms, the size of bedrooms, or the number of occupants, or impose a minimum age of occupants."

My surveys did not cover zoning restrictions on the size (square footage) of dwelling units. Size restrictions have been less common than bedroom and age restrictions. Zoning reformers have been considering capping the size of units because smaller units tend to be priced more moderately, all things being equal, and may be more carbon-efficient. On the other hand, if municipalities cannot use age restrictions and bedroom restrictions to limit the occupancy of children in new buildings, they might turn to unit size restrictions to game the law's intent; hence, the implementation guidelines prohibit their use.

The MBTA Communities zoning law requires complying zoning to be “as-of-right,” which means that permitting of projects is non-discretionary. In as-of-right zoning, the municipal building department issues building permits based on compliance with promulgated zoning rules. If the zoning does not include bedroom or age-restrictions, and the zoning for multi-family housing is as-of-right, then the builder can build to meet market demand; the builder will not need to bend construction plans to address local preferences about what kinds of households the new housing should accommodate. (Note that inclusionary zoning is consistent with MBTA Communities, so municipalities can require inclusion of affordable units in new developments.)

Without the zoning restrictions related to age and bedrooms, developers can still build studio apartments and age-restricted housing. Restriction of age-restricted zoning does not imply any restriction on age-restricted development. When we say that zoning cannot include bedroom restrictions, we are not restricting the development of studio apartments, one-bedroom units, or two-bedroom units. Instead, we are allowing property owners to assess the market, and build to meet it. In other words, if studio apartments and age-restricted homes are relatively profitable, they will be built. If three-bedroom apartments without age restrictions are relatively profitable, they will also be built.

MBTA Communities zoning reform will enable more family-suitable developments to get greenlights. This is good because we should care that all families have access to stable, appropriate housing. It is also fair, reflecting our country’s values, as expressed in the Fair Housing Act. When everyone is well housed, we are all better off.

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