



# Zoning & Planning Committee Report

## City of Newton In City Council

**Wednesday, March 29, 2023**

Present: Councilors Crossley (Chair), Albright, Wright, Leary, Baker, Krintzman, and Ryan

Absent: Councilor Danberg

Also Present: Councilors Kalis, Greenberg, Lucas, Markiewicz, Laredo, Malakie, Humphrey, Downs, Norton, and Oliver

City Staff: Barney Heath, Director of Planning; Jennifer Caira, Deputy Director of Planning; Zachary LeMel, Chief of Long Range Planning; Joseph Iadonisi, Planning Associate; Olivia James, Community Engagement Specialist; Jack Lovett, Executive Administrator; Andrew Lee, Assistant City Solicitor; Jonathan Yeo, Chief Operating Officer; and Jaclyn Norton, Committee Clerk

Planning Board Members: Amy Dain, Kevin McCormick and Peter Doeringer

For more information regarding this meeting, a video recording can be found at the following link: [Zoning & Planning Committee March 29, 2023 \(newtv.org\)](https://www.newtv.org/Zoning-Planning-Committee-March-29-2023)

**#39-22      Requesting discussion on state guidance for implementing the Housing Choice Bill**

COUNCILOR CROSSLEY on behalf of the Zoning & Planning Committee requesting discussion on state guidance for implementing the Housing Choice element of the MA Economic Development legislation. (formerly #131-21)

**Action:**      **Zoning & Planning Held 6-0 (Councilor Albright Not Voting)**

**Note:**      This item was discussed concurrently with #38-22.

**Chair's Note:** *Utile and staff will join the committee to present the MBTA communities compliance tool and discuss the degree to which the VCOD proposal to date satisfies the requirements, as well as how certain changes to the metrics or mapping of the VCOD impacts compliance.*

**#38-22 Discussion and review relative to the draft Zoning Ordinance regarding village centers**

ZONING & PLANNING COMMITTEE requesting review, discussion and possible ordinance amendments relative to Chapter 30 zoning ordinances pertaining to Mixed Use, business districts and village districts relative to the draft Zoning Ordinance. (formerly #88-20)

**Action:** **Zoning & Planning Held 6-0 (Councilor Albright Not Voting)**

**Note:** The chair explained that we are taking up two items in one conversation, to understand how well the version 1 VCOD proposal meets the MBTA compliance requirements. She introduced Director Barney Heath, Deputy Director Jennifer Caira, Deputy Director of Planning, Chief of Long-Range Planning Zachary LeMel, Attorney Andrew Lee, and consultants from Utile Architecture and Planning Will Cohen and Tim Love; and Nathan Carlucci, MBTA Communities Compliance Coordinator at the Department of Housing and Community Development (DHCD).

Ms. Caira and Will Cohen led the presentation (see attached presentation). Ms. Caira stated that for the purpose of this exercise, progress towards compliance was calculated assuming Version 1.0 of the VCOD (Village Center Overlay District) text and maps, using the DHCD Compliance tool. Recent conversations in committee that suggest changes to the version 1 metrics and maps were not input, with **one important exception:** revised VC1 metrics for VCOD zones were used, which would allow only 1500 sf footprints at 2.5 stories, and a maximum of four units per parcel.

**The Law.**

The MBTA Communities law, Section 3A of MGL Ch. 40A, requires communities with MBTA access to have at least one zoning district “of reasonable size” that permits multi-family development by-right, at a minimum overall density of 15 units per acre. “By-Right” means that a property owner must meet the requirements and specific controls set within the district and which apply across the community, but which compliance can be approved without further discretionary review. It is however noted that site plan review, including design review can be required as long as it complies with the [Section 3A Guidelines](#) from DHCD.

Attorney General Campbell has issued an Advisory stating that compliance is mandatory, that noncompliance can bring action from the AGs office, and that there are financial penalties for non-compliance include denying access to several sources of state funding, as noted (see attached). Multiple Councilors tried to distinguish between the statute and the specific rules in the DHCD Guidelines. It was noted that the Guidelines are the regulatory framework necessary

to define what is meant in the statute by a “district of reasonable size”. Attorney Lee stated that all requirements in the Compliance Guidelines should be treated as law.

### **Achieving Compliance.**

The MBTA compliant District may comprise multiple sub districts, such as VC1, VC2, VC3, and any other district we may define, as long as in the aggregate, the following requirements are met:

#### **In the Law:**

- The aggregate gross density of the district overall achieves 15 units per acre minimum, as clearly stated in the Law;
- the zoning standards for the district have no restrictions on age or number of bedrooms, and
- ground floor commercial uses are not required (although these may be allowed and incentivized).

#### **In the Guidelines** (that must define “a district of reasonable size”):

- 90% of the land area is located within a ½ mile of a Commuter Rail or Green Line Station;
- Total unit capacity must enable at least 8,330 units;
- 50% of the total land area is contiguous;

Multiple Councilors expressed concerns about the prohibition on requiring ground floor commercial, noting how this could seriously reduce the unit count toward compliance, or worse, that eliminating a requirement for commercial use in central business districts could compromise the vitality of our business centers, as we most want the housing that is within walking distance of goods and services. In response, Mr. Carlucci noted that this prohibition is made explicit in the statute, not in the regulations, and would therefore require a legislative amendment to change. A few councilors and the mayor’s office have been reaching out to the new Lt. Governor and our state delegation to see what can be done. Jonathan Yeo, Chief Operating Officer, indicated that the administration would be willing to work with Councilors in advocating for a change that would allow required ground floor commercial development to count. Meanwhile, several councilors urged that we go forward and solve the puzzle as though this will not change, as staff and Utile have been doing.

### **Total Land Area and Percent Contiguous**

The minimum size of the district for every MBTA community must be greater than or equal to 50 acres. However, Mr. Cohen and Ms Caira made clear that in Newton the District must be must larger in order to accommodate reasonable scale. Mr. Cohen stated that the total land area for the districts entered into the compliance model in this test case for village centers, which so far enables only 3500 units, is already 170 acres. Multiple Councilors agreed with Mr. Cohen on the need to connect some village centers to help solve the contiguity requirement.

### **Percent Located Within Station Area**

For Newton to comply with this regulation at least 90% of the district land area must be within ½ mile of a Commuter Rail or Green Line stations. The remaining 10% of the district can be outside of these station areas. When asked by a Councilor how the ½ mile was measured Mr. Cohen stated that the center point was the point where the transit stop is identified in a GIS map from MassDOT, and that this and other underlying data is provided to municipalities by DHCD. A map of Newton with all Commuter Rail and Green Line stops was presented that displayed a ¼ and ½ mile radius for each stop.

A Councilor asked if the Department and Utile were working on including T stops with no VCOD zoning in future map iterations. Ms. Caira said yes, and reminded that this test case tonight is only to see how far the VCOD districts in version 1, when applied to village centers that have public transit, would go toward meeting compliance. She stated that the team is looking at all options to reach compliance. Multiple Councilors advocated that this new zoning be equitably spread across the various MBTA stops to ensure this increased by-right development isn't focused in a certain part of the city. Ms. Caira also noted that publicly owned land and land owned by an educational institution may not count toward compliance. Publicly owned surface parking lots can count if there is a clear intent to dispose of that land. DHCD will be issuing guidance on that soon, and Mr. Carlucci welcomed the city to discuss this further before such guidance is issued.

### **Aggregate Gross Density**

The District used for compliance must achieve a minimum density of 15 units per acre. Ms. Caira clarified that subdistricts can have less density as long as the district as a whole meets this density requirement. Version 1 of the VCOD with the revised VC1 metrics currently achieves a total estimated aggregate gross density of 22 units/acre. When broken down VC1 achieves only 12 units/acre, VC2 achieves 23 units/acre, and VC3 achieves 32 units/acre. The current metrics for VC1 makes it very difficult to expand VC1 to reach compliance as it would decrease the total aggregate gross density.

### **Unit Capacity**

For Newton to comply, we must create an "overlay" (optional) district that allows for a unit capacity of 8,330 units. That is, the zoning must enable that many units to be built over time according to a clear set of rules that can be reviewed for compliance without requiring a special permit. The city is not required to build the units.

Director Heath clarified that nothing built counts; existing buildings may contain more or fewer units than what the zoning allows, but only what the zoning allows on paper is counted toward compliance. Mr. Cohen clarified that the size of a unit in the model is 1,000 sf which is a standard size in urban planning. During the presentation, it was noted by Ms. Caira that for VC1 only the new construction option can count towards this total unit capacity.

When the VCOD version 1 is put into the compliance model the total unit capacity is 3,500 units. Mr. Love noted that parking minimums have a significant impact on this unit capacity. A

Councilor asked if it would be possible to create new zones, for existing large parcels, including some that have already been granted special permits, to help increase the unit. Ms. Caira noted that this is possible, but reiterated that this development would need to be by-right to count towards compliance. Regarding a Councilors question on the height and footprint bonus for increased affordability, it was described that the additional units caused by the bonus could not be counted.

**Conclusion**

To aid compliance within the village center districts, multiple strategies are being considered. These strategies include a reduction or elimination of on-site parking minimums, increasing the lot size that triggers the special permit threshold, expanding the VC1 district, removing all city-owned and unwieldy sites, and removing or adjusting rules on priority streets for active first floor commercial uses. The Planning Department and Utile will work together to see how each of these strategies affects progress toward compliance and provide the Committee with an update once they have more information.

Committee members voted 6-0 (Councilor Albright Not Voting) on a motion to hold from Councilor Baker.

The meeting adjourned at 9:51 pm.

**Respectfully Submitted,**

**Deborah J. Crossley, Chair**

City of Newton  
Zoning & Planning Committee



# Village Center Rezoning Phase 4: MBTA Communities Update

March 29, 2023

## Agenda

1. Overview of new regulation
2. Current analysis
3. Strategies for compliance
4. Next Steps

# Introduction to the Statute

- Also known as “Section 3A” (*Mass. General Laws c.40A §3A*)

- Requires communities with MBTA access to have at least one zoning district which permits

**3+ units** ← **multi-family** development **as of right** →

*“development may proceed without the need for a special permit, variance, amendment, waiver, or other discretionary approval”*

- Site plan review may be required ... within the parameters established by the applicable case law. Site plan approval may regulate matters such as vehicular access and circulation on a site, architectural design of a building, and screening of adjacent properties. Site plan review should not unreasonably delay a project nor impose conditions that make it infeasible or impractical to proceed with a project that is allowed as of right and complies with applicable dimensional regulations. (<https://www.mass.gov/info-details/section-3a-guidelines>)

# What this means for Newton

### District(s) size

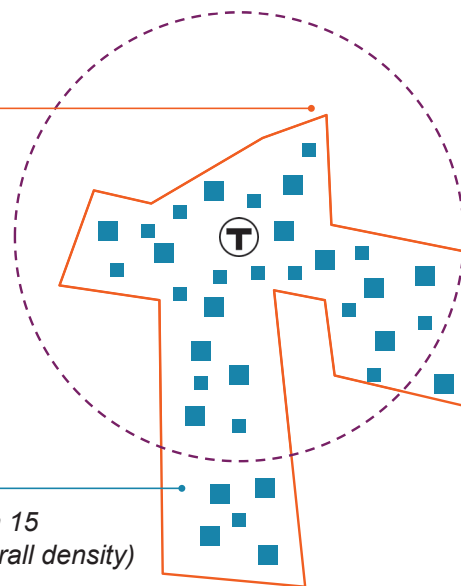
- ≥ 50 acres (*can be split across multiple districts*)  
(*regardless of the size, 50% of the total district needs to be in one contiguous district*)

### District location(s)

- ≥ 90% of district land area within ½ mile of Commuter Rail or Green Line stations
- Up to 10% of district(s) land area(s) can be outside the station areas

### District density

- ≥ 15 units per acre (*subdistricts can be less dense than 15 units/acre as long as the districts as a whole hit this overall density*)



# Criteria for compliance

## 1A. District Shape, Size, and Density

- Contiguity standards- 50% of land area in one contiguous district, all districts at least 5 acres
- Minimum district(s) area
- Gross Density requirement

## 1B. Zoning Standards

- Setbacks, height limits, parking requirements, etc. allowed
- No age restrictions
- No *required* ground floor commercial
- No restrictions on # of bedrooms, size of bedrooms, # of occupants

## 2. Multi-Family Unit Capacity

8,330 unit capacity

This is simply a zoning capacity - not a requirement to *build* a certain number of units

# Clarifying information

## 1. Can we still require a Special Permit?

As long as a multi-family district meets the minimum requirements of by-right unit capacity (8,330 multi-family units), minimum gross density (15 units per acre), and minimum district size (50 acres), there is nothing prohibiting requiring a special permit above a certain unit threshold. Version 1 of this zoning requires a special permit for development on parcels greater than 30,000 square feet. Raising this threshold accordingly would increase the unit capacity.

## 2. Is a district that allows or requires mixed use acceptable?

Commercial and other uses can be permitted and encouraged, *but not required* in a multi-family zoning district that counts toward the unit capacity requirements. Version 1.0 of this zoning incentivized ground floor commercial in the VC3 district. Planning is proposing instead in version 2.0 to require ground floor commercial along designated mixed-use priority streets. These areas would no longer count towards unit capacity.

## 3. How would historic districts or landmarks within a multi-family district be impacted?

The statute does not make any changes to existing historic protections. Local historic districts and the Newton Historical Commission currently have jurisdiction over by-right development and will continue to do so.

## 4. Can we still require affordable housing in a by-right district?

DHCD issued updated guidelines in October 2021 allowing communities to require more than 10% affordability that income levels less than 80% AMI, as long as economic feasibility is demonstrated. This should permit Newton to apply existing affordability requirements (generally 17.5% at an average of 65% AMI). (<https://www.mass.gov/info-details/summary-of-1021-revisions-to-section-3a-guidelines>)



Overview of new regulation

# Attorney General's Advisory

## Town and City Obligations Under State Law

*"Compliance with the MBTA Communities Zoning Law is not only mandatory, it is an essential tool for the Commonwealth to address its housing crisis along with our climate and transportation goals," said AG Campbell.*

Failure to comply with the Housing Choice Law may result in:

- Civil enforcement action or liability under Federal and State fair housing laws, as well as State antidiscrimination law
- Loss of funds from the Housing Choice Initiative
- Loss of funds from the Local Capital Project Fund
- Loss of funds from the MassWorks Infrastructure Program

## Current Analysis

- Calculation Methods & Definitions
- Citywide Map
- Total Unit Capacity & Land Area
- Aggregate Gross Density

Current Analysis

# Calculation Methods & Definitions

“Gross Density” =  $\frac{\text{Zoned Unit Capacity}}{\text{Gross Density Denominator}}$

- Determined by compliance model using size of districts, size of parcels, and zoning requirements (building heights, building footprints, open space requirements, parking, etc.)
- Total District Area MINUS the area of any of the following: *Hydrology, wetlands, Title 5 setbacks, Surface Water Protection Zone A areas, and Wellhead Protection Zone 1 areas*

### How did the State calculate our minimum multi-family unit capacity?

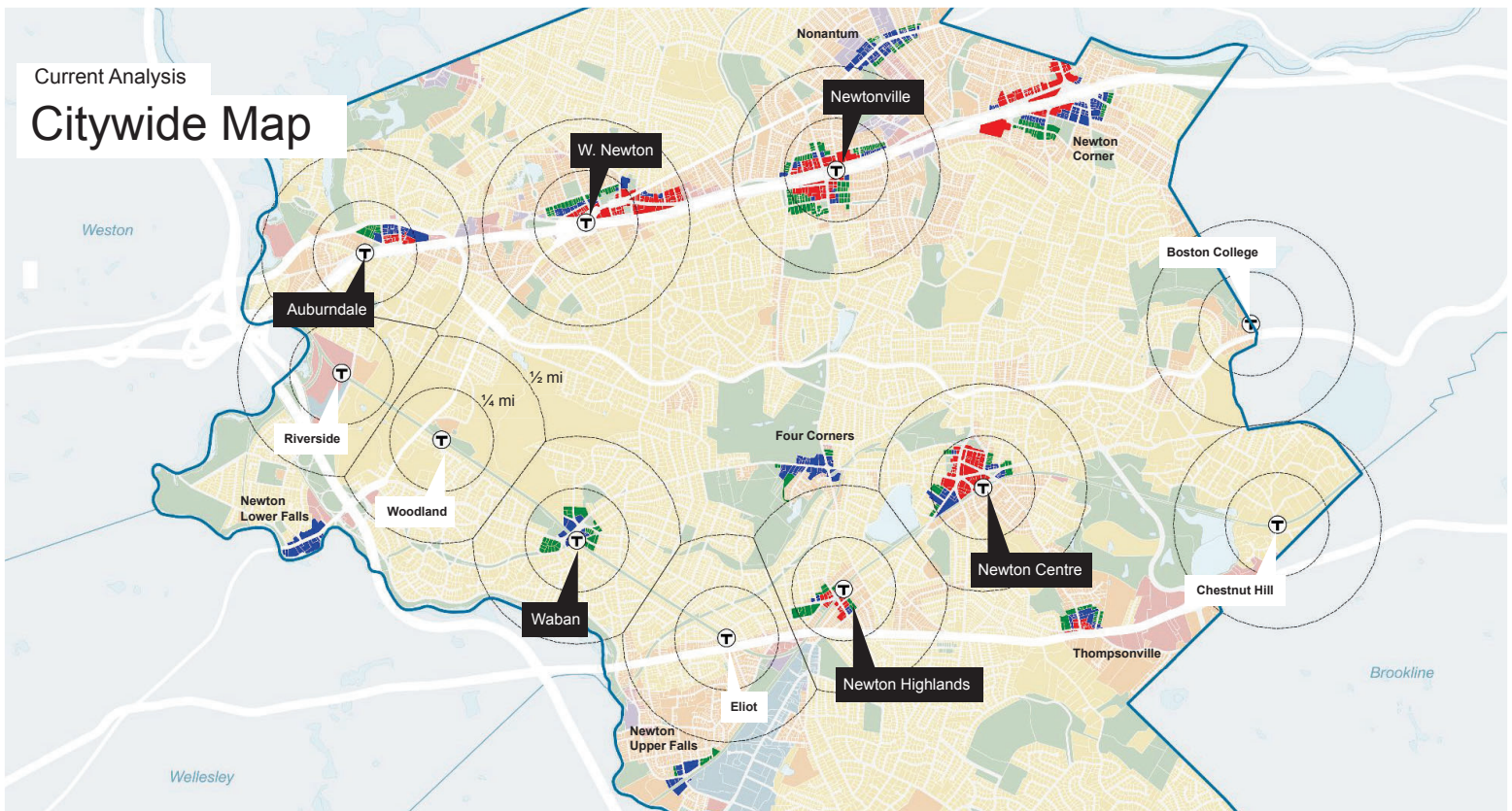
- “Minimum multi-family unit capacity for most communities will be based on the 2020 housing stock and the applicable percentage for that municipality’s community type. In some cases, the minimum unit capacity is derived from an extrapolation of the required minimum land area multiplied by the statutory minimum gross density of 15 dwelling units per acre. In cases where the required unit capacity from these two methods would exceed 25% of the community’s housing stock, the required unit capacity has instead been capped at that 25% level.”  
<https://www.mass.gov/info-details/multi-family-zoning-requirement-for-mbta-communities>

### How did the State calculate our minimum district size?

- “Minimum land area is 50 acres for all communities in the rapid transit, commuter rail and adjacent community types. There is no minimum land area requirement for adjacent small towns. Where 50 acres exceeds 1.5% of the developable land area in a town, a cap has been instituted that sets minimum land area to 1.5% of developable land area in the town.”  
<https://www.mass.gov/info-details/multi-family-zoning-requirement-for-mbta-communities>

### What is “developable” vs. “excluded” land?

- “Developable land” means land on which multi-family housing can be permitted and constructed. For purposes of these guidelines, developable land consists of: (i) all privately owned land except lots or portions of lots that meet the definition of excluded land, and (ii) developable public land.
- “Excluded land” means land areas on which it is not possible or practical to construct multifamily housing. For purposes of these guidelines, excluded land is defined by reference to the ownership, use codes, use restrictions, and hydrological characteristics in MassGIS and consists of the following: 1. All publicly-owned land, except for lots or portions of lots determined to be developable public land. 2. All rivers, streams, lakes, ponds and other surface waterbodies. 3. All wetland resource areas, together with a buffer zone around wetlands and waterbodies equivalent to the minimum setback required by title 5 of the state environmental code. 4. Protected open space and recreational land that is legally protected in perpetuity (for example, land owned by a local land trust or subject to a conservation restriction), or that is likely to remain undeveloped due to functional or traditional use (for example, cemeteries). 5. All public rights-of-way and private rights-of-way. 6. Privately-owned land on which development is prohibited to protect private or public water supplies, including, but not limited to, Zone I wellhead protection areas and Zone A surface water supply protection areas. 7. Privately-owned land used for educational or institutional uses such as a hospital, prison, electric, water, wastewater or other utility, museum, or private school, college or university. <https://www.mass.gov/doc/compliance-model-user-guide/download>



Current Analysis

# Total Unit Capacity

	Newtonville (District 1)			West Newton (District 2)			Newton Highlands (District 3)			Waban (District 4)		Auburndale (District 5)			Newton Centre (District 6)			
	VC3	VC2	VC1	VC3	VC2	VC1	VC3	VC2	VC1	VC2	VC1	VC3	VC2	VC1	VC3	VC2	VC1	Total
Unit Capacity	300	300	350	650	200	100	150	100	40	200	100	100	200	40	400	250	50	~3,500 units
Land Area (acres)	60			40			10			20		10			30			170 acres

➔ **8,330 units req'd**

Notes:

- VC1 is capped at 4 units/lot
- VC2 and VC3 do not have a unit cap per lot
- Development is only allowed as-of-right on lots less than 30,000 sq. ft. Lots larger than this limit have been removed from this analysis because only development permitted as-of-right may be counted toward the MBTA Communities requirements

Current Analysis

# Total Land Area (50% must be contiguous)

	Newtonville (District 1)			West Newton (District 2)			Newton Highlands (District 3)			Waban (District 4)		Auburndale (District 5)			Newton Centre (District 6)			
	VC3	VC2	VC1	VC3	VC2	VC1	VC3	VC2	VC1	VC2	VC1	VC3	VC2	VC1	VC3	VC2	VC1	Total
Unit Capacity	300	300	350	650	200	100	150	100	40	200	100	100	200	40	400	250	50	~3,500 units
Land Area (acres)	60			40			10			20		10			30			170 acres

**85 acres must be contiguous**

Notes:

- VC1 is capped at 4 units/lot
- VC2 and VC3 do not have a unit cap per lot
- Development is only allowed as-of-right on lots less than 30,000 sq. ft. Lots larger than this limit have been removed from this analysis because only development permitted as-of-right may be counted toward the MBTA Communities requirements

# Aggregate Gross Density

- The VC2 and VC3 districts' high gross density make up for the lack of density in VC1.
- Adjusting the district boundaries to ensure contiguity and including corresponding rights-of-way may reduce the overall density.
- These preliminary calculated densities suggest that with some refinement, we can get the zoning districts to an overall gross density of 15 units/acre.

	VC1	VC2	VC3	Total
Land Area (acres)	55	55	50	160 acres
Total Units	680	1250	1600	3,530 units
Gross Density (est.)	~12 units/acre	~23 units/acre	~32 units/acre	~22 units/acre

Some districts can be less dense than 15 units/acre as long as all districts, in total, meet 15 units/acre

# Version 1.0 VCOD Does Not Meet MBTA Compliance

## MBTA Compliance Summary (rounded)

	MBTA Requirements (min.)	Version 1.0 VCOD Results	MBTA Compliant
Unit Capacity	8,330 units	3,500 units	NO
Aggregate Gross Density	15 units/acre	22 units/acre	YES
Total Land Area	50 acres	170	YES
% of District to be Located in Station Area	90%	100%*	YES
% of Contiguous Land for Multi-Family Zoning District(s)	505%	35%**	NO

Notes:  
 \* Only VCOD zones within station area were tested  
 \*\* Newtonville is the largest contiguous VCOD and is used as the contiguous percentage

Must meet every requirement to reach compliance

# Strategies for Compliance

Potential next steps to explore

## Potential strategies to consider for compliance

- Reduce or eliminate parking minimums
- Raise SP threshold to add more sites to the by-right inventory
- Add additional area to the VC1 district, potentially with another commercial by-right option
- Remove all city-owned and other unwieldy sites that are depressing the density counts
- Remove or adjust rules on priority streets where commercial ground floor is highly desired