



March 30, 2022

Michael Kennealy, Secretary, Executive Office of Housing and Economic Development  
Jennifer Maddox, Undersecretary, Department of Housing and Community Development  
1 Ashburton Place  
Room 2101  
Boston, MA 02108

RE: Comments on Draft Compliance Guidelines for Multifamily Districts Under Section 3A of the Zoning Act

Dear Secretary Kennealy and Undersecretary Maddox,

Thank you for the leadership that you and the entire Baker Administration have shown in signing and implementing legislation that requires MBTA communities to permit multifamily zoning by right. We appreciate the extensive outreach you have done to get input from key stakeholders - including MACDC and our members, in both the creation of the draft guidelines and in getting the word out about them so that they are well understood. We write today to offer MACDC's comments on the Draft Guidelines.

MACDC agrees that all MBTA communities should contribute to the production of new housing and agrees that areas with safe and convenient transit access are particularly appropriate for multifamily housing. Requiring MBTA communities to allow multifamily zoning by right will, over the long run, increase the supply of housing, which in turn will reduce the competition for existing homes and help to moderate rents and home prices across the region. It also provides an opportunity for community-based organizations, housing advocates, community residents and others to advocate for smart local zoning regulations that comply with the law's requirements, achieve important local land use and community planning objectives, and hopefully go beyond the law's requirements by mandating affordable housing units in these new zones.

We are pleased that the Draft Guidelines state that, in addition to a non-compliant MBTA community not being eligible for funds from the three grant programs identified in the law, "DHCD may, in its discretion, take non-compliance into consideration when making other discretionary grant awards." We encourage DHCD to further define these other discretionary grant programs, and explicitly state that non-compliant communities will be at a competitive disadvantage when applying for these other grant programs. Furthermore, we note that Secretary Kennealy, in your presentation to MACDC's Members on March 2<sup>nd</sup>, emphasized that the language in the statute, which is included in the first page of the Draft Guidelines, reads that an MBTA community "shall" have at least one such zoning district. However, just below the statute language, the next sentence in the Draft Guidelines reads as follows: "The purpose of Section 3A is to encourage MBTA communities to adopt zoning districts where multi-family zoning is permitted as of right, and that meet other requirements set forth in the statute." Consistent with the statute, we suggest that, in this sentence, DHCD substitute the word "require" for the word "encourage". This will reinforce that adoption of such a zoning district, irrespective of eligibility or competitiveness for other State resources, is a legal requirement.

We also believe that the Guidelines should explicitly include principles to advance racial equity and take this opportunity to redress longstanding housing policy and practices that have excluded many people, especially people of color and lower income households, from living in certain places in the Commonwealth. In fact, the exclusionary zoning that exists, today, in many communities, reinforces the residential segregation that came about due to discriminatory policies and practices over many decades. MACDC believes the guidelines should provide communities with the tools to zone for affordable units and larger units suitable for families to meet the most pressing needs in the housing field and to make a significant dent in the region's segregation by race and income.

To that end, we offer the following recommendations:

- The guidelines should provide incentives for communities to adopt inclusionary zoning, or establish Chapter 40R districts, for their qualifying district or sub-districts. Such incentives are essential to ensure that everyone has a chance to live in these desirable locations near transit. Indeed, low-and moderate-income people are more reliant on public transit and often need these locations the most! We do not want to see transit-oriented locations being limited to upper income households which will either mean that lower income families will have to live further away or in a completely different municipality.

While multi-family housing is generally less expensive than large single-family homes, there are countless examples of multi-family buildings demanding extremely high rents or home prices when they are in good locations and include extra amenities. Moreover, the new zoning laws will inevitably increase land values making it even harder for affordable housing developers to acquire sites within these zones, potentially forcing such developers toward sites further away from transit. Creating new exclusive communities near transit would run directly counter to the goals of this legislation. Therefore, we urge you to create a significant incentive for cities and towns to adopt inclusionary zoning requirements, or establish Chapter 40R districts, which require affordability within these new zoning districts. We suggest a couple of options for achieving this goal.

- Give extra weight to deed-restricted affordable housing units when calculating required unit capacity. For example, in districts where affordable units are required, a unit zoned to serve households at or below 80% of Area Median Income (AMI) could count as, say, 1.5 units toward minimum unit capacity, while a unit zoned to serve households at or below 50% or 60% of AMI could count as 2 units.
  - Another strategy would be to allow municipalities to reduce the size of the multifamily zoning district by a percentage equivalent to the percentage of affordability for households with incomes at or below 60% of AMI.
  - In either case, there should be an upper limit on these incentives so that inclusionary zoning requirements of 10-15 percent are encouraged but exorbitant requirements that will prevent all new housing from being built are not.
- While the guidelines stipulate districts cannot include age restrictions or place limits on the size of units, number and size of bedrooms, or number of occupants, the guidelines should also address other zoning barriers to multi-bedroom units. We recommend that the guidelines not allow

minimum parking requirements, or at the very least state that district parking regulations cannot require parking spaces in excess of one parking space per unit, regardless of the number of bedrooms.

- We agree with the statement in the draft guidelines that “Reasonable size” of the multifamily district is a relative rather than an absolute determination. In that vein, we recommend that you consider reducing the minimum acreage from 50 acres to 25 acres to allow smaller districts more appropriate for small, slow-growth communities, while requiring districts to contain a minimum number of developable parcels in order to ensure multiple options for developers. This would prevent sprawling patterns of development and encourage more compact village style development.
- The guidelines should establish a methodology for EOHEd and DHCD to monitor the extent to which site plan review is being used to slow or otherwise thwart development and revisit the guidelines in two to three years if there is need to remedy this. A municipality disinclined towards housing production could potentially use this tool to impose undue conditions on development, rather than to ensure development meets a community’s reasonable design goals.
- The law provides an opportunity for local discussions about the types of housing most needed: housing affordable to low-income households, and housing suitable for families with children. To facilitate this, the State should provide/support:
  - Training, which MHP is well situated to provide, for municipal officials on tools and strategies to encourage affordable housing; and
  - Small grants to community-based organizations to provide them with resources so they can advocate locally for affordable and family-friendly housing.
  - Section 9 of the Draft Guidelines: Determination of Compliance, describes the process for DHCD in making determinations of full compliance and interim compliance. It is important that, in creating and implementing action plans, and in adopting zoning amendments, that each MBTA community makes a good faith effort to solicit and consider input from all community stakeholders. DHCD should insert language, in the appropriate sub-sections of Section 9, that demonstrating such a good faith effort is a requirement for achieving compliance.

We view the new multifamily zoning requirements as significant in ensuring communities permit multifamily housing. These changes in zoning are necessary, but not sufficient. The Commonwealth must incentivize the production and preservation of affordable housing, by providing additional incentives and resources to communities which are proactive in incorporating affordability in their zoning districts, and to community-based organizations who are advocating for inclusion of affordability requirements in their multifamily zoning districts.

If you any questions or want additional information, feel free to reach out to me at 617-379-5922, or at [joek@macdc.org](mailto:joek@macdc.org).

Sincerely,

A handwritten signature in blue ink, appearing to read "Joe Kriesberg". The signature is fluid and cursive, with the first name "Joe" and the last name "Kriesberg" clearly distinguishable.

Joseph Kriesberg, President

Cc: Clark Ziegler, MHP  
Don Bianchi, MACDC