



**PLANNING BOARD**  
P.O. Box 1305  
Littleton, Massachusetts 01460

received  
Tim Bell 4/17/24

April 17, 2024

Town Clerk Diane Crory

RE: MBTA Communities Zoning Bylaw Amendment

The Planning Board will hold a Public Hearing on May 2, 2024 regarding this Zoning Bylaw Amendment proposal.

**ARTICLE 13**  
**Planning Board**  
**Amend Zoning Bylaw**  
**MBTA Communities Zoning Bylaw and Zoning Map Amendment**  
*[Majority Vote]*

To see if the Town will vote to amend Chapter 173, the Zoning Bylaws, by:

1. Inserting in Section 173-22A(1) immediately below the existing entry for the Residence District (R), a new entry for the Littleton Station MBTA Communities Multi-family District (LSMFD).
2. Adding a new Article XXXIII, entitled Littleton Station MBTA Communities Multi-family District, as follows:

**Article XXXIII Littleton Station MBTA Communities Multi-family District**

**§ 173-247. Purpose.**

The purpose of the Littleton Station MBTA Communities Multi-family District (LSMFD) is to allow multi-family housing as of right in accordance with Section 3A of the Zoning Act (Massachusetts General Laws Chapter 40A). This zoning provides for as of right multi-family housing to accomplish the following purposes:

- A. Encourage the production of a variety of housing sizes and types to provide equal access to new housing throughout the community for people with a variety of needs and income levels;
- B. Locate “missing middle” housing adjacent to the Foster Street Commuter Rail Station to promote general public health, reduce the number of vehicular miles travelled, support economic development, and meet community-based environmental goals, including reducing greenhouse gases and improving air quality;
- C. Encourage connections between the commuter rail station and a community multi-use (pedestrian and bicycle) path;
- D. Increase the municipal tax base through private investment in new residential developments; and
- E. Promote recommendations of the Littleton Master Plan and the Littleton Station Village Vision Plan.

**§ 173-248. Applicability.**

- A. This LSMFD is an overlay district having a land area of approximately 30.1 acres in size that is superimposed over the underlying zoning district(s) and is shown as the Boundary of the Littleton Station MBTA Communities Multi-family Overlay District on the plan dated April 18, 2024.
- B. An applicant may develop multi-family housing located within this LSMFD in accordance with the provisions of this Article XXXIII.
- C. Underlying Zoning. The LSMFD is an overlay district superimposed on underlying zoning districts. The regulations for use, dimension, and all other provisions of the Zoning Bylaw governing the respective underlying zoning district(s) shall remain in full force, except for uses allowed as of right in the LSMFD. Uses that are not identified in Article XXXIII are governed by the requirements of the underlying zoning district(s).
- D. The benefits and obligations of the zoning bylaw shall apply only to proposals for development on those parcels located entirely within the boundary of the LSMFD. Except as specifically provided for in this Article, the following sections of this Chapter do not apply to real property located within the LSMFD:
  - (1) Article VI Intensity of Use Regulations
  - (2) §173-16 et. seq. Site Plan Review
  - (3) § 173-32 Parking Requirements

- (4) § 173-43 Screening
- (5) Article XIX Open Space Development
- (6) Article XX Shared Residential Driveways
- (7) Should the provisions of this Article conflict with those found elsewhere in this Chapter, the provisions of this Article shall apply.

**§ 173-249. Definitions**

For the purposes of this Article XXXIII only, the following definitions apply:

- A. ACCESS DRIVE, PRINCIPAL – The paved way that allows vehicular access from the public street to buildings, driveways, and parking areas on the lot. The primary access drive may be constructed on an easement or as a subdivision way.
- B. APPLICANT – A person, business, or organization that applies for a building permit, or Site Plan Review, or Special Permit.
- C. AS OF RIGHT – Development that may proceed under the Zoning in place at time of application without the need for a special permit, variance, zoning amendment, waiver, or other discretionary zoning approval.
- D. BUILDING – A structure with a roof and walls and used or intended for supporting or sheltering any use or occupancy.
- E. DEVELOPMENT STANDARDS – Provisions of § 173-255. General performance standards and criteria made applicable to projects within the LSMFD.
- F. LOT – A continuous parcel of land, in single or joint ownership, with legally definable boundaries. A lot may be accessed by frontage on a public right-of-way, a subdivision way, or access easement.
- G. IMPERVIOUS SURFACE – The percentage of lot area covered by buildings, structures, roofs, and impervious paving.
- H. MULTI-FAMILY HOUSING – A building with three or more residential dwelling units or two or more buildings on the same lot with more than one residential dwelling unit in each building.
- I. MULTI-FAMILY ZONING DISTRICT – A zoning district, either a base district or an overlay district, in which multi-family housing is allowed as of right.
- J. PARKING, STRUCTURED – A building in which vehicle parking is accommodated on multiple stories; a vehicle parking area that is underneath all or part of any story of a building; or a vehicle parking area that is not underneath a building, but is entirely covered, and has a parking surface at least eight feet below grade. Structured Parking does not include surface parking or carports, including solar carports.
- K. PARKING, SURFACE – One or more parking spaces without a built structure above the space. A solar panel and/or bike parking designed to be installed above a surface parking space does not

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count as a built structure for the purposes of this definition and may be permitted by Site Plan approval.

L. RESIDENTIAL DWELLING UNIT – A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

M. SECTION 3A – Section 3A of the Zoning Act.

N. SITE PLAN REVIEW AUTHORITY – The Littleton Planning Board shall be the Site Plan Review Authority.

**§ 173-250. Permitting.**

Site plan review by the Planning Board is required for the creation of, addition to, or substantial alteration of any structure or parking in the LSMFD, subject to § 173-255 General performance standards and criteria and § 173-258 Site Plan Review.

**§ 173-251. Permitted Uses.**

A. Residential

- a. Multi-family housing.
- b. Uses exempt by statute (MGL C. 40 §3)

B. Accessory Uses

- c. Roadside stands (agricultural)
- d. Home occupations
- e. Parking and parking structures in compliance with § 173-32
- f. Signs in compliance with Article VIII
- g. Solar panels installed above one or more parking spaces
- h. Bike storage
- i. Other customary accessory uses to multi-family use, including but not limited to associated infrastructure such as wastewater treatment facilities

C. Within the LSMFD, multiple buildings and multiple uses are permitted on a single lot. A residential building in the LSMFD shall have no more than 12 residential dwelling units.

**§ 173-252. [RESERVED]**

**§ 173-253. Dimensional Requirements.**

Notwithstanding anything to the contrary in this Zoning, the dimensional requirements applicable in the LSMFD are as follows:

- A. The minimum lot area shall be 1 acre.
- B. The minimum lot frontage shall be zero.

- C. The maximum building height is 35 feet or 2.5 stories, whichever is less.
- D. The minimum setback from the front property line is 50 feet. The minimum setback from a side or rear property line is 30 feet.
- E. The maximum Impervious Surface is 50%.
- F. The maximum density shall be six dwelling units per acre.
- G. Exceptions. The limitation on height of buildings shall not apply to roof-top mechanicals, and chimneys, ventilators, towers, silos, spires, or other ornamental features of buildings, which features are in no way used for living purposes and do not constitute more than 25% of the ground floor area of the building. Roof-top mechanicals shall be screened.
- H. Exceptions: Renewable Energy Installations. The Site Plan Review Authority may waive the height and setbacks in this §173-253 to accommodate the installation of solar photovoltaic, solar thermal, living, and other eco-roofs, energy storage, and air-source heat pump equipment. Such installations shall not create a substantial detriment to abutters in terms of noise or shadow and must be appropriately integrated into the architecture of the building and the layout of the site. The installations shall not provide additional habitable space.

#### § 173-254. Off-Street Parking

Except for the parking requirements below, which are applicable to development in the LSMFD, all other provisions of Article VII Parking Requirements apply.

- A. **Number of parking spaces.** The following **maximum** numbers of off-street parking spaces shall be permitted by use, either in surface parking or within garages or other structures. Parking may be located on an adjacent lot provided that the parking is within 400 feet and is subject to appropriate easement language to be recorded at the Registry of Deeds:

Use	Maximum Spaces
Multi-family	1.5 spaces per unit

- B. **Number of bicycle parking spaces.** The following **minimum** numbers of covered bicycle storage spaces shall be provided by use:

Use	Minimum Spaces
Multi-family	0.25 spaces per unit

- C. **Bicycle storage.** Covered bicycle parking spaces shall be provided for no less than half the required bicycle spaces for that building.

#### § 173-255. General performance standards and criteria.

- A. Development standards in the LSMFD are applicable to all multi-family development within the LSMFD. These standards are components of the Site Plan Review process in § 173-258. Site Plan Review.

B. Site Design.

- a. **Connections.** Sidewalks shall provide a direct connection among building entrances to sidewalks, bicycle storage, and parking.
- b. **Vehicular access.** Where feasible, curb cuts shall be minimized, and shared driveways encouraged.
- c. **Screening for Parking.** Surface parking adjacent to a sidewalk shall be screened by a landscaped buffer of sufficient width to allow the healthy establishment of trees, shrubs, and perennials, but no less than 6 (six) feet. The buffer may include a fence or wall of no more than three feet in height unless there is a significant grade change between the parking and the sidewalk.
- d. **Parking Materials.** The parking surface may be concrete, asphalt, decomposed granite, bricks, or pavers, including pervious materials but not including grass or soil not contained within a paver or other structure.
- e. **Plantings.** Plantings shall include species that are native or adapted to the region. Plants on the Massachusetts Prohibited Plant List, as may be amended, shall be prohibited.
- f. **Lighting.** Light levels shall meet or exceed the minimum design guidelines defined by the Illuminating Engineering Society of North America (IESNA) and shall provide illumination necessary for safety and convenience while preventing glare and overspill onto adjoining properties and reducing the amount of skyglow.
- g. **Mechanicals.** Mechanical equipment at ground level shall be screened by a combination of fencing and plantings. Rooftop mechanical equipment shall be screened.
- h. **Dumpsters.** Dumpsters shall be screened by a combination of fencing and plantings. Where possible, dumpsters or other trash and recycling collection points shall be located within the building.
- i. **Stormwater management.** Strategies that demonstrate compliance of the construction activities and the proposed project with the most current versions of the Massachusetts Department of Environmental Protection Stormwater Management Standards, the Massachusetts Stormwater Handbook, Massachusetts Erosion Sediment and Control Guidelines, the Littleton Stormwater Management and Erosion Control Regulations, and an Operations and Management Plan for both the construction activities and ongoing post-construction maintenance and reporting requirements.

C. Buildings: General.

- a. **Entries.** Where feasible, entries shall be clearly defined and linked to a paved pedestrian network that includes the public sidewalk.

D. Structures: Multiple Buildings on a lot.

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- a. Parking and circulation on the site shall be organized to reduce the amount of impervious surface. Where possible, parking and loading areas shall be connected to minimize curb cuts onto public rights-of-way.
- a. A paved pedestrian network shall connect parking to the entries to all buildings and the buildings to each other.
- b. The orientation of multiple buildings on a lot should reinforce the relationships among the buildings. All building façade(s) shall be treated with the same care and attention in terms of entries, fenestration, and materials.
- c. Building(s) with frontage on the street shall have a pedestrian entry facing the street.
- E. **Buildings: Shared Outdoor Space.** Multi-family housing shall have common outdoor space that all residents can access. Such space may be located in any combination of ground floor, courtyard, rooftop, or terrace.
- F. **Buildings: Principal Façade and Parking.** Parking shall be subordinate in design and location to the principal building facade.
  - a. **Surface parking.** Surface parking shall be located to the rear or side of the principal building. Parking shall not be located in the setback between the building and any lot line adjacent to the Public Access Drive.
  - b. **Integrated garages.** The principal pedestrian entry into the building shall be more prominent in design and placement than the vehicular entry into the garage.
  - c. **Parking structures.** Building(s) dedicated to structured parking on the same lot as one or more multi-family buildings shall be subordinate in design and placement to the multi-family building(s) on the lot.
- G. **Design Guidelines.** The Site Plan Review Authority may adopt and amend, by simple majority vote, Design Guidelines which shall be applicable to all rehabilitation, redevelopment, or new construction within the LSMFD. Such Design Guidelines must be objective and not subjective and may only address the scale and proportions of buildings, the alignment, width, and grade of streets and sidewalks, the type and location of infrastructure, the location of building and garage entrances, off street parking, the protection of significant natural site features, the location and design of on-site open spaces, exterior signs, and buffering in relation to adjacent properties. Design Guidelines may contain graphics illustrating a particular standard or definition in order to make such standard or definition clear and understandable.
- H. **Waivers.** Upon the request of the Applicant and subject to compliance with the Compliance Guidelines, the Site Plan Review Authority may waive by majority vote the requirements of this section, § 173-255 in the interests of design flexibility, including topographical changes and overall project quality, and upon a finding of consistency of such variation with the overall purpose and objectives of the LSMFD.

**§ 173-256. Affordability Requirements.**

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- A. **Applicability.** The provisions of Article XXIX: Inclusionary Housing shall apply with the exception listed below. Affordable Units must be restricted in accordance with the metrics below.
- B. **Provision of Affordable Housing.** In Applicable Projects, not fewer than ten percent (10%) of housing units constructed shall be Affordable Housing Units. For purposes of calculating the number of units of Affordable Housing required within a development project, a fractional unit shall be rounded down to the next whole number. The Affordable Units shall be available to households earning income up to eighty percent (80%) of the AMI.

**§ 173-258. Site Plan Review**

- A. **Applicability.** Site Plan Review is required for all projects in the LSMFD. An application for Site Plan Review shall be reviewed by the Site Plan Review Authority for consistency with the purpose and intent of §173-247 through §173-257.
- B. **Other Sections of the Bylaw.** The requirements of Article XVI Wetlands and Floodplain Regulation and Article XIV, Aquifer and Water Resource District shall be incorporated into the Site Plan Review Process, as applicable, and shall not require a Special Permit
- C. **Submission Requirements.** As part of any application for Site Plan Review for a project within the LSMFD submitted under § 173-251 through § 173-257, the Applicant must submit the following documents to the Site Plan Review Authority:
  - a. Application and fee for Site Plan Review.
  - b. Site plans that show the boundaries of the lot(s), existing and proposed topography, position of existing and proposed building(s) on the site, points of vehicular access to and from the site and vehicular circulation on the site and service entries, walkways, stormwater management, utilities, park or recreation areas, and landscape treatments, including any screening of adjacent properties.
  - c. Elevations of the building(s) showing the architectural design of the building.
  - d. All site plans shall be prepared by a certified architect, landscape architect, and/or a civil engineer registered in the Commonwealth of Massachusetts. All landscape plans shall be prepared by a certified landscape architect registered in the Commonwealth of Massachusetts. All building elevations shall be prepared by a certified architect registered in the Commonwealth of Massachusetts. All plans shall be signed and stamped, and drawings prepared at a scale of one inch equals forty feet (1"=40') or larger, or at a scale as approved in advance by the Site Plan Review Authority.
  - e. Narrative of compliance with the applicable design standards of this Article.
- D. **Timeline.** Site Plan Review should begin within 30 days of the submission of a complete application and should be completed expeditiously. The site plan review authority may, when appropriate, seek the input of other municipal boards or officials and any peer review deemed necessary. If the relevant board or official has not provided input within 35 days of the receipt of the application, the Site Plan Review Authority may assume that there is no objection and proceed with the review process. In general, site plan review should be completed no more than 6 months after the submission of the application.

- E. **Site Plan Review and Approval.** Site Plan approval for uses listed in §173-251. Permitted Uses shall be granted upon determination by the Site Plan Review Authority that the Applicant has submitted the required fees and information as set forth in Municipality's requirements for a Building Permit and Site Plan Review; and the project as described in the application meets the development standards set forth in §173-255. General performance standards and criteria. The Site Plan Review Authority may impose reasonable conditions, at the expense of the applicant, to ensure that these conditions have been satisfied.
- F. **Determinations.** The Planning Board shall approve a site plan only upon its determination of the following:
- a. Internal circulation and egress are such that traffic safety is protected, and access via minor streets servicing single-family homes is minimized.
  - b. Visibility of parking areas from public ways and residences is minimized, and lighting of these areas avoids glare on adjoining properties.
  - c. Major topographic changes or removal of existing trees is minimized.
  - d. Adequate access to each structure for fire and service equipment is provided.
  - e. Utilities and drainage in the vicinity either are or will be made adequate.
  - f. Methods of stormwater control and treatment as outlined in the Town of Littleton Low Impact Design/Best Management Practices Manual (latest edition) are utilized to the maximum extent practicable.
- G. **Project Phasing.** An Applicant may propose, in a Site Plan Review submission, that a project be developed in phases subject to the approval of the Site Plan Review Authority, provided that the submission shows the full buildout of the project and all associated impacts as of the completion of the final phase. However, no project may be phased solely to avoid the provisions of §173-256 Affordability Requirements.

**§ 173-259. Severability.**

If any provision of this Article XXXIII is found to be invalid by a court of competent jurisdiction, the remainder of Article XXXIII shall not be affected but shall remain in full force. The invalidity of any provision of this Article XXXIII shall not affect the validity of the remainder of the Town of Littleton's Zoning.

3. Amending the Zoning Map to show the parcels shown as "295 Foster Street (R10-2-2)" and "305 Foster Street (R10-2-1)" on the plan of land entitled Boundary of the Littleton Station MBTA Communities Multi-family Overlay District, dated April 18, 2024 to be located in the Littleton Station MBTA Communities Multi-family Overlay District.
4. Amending Article XXX. Village Common District, §173-217, Applicability, by inserting the following into Section B:

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- i. The requirements of Article XVI Wetlands and Floodplain Regulation and Article XIV, Aquifer and Water Resource District shall be incorporated into the Site Plan Review Process, as applicable, and shall not require a Special Permit. This paragraph applies only to the following parcels: 410 King Street (U09-28-0) and 450 King Street (U09-23-0).
- 5. Amending Article XXX. Village Common District, §173-217, Applicability, by inserting a new Section C to read as follows:
  - C. The provisions of Article XXIX: Inclusionary Housing shall apply with the exception listed below. Affordable Units must be restricted in accordance with the metrics below.
    - a. **Provision of Affordable Housing.** In Applicable Projects, not fewer than ten percent (10%) of housing units constructed shall be Affordable Housing Units. For purposes of calculating the number of units of Affordable Housing required within a development project, a fractional unit shall be rounded down to the next whole number. The Affordable Units shall be available to households earning income up to eighty percent (80%) of the AMI.

and by re-lettering the existing Section C as D to account for said addition provided for above.

- 6. Amending Article XXXI. King Street Common Zoning District, §173-227, Applicability, by inserting the following into Section B:
  - g. The requirements of Article XVI Wetlands and Floodplain Regulation and Article XIV, Aquifer and Water Resource District shall be incorporated into the Site Plan Review Process, as applicable, and shall not require a Special Permit.
- 7. Amending Article XXXI. King Street Common Zoning District, §173-227, Applicability, by inserting a new Section C to read as follows:
  - C. The provisions of Article XXIX: Inclusionary Housing shall apply with the exception listed below. Affordable Units must be restricted in accordance with the metrics below.
    - a. **Provision of Affordable Housing.** In Applicable Projects, not fewer than ten percent (10%) of housing units constructed shall be Affordable Housing Units. For purposes of calculating the number of units of Affordable Housing required within a development project, a fractional unit shall be rounded down to the next whole number. The Affordable Units shall be available to households earning income up to eighty percent (80%) of the AMI.

and by re-lettering the existing Section C as D to account for said addition provided for above.

or to take any other action in relation thereto.

**[Article 13 updates the zoning bylaw and zoning map to bring Littleton into compliance with MBTA Communities requirements. Sections 1, 2, and 3 add a new 30-acre multi-family overlay district for 295 Foster Street and 305 Foster Street. This new Littleton Station MBTA Communities Multi-family District (LSMFD) will allow “missing middle” housing near the Foster Street commuter rail station. Dimensional requirements include height restrictions of**

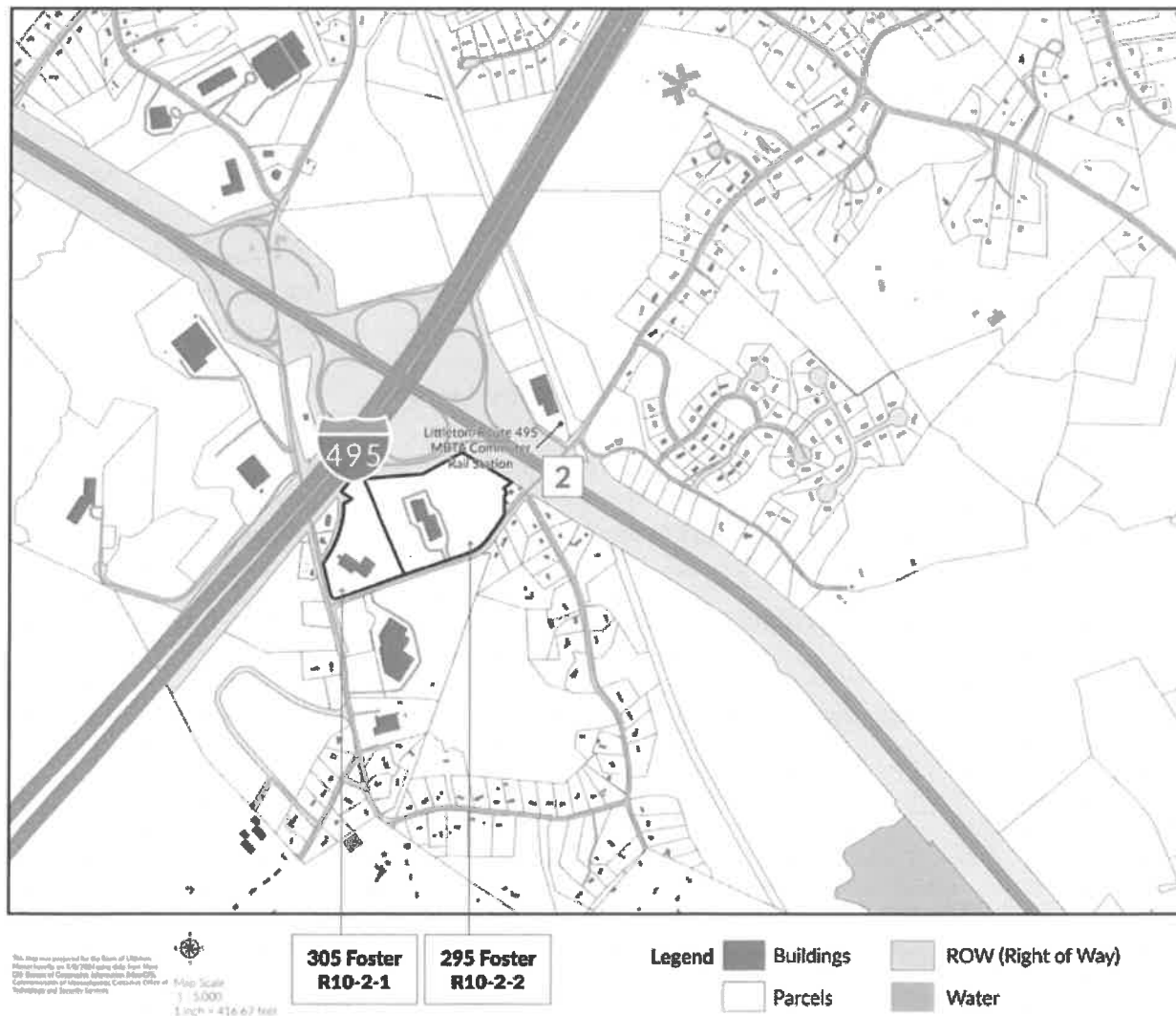
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**2.5 stories, minimum front setback of 50 feet, and building size of no more than 12 residential units per building.**

**Sections 4, 5, 6, and 7 update the Village Common (VC) and King Street Common (KSC) zoning districts to allow Littleton to “count” these multi-family and mixed-use areas in Littleton Common as the majority of the required 50-acre MBTA Communities zoning district. With these proposed updates, Littleton will be able to count 600 of the 750-unit zoning requirement in the KSC and the VC district.**

**This article builds on foundational planning work of the community by promoting recommendations of the Littleton Master Plan, the Littleton Common Revitalization Road Map, and the Littleton Station Village Vision Plan. Due to recent changes in MA State Law, this article does not require a 2/3 vote for passage as traditionally required for a standard Zoning Bylaw amendment.]**

**Map of 295 and 305 Foster Street**



**[The Massachusetts Attorney General’s Office has published a Question and Answer to provide answers to frequently asked questions regarding the MBTA Communities Law as follows:**

**(1) What is the MBTA Communities Law and what does it require?**

The MBTA Communities Act was adopted in January 2021, as part of legislation to strengthen the state’s economy. It was passed by broad bipartisan majorities in the legislature — the Senate voted unanimously in favor of the Act, and the House voted 143 in favor to 4 against. Governor Baker signed the Act into law on January 14, 2021.

The MBTA Communities Act requires 177 Cities and Towns to establish “at least 1 district of reasonable size in which multi-family housing is permitted as of right.” Where possible, the district must be within a half mile from public transportation (commuter rail, bus station, ferry terminal or subway). MBTA Communities must permit the development of housing suitable for families with children, and may not impose age restrictions, within the district.

The state agency with responsibility for housing issues, known as the Executive Office of Housing and Livable Communities (or EOHLIC), has detailed materials available to address questions about this law and help communities understand their obligations.

**(2) Is compliance with the law mandatory?**

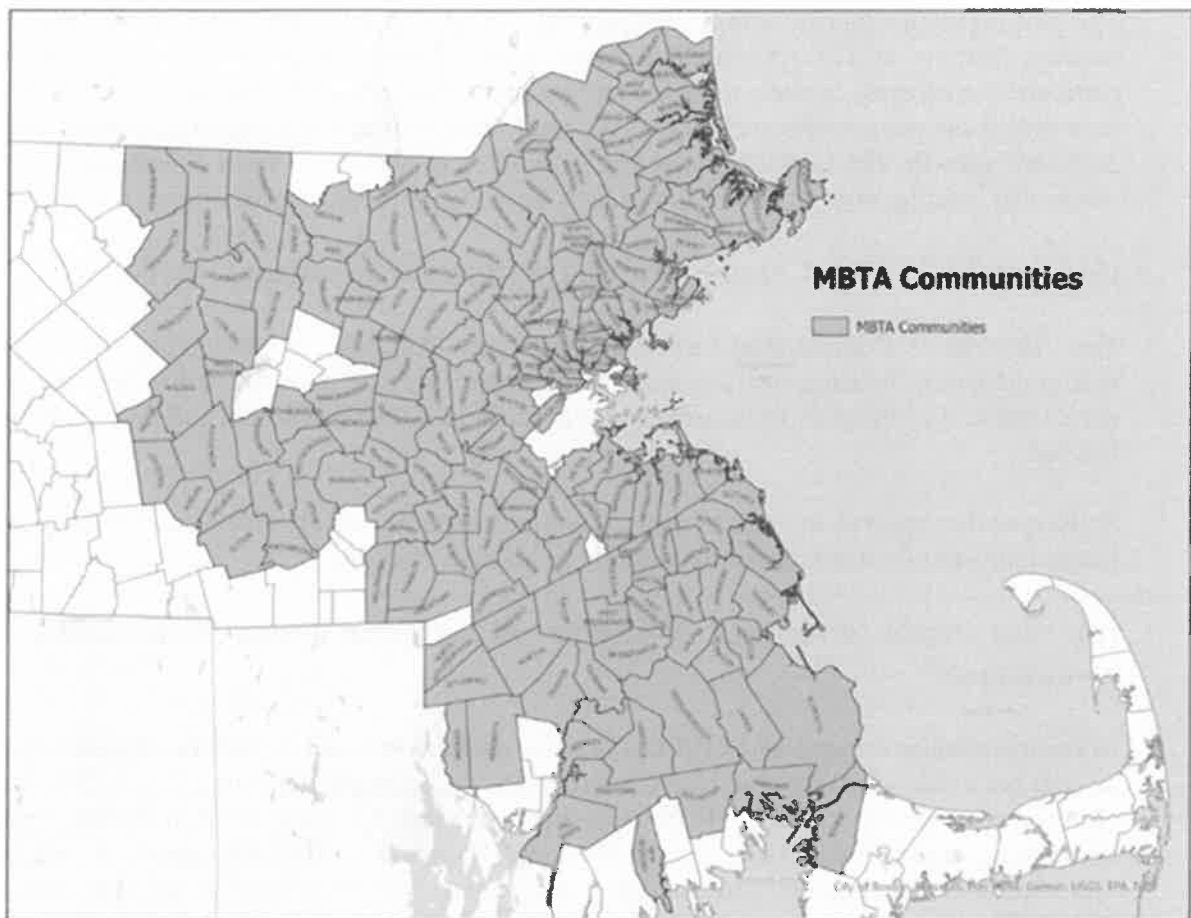
Yes. The law states clearly that 177 communities covered by the MBTA Communities Law “shall have a zoning ordinance or bylaw that provides for at least 1 district of reasonable size” that permits multi-family housing as of right.

**(3) What Cities and Towns are subject to the law?**

Communities that are served by the MBTA are subject to the law, including:

- 84 communities that host MBTA service, including rapid transit, commuter rail, ferry or bus.
- 93 communities that abut — that is, share a border with — a City or Town that is served by the MBTA.

The following map demonstrates the location of MBTA Communities throughout the Commonwealth:



#### **(4) Is the MBTA Communities Act constitutional?**

Yes, it is. Under the state constitution, our state legislature has the power to pass laws about municipal zoning. Mass. Const. Art. Amend. art. 60. In the words of our state supreme court, this gives the state the “supreme power” in zoning matters.

In many cases, the legislature has passed laws that empower local communities to make their own decisions about zoning. In some cases, though, the legislature has determined that local discretion should be limited in order to allow development that will further state or regional interests. For example, the legislature has set statewide standards when it comes to housing development for low- and moderate-income residents (under Chapter 40B); as well as schools, churches and other religious institutions, certain agricultural uses, child care centers, congregate care for those with disabilities, and solar power installations (under G.L. c. 40A, § 3).

Litigation has challenged Chapter 40B based on an argument that the state cannot require communities to allow low- and moderate-income housing developments that would otherwise violate local zoning. But those challenges have failed because the constitution gives the state the authority to restrict local zoning. The state supreme court has consistently required municipalities to comply with state law that allows educational, religious, childcare, and solar developments, over community objections.

The state legislature had the authority to pass the MBTA Communities Law to require multi-family housing districts in 177 communities where public transportation is accessible. The state is particularly interested in such development because Massachusetts is facing a housing crisis that is crowding out people who wish to live and work here, hurting our communities and limiting our economic growth. The legislature also chose to preserve significant local discretion to determine where that housing may be allowed in order to meet the particular needs of each community.

**(5) Does the MBTA Communities Law allow for municipal discretion?**

Yes. The MBTA Communities Law and Compliance Guidelines established by the state require that multi-family housing districts must be of reasonable size and, where feasible, located near mass transit; they must allow housing suitable for families with children; and they cannot be age-limited.

As long as they meet those requirements, communities have considerable discretion as to where to locate multi-family districts and how big those districts may be.

**(6) Are there resources available to assist covered communities with compliance?**

Municipal planners may seek EOHLC's assistance and communities may be eligible for (or may already have received) grant funding to help design compliant districts. In addition, Massachusetts Housing Partnership (MHP) offers consultant services to assist with technical aspects of compliance and Citizens' Housing and Planning Association (CHAPA) provides assistance to municipalities around public education and engagement. Regional Planning Agencies also provide technical assistance to their municipalities. Taken together, over \$6 million in technical assistance has been provided to 156 of the 177 municipalities since August 2022.

Municipal counsel are encouraged to reach out to the Attorney General's Municipal Law Unit with questions on compliance. Both EOHLC and the Attorney General's Office have offered pre-review for proposed districts to give municipalities guidance as to whether the district is likely to be approved.

**(7) Does the MBTA Communities Law impermissibly limit local control?**

No. The state legislature has the power to enact zoning laws with which communities must comply. The power is set forth in Article 60 of the Amendments to the state constitution. That power is specifically preserved by the Home Rule Amendment, which requires municipalities to follow state law, like the MBTA Communities Law. Mass. Const. Art. Amend. art. 89, § 8.

In addition, the MBTA Communities Act ensures communities can determine where the required district is (or districts are) located and how large they are, within certain parameters.

**(8) Are the Guidelines adopted by the state binding on my community?**

Yes, they are. State law requires the state — and, specifically, the Executive Office of Housing and Livable Communities, known as EOHLC — to “promulgate guidelines to determine if an MBTA Community” is in compliance with its obligations.

These guidelines are binding. We are aware of suggestions that guidelines are somehow non-binding because they are not “regulations.” But our state supreme court has recently rejected an argument that EOHLC guidelines are nonbinding. *See Fairhaven Hous. Auth. v. Commonwealth*, 493 Mass. 27 (2023).

### **(9) How can zoning that is compliant with the MBTA Communities Law be adopted?**

One or more zoning districts that are consistent with the MBTA Communities Act may be adopted through the typical municipal process for adopting zoning ordinances or bylaws. That means in certain towns, an approval of Town Meeting or Representative Town Meeting will be required (in an annual or specially-called meeting), following action by the appropriate municipal board (e.g., the Select Board or the Planning Board). In cities, approval by the City Council is required. A few municipalities may have existing zoning that complies with the Guidelines in which case they should submit a complete application to EOHLC for a determination of compliance.

### **(10) What do MBTA Communities have to do, and by when?**

The MBTA Communities Act simply required cities and towns to “have” a zoning ordinance or by-law that provides for at least one district of reasonable size in which multi-family housing is permitted as of right and meets the other requirements of the Act. However, EOHLC recognized that many communities would need time to craft and pass an appropriate district, and therefore created a process by which communities can be treated as being in compliance by taking concrete steps towards adopting the necessary zoning ordinance or by-law.

Communities served by MBTA rapid transit (the subway, trolley, or Silver Line buses) were required to submit a zoning ordinance or bylaw to EOHLC for approval by December 31, 2023. Of the 12 communities subject to that deadline, only Milton has failed to submit a zoning ordinance or bylaw for approval.

Most of the remaining communities covered by the law—those served by commuter rail, bus, or ferry, or adjacent to such a community—must submit their zoning ordinance or bylaw for EOHLC approval by December 31, 2024. Certain smaller adjacent communities are allowed until December 31, 2025.

The zoning ordinance or bylaw that a community adopts must comply with EOHLC Guidelines. However, if they submit by their deadline, MBTA Communities will be treated as compliant with the law while EOHLC is reviewing their submission.

### **(11) What happens if my City or Town fails to comply with the MBTA Communities Law?**

Communities that fail to comply with the MBTA Communities Act automatically lose certain state funding, including funding: for local infrastructure generally, such as road, bridge, water and sewer improvements (known as MassWorks); for local infrastructure projects that support housing (known as HousingWorks); for EOHLC grants to communities with a “Housing Choice” designation; and state funding under the Local Capital Projects Fund.

In addition, the Healey-Driscoll Administration has notified communities that compliance with the MBTA Communities Act will be considered when dispensing certain discretionary local aid.

In addition, intentional or persistent non-compliance may result in an enforcement action against the municipality by the Attorney General. Any such action would seek a court order requiring the community to comply with the law. Such a lawsuit is currently pending in the state supreme court against the Town of Milton.

**(12) The following questions might be asked by residents preparing to attend a Town Meeting where a new zoning district will be considered:**

- **How did my community settle upon the district presented for Town Meeting consideration?**

This answer will vary for each community. At a minimum, each community held a public Planning Board hearing on the proposed district, at which residents could participate. After the hearing, the Planning Board was required to issue a report to Town Meeting or City Council with a recommendation concerning whether or not the zoning district should be adopted.

Many communities also held preliminary workshops or public comment meetings on proposed MBTA Communities zoning districts. In many cases, proposed zoning districts are drafted with help from planning consultants, often hired with grant money provided by Commonwealth agencies. Like every other zoning bylaw, the zoning district is drafted with input from the Town/City Planner, the Planning Board, and the Select Board or City Council.

- **What vote is required in order for the new district to pass?**

A simple majority vote.

- **What happens if the proposed zoning district passes?**

It is submitted to the Executive Office of Housing and Livable Communities (EOHLC) to ensure that the district is compliant with the MBTA Communities Act. EOHLC offers an optional “pre-adoption” review of proposed districts before they are voted on, in which case the community will have some indication as to whether the zoning district is likely to be approved.

As with all other town zoning bylaws, a town’s MBTA Communities zoning bylaw also will be submitted to the Attorney General’s Office for review and approval as required by statute. Once the zoning bylaw is approved, it will take effect, and multi-family housing will be permitted in the new zoning district. Please note that EOHLC determinations of compliance are separate from the bylaw review by the Attorney General’s Office and that a bylaw approved by the Attorney General will be in effect even if EOHLC makes a determination that the bylaw does not comply with the Guidelines and the Act.

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- **What happens if the proposed zoning district does not pass?**

This answer will depend on the time of the Town Meeting or City Council vote and whether the community will be able to come into compliance in advance of the applicable deadline (which, for many communities, will be December 31, 2024). If the vote renders the community out of compliance, the community will face the consequences set forth in response to question 11, above.]

***Motion:*** Moved and seconded by the Planning Board that the Town vote to approve Article 13 as printed in the warrant

**The Finance Committee, Select Board and Planning Board recommend this article.**

