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# EOHED Issues Updated Guidance for Multi-Family Zoning in MBTA Communities

BY BOWDITCH & DEWEY • NOVEMBER 8, 2022

On October 21, 2022, the Commonwealth of Massachusetts Executive Office of Housing and Economic Development ("EOHED") updated final guidelines to the Commonwealth's 175 MBTA communities for compliance with M.G.L. c. 40A, § 3A ("Guidelines"); the EOHED initially provided final Guidelines on August 10, 2022.

The Department of Housing and Community Development ("DHCD") updated Guidelines no longer require that affordable housing restriction have a 30-year term to comply with M.G.L. c. 40A, § 3A. Instead, restrictions in the chain of title must satisfy "the requirements for inclusion under 760 CMR 56.03(2) or any other regulation or guidance issued by DHCD." Notably, affordable units "may be, but are not required to be, eligible for inclusion on DHCD's Subsidized Housing Inventory."

In addition, "DHCD will consider an affordability requirement to be consistent with as of right zoning as long as the zoning requires not more than 10 percent of the units in a project to be affordable units, and the cap on the income of families or individuals who are eligible to occupy the affordable units is not less than 80 percent of area median income."

Notably, DHCD "may, in its discretion, approve a greater percentage of affordable units, or deeper affordability for some or all of the affordable units" if the affordability requirements applicable in the multi-family zoning district are reviewed and approved by DHCD as part of a smart growth district under M.G.L. c. 40R or another zoning incentive program administered by DHCD; or if the affordability requirements applicable in the multi-family zoning district are supported by an economic feasibility analysis prepared for the municipality by a qualified and independent third party acceptable to DHCD, and using a methodology and format acceptable to DHCD.

The updated Guidelines do not change the January 31, 2023, deadline for MBTA communities to submit a zoning compliance "Action Plan" to the Department of Community Housing and Development.

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