

SJC Upholds MBTA Communities Act MBTA Communities Act Mandating Multifamily Zoning

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The MBTA Communities Act, which requires 177 towns and cities to permit multifamily housing by-right, is constitutional and compliance with the Act may be enforced by the Attorney General, based on a ruling by the Supreme Judicial Court today ([Attorney General v. Town of Milton](#)). Agency guidelines governing compliance with the Act, however, are currently unenforceable for failure to comply with the state's Administrative Procedures Act.

First passed in 2021, the MBTA Communities Act (M.G.L. c. 40A, Sec. 3A), states that certain municipalities in proximity to MBTA transportation services "shall have a zoning ordinance or by-law that provides for at least 1 district of reasonable size in which multi-family housing is permitted as of right." The Act provides that municipalities that fail to adopt such zoning shall not be eligible for funding from four specified state programs. Under the Act, the Executive Office of Housing and Livable Communities (EOHLC) "shall promulgate guidelines to determine if an MBTA community is in compliance."

The Town of Milton's representative town meeting approved a compliant multifamily zoning district in 2023, but a local referendum repealed the zoning and the Town missed a deadline set forth in the EOHLC's guidelines. The Attorney General's Office sued Milton to compel compliance.

Milton challenged the MBTA Communities Act and its delegation of authority to the EOHLC on constitutional grounds, but also challenged the Attorney General's enforcement authority, asserting that the penalties for non-compliance were limited to the grant funds specified in the Act. Milton further challenged the EOHLC's guidelines, which were not formally promulgated as state regulations.



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The SJC upheld the Act and determined that the Attorney General has authority to enforce compliance, holding:

"If we were to adopt the town's interpretation, the only consequence to an MBTA community for failing to comply with the act would be the loss of certain funding opportunities. Thus, those communities, like the town in this case, which choose to forgo the identified funding programs, would be free to ignore the legislative decision to require towns benefiting from MBTA services to permit their fair share of multifamily housing near their local MBTA stations and terminals. As the purpose of § 3A is to increase housing stock, the town's proposed reading of the act would thwart the Legislature's purpose by converting a legislative mandate into a matter of fiscal choice."

Agreeing with Milton in part, the SJC held that the EOHLC's guidelines for MBTA communities are unenforceable because they were not adopted under the formal agency rule-making procedures required by M.G.L. c. 30A. The guidelines contain deadlines and extensive details on the requirements for multifamily zoning districts under the Act. The SJC did not address whether various provisions in the EOHLC's guidelines are allowed under the Act, as the agency may change certain provision in its new regulations.

The EOHLC must now go through formal promulgation, which requires a comment period and a public hearing. This process may delay enforcement proceedings by the Attorney General against Milton and other communities that have not yet adopted MBTA zoning.

If you have questions about the SJC's decision, please reach out to an attorney in our Municipal or Real Estate group.

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