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The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

DIVISION OF LOCAL MANDATES

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April 24, 2025

By First-Class Mail & Email (selectmen@berkleyma.us)

Town of Berkley Board of Selectmen
One North Main Street
Berkley, MA 02779-1336

**RE: Request for Waiver of Timeline under M.G.L. c. 29, § 27C, regarding
Mandate Determination Request related to MBTA Communities Act
(M.G.L. c. 40A, § 3A)**

Dear Select Board Members:

On March 7, 2025, the Office of the State Auditor (OSA) received your emailed letter on behalf of the Town of Berkley requesting “a determination by the Division of Local Mandates (DLM) regarding the fiscal impact of the MBTA Communities Act and the classification of its requirements as an unfunded mandate under the Local Mandate Law (M.G.L. c. 29, § 27C) . . . [s]pecifically . . . a determination of the amount of any deficiency in payments required under [the MBTA Communities Act and the regulations promulgated pursuant thereto] for the preceding year, as well as the total annual financial effect of this statute and the corresponding regulations for the next three (3) years.”

On February 21, 2025, OSA, through DLM, issued determinations to Wrentham, Middleborough, and Methuen pursuant to DLM’s statutory obligation under M.G.L. c. 29, § 27C (the Local Mandate Law), that M.G.L. c. 40A, § 3A (the MBTA Communities Act, the Act, or § 3A), constitutes an unfunded mandate.¹ Said determinations set forth DLM’s analysis in arriving at the conclusion that the Act constitutes an unfunded mandate while noting that additional time is required to perform a thorough analysis of the costs imposed.² The Town of Berkley’s request is substantively the same as the previous requests received by DLM regarding the MBTA Communities Act. Accordingly, DLM incorporates its analysis herein by reference to

¹ See Massachusetts Office of the State Auditor, Division of Local Mandates. (2025, February 21). *Mandate Determination related to MBTA Communities Act (M.G.L. c. 40A, § 3A)* (on the Towns of Wrentham and Middleborough and the City of Methuen). Available at <https://www.mass.gov/lists/all-local-mandate-determinations#2025->.

² See *id.*

said determinations, as well as DLM's conclusion that the Act is an unfunded mandate within the meaning of the Local Mandate Law as the current method of funding by the Commonwealth of § 3A compliance costs incurred by municipalities does not satisfy the requirements of the Local Mandate Law.

As with all determinations, DLM cautions that its conclusion is based on DLM's interpretation and application of current law and judicial precedent and, accordingly, is subject to legislative or regulatory changes or judicial determination. As you may be aware, there continues to be pending litigation regarding the MBTA Communities Act between various municipalities and the Commonwealth. Such litigation may ultimately impact the determination of whether the Act is an unfunded mandate and/or the parameters of the costs imposed by the Act. In the meantime, DLM's determination uniformly applies to all MBTA communities regardless of whether any individual MBTA community requests a determination from DLM.³

Notwithstanding the outcome of the pending litigation, DLM needs additional time to collect data from all MBTA communities in order to determine the "total annual financial effect for a period of not less than 3 years" of the Act pursuant to the Local Mandate Law.⁴ Accordingly, DLM requests a waiver from the Town of Berkley of the 60-day timeline under the Local Mandate Law regarding the financial effect determination. We would appreciate a response via email to sonia.kwon@massauditor.gov at your earliest convenience.

Please contact our office with any questions.

Sincerely,



Sonia J. Kwon
Senior Legal Counsel
Division of Local Mandates

cc: Berkley Planning Board (planningboard@berkleyma.us)
Berkley Zoning Board (berkleyzba@berkleyma.us)
Michael Leung-Tat, General Counsel, OSA (michael.leung-tat@massauditor.gov)
Jana DiNatale, Director, DLM (jana.dinatale@massauditor.gov)

³ See M.G.L. c. 40A, § 1A, for definition of "MBTA community."

⁴ See M.G.L. c. 29, § 27C(f).