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Second Advisory Concerning Enforcement of the MBTA Communities Zoning Law

Massachusetts is experiencing a housing crisis. In many communities across the Commonwealth, we have a shortage of housing options that serve the needs of all people, including seniors, teachers, first responders, and young adults. Nearly five years ago, large bipartisan majorities of the legislature took an important step towards combatting this shortage by passing the MBTA Communities Act, G.L. c. 40A, § 3A (the “Act”). The Act requires communities within the MBTA service district to allow for multi-family housing to be built near transit stations.¹

In March 2023, the Attorney General’s Office (AGO) issued an Advisory concerning the requirements imposed by the Act.² Citing the plain text of the Act, the Advisory explained that the Act is mandatory and that all MBTA Communities are required to comply with it. As of the date of this Advisory, 79% of the covered municipalities—139 MBTA Communities—have adopted multi-family zoning to comply with the Act.

The courts have repeatedly explained that compliance with the Act is mandatory. In *Attorney General v. Milton*, 495 Mass. 183 (2025), the Supreme Judicial Court confirmed that the Act is constitutional, that it imposes a duty on covered municipalities, and that the Attorney General may enforce against noncompliance.³ In June 2025, the Superior Court further affirmed the Act’s enforceability, holding that the Act is not an “unfunded mandate” and rejecting challenges to regulations issued by the Executive Office of Housing and Livable Communities.⁴

While the vast majority of MBTA Communities have adopted multi-family zoning near transit to comply with the Act, a small number of communities with a July 14, 2025, compliance deadline have so far failed to adopt the required zoning. As of July 15, 2025, these communities will be noncompliant with the Act and will face the loss of discretionary state grant funding.⁵

¹ An MBTA Community is a town or city which hosts MBTA service; which abuts a town or city that hosts service; or which has been added to the Transit Authority pursuant to a special law. *See* G.L. c. 40A, § 3A(a)(1); G.L. c. 40A, § 1A. Currently, there are 177 MBTA Communities in Massachusetts. A list of these MBTA Communities, and other information related to the Act, including the implementing regulations adopted by the Executive Office of Housing and Livable Communities, can be found [here](#).

² The 2023 Advisory can be found [here](#).

³ The Supreme Judicial Court’s decision can be found [here](#).

⁴ The Superior Court’s orders granting summary judgment in favor of the Commonwealth are available [here](#) and [here](#).

⁵ As noted in the Attorney General’s 2023 Advisory, MBTA Communities that fail to comply with the Act’s requirements risk liability under federal and state fair housing laws, which prohibit towns from using their zoning power for a discriminatory purpose or with discriminatory effect. *See* Fair Housing Act of 1968, as amended, 42 U.S.C. § 3601 *et seq.*; G.L. c. 151B, § 4(4A) (prohibiting activities that interfere with the exercise or enjoyment of fair housing rights); 804 C.M.R. § 2.01(2)(f)-(h) (Antidiscrimination law applies to “persons who...interfere with another person in the exercise or enjoyment of any right under M.G.L. c. 151, § 4...persons who directly or

We understand that local leadership in several of these communities have stated their intent to come into compliance. We welcome—and stand ready to assist—steps in that direction. Recognizing that the local legislative process to adopt zoning by-laws and ordinances involves multiple steps that take time to complete, the AGO does not plan take legal action this summer or fall against noncompliant communities that are making demonstrable and good faith efforts towards compliance. Throughout the summer and the fall town meeting season, the Office will continue its work with the Healey-Driscoll Administration to support both noncompliant communities and “adjacent small towns” with a December 31, 2025, deadline⁶ in their efforts to adopt compliant zoning. By contrast, where a community has demonstrated that it will achieve compliance only when ordered to do so by a court, and the pertinent deadline has passed, the AGO may bring a civil enforcement action at any time.

By January 2026, however, five years will have passed since the Act was signed into law. By that point, every MBTA Community will have had ample time—and considerable state support—to establish the legally mandated zoning. Because facilitating additional residential housing development is a foremost state priority—in the interests of those who reside in the Commonwealth and those who hope to, and essential to the success of our state economy—five years is more than sufficient time for each community to have achieved compliance. That is especially true because rezoning is but an initial, necessary step towards building the new housing that the Commonwealth so badly needs. The remaining steps will take time before additional housing is built, and we have no time to waste in addressing the Commonwealth’s continued housing shortage; nor in addressing impediments to that important work. Therefore, in January 2026, the Attorney General is prepared to bring an enforcement suit against any MBTA Community that has failed to both adopt the required zoning and apply for a determination of district compliance from the Executive Office of Housing and Livable Communities.

The AGO applauds the residents and communities that have worked hard over the last five years toward the successful implementation of the MBTA Communities Act. We are hopeful that those communities with work yet to be done will take advantage of these next five months to do it. The AGO remains available to offer guidance and technical support to communities as they move towards zoning adoption.

indirectly prevent or attempt to prevent the construction, purchase, sale or rental of any dwelling or land covered by M.G.L. c 151B, § 4...[and] persons who aid or abet in doing any illegal acts...”; 804 C.M.R. § 2.01(5)(f) (“Examples of unlawful housing practices include...to pass an ordinance that unlawfully denies a dwelling, commercial space or land to a person or group of persons because of their protected status.”). An MBTA Community may violate these laws if, for example, its zoning restrictions have the effect of unfairly limiting housing opportunities for families with children, individuals who receive housing subsidies, people of color, people with disabilities, or other protected groups.

⁶ Under 760 CMR 72.00, 22 communities categorized as “adjacent small towns” have a later compliance deadline of December 31, 2025. All have submitted Action Plans to EOHLIC and are currently in “interim compliance” with the Act.