

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, SS.

SUPERIOR COURT DEPARTMENT
DOCKET NO. 2583CV00188

TOWN OF MIDDLEBOROUGH,

Plaintiff

v.

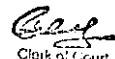
COMMONWEALTH OF
MASSACHUSETTS, HON. GOVERNOR
MAURA HEALEY, and the
COMMONWEALTH OF
MASSACHUSETTS EXECUTIVE OFFICE
OF HOUSING AND LIVABLE
COMMUNITIES,

Defendants

VERIFIED COMPLAINT

FILED
COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPT. OF THE TRIAL COURT
PLYMOUTH COUNTY

FEB 29 2025



Clerk of Court
INTRODUCTION

The so-called "MBTA Communities Act" was enacted in 2021 for the purpose of alleviating the Commonwealth's housing shortage by requiring certain communities in the eastern part of the state, so-called MBTA Communities, to change zoning regulations to create districts near their local transit stations to allow multifamily housing by-right at a density of at least fifteen (15) residential units per acre. The Town of Middleborough is in full compliance with the Act in so far as it has a zoning district that has a minimum gross density of more than 15 units per acre and is located less than 0.5 miles from a commuter rail station. In fact, Middleborough has gone far above the minimum requirements to provide a 40 acre zoning district that encompasses the area around an MBTA commuter rail station and in which multifamily housing is allowed as of right at a density of 20 units per acre. Not only has Middleborough created the required district, but it has already facilitated the development of 174

multi-family housing units within 0.5 miles of the station and more throughout the Town, and it has far exceeded its minimum quota for affordable housing as defined in Chapter 40B of the General Laws.

Despite Middleborough's compliance with the letter and the intent of the Act, through a gross abuse of power, Middleborough has been branded as noncompliant because the Executive Office of Housing and Livable Communities ("EOHLC") has decided that it does not fit within its cookie-cutter model for what such an MBTA Community should look like. As a result of EOHLC's arbitrary and unreasonable interpretation of the Act, and in concert with the Governor, the Attorney General and other State agencies, Middleborough has been punished through the withholding and/or recission of more than \$6.5 million in funding for school programs, infrastructure projects and other initiatives that are necessary to provide the very housing the Act was enacted to create.

Since the passage of the Act, the Governor, the Attorney General, EOHLC and other state agencies have engaged in a tyrannical campaign of aggressive enforcement through threats, intimidation, coercion, and punishment, which continued even after the Supreme Judicial Court declared EOHLC's so-called "guidelines" unenforceable and it continues on after the State Auditor declared that the Act and the newly enacted Emergency Regulations are an unfunded mandate. Therefore, by this action, the Town of Middleborough seeks declaratory and injunctive relief to enjoin enforcement of the MBTA Communities Act, the Emergency Regulations and any other regulations or guidelines promulgated by EOHLC pursuant to the Act, unless and until the Legislature complies with the Unfunded Mandate Law. The Town also seeks declaratory and injunctive relief to nullify EOHLC's Emergency Regulations and soon to be Permanent Regulations (760 CMR 72.00, currently in draft form), which are invalid as arbitrary and

capricious on their face and as applied to the Town; to vacate the branding of Middleborough as noncompliant; and to require the Commonwealth to honor its contractual obligations to the Town by releasing previously committed grant funds that were wrongly misappropriated as a result of the Governor and EOHLIC's abuse of power.

PARTIES

1. The plaintiff, Town of Middleborough, is a Massachusetts municipal corporation with a business address of Middleborough Town Hall, 10 Nickerson Avenue, Middleborough, Massachusetts, 02346.
2. The Defendant, Commonwealth of Massachusetts, is a sovereign state formed by the Massachusetts Constitution, with a business address of with a business address of Massachusetts State House, Boston, Massachusetts 02133.
3. The Defendant, Hon. Maura Healey, is the Governor of the Commonwealth of Massachusetts, with a business address of Massachusetts State House, 24 Beacon St., Office of the Governor, Room 280, Boston, Massachusetts 02133, and she is named in her official capacity as the Chief Executive Officer of the Commonwealth.
4. The Defendant, Massachusetts Executive Office of Housing and Livable Communities, an agency of the Commonwealth, established pursuant to Chapter 7 of the Acts of 2023 (Article LXXXVII of the Amendments to the Constitution, Reorganization Plan #1 of 2023), with a business address of 100 Cambridge Street, #300, Boston, Massachusetts 02114.

JURISDICTION

5. The Superior Court has jurisdiction over this action pursuant to G.L. c. 29, §27C (Unfunded Mandate Law), G.L. c. 231A, §1 (Declaratory Judgment Act), G.L. c. 30A, §7

(the “State Administrative Procedures Act”) and G.L. c. 214 § 1 (General Equity Jurisdiction).

STATEMENT OF FACTS

The Town of Middleborough

1. The Town of Middleborough is a rural community located in Plymouth County, approximately 40 miles from Boston.
2. On or about January 21, 2021, § 18 of Chapter 358 of the Acts of 2020, the so-called MBTA Communities Act (the “Act”), was enacted.
3. The Act inserted in a new section 3A into Chapter 40A of the Massachusetts General Laws, as well as amendments to other statutes, to require that any municipality that qualifies as an “MBTA Community”, to 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 without age restrictions and that is suitable for families with children, that a minimum gross density of 15 units per acre, and is located not more than 0.5 miles from a public transportation station. G.L. c. 40A, §3A.
4. Notwithstanding its distance from Boston, Middleborough is an MBTA Community because it contains a commuter rail station.
5. Middleborough complies with the Act insofar as it has at least one zoning district of reasonable size in which multi-family housing is permitted as of right, without age restrictions and that is suitable for families with children, such district has more than a minimum density of 15 units per acre, and the district is located within .5 miles of an MBTA commuter rail station.

6. More specifically, in 2021, the Town enacted the Smart Growth Overlay Zoning District (the “District”) in accordance with Chapter 40R of the Massachusetts General Laws for the purpose of providing multi-family and affordable housing, “in ways that meet the needs of the town's population, for a diversified housing stock at a variety of costs within walking distance of services and public transportation, including affordable housing and other housing types”. A true and accurate copies of the Zoning Bylaw and Map are attached hereto as “Exhibit A”.
7. The District Map and its governing Zoning Bylaw were conditionally approved by the Department of Housing and Community Development (DHCD) (the predecessor to EOHLC) on or about April 23, 2021 and they were finally approved on July 8, 2022. True and accurate copies of DHCD’s April 23, 2021 and July 8, 2022 letters are attached hereto as “Exhibit B.”
8. In its approval letters, DHCD stated that “[w]e appreciate the initiative that the Town of Middleborough is taking to expand housing opportunities within the proposed District.” (April 23, 2021), and “Congratulations on the Town’s adoption of the Middleborough Smart Growth Overlay District and thank you for helping to expand housing opportunities and encourage Smart Growth in Massachusetts.” (July 8, 2022). See, Exhibit B.
9. Included within the District is the “Middleborough Smart Growth Zoning Overlay Sub-District (MSGO), a sub-district encompassing a total of approximately 40.4 acres, all within 0.5 miles of the MBTA station, and in which multi-family residential dwellings are allowed as of right, along with development of up 20 residential dwelling units per acre. See Exhibit A.

10. At the time of approval, DHCD acknowledged that “[t]he District allows for an estimated additional 549 as-of-right housing units”. See, Exhibit B.
11. Since the adoption of the Smart Growth Bylaw, the Town has approved 174 new housing units, in three developments all located within 0.5 miles of an MBTA station and comprised entirely of multi-family residential units. These developments also meet the Town’s requirement that at least twenty-five percent (25%) of the units be for affordable housing.
12. The three developments are: Pilgrim Junction, 108 units/27 units affordable; Glass Square, 40 units/10 units affordable; and Station Street, 26 units/ 7 units affordable. The Station Street facility has been fully constructed and all 26 units are occupied, including the 7 affordable units.
13. As of the 2020 Census, the Town of Middleborough had 9,808 housing units. See <https://www.census.gov/quickfacts/fact/table/middleboroughtownplymouthcountymassachusetts/AFN120222> (copy attached as “Exhibit C”).
14. The state’s Affordable Housing Zoning Law, Chapter 40B of the General Laws, mandates that 10 percent of the housing within a community must meet the definition of affordable housing. See, G.L. c. 40B, § 20.
15. Middleborough has gone above this mandate. As of December 24, 2024, the Town has 1,239 units that qualify as affordable housing under Chapter 40B, which represents 12.73% of its total housing stock. A true and accurate copy of the Executive Office of Housing and Livable Communities CH40B Subsidized Housing Inventory, Middleborough, is attached hereto as “Exhibit D.”

16. In addition to its existing stock of affordable housing, more affordable housing is currently in development and Middleborough is soon to have 14.23% of its housing stock qualified as affordable housing. These figures do not include 1,127 units in manufactured housing communities, that meet the income and rent requirements for affordable housing but are not counted as part of the State's calculation.
17. Within the last year 20 years the Town has permitted 881 units of multi-family housing within one mile of the MBTA station, 245 of which meet the State's definition of affordable housing. These developments are: Oasis, 296 units/74 affordable; West Grove Apartments, 135 units/34 affordable; Mayflower Manor, 44 units/11 affordable; Shoe Shop Place, 30 units/8 affordable; The Groves, 110 units/51 affordable; and Cranberry Village, 250 units/66 affordable.
18. Notwithstanding Middleborough's substantial achievements in creating affordable multi-family housing in close proximity to the MBTA station, it has been unfairly branded as noncompliant with the Act and retaliated against by the Governor, through EOHLC and other State agencies, and it has been punished through the loss of more than \$6.5 million in funding for essential infrastructure projects and social services.

The MBTA Communities Act

19. On or about January 21, 2021, § 18 of Chapter 358 of the Acts of 2020, the so-called MBTA Communities Act (the "Act"), was enacted.
20. The Act was subsequently amended by § 10 of Chapter 29 of the Acts of 2021, effective July 29, 2021, further amended by §§ 152-153 of Chapter 7 of the Acts of 2023, effective May 30, 2023, and further amended by § 9 of Chapter 150 of the Acts of 2024, effective August 6, 2024

21. The Act inserted in a new section 3A into Chapter 40A of the Massachusetts General Laws, as well as amendments to other statutes, to require that any municipality that qualifies as an “MBTA Community”, “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; provided, however, that such multi-family housing shall be without age restrictions and shall be suitable for families with children. For the purposes of this section, a district of reasonable size shall: (i) have a minimum gross density of 15 units per acre, subject to any further limitations imposed by section 40 of chapter 131 and title 5 of the state environmental code established pursuant to section 13 of chapter 21A; and (ii) be located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable.” G.L. c. 30A, §3A.
22. “MBTA community” is defined by reference to Section 1 of MGL c. 161A: one of the “14 cities and towns” that initially hosted MBTA service; one of the “51 cities and towns” that also host MBTA service but joined later; other “served communities” that abut a city or town that hosts MBTA service; or a municipality that has been added to the MBTA under G.L. c. 161A, sec. 6 or in accordance with any special law relative to the area constituting the authority.
23. In total, 177 communities qualify as “MBTA Communities”. These communities are comprised of the majority of the municipalities generally east of Worcester. While served by the MBTA, Boston and its surrounding neighborhoods are exempted from the Act.

24. In order to comply with the Act, MBTA Communities are mandated to incur significant expense to upgrade its infrastructure and to provide services to meet the Act's housing unit density requirements.
25. The Act did not include an appropriation to cover reimbursement for MBTA Communities' cost of compliance with this mandate in the same session in which it was enacted, or in any other session, nor did it contain an exemption from the Unfunded Mandate Law.
26. Compliance with the Act is mandatory, and MBTA Communities that are deemed noncompliant are subject to draconian sanctions and may be subject to enforcement action by the Attorney General.
27. Although the Governor is claiming that the Act is creating more affordable housing, the Act, "G.L. c. 40A, § 3A does not include any express requirement or authorization for an MBTA community to require Affordable units in a Multi-family housing project that is allowed As of right." 780 CMR 72.04 (1)(b).
28. Likewise, the Regulations would prohibit any such district from requiring that more than 10 percent of the units be affordable. 780 CMR 72.04 (1)(b)(1).
29. In contrast, Middleborough's Smart Growth Zoning Bylaw requires that at least 25% of all units meet the State's definition of affordable housing.

The EOHL C Regulations

30. The Act authorizes EOHL C "in consultation with the executive office of economic development, the Massachusetts Bay Transportation Authority and the Massachusetts Department of Transportation" to "promulgate guidelines to determine if an MBTA community is in compliance with this section." G.L. c. 40A, § 3A(b).

31. On or about August 17, 2023, EOHLC enacted Guidelines that imposed significant substantive and procedural obligations on regulated municipalities and provided far more substantive and procedural detail than the Act itself. A true and accurate copy of the Guidelines and subsequent Regulations are attached hereto as “Exhibit E”.
32. The “Guidelines” were not enacted in accordance with the requirements of the Administrative Procedures Act, G.L. c. 30A, §1, *et seq.*
33. EOHLC did not conduct an analysis of the financial impact of the Guidelines and it did not file with the state secretary an “estimate of its fiscal effect including that on the public and private sector, for its first and second year, and a projection over the first five-year period, or a statement of no fiscal effect has been filed with said state secretary.” G.L. c. 30A, §5.
34. The Guidelines contained requirements that went far above and beyond the requirements of the Act and placed unreasonable burdens and restrictions on MBTA Communities.
35. Upon issuance of the Guidelines, EOHLC began its campaign of threats, intimidation and coercion of MBTA Communities to force them to accept its arbitrary and unreasonable interpretation of the Act.
36. However, in response to an enforcement action against a municipality that was branded as noncompliant under the Guidelines, the Supreme Judicial Court held in Attorney General v. Town of Milton et. al., Docket No. SJC-13580 (“Milton”) (2025) (the “Milton Case”), that the “Guidelines” were ineffective and unenforceable because they were not promulgated in accordance with the Administrative Procedures Act.
37. The Attorney General lauded the decision in the Milton Case as a “resounding victory”.
<https://www.mass.gov/news/ag-campbell-issues-statement-on-victory-in-attorney-general-v-town-of-milton>

general-v-town-of-

milton#:~:text=Attorney%20General%20Andrea%20Joy%20Campbell,of%20housing%20for%20our%20residents. (copy attached hereto as “Exhibit F”).

38. The decision, however, did nothing more than affirm the constitutionality of the Act and the Attorney General’s authority to enforce it.
39. Aside from ruling that the MBTA Communities Act is constitutional and enforceable by the Attorney General, the Supreme Judicial Court has not reviewed or ruled upon any substantive provisions of the Act or the Regulations.
40. On or about January 14, 2025, just 6 days after the decision in the Milton Case, EOHLC enacted “Emergency Regulations” which generally mimic the unenforceable Guidelines, and just days after that, they issued “Draft Regulations” that were identical to the Emergency Regulations” See, 760 CMR 72.00, *et seq.*
41. In its Public Notice of adoption of the Emergency Regulations, EOHLC stated “[i]n accordance with M.G.L. c. 30A, § 5, the proposed regulation has a minimal or non-existent Small Business Impact.” A true and accurate copy of the Public Notice is attached hereto as “Exhibit G”.
42. This perfunctory statement was not accompanied by any factual support for the determination, nor could there have been a good faith determination of the impact in the 6 days between the decision and the issuance of the Emergency Regulations.
43. EOHLC has, therefore, once again violated the Administrative Procedures Act and the Regulations are void and unenforceable.

EOHLC'S Requirements for MBTA Communities

44. EOHLC has determined the “size” of the “district of reasonable size” for each regulated municipality by employing two tests: a “minimum land area” test and a “minimum multi-family unit capacity” test. 780 CMR 72.05.

45. The determination as to what is required for a community to be considered compliant is made by entering certain information into a computer model, which then informs the community of its requirements for the size of the required district and the required density.

46. According to EOHLC’s computer model, Middleborough must zone 50 acres for multi-family uses as of right and must create zoning which allows for at least 1,471 units within that 50 acres, which amounts to 29.42 units per acre. Further, 40% of the enacted zoning must be within 0.5 mile of the train station.

47. To meet the required 50 acres and 1,471 units, Middleborough would need to zone areas outside the 0.5 mile radius from the train station, including areas in the Town of Lakeville over which it has no control. A true and accurate copy of “Parcels Comprising the Middleborough Smart Growth Overlay Zoning District” map, is attached hereto as “Exhibit H”.

48. To put Middleborough’s required 29.42 unit per acre density in perspective, using the Massachusetts Housing Partnership Center for Housing Data’s planning tool, <https://residensity.mhp.net/>, the following areas in the City of Boston, which is exempt from the Act, have less housing density within 0.5 miles of a transit station than Middleborough is required to have (See, attachments in “Exhibit I”):

- Warren Street Station, Brighton: 24.62 units per acre;

- Roxbury Crossing, Roxbury: 10.57 units per acre;
- Stony Brook Station, Jamaica Plain: 18.09 units per acre.

49. Likewise, Brookline (10.95 units per acre), Newton (5.48 units per acre), Watertown (15.23 units per acre), Everett (22.19 units per acre), Salem (11.24 units per acre), and Revere (18.33 units per acre), are all closer to Boston and they all have densities less than what Middleborough, at over 40 miles from the City of Boston, is required to have. See, Exhibit I.

50. EOHLC's mandate is not consistent with the Act's requirement for the creation of only a single district "located not more than" a half mile from an applicable transit station or the requirement that the such districts allow 15 units per acre. G.L. c. 40A, §3A.

51. The acreage and percentages required by EOHLC for the minimum land area and minimum multi-family unit capacity tests are not derived from the Act itself, the formula for making this determination is arbitrary and capricious, and the formula fails to take into account the unique characteristics of each community.

The Unfunded Mandate Law

52. Massachusetts General Laws, Chapter 29, Section 27C, the Unfunded Mandate Law, provides that any post-1980 state law, rule, or regulation that imposes additional costs, excluding incidental local administration expenses, upon any city or town and that is not conditioned on local acceptance, must be fully funded by the Commonwealth or expressly exempted from the Unfunded Mandate Law.

53. A statute or regulation results in an unfunded mandate if it: (1) takes effect after January 1, 1982; (2) it is a new law changing existing law; (3) it imposes direct service or cost obligations on municipalities that amounts to more than an incidental local administrative

expense; and (4) the Legislature did not make an appropriation to meet those expenses or expressly exempt the legislation from the requirements of the Unfunded Mandate Law.

See, G.L. c. 29, §27C (a) – (c).

54. The appropriation must be made in the same legislative session in which such law is enacted and additional appropriations must be made in each successive year that the mandate remains in effect. Id.

55. In addition to being properly funded by the Legislature, “[n]o rule or regulation so filed with the state secretary shall become effective until an estimate of its fiscal effect including that on the public and private sector, for its first and second year, and a projection over the first five-year period.” See, G.L. c. 30A, §5.

56. A city or town may petition the Superior Court for a declaration that a statute or regulation imposes an unfunded mandate and for an exemption from compliance and such action may be certified as a class action. G.L. c. 29, §27C (e).

57. The Act also allows municipalities to petition the State Auditor’s Division of Local Mandates (“DLM”) for a determination of whether a statute or regulation results in an unfunded mandate. G.L. c. 29, §27C (d).

58. On or about September 12, 2024, on behalf of the residents and taxpayers of the Town of Middleborough, the Town’s Select Board sent a written petition to the State Auditor requesting an opinion with regard to cost reimbursement for all expenses, direct and indirect, with respect to the Act. A true and accurate copy of Middleborough’s September 12, 2024 correspondence is attached hereto as “Exhibit J”.

59. Upon information and belief, other communities affected by the Act sent similar petitions.

60. In a decision dated February 21, 2025, DLM responded to the Town's petition and it found that "DLM has conducted extensive legal and policy review regarding the requested matter, including review of the *Milton* decision and the emergency regulations filed thereafter by the Administration, and determines that the MBTA Communities Act constitutes an unfunded mandate." A true and accurate copy of DLM's February 21, 2025 determination is attached hereto as "Exhibit K".

61. DLM also found that it "requires additional time to perform a thorough analysis of the costs imposed as the impact of the MBTA Communities Act is still being determined. Such analysis will include review of the required fiscal impact statements by EOHLIC and implementing other data collection measures as necessary." See, Exhibit K.

62. Once DLM reaches a final determination of the financial impact of the Act, the determination of the amount of deficiency provided by DLM is *prima facie* evidence of the amount necessary to fully fund the mandate. G.L. c. 29, §27C (d).

63. DLM's decision comes at "a critical time for cities and towns, as inflationary pressures and the constraints of Proposition 2^{1/2} have squeezed local operating budgets and impacted key municipal and school services" and when "Unrestricted General Government Aid (UGGA) still trailing levels from more than 17 years ago".

Massachusetts Municipal Association Letter to Governor Healey Re: FY26 Budget,
<https://www.mma.org/advocacy/in-letter-to-governor-mma-outlines-municipal-priorities-for-fy26-state-budget/> (copy attached as "Exhibit L").

64. Despite the strain on local governments, the Healey Administration has consistently failed to provide sufficient funding for Middleborough to operate within the constraints

of Proposition 2 ½, while continuing to coerce municipalities into complying with unfunded mandates by threatening to take away even more funding.

65. After receiving DLM's decision, the Attorney General issued a press release stating that the Commonwealth does not intend to comply with the Unfunded Mandate Law while DLM conducts the analysis of the financial impacts of the Act and brazenly stating “[t]he Auditor's claim that the MBTA Communities Law is an unfunded mandate is wrong, and, more importantly, this letter has no effect whatsoever on implementation of the Law.” <https://www.mass.gov/news/ag-campbell-issues-statement-clarifying-legality-of-municipal-compliance-with-mbta-communities-law> (copy attached hereto as “Exhibit M”).

66. This statement is legally and factually incorrect and clearly demonstrates the Governor and the Attorney General's lack of regard for due process and the requirements of the law.

The Act Imposes Significant Expense on Middleborough

67. If the Town is required to set aside even more land for dense residential developments than it already has, which it will have no ability to deny, the Town will be forced to incur hundreds of millions of dollars to make improvements to infrastructure to create does capacity to handle the increased demand.

68. In approving the Town's Smart Growth Zoning District, EOHL (formerly DHCD) acknowledged that in Middleborough “the existing basic infrastructure and/or practical availability of one or more of the associated utilities, in particular, water, sewer, and natural gas, is absent, significantly restrained or otherwise insufficient to accommodate the densities that must be allowed under the statute.” See, Exhibit B.

69. To meet the even greater density requirements of EOHLC, the Town will be required to spend more than \$125 million to upgrade its public water supply system, including the acquisition of land and the development of two new wells, which must first go through a rigorous State permitting process; it will have to expend almost \$200 million to upgrade its sewer system, which will not only require the installation and upgrading of pipes and pump stations, but it will also require an upgrade to its wastewater treatment plant, a project the will require approval of the Federal government; and it will be required to expended hundreds of millions of dollars to construct new school facilities to accommodate the influx of new students.
70. In addition to these significant capital costs, the Town will see significant increases across all operating budgets due to the need for additional services, particularly with respect to public safety, public schools, transportation and health and human services. These increases will be ongoing and escalating from year-to-year.
71. Without sufficient funding from the Commonwealth or the ability to raise needed funds within the constraints of Proposition 2 ½, the Town will either be left with large areas of undevelopable land or severe budget shortfalls that will require the elimination of services to meet the needs of its residents.
72. The expenses thrust upon Middleborough far exceed “incidental local administrative expense” and will result in serious harm to the public interest.

**The Governor And EOHLC’s Campaign
of Threats, Intimidation And Coercion**

73. In addition to imposing an unfunded mandate, the Governor, through the Attorney General, EOHLC and other State agencies, has aggressively pursued enforcement of the

Act, the invalid Guidelines and now the Regulations, through a campaign of threats, intimidation and coercion.

74. Despite the Guidelines being ineffective as a result of EOHLC's failure to comply with the Administrative Procedures Act, on March 15, 2023, the Attorney General issued an advisory to "assist" MBTA Communities. See <https://www.mass.gov/doc/advisory-concerning-enforcement-of-the-mbta-communities-zoning-law/download> (copy attached as "Exhibit N").

75. This assistance consisted of nothing more than a summary of the Act, but it did include the following threat:

Communities that fail to comply with the Law may be subject to civil enforcement action. Non-compliant MBTA Communities are also subject to the administrative consequence of being rendered ineligible to receive certain forms of state funding. . . . MBTA Communities that fail to comply with the Law's requirements also risk liability under federal and state fair housing laws. The Massachusetts Antidiscrimination Law and federal Fair Housing Act prohibit towns and cities from using their zoning power for a discriminatory purpose or with discriminatory effect.

76. As detailed by the Supreme Judicial Court, the Attorney General followed through with her threats by declaring that the Town of Milton, a branded noncompliant community, would not be eligible for grant funds it had applied for and the Attorney General filed a lawsuit against Milton in which she sought an injunction compelling Milton to comply with the Act, or alternatively, for the appointment of a special master to rewrite Milton's zoning bylaws for it.

77. In addition to the Attorney General's unreasonable and aggressive enforcement stance, EOHLC has indicated that MBTA Communities that do not comply with its interpretation of the Act will be penalized in ways not authorized by the Act itself.

78. According to the Act, “[a]n MBTA community that fails to comply with this section shall not be eligible for funds from: (i) the Housing Choice Initiative as described by the governor in a message to the general court dated December 11, 2017; (ii) the Local Capital Projects Fund established in section 2EEEE of chapter 29; (iii) the MassWorks infrastructure program established in section 63 of chapter 23A, or (iv) the HousingWorks infrastructure program established in section 27 of chapter 23B.” G.L. c. 40A, §3A(b).

79. However, EOHLC has expanded the statutory penalties for noncompliance by including in the guidelines, now the Emergency and Draft Regulations, 13 additional grant programs, beyond the four selected by the Legislature, that “*will* take compliance with Section 3A into consideration when making grant award recommendations.” 760 CMR 72.09(1).

80. The Regulations also state that an MBTA Community’s status of compliance “also may inform other funding decisions by EOED, EOHLC, the MBTA and other state agencies which consider local housing policies when evaluating applications for discretionary grant programs or making other discretionary funding decisions.” 760 CMR 72.09(2).

81. EOHLC has no jurisdiction over the funding decisions of other agencies.

82. Also, the Governor, through EOHLC and other state agencies, are withholding and/or rescinding previously committed grant funds from Middleborough and other communities branded as noncompliant. Significantly, there is nothing in the Act that states that previously awarded grant funds could be withheld or withdrawn.

83. As the Regulations require high density housing, it would be imperative for the Legislature to fund the foreseeable implications to Middleborough such as the need for

public infrastructure (roads, water and sewer service, public services (schools, first responders)), and the preservation of historic elements and the natural environment.

84. Not only has EOHLIC failed to take these considerations into account, it is imposing draconian penalties for its perceived noncompliance that will thwart the purposes of the Act.

Middleborough's Position with Respect to the Act

85. Despite the Town's compliance with the letter and intent of the Act, and, as recognized by EOHLIC's predecessor, "the initiative that the Town of Middleborough is taking to expand housing opportunities within the proposed District" (Exhibit B), the EOHLIC has incorrectly branded the Town as noncompliant.

86. Notwithstanding EOHLIC's arbitrary and irrational position, public officials from the Town of Middleborough attempted to work with EOHLIC to try to resolve this dispute.

87. In April of 2023, the Town Manager, Select Board Chair, Town Planner and the Town's State Representative, Norman Orrall, met with representatives of EOHLIC to discuss how Middleborough is taking the necessary steps to provide affordable, multi-family housing for its residents and asking that EOHLIC accept its 40R zoning district as satisfying the requirements of the Act.

88. EOHLIC officials refused to accept any zoning district that did not meet the specifications generated by its computer model.

89. In 2023, the now defunct Guidelines required all MBTA Communities to submit an action plan to determine what would be required for that community to be considered compliant. See, Exhibit E.

90. On or about June 6, 2023, the Town submitted an action plan by entering the required information into EOHLC's computer model that then calculated the size of the district and the number of housing units EOHLC would require for Middleborough to be considered in compliance. A true and accurate copy of the Town's 2023 Action Plan is attached hereto as "Exhibit O".

91. The computer model determined that Middleborough would need to have a zoning district at least fifty (50) acres in size and able to accommodate at least 1,471 housing units.

92. On or about June 9, 2023, Middleborough was informed that its Action Plan was accepted and that it would be considered in interim compliance until December 23, 2024, the deadline for enacting a new zoning bylaw with the required 50 acres/1,471 housing units. A true and accurate copy of EOHLC's June 9, 2023 Determination is attached hereto as "Exhibit P"

93. Although the Town was considered in interim compliance at that time, in numerous discussions with Town Officials and representatives of the Southeastern Regional Planning & Economic Development District ("SRPEDD"), EOHLC officials made it clear that the Town's Smart Growth Overlay Zoning District would not be accepted as compliant, despite the fact that it meets the letter of the Act insofar as it is a district of a reasonable size (40.4 acres), where multi-family housing is allowed as of right at a density of more than 15 units per acre.

94. Aside from these informal communications, Middleborough never received a determination that its Smart Growth Overlay Zoning District did not comply with the Act.

95. EOHLC's informal adverse decision that Middleborough is noncompliant was made in violation of G.L. c. 30A, §11, insofar as it did not provide the Town with a written statement of the reasons for its decision; of its rights to review or appeal the decision within the agency or before the courts, as the case may be; and of the time limits for bringing such an appeal.

96. In September of 2024, after months of research and modelling, and in an effort to save the Town from the Governor's looming punishment, the Planning Board submitted an amendment to the Town's Zoning Bylaw and Map to the Select Board for presentation to Town Meeting, in an attempt to satisfy EOHLC's demands. A true and accurate copy of the Planning Boards proposal is shown in the Warrant for the October 7, 2024 Special Town, attached hereto as "Exhibit Q".

97. In order for Middleborough to amend its Zoning Bylaw and Map, however, the proposal has to be approved by a majority of the voters attending Town Meeting. G.L. c. 40A, §5.

98. The proposed bylaw was presented at a Special Town Meeting on October 7, 2024, but the proposed bylaw failed to achieve the required majority vote. See, Exhibit Q.

99. Middleborough has an open Town Meeting form of government, in which any registered voter of the Town is qualified to attend, speak in debate and vote.

100. No board or officer of the Town has the authority to require Town Meeting to vote in a particular way.

101. Thereafter, as described in detail above, the Guidelines were declared null and void by the Supreme Judicial Court on January 8, 2025, and on January 14, 2025, EOHLC reissued the Guidelines in the form of the Emergency Regulations. 760 CMR 72.00.

102. Upon issuance of the Emergency Regulations, by letter dated January 27, 2025, EOHLG informed Middleborough that it would have an “opportunity” to submit a new action plan by February 13, 2025. A true and accurate copy of the letter is attached hereto as “Exhibit R”.

103. Middleborough did not submit a new action plan because there had been no changes in circumstances to suggest that there would be a different outcome than there was in 2023.

104. By correspondence date February 19, 2025, EOHLG informed Middleborough that it was deemed noncompliant with the Act because it had not submitted an Action Plan by February 13, 2025. A true and accurate copy of EOHLG’s determination is attached hereto as “Exhibit S”.

105. However, Middleborough submitted an Action Plan on June 6, 2023 pursuant to the now defunct Guidelines. See, Exhibit P.

106. The Action Plan requirements in the Regulations are identical to the Action Plan requirements in the former Guidelines.

107. If Middleborough was compliant under the Guidelines, it is compliant under the Regulations.

108. EOHLG’s decision that Middleborough is not in compliance with the Act because it did not submit an Action Plan by February 13, 2025, does not comply with G.L. c. 30A, §11(8) because it did not inform Middleborough of its rights to review or appeal the decision within the agency or before the courts, as the case may be; and of the time limits for bringing such an appeal. See, Exhibit S.

109. The decision to declare that Middleborough is not in compliance with the Act because it did not submit an Action Plan by February 13, 2025, when it in fact submitted one on June 6, 2023, is arbitrary and capricious and in violation of law and must be overturned.

110. Notwithstanding the Town's "initiative" in providing affordable, multi-unit housing within 0.5 miles of the MBTA station, and its compliance with the letter of the Act, EOHLC has refused to consider the Town in compliance.

111. EOHLC's decision is arbitrary and capricious and an abuse of discretion insofar as it conflicts with the express terms of the Act, because it was not issued in accordance with the Administrative Procedures Act, and because it is contrary to the very purpose of the Act, which is to create opportunities for multi-family housing.

112. EOHLC continues to brand Middleborough as noncompliant and it has suffered adverse consequences as a result thereof.

Retaliation Against Middleborough

113. Since it has erroneously been branded as noncompliant with the Act, the Governor, through EOHLC and other State agencies have retaliated against Middleborough and its residents and businesses in an effort to coerce Middleborough to comply with its mandate.

114. According to the Act "An MBTA community that fails to comply with this section shall not be eligible for funds from: (i) the Housing Choice Initiative as described by the governor in a message to the general court dated December 11, 2017; (ii) the Local Capital Projects Fund established in section 2EEEE of chapter 29; (iii) the MassWorks infrastructure program established in section 63 of chapter 23A, or (iv) the

HousingWorks infrastructure program established in section 27 of chapter 23B.” G.L. c. 40A, §3A.

115. While the Act states that communities that are not in compliance shall not be eligible for certain grants, nothing in the Act permits State agencies to rescind previously committed grant funds.

116. The Governor, through EOHLC and other State agencies, have gone much further to punish Middleborough and other communities that have been branded noncompliant. In fact, the Governor has been quoted as saying “If you don’t comply with the act, then you’re going to see us withholding as a state money for any number of programs that you’re used to receiving money for,” Healey said. “That includes for schools, it includes for roads and bridges, it includes for a whole host of things that are important to communities.” See <https://www.wbur.org/news/2023/12/08/maura-healey-mbta-communities-act-zoning-law> (copy attached hereto as “Exhibit T”).

117. True to the Governor’s word, on February 24, 2024, the Department of Education and Secondary Education (DESE), rescinded a November 21, 2024 grant award to the Middleborough Public Schools in the amount of \$73,705. The award was rescinded four months after the Town was told that the funds were available for it to spend, and after being told that Middleborough had, in fact, expended the funds. True and accurate copies of e-mails between representatives of the Middleborough Public Schools and representatives of DESE are attached hereto as “Exhibit U”.

118. The purpose of this grant was to fund programs to allow the Middleborough Schools to respond to the social-emotional and behavioral and mental health needs of students, families, and educators and to build strong partnerships with community-based

mental health agencies and/or providers to create comprehensive mental health systems.

<https://www.doe.mass.edu/grants/2025/0311/> (copy attached hereto as “Exhibit V”).

119. In addition to the rescission of this funding, the Town was also informed that the School’s application for funding pursuant Safe and Supportive Schools was denied.

120. This funding is “intended to help districts ensure that each school creates a safe, positive, healthy, equitable and inclusive whole-school learning environment and makes effective use of a system for integrating services and aligning initiatives that promote students’ behavioral health, including social and emotional learning, bullying prevention, trauma sensitivity, dropout prevention, truancy reduction, children’s mental health, foster care and homeless youth education, inclusion of students with disabilities, positive behavioral approaches that reduce suspensions and expulsions, and other similar initiatives.” See, <https://www.doe.mass.edu/sfs/safety/grants/> (copy attached hereto as “Exhibit W”).

121. There is nothing in the Act to even remotely suggest that school children should be punished as a consequence of a municipality’s perceived failure to comply with the Act.

122. Aside from e-mails, the Town did not receive any formal determination that its grant funding had been rescinded.

123. Although the Town is in compliance with the Act, it has arbitrarily been branded as noncompliant, and as a result, it received a letter from EOHLG stating “All discretionary grant programs across the Healey-Driscoll Administration take compliance with the MBTA Communities Law into consideration when making funding decisions.”
See, Exhibit S.

124. Over the past Fiscal Year, the Town has expended approximately \$3.7 million in reliance on the following reimbursement grants previously awarded by the Commonwealth and for which reimbursement has not been provided:

- Municipal Vulnerability Preparedness (MVP) FY25 Action Grant– School Street Parking Lot Renovation - Design, \$171,230;
- Parkland Acquisitions & Renovations to Communities (PARC) – Middleborough Skatepark, FY25 Design, FY26 Construction, \$495,000;
- Drinking Water Supply Protection Grant, Purchase of land for new Wilbur Well, \$100,200;
- MassDOT/Safe Routes to Schools, Wood Street sidewalks, \$2,800,000;
- MassTrails Grant, ADA Trail @ Pratt Farm, construction of boardwalk extension, \$60,000; and
- Municipal Local Cybersecurity Grant Program, Creation of CIRT and TTX, \$100,050.

125. Although the Town complied with the terms of those grants by doing the work it promised to do and providing valuable benefits to the citizens of the Commonwealth, reimbursement is being withheld as a result of Middleborough's perceived noncompliance with the Act.

126. The Commonwealth is also withholding previously committed MassWorks Grant funds in the amount of \$2.8 million, also due to Middleborough's perceived noncompliance.

127. Although these agreements are described as "grants", they constitute binding obligations on the part of the Commonwealth to provide funding in exchange for the Town providing valuable public benefits that would not otherwise be undertaken.

128. This funding is used for important public services and projects including: funding for the protection of parkland, open space and water supply land, funding to make existing facilities more usable for individuals with disabilities, and the construction of

sidewalks for the protection of public school children that do not have access to transportation.

129. Also, the Town and a private developer entered into a Tax Increment Financing (TIF) agreement in accordance with G.L. c. 23A, §3A-3F, to provide a developer with incentives to move its corporate headquarters and manufacturing operations from out-of-state to Middleborough, in exchange for the creation of more than 100 full time jobs and other investments in the community.

130. At the time of that agreement, the statute required that the agreement be approved by Energy Efficiency Advisory Council (EEAC). Although the TIF statute did not condition approval of such financing agreements on compliance with the Act, the EEAC arbitrarily denied the application because it believed that Middleborough was not in compliance. Since that time, the TIF statute was amended to remove EEAC's approval from the process.

131. In addition to withholding previously committed funds and arbitrarily denying project applications, the Commonwealth denied applications for State funding by two private parties intending the use the funds to build additional multi-family housing units in the Town. These private parties have no control over whether or not the Town complies with the Act and the consequence of these decisions is to eliminate the very housing that the Act was designed to create.

132. As a result of EOHLC's arbitrary and capricious interpretation of the Act, and EOHLC's and the Governor's overzealous and coercive tactics to enforce invalid regulations, the residents of the Town and the region have been and will continue to be irreparably harmed through the denial of funding for essential services and amenities.

133. Unless and until the arbitrary and capricious branding of Middleborough as noncompliant with the Act is rescinded, the Town and its residents will continue to be subjected to retaliation and irreparable harm.

COUNT I
VIOLATION OF THE UNFUNDED MANDATE LAW

134. The facts asserted in paragraphs 1 to 133 of this Verified Complaint are hereby incorporated by reference and reasserted as if fully set forth herein.

135. Massachusetts General Laws, Chapter 29, Section 27C, the Local Mandate Law, provides that any post-1980 state law, rule, or regulation that imposes additional costs, excluding incidental local administration expenses, upon any city or town and that is not conditioned on local acceptance must be fully funded by the Commonwealth.

136. A statute or regulation results in an unfunded mandate if it: (1) takes effect after January 1, 1982; (2) is a new law changing existing law; (3) it imposes direct service or cost obligations on municipalities that amounts to more than an incidental local administrative expense; and (4) the Legislature did not make an appropriation to meet those expenses or it did not expressly exempt the legislation from the requirements of the Unfunded Mandate Law. G.L. c. 29, §27C.

137. A city or town may petition the Superior Court for a declaration that a statute or regulation imposes an unfunded mandate and for an exemption from compliance. G.L. c. 29, §27C.

138. On or about January 21, 2021, § 18 of Chapter 358 of the Acts of 2020, the so-called MBTA Communities Act (the “Act”), was enacted and was subsequently amend in 2021, 2023 and 2024.

139. The Act inserted in a new section 3A into Chapter 40A of the Massachusetts General Laws, which requires that any municipality that qualifies as an “MBTA Community”, at least one zoning district of reasonable size in which multi-family housing is permitted as of right, without age restrictions and that is suitable for families with children, such district has more than a minimum density of 15 units per acre, and the district is located within 0.5 miles of the an MBTA commuter rail station.

140. On August 17, 2023, EOHLC enacted Guidelines which imposed significant substantive and procedural obligations on regulated municipalities and provided far more substantive and procedural detail than the Act itself.

141. After the Guidelines were declared ineffective and unenforceable by the Supreme Judicial Court, EOHLC enacted Emergency Regulations and soon to be enacted Draft Regulations that simply mirror the unenforceable Guidelines.

142. The Act and the Regulations constitute a change in law and they are not a mere clarification of an existing law.

143. The Act and the Regulations require so-called MBTA Communities, including the Town of Middleborough, to incur significant costs that are far above incidental local administrative expenses.

144. Such expenses include the expenditure of hundreds of millions of dollars in required infrastructure upgrades, and increases in annual operating expenses across all departments, particularly for public safety, schools and health and human service.

145. Neither the Act, nor any of its amendments, included an appropriation to reimburse Middleborough or any other regulated community for the cost of complying

with the mandate, nor did it contain an exemption from the Unfunded Mandate Law, and no such appropriation has been made as of the date of this Verified Complaint.

146. In addition to these consequences, at the behest of the Governor, EOHLC and other state agencies have taken the position that municipalities that have been branded noncompliant will not qualify for any state aid or grant funding, and they have refused to release previously committed grant funds to the Town of Middleborough.

147. This results in an additional unfunded mandate imposed on the Town of Middleborough.

148. In the absence of an appropriation sufficient to reimburse MBTA Communities' costs of complying with the mandate, the Act and the Regulations constitute an unfunded mandate in violation of G.L. c. 29, §27C, and they are unenforceable until such time as compliance is achieved.

COUNT II
THE REGULATIONS ARE INVALID

149. The facts asserted in paragraphs 1 to 149 of this Verified Complaint are hereby incorporated by reference and reasserted as if fully set forth herein.

150. The Act authorizes EOHLC to promulgate guidelines to "determine if an MBTA community is in compliance with this section." G.L. c. 40A, § 3A(c).

151. The Supreme Judicial Court has determined that EOHLC can only act through regulations enacted in strict compliance with the Administrative Procedures Act.

152. EOHLC has issued Emergency Regulations and Draft Regulations that will soon take effect as permanent regulations.

153. Those Regulations merely mimic the invalid and ineffective Guidelines.

154. The original “guidelines” provided definitions, determined districts “of reasonable size” (which exceed 15 units per acre), and imposed procedural requirements on the 177 communities, including Middleborough.

155. EOHLC has determined the “size” of the “district of reasonable size” for each regulated municipality by using a computer model.

156. The Regulations are arbitrary and capricious and invalid on their face insofar as they do not require EOHLC to determine the amount of required land area and unit density based on each regulated community’s unique characteristic, and they do not provide any mechanism for an aggrieved community to challenge the output of the computer model or to appeal the decision.

157. As designated by EOHLC,’s computer model, Middleborough must zone 50 acres for multi-family uses as of right and must create zoning which allows for at least 1,471 units. Further, 40% of the enacted zoning must be within 0.5 mile of the train station.

158. To require 50 acres and 1,471 units, Middleborough would need to zone areas of town outside the 0.5 mile radius from the train station and areas in another municipality, which is not consistent with the Act.

159. To require Middleborough to add additional density to an area where “the existing basic infrastructure and/or practical availability of one or more of the associated utilities, in particular, water, sewer, and natural gas, is absent, significantly restrained or otherwise insufficient to accommodate the densities that must be allowed under the [40R] statute”, is arbitrary and capricious and an abuse of discretion.

160. The Regulations are arbitrary and capricious as applied to Middleborough, insofar as Middleborough has complied with the letter of the Act by creating a zoning district of

a reasonable size (40 acres), in which multi-family housing is allowed as of right at a density of more than 15 units per acre (Middleborough allows 20 units per acre) and it is within 0.5 miles of an MBTA commuter rail station.

161. The Regulations are *ultra vires* as they require a minimum number of units and unit density in excess of the number required by the Act.
162. EOHLC has violated Chapter 30A, §5A, by failing make a good faith estimate the fiscal effect of Regulations on the public and private sector, and to consider the impact of such regulations on small business.
163. As a result of the Regulations being arbitrary and capricious and not being properly enacted in accordance with the Administrative Procedures Act, the Regulations are invalid and unenforceable on their face and as applied to Middleborough.

COUNT III
EOHLC'S DECISION THAT THE TOWN IS NONCOMPLIANT IS INVALID

164. The facts asserted in paragraphs 1 to 163 of this Verified Complaint are hereby incorporated by reference and reasserted as if fully set forth herein.
165. EOHLC officials have told Middleborough officials that they have determined that the Town is not in compliance with the Act because it has not created a zoning district that meets the criteria generated by EOHLC's computer model.
166. EOHLC's adverse decision was made in violation of G.L. c. 30A, §11(8), insofar as it fails to provide the Town with a written statement of the reasons for its decision; it fails to inform the Town its rights to review or appeal the decision within the agency or before the courts, as the case may be; and it fails to inform the Town of the time limits for bringing such an appeal.

167. Middleborough complies with the Act insofar as it has at least one zoning district of reasonable size (40 acres) in which multi-family housing is permitted as of right, without age restrictions and that is suitable for families with children, such district has more than a minimum density of 15 units per acre (it allows 20 units per acre), and the district is located within 0.5 miles of the MBTA commuter rail station.

168. To require Middleborough to add additional density to an area where “the existing basic infrastructure and/or practical availability of one or more of the associated utilities, in particular, water, sewer, and natural gas, is absent, significantly restrained or otherwise insufficient to accommodate the densities that must be allowed under the [40R] statute”, is arbitrary and capricious and an abuse of discretion.

169. By correspondence date February 19, 2025, EOHLC informed Middleborough that it was deemed noncompliant with the Act because it had not submitted an Action Plan by February 13, 2025.

170. However, Middleborough submitted an Action Plan in June of 2023 pursuant to the now defunct Guidelines.

171. The Action Plan requirements in the Emergency Regulations/Draft Regulations are identical to the Action Plan requirements in the former Guidelines.

172. If Middleborough was compliant under the Guidelines, it is compliant under the Emergency Regulations.

173. The Regulations do not require MBTA Communities that submitted action plans pursuant to the Guidelines to submit new plans.

174. Having submitted a compliance plan, Middleborough has until July 14, 2025 to enact a Bylaw consistent with the requirements of EOHLC’s computer model.

175. EOHLC's decision that Middleborough is not in compliance with the Act did not comply with G.L. c. 30A, §11(8) because it did not inform Middleborough of its rights to review or appeal the decision within the agency or before the courts, as the case may be; and of the time limits for bringing such an appeal.

176. The decision to declare that Middleborough is not in compliance with the Act because its 40R Zoning District does not meet the specifications developed by the computer model is arbitrary and capricious and in violation of law and must be overturned.

177. The Decision to declare that Middleborough is not in compliance with the Act because it did not submit an Action Plan by February 13, 2025, when it in fact submitted one in June of 2023, is arbitrary and capricious and in violation of law and must be overturned.

COUNT IV
BREACH OF CONTRACT

178. The facts asserted in paragraphs 1 to 177 of this Verified Complaint are hereby incorporated by reference and reasserted as if fully set forth herein.

179. Although the Act states that noncompliant municipalities will not "eligible for funds" pursuant to certain grant programs, nothing in the Act authorizes the Commonwealth or any of its agencies to rescind grant awards that had already been made.

180. Although described as a "grant", an award of funding constitutes a binding contract in which there is consideration paid by both parties, i.e., an agreement by the Town to provide valuable public benefits that would not otherwise be undertaken, and an agreement by the Commonwealth to provide funding for those benefits.

181. The Town has relied to its detriment on the awards previously made by expending millions of dollars based on the promise of reimbursement, only to have payment withheld or rescinded.

182. Aside from the false allegation that Middleborough is not compliant with the Act, Middleborough has complied with all of the requirements of its grant agreements with the Commonwealth.

183. The Town has expended significant sums in reliance on the Commonwealth honoring its contractual obligations and it will be irreparably harmed if the Commonwealth breaches those contracts, which breaches will result in the loss of critically important funding for public services and projects including: funding for the protection of parkland, open space and water supply land, funding to make existing facilities more usable for individuals with disabilities, the provision of mental services for public school children, and the construction of sidewalks for the protection of public school children that do not have access to transportation.

184. The Commonwealth's revocation of previously committed grant funds is a breach of contract and those contracts are enforceable by this Court.

PRAYERS FOR RELIEF

WHEREFORE, the Plaintiff, the Town of Middleborough, requests this Honorable Court to:

- A. Issue a Short Order of Notice scheduling a hearing on Middleborough's Motion for Preliminary Injunction filed contemporaneously herewith;
- B. After a hearing, declare that the Act and the Emergency and Draft Regulations and any permanent regulations, constitute an unfunded mandate in violation of G.L. c. 29, §27C,

and issue preliminary and permanent injunctions enjoining the Commonwealth and EOHLC from enforcing the Act and the Regulations unless and until they are brought into compliance with G.L. c. 29, §27C, and enjoining the Commonwealth and all of its agencies, including but not limited to EOHL, from taking any adverse actions against Middleborough and other similarly situated municipalities unless and until the Act and the Regulations are properly funded;

- C. After a hearing, declare that the Regulations are invalid on their face and as applied to Middleborough because they were not enacted in accordance with the Administrative Procedures Act and because they are arbitrary and capricious and constitute an abuse of EOHL's discretion; and issue preliminary and permanent injunctions enjoining the Commonwealth and all of its agencies, including but not limited to EOHL, from taking any adverse actions against Middleborough and other similarly situated municipalities unless and until EOHL enacts regulations through proper administrative procedures and in accordance with its enabling act;
- D. After a hearing, declare that EOHL's branding of Middleborough as noncompliant with the Act is arbitrary and capricious and constitutes an abuse of discretion and is invalid and unenforceable because EOHL did not provide proper notice of its decision and an opportunity for appeal, and because the decision is arbitrary and capricious and an abuse of discretion; and further declare that EOHL's decision is null and void; and issue preliminary and permanent injunctions enjoining the Commonwealth and all of its agencies, including but not limited to EOHL, from taking any adverse actions against Middleborough or from enforcing the decision;

- E. After a hearing, declare that the Commonwealth breached its contract with Middleborough by withholding and/or rescinding in violation of grants previously awarded to the Town, based on an erroneous determination that Middleborough is not in compliance with the Act; and issue preliminary and permanent injunctions enjoining the Commonwealth and all of its agencies, including but not limited to EOHLC, from withholding or rescinding grant funds previously awarded to Middleborough, and ordering the immediately release such funds;
- F. After a hearing declare that the Town of Middleborough's Smart Growth Overlay Zoning District Zoning District (the "District"), which was adopted and approved by EOHLC 's predecessor in accordance with Chapter 40R of the Massachusetts General Laws, meets the requirements of the Act and that Middleborough is in full compliance with the Act and no further enforcement actions or penalties shall be brought against Middleborough.
- G. Issue an order certifying Count I as a class action of similarly situated municipalities pursuant to Mass.R.Civ.P. 23 and G.L. c. 29, §27C.
- H. Award Middleborough reimbursement for its costs and attorneys' fees associated with bringing this action; and
- I. Grant such other relief as this court deems just and equitable.

[signature page to follow]

Respectfully submitted,

PLAINTIFF,
TOWN OF MIDDLEBOROUGH,
By its attorneys,



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Dated: February 28, 2025

VERIFICATION

I, James McGrail, as the Town Manager of the Town of Middleborough, hereby state that I have read the foregoing Verified Complaint and that the facts set forth therein are true and accurate, based upon my personal knowledge and/or my review of the records of the Town of Middleborough and the information available to me. I further verify that I have been authorized to verify and approve this Verified Complaint by a unanimous vote of the Middleborough Select Board.

SIGNED UNDER THE PENALTIES OF PERJURY THIS 28TH DAY OF FEBRUARY, 2025



James McGrail
Town of Middleborough
Town Manager

Exhibit A

8.6. SMART GROWTH ZONING OVERLAY DISTRICT (SGO) [Added 10-4-2021 STM by Art. 28, AG 1-27-2022, eff. 10-4-2021]

A. General Regulations that apply to the Smart Growth Zoning Overlay District

(1) **Purposes** — The purposes of the Smart Growth Zoning Overlay District are:

- (a) To provide an opportunity for residential development and to especially encourage mixed-use smart growth development, including both new construction and renovation of existing buildings, within a distinctive, attractive and livable environment that supports the commercial revitalization of Middleborough and is consistent with the purposes of the Governing Laws.
- (b) To promote continuing development and redevelopment in Middleborough that is pedestrian friendly and consistent with Middleborough's history and architecture.
- (c) To ensure high quality site planning, architecture and landscape design that enhances the distinct visual character and identity of Middleborough and provides an environment with safety, convenience, and amenity.
- (d) To provide, in ways that meet the needs of the town's population, for a diversified housing stock at a variety of costs within walking distance of services and public transportation, including affordable housing and other housing types.
- (e) To the extent not in conflict with the purposes of M.G.L. c. 40S, the Governing Laws, and provisions for As-Of-Right Development herein, to generate positive tax revenue for the Town, and to benefit from the financial incentives provided by Massachusetts General Law Chapter 40R, while providing the opportunity for new business growth and additional local jobs.
- (f) To encourage preservation and rehabilitation of historic structures and buildings.
- (g) To promote efficient use of land and existing parking supply and limit the expansion of surface parking within the district by encouraging shared parking.
- (h) To encourage adoption of energy efficient building practices and sustainable construction methods.
- (i) To ensure compliance with the Massachusetts Department of Environmental Protection stormwater management policies and practices.

(2) **Definitions** — Terms and words not defined herein but defined in Section 10.0 of the Middleborough Zoning Bylaw shall have the meaning given therein. **For the purposes of 40R program eligibility**, to the extent there is any conflict between such terms, any of the terms defined herein, or their application herein and the Governing Laws, the requirements of the Governing Laws shall govern unless otherwise specifically approved by DHCD. Subject to the limitations of the preceding sentence, as used in this Section, the following terms shall have the meanings set forth below:

ACCESSORY BUILDING OR STRUCTURE: A subordinate building or structure located on the same lot as the main or principal building or principal use, the use of which is customarily incidental to that of the principal building or use of the land.

ACCESSORY USE: A use customarily incidental to that of the main or principal building or use of the land.

ADMINISTERING/MONITORING AGENT: An entity designated by the Middleborough Board of Selectmen, which may be the Middleborough Housing Authority or other qualified housing entity, with the power to monitor and to enforce compliance with the provisions of this section related to Affordable Units, including but not limited to computation of rental and sales prices; income eligibility of households applying for Affordable Units; administration of an approved housing marketing and resident selection plan; and recording and enforcement of an Affordable Housing Restriction for each Affordable Unit in the SGO (See Section A (8)).

ADMINISTRATIVE REGULATIONS or PAA REGULATIONS: Administrative rules and provisions relative to Plan Approval that are adopted by the Planning Board pursuant to 40R and in its capacity as the 40R Plan Approval Authority under Section A (9). Such rules and regulations, Project application form(s), any other application requirements and any subsequent amendments thereof must be approved by the Department of Housing and Community Development.

AFFORDABLE HOMEOWNERSHIP UNIT: A Dwelling Unit required to be sold to an Eligible Household per the requirements of this Section.

AFFORDABLE HOUSING: Housing that is affordable to and occupied by Eligible Households.

AFFORDABLE HOUSING RESTRICTION: A deed restriction of an Affordable Unit meeting statutory requirements in Massachusetts General Law Chapter 184 Section 31 and the requirements of Section A (8) of this bylaw.

AFFORDABLE RENTAL UNIT: A Dwelling Unit required to be rented to an Eligible Household per the requirements of Section A (8).

AFFORDABLE UNIT: The collective reference to Affordable Homeownership Units and Affordable Rental Units.

ALLOWED USE: A Principal, Accessory or other permitted Use listed under Section 8.6 (B). A Use that is not prohibited under Section 8.6 (B).

ANNUAL UPDATE: A list of all approved and currently proposed Smart Growth Zoning Overlay Districts within the Town of Middleborough and other associated information, to be filed on or before July 31st of each year with the Massachusetts Department of Housing and Community Development pursuant to Massachusetts General Law Chapter 40R and applicable regulations (760 CMR 59.07 (1)).

APPLICANT: A landowner or other petitioner who files a plan for a Development Project subject to the provisions of this Section.

AREA-WIDE MEDIAN INCOME: The median income, adjusted for household size, as reported by the most recent information from, or calculated from regulations promulgated by, the United States Department of Housing and Urban Development (HUD).

AS-OF-RIGHT DEVELOPMENT: A use or Development Project allowable under this Section without recourse to a special permit, variance, zoning amendment, or other form of zoning relief. A Development Project that is subject to the Plan Review requirement of this Section shall be considered an As-Of-Right Development.

BUILDING: A structure enclosed within exterior walls or firewalls, built, erected, and framed of a combination of any materials, whether portable or fixed, having a roof, to form a structure for the shelter of persons, animals, or property. For the purposes of this definition, "roof" shall include an awning or any similar covering, whether or not permanent in nature.

BUILDING, PRINCIPAL: A building in which is conducted the main or principal use of the lot on which said building is situated.

BUILDING HEIGHT: As per the State Building Code, this term shall mean the distance between the average grade of the ground at the front of the building and the roof of the building; excluding roof structures (such as heating, ventilating and air conditioning equipment) normally located on or built above the roof and not devoted to human occupancy.

BUSINESS OR PROFESSIONAL OFFICE: A building or part thereof, for the transaction of business or the provision of services exclusive of the receipt, sale, storage or processing of merchandise.

CONDOMINIUM: A system of ownership of real estate, including commercial, industrial, and attached and detached residential dwelling units, established pursuant to the Condominium Act of the Commonwealth of Massachusetts, Chapter 183A of the Massachusetts General Laws, in which the apartments or dwelling units are individually owned and the land and common areas are owned in common. A condominium is not a use or a building type; rather it is a form of ownership that can apply to any use or building type.

DENSITY: The number of dwelling units per acre of land.

DEPARTMENT or DHCD: The Massachusetts Department of Housing and Community Development, or any successor agency.

DESIGN STANDARDS: Provisions adopted in accordance with Section B. shall be applicable to all Development Projects within the SGO.

DEVELOPMENT PROJECT or PROJECT: A residential or mixed-use development undertaken under this Section. A Development Project shall be identified as such on the Plan which is submitted to the Planning Board for Plan Review.

DWELLING UNIT: Habitable room or group of habitable rooms, containing cooking facilities, sanitary facilities, providing facilities for living, sleeping, and eating for one family.

ELIGIBLE HOUSEHOLD: An individual or household whose annual income is less than or equal to eighty percent (80%) of the Area-wide Median Income as determined by the United States Department of Housing and Urban Development (HUD), adjusted for household size, with income computed using HUD's rules for attribution of income to assets.

FAMILY OR HOUSEHOLD: One or more persons related by blood, marriage or adoption and sharing cooking, storage, bathroom, living and sleeping facilities in a dwelling as a single housekeeping unit. In addition, a family may include any of the following:

- a. Domestic partners.
- b. Foster children.
- c. Domestic employees.
- d. Not more than two boarders.
- e. Not more than four additional persons not related to the others by blood, marriage, or adoption.

FLOOR AREA (GROSS): The sum of the areas of the several floors of a building, measured from the exterior faces of the outside walls. It does not include cellars, unenclosed porches or attics not used for human occupancy or any floor space in accessory buildings or in the main building intended and designed for the parking of motor vehicles in order to meet the parking requirements of Section 5.3 of the Middleborough Zoning Bylaw or any such floor space intended and designed for accessory heating and ventilating equipment.

GOVERNING LAWS: M.G.L. Chapter 40R and 760 CMR 59.00

INSTITUTIONAL USE: A non-profit or quasi-public use or institution, such as a church, library, public or private school, municipally owned or operated Building, Structure or land, used for public purpose.

LOADING SPACE: Off-street space logically and conveniently located for bulk pickups and deliveries by truck, scaled to delivery vehicles expected to be used, and accessible to such vehicles when required off-street parking spaces are filled. Required off-street loading space is not to be included as off-street parking space in computation of required off-street parking space.

LOT: An area of land held in one ownership, with definite boundaries, used or available for use, as the site of one or more buildings under this Zoning Bylaw.

LOT FRONTAGE: The frontage of a lot on a public or private street.

MIXED-USE DEVELOPMENT PROJECT: A Development Project containing a mix of Residential Uses and Non-Residential Uses as specified in Section 8.6(5) and subject to all provisions of this Section 8.6.

NON-RESIDENTIAL USE: Office, Retail, Restaurant, Service or Institutional Use, inclusive, or some combination of the same.

OFFICE: A workplace used for the transaction of business or non-profit functions, excluding as principal uses manufacturing, retail construction, and warehousing and including, but not limited to, professional offices and offices that support or manage on-site or off-site manufacturing, retailing, construction, and warehousing, as well as research laboratories and other facilities in which research activities are conducted. An office that is operated as part of another primary use on the use table shall be considered accessory to that primary use and not a separate use.

OPEN SPACE: Land not covered by buildings, roads, driveways, sidewalks, parking areas, loading areas, service yards or other improvements. Open space shall include, without limitation, (a) the buffer zones provided herein, (b) any wetlands, marshes, meadows, swamps, creeks, streams and ponds as defined in Mass. General Laws, Chapter 131, Section 40 (provided that the applicant is not hereby prevented from doing any work in such areas as is permitted by the Middleborough Conservation Commission pursuant to said act) and (c) any other protected natural areas.

PARKING (OFF-STREET): For purposes of this Section 8.6(6), an off-street parking space shall consist of an area for parking an automobile with room for opening the doors on both sides, together with properly related access to a street and sufficient maneuvering room, but shall be located totally outside of any street or alley right-of-way.

PARKING STALL OR SPACE: An area dedicated to the parking of a single vehicle within a parking area. Dimensional requirements are set forth in Section 5.3 of the Middleborough Zoning Bylaw.

PERSONAL SERVICE ESTABLISHMENT: A facility providing personal services such as hair salon, barber shop, tanning beds, dry cleaning, print shop, photography studio and the like.

PLAN: A plan depicting a proposed Development Project for all or a portion of the SGO and which is submitted to the Planning Board for its review and approval in accordance with the provisions of this Section 8.6.

PLAN APPROVAL: The Planning Board's authorization, acting as the Plan Approval Authority (PAA) per the Governing Laws for a proposed Development Project based on a finding of compliance with this Section and Design Standards after the conduct of a Plan Review.

PLAN APPROVAL AUTHORITY (PAA): The Middleborough Planning Board authorized under Section 8.6 to conduct the Plan Approval process for purposes of reviewing Project applications and issuing Plan Approval decisions with the SGO.

PLAN REVIEW: The review procedure established by this bylaw and administered by the Town of Middleborough Planning Board acting as PAA.

PRINCIPAL USE: The primary use to which the premises are devoted, and the main purpose for which the premises exist.

RECREATIONAL AREA: A parcel(s) of land or an area(s) of water, or a combination of land and water within the site which is designated, maintained and preserved for active or passive recreational uses (such as a park, tennis courts, ball fields, walking/biking trails, swimming pools, golf courses, etc.) or for buffer areas, and designed and intended for the use or enjoyment of occupants of the site and, in certain circumstances, the general public. Recreational Areas may contain such Structures and improvements as are appropriate under the provisions of this Section.

RESIDENTIAL PROJECT: A Project that consists solely of residential, parking and accessory uses as defined in Section 8.6(B).

RESIDENTIAL USE: A Building or part of a Building containing Dwelling Units as defined herein above and parking that is Accessory to the Dwelling Units.

RESTAURANT: A building or portion thereof, containing tables and/or booths for at least two-thirds (2/3) of its legal capacity, which is designed, intended and used for the indoor sales and consumption of food prepared on the premises, except that food may be consumed outdoors in landscaped terraces, designed for dining purposes, which are adjuncts to the main indoor restaurant facility. The term "restaurant" shall not include "fast food restaurant."

RESTAURANT, FAST FOOD: An establishment whose primary business is the sale of food for consumption on or off the premises which is: primarily intended for immediate consumption rather than for use as an ingredient or component of meals; available upon a short waiting time; and packaged or presented in such manner that it can be readily eaten outside the premises where it is sold. Drive-in Food Service Establishment is a fast food restaurant which provides convenient vehicular access and may provide service to customers while in their vehicles.

RETAIL: A facility selling goods to the public in an enclosed building but not specifically listed in the Table of Use Regulations.

SCHOOL: A Building devoted to the instruction or education in primary, secondary, high school, or post-high school grades.

SERVICE: The performance of any act for the benefit of another with a view to profit or for a livelihood.

SMART GROWTH ZONING OVERLAY DISTRICT (SGO): An Overlay Zoning District adopted pursuant to Massachusetts General Law Chapter 40R, in accordance with the procedures for zoning adoption and amendment as set forth in Massachusetts General Law Chapter 40A and approved by the Department of Housing and Community Development pursuant to Massachusetts General Law Chapter 40R and applicable regulations.

STREET: (1) A public way (other than a non-access highway) or a way which the Town Clerk certifies is maintained and used as a public way; or, (2) A way shown on a plan approved and endorsed in accordance with the Subdivision Control Law (MGL Chapter 41 Section 81K et seq); or, (3) A way in existence when the Subdivision Control Law became effective in Middleborough, having, in the opinion of the Planning Board, sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby and for the installation of the municipal services to serve such land and the buildings erected or to be erected thereon.

STRUCTURE: A combination of materials assembled at a fixed location to give support or shelter, including but not limited to a building, framework, retaining wall, tent, reviewing stand, platform, bin, fence, sign, flagpole, recreational tramway, mast for radio antenna or the like. Fences, signs and flagpoles shall be exempt from setback requirements for structures, but subject to other requirements set forth herein.

UNDERLYING ZONING: The zoning requirements adopted pursuant to Massachusetts General Law Chapter 40A that are otherwise applicable to the geographic area in which the SGO is located, as said requirements may be amended from time to time.

UNRESTRICTED UNIT: A Dwelling Unit that is not restricted as to rent, price or eligibility of occupants.

USE: The purpose for which land or a Building or Structure is arranged, designed, intended or erected, or for which land or a Building or Structure is or may be occupied.

YARD: A space open to the sky, located between a building or structure and a lot line, unoccupied except by fences, walls, poles, paving and other customary yard accessories.

YARD, FRONT: The area of a lot lying between the right of way sideline of a public or private road on which the lot has frontage and the nearest building on the lot. In the case of corner lots or lots otherwise having frontage on more than one road, all fronting yards shall be considered front yards.

YARD, REAR: The area of a lot between the rear most building on the lot and the rear lot line. The rear yard shall extend across the full width of the lot.

YARD, SIDE: The area on a lot between the side lot line and the building or buildings on the lot, extending between the front yard and rear yard.

(3) **Scope and Authority:** The Smart Growth Zoning Overlay District is established pursuant to the Governing Laws and shall be deemed to overlay the parcels as shown on the Zoning Map of the Town of Middleborough, as amended herein. The Underlying Zoning shall remain in effect, and the Applicant shall have the option of applying for Plan Approval pursuant to the Zoning controls set forth in this Section 8.6 or complying with all applicable zoning controls set forth in the Zoning Bylaw of the Town of Middleborough for the underlying district(s) or for other overlay zoning that may be therein defined.

(4) **Performance Standards:** All permitted Uses must comply with the following:

- (a) Does not regularly emit noxious odors, noises, or dust particles, or smoke, or pose danger, such as manufacture of acids, gases, fertilizers and glue, petroleum refining, reduction of animal matter, and manufacture of cement, gypsum, or explosives.
- (b) Does not present a danger to persons within or outside the SGO by reason of emission of odor, fumes, gases, particulate matter, smoke, noise, vibration, glare, radiation, electrical interference, threat of fire or explosion, or any other reason.
- (5) **Mixed-Use Development:** Development Projects may include a portion not to exceed 50% of the total gross floor area to be used for Non-Residential Uses including Office, Retail, Restaurant, Service or Institutional Uses. Residential units generally must be located above the first-floor but may be permitted in first floor portions of the Building. Where a first-floor residential portion of the Building fronts on a public way, the Planning Board then must determine that the public way is principally a residential Street or that such first floor Residential Use would be in keeping with the character of the adjoining land Uses.

(6) Off-Street Parking and Loading

- (a) Off-Street Parking: Retail Stores, Offices and Consumer Service establishments located within one hundred (100) feet of a public off-street parking facility shall be exempt from off-street parking requirements. In all other cases, off-street parking shall be provided to meet the following minimum and maximum requirements:

Use	Minimum & Maximum Number of Parking Spaces
Retail	1 per 300 sq. ft. of gross floor area
Restaurant	1 for each 3 seats
Office	3 per 1,000 square feet
Institutional	1 for each 3 seats
Residential	1.25 per unit
Other Non-Residential, more than 2,000 square feet	3 per 1,000 square feet

- (b) Off-Street Loading & Delivery: All loading shall take place on-site in a specified area designed for this purpose. Loading shall not block streets, access ways, driveways, parking or pedestrian areas.
- Off-street loading facilities shall be provided. The PAA shall determine the adequacy of loading facilities based on the nature of use. Off-street loading facilities shall be screened from public use areas.
- (c) Location of Parking: Any surface parking lot shall, at the sole discretion of the Planning Board, be located at the side or rear of a Building, relative to any public

right-of-way, public open space, or pedestrian way. In no case shall surface parking for new construction be permitted within any applicable restricted Front Setback area.

(d) **Waiver of Parking and Loading Requirements:** The Planning Board may grant a Plan Approval providing such relief from the standards or prescribe safeguards and conditions as it shall warrant appropriate, provided that it finds that it is impractical to meet the standards and that such modifications are appropriate by reason of the proposed Use and will not result in or worsen parking or traffic problems in the SGO. The Planning Board may impose conditions of Use or occupancy appropriate to such modifications, provided that the particular use and occupancy were voluntarily proposed by the applicant and any such conditions are expressly approved in writing by DHCD and would not impair the development of housing within the District which is appropriate for diverse populations, including households with children, other households, individuals, households including individuals with disabilities, and the elderly.

(e) **Shared Use of Required Parking:** Shared use may be made of required parking spaces by intermittent Use establishments, for example, churches, assembly halls or theaters, whose peak parking demand is only at night or on specific days of the week may be shared with other Uses whose peak demand is only during the day, or in public parking lots, subject to the paragraph below. At the time of application, a formal agreement shall be made in recordable form and recorded at the Registry of Deeds by the owners of the Uses involved concerning the number of spaces involved, substantiation of the fact that such shared use is not overlapping or in conflict, and the duration of the agreement.

The applicant shall demonstrate to the satisfaction of the Planning Board that shared spaces will meet parking demands by using accepted methodologies (e.g., the Urban Land Institute Shared Parking Report, ITE Shared Parking Guidelines, or other industry established studies on shared parking).

(f) **Cooperative Establishment and Operation of Parking Areas:** Required spaces for any number of Uses may be provided in a combined Lot or Lots (public or private), provided that the number of spaces in the combined facility shall not be less than the sum of those required of the individual Uses, with allowances made, upon formal designation, for night use or for separate and distinct working shifts, and provided also that such Lot or Lots shall be within 150 feet of the Principal Buildings served.

(g) **Parking Design:** Parking shall be designed and constructed to comply with all applicable state and federal disability access requirements including but not limited to the Americans with Disabilities Act (ADA) and 521 CMR.

(7) **Open Spaces and Recreational Areas:** The site design for Development Projects shall include a minimum of 20% of total acreage in common open space and recreational areas. The Plans and any necessary supporting documents submitted with an application for Plan Approval within the SGO shall show the general location, size, character, and general area within which common open space or facilities will be located. The plans

and documentation submitted to the Planning Board shall include a description of proposed ownership and maintenance provisions of all common open space and facilities and, if requested by the Planning Board, any necessary restrictions or easements designed to preserve the open space and recreational areas from future development. Upon consideration of the above information, the Planning Board may, in its sole discretion, approve a waiver as provided for in Section 8.6 (10) for a Front Setback to allow for common open space and recreational areas.

(8) Affordable Housing

(a) Affordable Units shall comply with the following requirements:

- (1) The monthly rent payment for an Affordable Rental Unit, including utilities and parking, shall not exceed thirty percent (30%) of the maximum monthly income permissible for an Eligible Household, assuming a household size equal to the number of bedrooms in the unit plus one, unless another methodology for determining the target household size has been approved by DHCD.
- (2) For an Affordable Homeownership Unit the monthly housing payment, including mortgage principal and interest, private mortgage insurance, property taxes, condominium and/or homeowner's association fees, insurance, and parking, shall not exceed thirty percent (30%) of the maximum monthly income permissible for an Eligible Household, assuming a household size equal to the number of bedrooms in the unit plus one.
- (3) Affordable Units required to be offered for rent or sale shall be rented or sold to and occupied only by Eligible Households.

(b) Number of Affordable Units: Not less than twenty percent (20%) of all Dwelling Units and not less than twenty-five percent (25%) of all rental Dwelling Units constructed in a Development Project shall be Affordable Units. Provided however, for Development Projects in which all of the Dwelling Units are limited to occupancy by elderly persons and/or by persons with disabilities, not less than twenty-five percent (25%) of the Dwelling Units shall be Affordable Units, whether the Dwelling Units are rental units or ownership units.

(c) Fractional Units: When the application of the percentages specified in Section A(8)(a) results in a number that includes a fraction, the fraction shall be rounded up to the next whole number.

(d) Design and Construction: Affordable Units must be dispersed equitably and proportionately throughout a Development Project, including, where applicable, across all Buildings, floors and unit types in accordance with the affordable housing restriction and marketing and tenant selection plan approved by DHCD. Affordable Units must be comparable in initial construction quality and exterior design to the Unrestricted Units. However, nothing in this section is intended to limit a homebuyer's rights to renovate a Dwelling Unit under applicable law. The Affordable Units must have access to all on-site amenities. Affordable Units shall

be finished housing units. All Affordable Units must be constructed and occupied not later than concurrently with construction and occupancy of Unrestricted Units. In Development Projects that are constructed in phases, Affordable Units must be constructed and occupied in proportion to the number of units in each phase of the Development Project.

- (e) Unit Mix: The total number of bedrooms in the Affordable Units shall be at least proportionate to the total number of bedrooms in all units of the Project of which the Affordable Units are a part.
- (f) Affordable Housing Restriction: Each Affordable Unit shall be subject to an Affordable Housing Restriction approved by DHCD, pursuant to 40R, and recorded with the County Registry of Deeds or Land Court Registry District of the County. All Affordable Housing Restrictions must include, at minimum, the following:
 - (1) A description of the Affordable Homeownership Unit, if any, by address and number of bedrooms; and a description of the overall quantity, initial unit designations, number of bedrooms and number of bedroom types of Affordable Rental Units in a Development or portion of a Development which are rental. Such restrictions shall apply individually to the specifically identified Affordable Homeownership Unit and shall apply to a percentage of rental units of a rental Development Project or the rental portion of a Development Project with the designated Affordable Rental Units initially identified in the corresponding Affirmative Fair Housing Marketing Plan (AFHMP) and able to float on a limited basis, as necessary, subject to specific approval by DHCD in accordance with the AFHMP and DHCDs AFHMP guidelines.
 - (2) The term of the Affordable Housing Restriction which shall be in perpetuity or for the longest period customarily allowed by law, as further specified in the PAA's Plan Approval decision, but shall be no less than thirty (30) years.
 - (3) The name and address of the Monitoring Agent with a designation of its power to monitor and enforce the Affordable Housing Restriction.
 - (4) Reference to a housing marketing and resident selection plan, to which the Affordable Unit is subject, and which includes an affirmative fair housing marketing program, including public notice and a fair resident selection process. If approved by DHCD, pursuant to 40R for the corresponding Project or phase(s) therein, the housing marketing and selection plan may provide for local preferences in resident selection. The plan shall designate the minimum household size appropriate for a unit with respect to bedroom size and provide that preference for such unit shall be given to a household of the appropriate size based on need for the number of bedrooms in the unit.
 - (5) A requirement that buyers or tenants will be selected at the initial sale or initial rental and upon all subsequent sales and rentals from a list of Eligible Households compiled in accordance with the housing marketing and selection

plan.

- (6) Reference to the formula pursuant to which rent of a rental unit or the maximum resale price of a homeownership unit will be set.
- (7) A requirement that only an Eligible Household may reside in an Affordable Unit and that notice of any lease or sublease of any Affordable Unit shall be given to the Monitoring Agent.
- (8) Provision for effective monitoring and enforcement of the terms and provisions of the Affordable Housing Restriction by the Monitoring Agent.
- (9) Provision that the restriction on an Affordable Homeownership Unit shall run in favor of the Monitoring Agent and the Town of Middleborough, in a form approved by municipal counsel and DHCD pursuant to the Governing Laws and shall limit initial sale and re-sale to and occupancy by an Eligible Household.
- (10) Provision that the owner(s) or manager(s) of Affordable Rental Unit(s) shall file an annual report to the Monitoring Agent, in a form specified by that agent certifying compliance with the provisions of this Section 8.6(A)(8)) and containing such other information as may be reasonably requested in order to ensure compliance with the Affordable Housing Restriction and AFHMP.
- (11) Provision that the restriction on Affordable Rental Units in a rental Project or rental portion of a Project shall run with the rental Project or rental portion of a Project and shall run in favor of the Monitoring Agent and the Town of Middleborough, in a form approved by municipal counsel and DHCD pursuant to the Governing Laws and shall limit rental and occupancy to an Eligible Household.
- (12) A requirement that residents in Affordable Units provide such information as the Monitoring Agent may reasonably request in order to ensure compliance with the Affordable Housing Restriction and AFHMP.
- (13) Designation of the priority of the Affordable Housing Restriction over other mortgages and restrictions.

(g) Administration: The Monitoring Agent shall ensure the following (See Section 8.6 (A) (2) Definitions):

- (1) Prices of Affordable Homeownership-Units are properly computed; rental amounts of Affordable Rental Units are properly computed.
- (2) Income eligibility of households applying for Affordable Units is properly and reliably determined.
- (3) The housing marketing and resident selection plan has been approved by DHCD pursuant to the Governing Laws, conforms to all requirements and is properly administered.

- (4) Sales and rentals are made to Eligible Households chosen in accordance with the housing marketing and resident selection plan with appropriate unit size for each household being properly determined and proper preference being given.
- (5) Affordable Housing Restrictions meeting the requirements of this Section are recorded with the Plymouth County Registry of Deeds or Land Court. In the case where the Monitoring Agent cannot adequately carry out its administrative duties, upon certification of this fact by the Planning Board or by the Department of Housing and Community Development, the administrative duties shall devolve to and thereafter be administered by a qualified housing entity designated by the Middleborough Board of Selectmen.
- (h) Costs of Housing Marketing and Selection Plan: The housing marketing and selection plan shall make provision for payment by the owner of reasonable costs to the Monitoring Agent and the owner shall pay reasonable costs to the Monitoring Agent to develop, advertise, and maintain the list of Eligible Households and to monitor and enforce compliance with affordability requirements under this Section 8.6 and the Governing Laws.
In combination, the various documentation required under Section A(8), to be submitted with an application for Plan Approval, shall include details about construction related to the provision, within the Development Project, of units that are accessible to the disabled and appropriate for diverse populations, including households with children, other households, individuals, households including individuals with disabilities, and the elderly.
- (i) Age Restrictions: Nothing in this Section 8.6 shall permit the imposition of restrictions on age upon Projects unless proposed or agreed to voluntarily by the Applicant.
- (9) **Plan Approval Procedures:** The Planning Board shall adopt and file with the Town Clerk Administrative Regulations relative to the application requirements and contents for Plan Review, subject to approval by the Massachusetts Department of Housing and Community Development. Plan approval procedures shall be as follows:
 - (a) Pre-Application Requirements: Prior to the submittal of a Plan for Plan Approval, a "Concept Plan" may be submitted to help guide the development of the definitive submission for project build out. Such Concept Plan shall reflect the following:
 - (1) Overall building envelope areas.
 - (2) Open space and natural resource areas.
 - (3) General site improvements, drainage plans, groupings of Buildings and proposed land Uses.
 - (4) Anticipated parking spaces and locations.

(5) Site vehicular access.

The Concept Plan is intended to be used as a tool for both the Applicant and the Planning Board to ensure that the proposed Project design will be consistent with the Design Standards and other requirements of the SGO.

(b) Application Procedures: All Projects are subject to Plan Approval.

(1) Submittal.

(a) An application for Plan Approval shall be submitted in accordance with the requirements herein and further specified in the SGO Administrative Regulations, on the form provided by the PAA along with the application fees set forth in the Administrative Regulations. The application shall be accompanied by such plans and other documents as required by the Administrative Regulations required to verify compliance with any of the provisions of this Section in a manner that, as defined in 760 CMR 59.02, does not Unduly Restrict development within the SGO. In addition to the submission requirements of Administrative Regulations, an application for Plan Approval shall also include all of the following:

- Development narrative including all Uses, breakdown of square footage for each Use, number of housing units and zoning summary.
- Photos of adjacent properties and other properties impacted by the Development Project.

(b) All plans shall be prepared by certified architects or engineers as required by the Massachusetts Building Code and shall include all of the following:

- Building plans - all levels including roof
- Building elevations - all sides including courtyards and interior Lot elevations
- Massing perspective sketches or renderings illustrating the key elements of the proposed Development Project within its context.
- Proposed exterior lighting plan with photometric information.
- The documents shall clearly differentiate between existing and proposed work by Use of screened lines of color. Changes and revisions to subsequent submittals shall be prominently noted.

(c) An application for Plan Approval shall be filed by the Applicant with the Town Clerk. A copy of the application, including the date of filing certified by the Town Clerk, as well as the required number of copies of the application, shall be filed forthwith by the Applicant with the Planning Board. Application submissions must include a hard copy as

well as an electronic copy in PDF or CAD format. Said filing shall include any required forms provided by the Planning Board and approved by DHCD as part of the Administrative Regulations. As part of any application for Plan Approval for a Development Project, the Applicant must submit the following documents to the Planning Board and the Monitoring Agent:

- Evidence that the Development Project complies with the cost and eligibility requirements of Section A.(8);
- Development Project plans that demonstrate compliance with the design and construction standards of Section A.(8)(d); and
- A form of Affordable Housing Restriction that satisfies the requirements of Section A.(8)(f).
- Review Fees: The Applicant shall be required to pay for reasonable consulting fees to provide peer review of the application for the benefit of the Planning Board, pursuant to M.G.L. Chapter 40R, Section 11(a). Such fees shall be held by the Town of Middleborough in an interest-bearing escrow account, and shall be used only for expenses associated with the use of outside consultants employed by the Planning Board in reviewing the Plan application. Any surplus funds remaining after the completion of such review, including any interest accrued, shall be returned to the Applicant forthwith.

(2) Circulation to Other Boards: In accordance with the Administrative Regulations the Planning Board shall provide a copy of the application materials to all relevant municipal Boards, Departments, Commissions and Officials as determined by the Planning Board and to the Monitoring Agent. Subject to the requirements under 9(b)[4] below, these entities shall provide any written comments within 60 days of the filing of the Plan and application with the Town Clerk.

(3) Public Hearing and Time Limits: The Planning Board shall hold a public hearing and review all applications according to the procedure specified in Massachusetts General Law Chapter 40A Section 11.

(4) The decision of the Planning Board shall require a majority vote of the board's members and be made, and written notice of the decision filed with the Town Clerk, within 120 days of receipt of the application by the Town Clerk. This time may be extended by mutual agreement between the Planning Board and the Applicant by written agreement filed with the Town Clerk. Failure of the Planning Board to take action within said 120 days or the extended time shall be deemed an approval of the Plan Approval application.

(5) Criteria for Plan Approval: The Planning Board shall approve the Development Project upon all of the following findings:

- (a) The Applicant has submitted the required fees and information as set forth in the SGO Administrative Regulations.
- (b) The proposed Development Project as described in the application meets all of the requirements and standards set forth in this Section 8.6, applicable Design Standards and the SGO Administrative Regulations, or a waiver has been granted there from, and shall also include written confirmation by the Monitoring Agent that all Affordable Housing requirements have been satisfied.
- (c) Any extraordinary adverse potential impacts of the Project on nearby properties have been adequately mitigated.

(6) Criteria for Plan Denial: A Plan Approval application may be disapproved only where the Planning Board finds that:

- (a) The applicant has not submitted the required fees and information as set forth in the SGO Administrative Regulations; or
- (b) The Project as described in the application does not meet all the requirements and standards set forth in this Section 8.6, applicable Design Standards and the SGO Administrative Regulations, or that a required waiver there from has not been granted; or
- (c) It is not possible to adequately mitigate extraordinary Project impacts on nearby properties by means of suitable conditions.

(10) **Waivers:** Upon request of the Applicant, the Planning Board may waive dimensional and other requirements, including Design Standards, with conditions, in the interests of design flexibility and overall Project quality, and upon a finding of consistency of such variation with the overall purpose and objectives of the SGO, and if it finds that such waiver will allow the Project to achieve the density, affordability, mix of uses and/or physical character allowed under this Section. Notwithstanding anything to the contrary in this Section 8.6 or the Zoning Bylaw of Middleborough, the Affordable Housing provisions that comprise Section A (8) shall not be waived without the express written approval of DHCD. The Planning Board will take into consideration the following items when considering a waiver:

- (a) High performance energy efficient buildings and construction methods.
- (b) Projects with publicly accessible open space.
- (c) Projects that include retail and restaurants located on Street level.
- (d) A demonstrated shared parking initiative that makes efficient use of land and existing parking supply.
- (e) The preservation or rehabilitation of historic properties or other buildings considered significant to the Town.

(11) **Plan Changes After Approval by Planning Board**

- (a) **Minor Plan Changes:** After Plan Approval, an Applicant may apply to make minor changes in a Development Project that do not affect the overall build out or Building envelope of the site, or provision of open space, number of housing units, or housing need or Affordable Housing features. Such minor changes must be submitted to the Planning Board on redlined prints of the approved Plan, reflecting the proposed change, and on application forms provided by the Planning Board. The Planning Board may, in its sole discretion, authorize such changes at any regularly scheduled meeting, without the need to hold a public hearing. The Planning Board shall set forth any decision to approve or deny such minor change by motion and written decision and provide a copy to the Applicant for filing with the Town Clerk.
- (b) **Major Plan Changes:** Those changes deemed by the Planning Board to constitute a major change in a Development Project because of the nature of the change in relation to the prior approved Plan, or because such change cannot be appropriately characterized as a minor change as described above, shall be processed by the Planning Board as a new application for Plan Approval pursuant to this Section.

(12) **Fair Housing Requirement:** All Development Projects within the SGO shall comply with applicable federal, state and local fair housing laws.

(13) **Project Phasing:** The Planning Board may allow a Project to be phased at the request of the Applicant or to mitigate any extraordinary adverse impacts on nearby properties and provided that the submission shows the full build-out of the Project and all associated impacts as of the completion of the final phase and subject to approval of the Planning Board. For Projects that are approved and developed in phases, the proportion of Affordable Units shall be no less than the minimum percentage required for the Project as a whole under Section A(8)(b).

(14) **Decisions:** The Planning Board shall issue to the Applicant a copy of its decision containing the name and address of the owner, identifying the land affected and the Plans that were the subject of the decision and certifying that a copy of the decision has been filed with the Town Clerk. If 20 days have elapsed after the decision has been filed with the Town Clerk without an appeal having been filed, or if such appeal having been filed is dismissed or denied, or if a Plan is approved by reason of the failure of the Planning Board to timely act, the Town Clerk shall so certify on a copy of the decision. A copy of said decision shall be filed with the Registry of Deeds.

A Plan Approval shall remain valid and run with the land indefinitely, provided that substantial construction has commenced and continued within two years after the decision is issued, which time shall be extended by the time required to adjudicate an appeal and which time shall be extended if the Project proponent is actively pursuing other required permits or there is excusable neglect for failure to commence.

The Planning Board may require the posting of a performance bond to secure and/or screen a Development Project site in the event that demolition is undertaken but subsequent work lapses, for any reason within or outside the Applicant's control, for a period longer than one year.

(15) **Date of Effect:** The effective date of this SGO Bylaw shall be the date on which such adoption is voted upon by Town Meeting pursuant to the requirements of Section 5 of Chapter 40A of the General Laws and Chapter 40R of the General Laws; provided, however, that an Applicant may not proceed with construction pursuant to this Bylaw (Section 8.6) prior to the receipt of final approval of this Bylaw (Section 8.6) and accompanying Zoning Map by both the Department of Housing and Community Development and the Office of the Massachusetts Attorney General.

(16) **Design Standards:** The Planning Board may adopt and amend, by simple majority vote, Design Standards which shall be applicable to all Projects. Such Design Standards 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. DHCD may, at its discretion, require Design Standards to contain graphics illustrating a particular standard or definition in order to make such standard or definition clear and understandable.

Before adopting any Design Standards, the Planning Board shall submit the proposed Design Standards to DHCD for approval. Any amendment to the Design Standards shall not take effect until approved by DHCD and filed with the Town Clerk.

An application for Plan Approval that has been submitted to the Town Clerk pursuant to this Section shall not be subject to any Design Standard that has not been approved by DHCD and filed with the Town Clerk.

(17) **Severability:** If any provision of this Bylaw is found to be invalid by a court of competent jurisdiction, the remainder of this Section shall not be affected but remain in full force. The invalidity of any provision of this Section shall not affect the validity of the remainder of the Town's Zoning Bylaw.

B. Establishment and Delineation of the Smart Growth Zoning Overlay Sub-Districts

(1) Middleborough Smart Growth Zoning Overlay Sub-District (MSGO)

(a) **Establishment and Delineation of the MSGO** — The Middleborough Smart Growth Zoning Overlay Sub-District (MSGO) is an overlay district that is superimposed over the Underlying District. The boundaries are delineated as the "Middleborough Smart Growth Zoning Overlay Sub-District" on the Official Zoning Map of the Town of Middleborough on file in the office of the Town Clerk, said map hereby made a part of the Middleborough Zoning Bylaw.

(1) **Allowed Uses** The following Uses shall be permitted As-of-Right in the MSGO upon Plan Approval pursuant to the provisions of this Section 8.6:

(a) Multi-family Residential

(b) Only as part of a Mixed-Use Development Project (see Section 8.6(A)(5)):

- i. Office
- ii. Retail
- iii. Restaurant (excludes drive-through windows)
- iv. Institutional
- v. Consumer Service

In addition to the Allowed Uses listed above, the following Uses are permitted As-of-Right for Development Projects within the MSGO subject to the requirements of this Section 8.6:

- (a) Parking accessory to any of the above Allowed Uses, including surface, garage-under, and structured parking
- (b) Accessory Uses customarily incidental to any of the above permitted Allowed Uses

(2) **Prohibited Uses** Any use not listed herein as an Allowed Use is deemed prohibited.

(b) **Dimensional and Other Requirements** Applications for Plan Approval shall be governed by this Section 8.6 and the MSGO Design Standards.

Dimensional Requirements

Maximum Floor Area Ratio (FAR) (Gross Floor Area/ Lot Size)	4
Maximum Building Height	45 Feet
Minimum Lot Frontage	50 Feet
Maximum Lot Coverage	N/A***
Minimum Lot Area	N/A***
Number of Buildings per Lot	N/A***
Maximum Building Frontage	300 Feet
Minimum Front Setback*	0 Feet
Maximum Front Setback*	10 Feet
Minimum Side/Rear Setback** abutting a Residential Zone	15 Feet
Minimum Side/Rear Setback** in MSGO or abutting Business-B	0 Feet
Interior Setback (between Buildings on same Lot)	15 Feet

Dimensional Requirements

*Design Standards will include for front facade Setback requirements

**Design Standards will include Building step-back requirements

***No requirement or limitation applies

- (1) **Residential Density Allowances** The following residential densities shall be allowed on all Lots and within all Buildings within the MSGO pursuant to the requirements of this Section 8.6: Multifamily Residential 20 Units per acre.
 - (a) The Planning Board may provide a waiver as specified in Section A (10) to allow a density in excess of that stated above.
 - (b) The Planning Board may provide a waiver as specified in Section A(10) to promote the renovation or adaptive reuse of existing buildings.
- (2) **Contiguous Lots** In the MSGO, where two or more Lots are contiguous or are separated by a right-of-way, such Lots may be considered as one Lot for the purpose of calculating maximum Lot coverage; parking requirements; minimum useable open space; and Dwelling Units per acre.
- (3) **Age-Restricted Housing Units** An Applicant may propose a Residential or Mixed-Use Development Project in which all Dwelling Units are designed for or are accessible to the elderly or the handicapped under all applicable laws and regulations, provided that not less than twenty-five percent (25%) of the housing units in any such Development Project shall be Affordable Units. All such Development Projects shall be governed by the requirements of this Section 8.6 and the Design Standards.

(2) John Glass Square Smart Growth Zoning Overlay Sub-District

- (a) **Establishment and Delineation of the JGSGO-** The John Glass Square Smart Growth Zoning Overlay Sub-District (JGSGO) is an overlay district that is superimposed over the Underlying District. The boundaries are delineated as the "John Glass Square Smart Growth Zoning Overlay Sub-District" on the Official Zoning Map of the Town of Middleborough on file in the office of the Town Clerk, said map hereby made a part of the Middleborough Zoning Bylaw.
 - (1) **Allowed Uses** The following Uses shall be permitted As-of-Right in the JGSGO upon Plan Approval pursuant to the provisions of this Section 8.6:
 - (a) Two- and/or Three-Family Residential
 - (b) Only as part of a Mixed-Use Development Project (see Section 8.6(A)(5)):
 - i. Office
 - ii. Retail

- iii. Restaurant (excludes drive-through windows)
- iv. Institutional
- v. Consumer Service

In addition to the Allowed Uses listed above, the following Uses are permitted As-of-Right for Development Projects within the JGSGO subject to the requirements of this Section 8.6:

- (a) Parking accessory to any of the above Allowed Uses, including surface, garage-under, and structured parking
- (b) Accessory Uses customarily incidental to any of the above permitted Allowed Uses

(2) **Prohibited Uses** Any use not listed herein as an Allowed Use is deemed prohibited.

(b) **Dimensional and Other Requirements** Applications for Plan Approval shall be governed by this Section 8.6 and the JGSGO, Design Standards.

Dimensional Requirements

Maximum Floor Area Ratio (FAR) (Gross Floor Area/ Lot Size)	3
Maximum Building Height	35 Feet
Minimum Lot Frontage	50 Feet
Maximum Lot Coverage	N/A***
Minimum Lot Area	N/A***
Number of Buildings per Lot	N/A***
Maximum Building Frontage	300 Feet
Minimum Front Setback*	0 Feet
Maximum Front Setback*	10 Feet
Minimum Side/Rear Setback** abutting a Residential Zone	15 Feet
Minimum Side/Rear Setback** in JGSGO or abutting Business-B	0 Feet
Interior Setback (between Buildings on same Lot)	15 Feet

*Design Standards will include for front facade Setback requirements

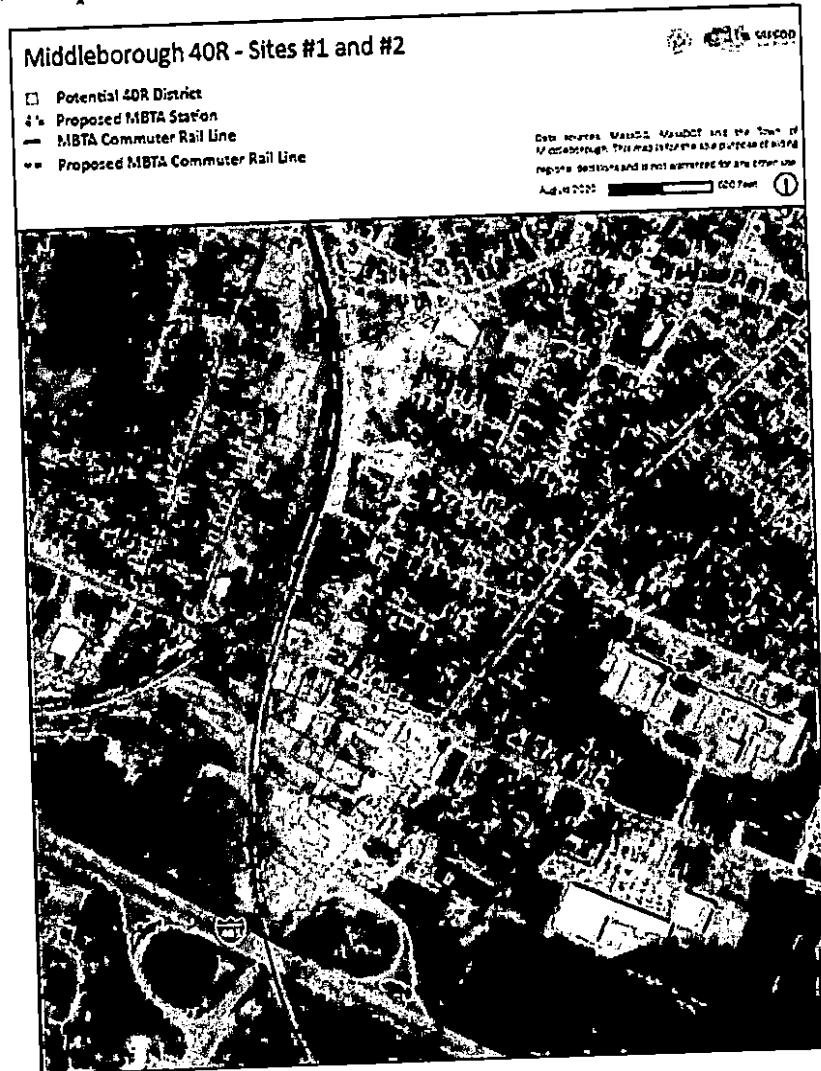
**Design Standards will include Building step-back requirements

Dimensional Requirements

***No requirement or limitation applies

- (1) **Residential Density Allowances** The following residential densities shall be allowed on all Lots and within all Buildings within the JGSGO pursuant to the requirements of this Section 8.6: Single-Family Residential 12 Units per acre.
 - (a) The Planning Board may provide a waiver as specified in Section A (10) to allow a density in excess of that stated above.
 - (b) The Planning Board may provide a waiver as specified in Section A (10) to promote the renovation or adaptive reuse of existing buildings.
- (2) **Contiguous Lots** In the JGSGO, where two or more Lots are contiguous or are separated by a right-of-way, such Lots may be considered as one Lot for the purpose of calculating maximum Lot coverage; parking requirements; minimum useable open space; and Dwelling Units per acre.
- (3) **Age-Restricted Housing Units** An Applicant may propose a Residential or Mixed-Use Development Project in which all Dwelling Units are designed for or are accessible to the elderly or the handicapped under all applicable laws and regulations, provided that not less than twenty-five percent (25%) of the housing units in any such Development Project shall be Affordable Units. All such Development Projects shall be governed by the requirements of this Section 8.6 and the Design Standards.

Middleborough Smart Growth Zoning Overlay Sub-District & John Glass Square Smart Growth Zoning Overlay Sub-District



Note: Middleborough Smart Growth Zoning Overlay Sub-District is located adjacent to the I-495 interchange and the John Glass Square Smart Growth Zoning Overlay Sub-District is located adjacent to the intersection of Center Street and Station Street.

Middleborough Zoning Map



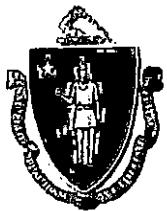
MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT

Town of Middleborough, MA makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 04/18/2022
Data updated Daily

Print map scale is approximate.
Critical layout or measurement
activities should not be done using
this resource.

Exhibit B



Commonwealth of Massachusetts
**DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT**

Charles D. Baker, Governor ♦ Karyn E. Polito, Lt. Governor ♦ Jennifer D. Maddox, Undersecretary

April 23, 2021

Robert G. Nunes
Town Manager
10 Nickerson Avenue, 1st Floor
Middleborough, MA 02346

RE: Middleborough Smart Growth Zoning Overlay District – Letter of Conditional Eligibility

Dear Mr. Nunes:

I am writing in regard to the application for a preliminary determination of eligibility, pursuant to MGL, Chapter 40R and 760 CMR 59.00, that the Town of Middleborough (Town) submitted to the Department of Housing and Community Development (DHCD/Department) for the proposed Middleborough Comprehensive Smart Growth Zoning Overlay District (District). DHCD has completed its review of the application including the draft Smart Growth Zoning and determined that, subject to the conditions outlined herein, the proposed District and the bylaw, as revised by DHCD (attached) or otherwise approved in writing by the Department, satisfy the applicable statutory and regulatory requirements for eligibility.

After factoring in the allowable residential densities, any Existing Zoned Units, and allowances for non-residential use on parcels that qualify as Developable Land, the application indicates that 181 of the 549 additional as-of-right units allowed under the revised Smart Growth Zoning would initially qualify as Incentive Units. Where the basic infrastructure is in place to accommodate the Incentive Units allowed under the Smart Growth Zoning and there are no other substantial factors under the town's control that would prevent development consistent with the allowed densities, this number of initially recognized Incentive Units would qualify the town for a \$200,000 Zoning Incentive Payment upon DHCD's Final Approval of the District.

In this case, however, as further detailed in the application and the additional supplementary information requested by DHCD, the existing basic infrastructure and/or practical availability of one or more of the associated utilities, in particular, water, sewer, and natural gas, is absent, significantly constrained, or otherwise insufficient to accommodate the densities that must be allowed under the statute. As such, eligibility for the initial Zoning Incentive Payment or any corresponding portion thereof would generally be subject to evidence, satisfactory to DHCD, that such necessary basic infrastructure and/or utility supply is, at a minimum, planned, locally approved, and funded, and will clearly be available but for connection costs and infrastructure customarily provided by applicants in general. To the extent that alternative, less market tested building systems may be available to substitute for certain typical infrastructure/utility needs (e.g., natural gas), DHCD may require evidence of building permits or other indications of project feasibility.

This infrastructure condition shall nonetheless not prevent the Department from releasing, at its discretion and subject to funding availability, all or a portion of the initial Zoning Incentive Payment provided such funds are used exclusively to construct such necessary basic infrastructure where there is reasonable evidence that such construction will ensure the feasibility of one or more 40R development projects consistent with the statutory densities. In any case, to the extent the District generates eligible Bonus Units, the Town would be eligible for one or more corresponding Density Bonus Payments as well as any corresponding Zoning Incentive Payment not already paid to the Town. While the calculation of the 181 initially eligible Incentive Units is limited to the subset of buildable acreage that meets the more narrow regulatory definition of Developable Land and further deducts for allowances for non-residential use, to the extent the number of eligible Bonus Units constructed within the District equals or exceeds the minimum Incentive Unit threshold (e.g., 201, 501) associated with a larger Zoning Incentive Payment, the Town would be eligible for a corresponding payment increase.

The attached draft of the town's Smart Growth Zoning includes a modest number of red-lined changes to address corresponding provisions in the statute, regulations, and/or guidelines. While DHCD will certainly consider alternative revisions, this preliminary determination of eligibility and any subsequent Conditional or Final Approval by the Department is subject to adoption of the Smart Growth Zoning as revised and attached or otherwise subsequently approved by DHCD. The Department has also reviewed and hereby approves the accompanying Draft Design Standards & Guidelines dated July 23, 2020. Any changes or amendments to this approved version that are more, rather than less, restrictive must be approved by the Department.

Pursuant to 760 CMR 59.05, DHCD issues this Letter of Conditional Eligibility with the following additional, standard conditions:

1. Unless subsequently otherwise approved in writing by DHCD, the Town adopts the Smart Growth Zoning as enclosed and herein preliminarily approved as eligible. This determination is only valid provided adoption of the Smart Growth Zoning occurs within three years of the date of this letter. After adoption of the Smart Growth Zoning, the Town must submit proof of adoption to DHCD in order to receive Conditional or Final Approval, as applicable. As further outlined on the attached application form, proof of adoption requires the submission of the following information:
 - a) a copy of the Smart Growth Zoning adopted by Town Meeting and certified by the Town Clerk;
 - b) a copy of the amended Zoning Map adopted by Town Meeting and certified by the Town Clerk;
 - c) a copy of the Attorney General's letter approving the Smart Growth Zoning;
 - d) if there are any changes to the enclosed version of Smart Growth Zoning between this preliminary determination of eligibility and adoption by Town Meeting, an annotated or red-line version of the amendments to the Smart Growth Zoning must be submitted that clearly indicates all changes; and
 - e) a certification by the Town Clerk that the Smart Growth Zoning has been published and posted pursuant to applicable law.
2. If there are substantial changes to the Smart Growth Zoning, DHCD may treat such submission as an amendment to the application and will notify the Town in writing. In such cases, DHCD must issue its

Conditional or Final Approval within 60 days of receipt of such submission, provided the amended application satisfies all the approval criteria set forth in 760 CMR 59.04(1).

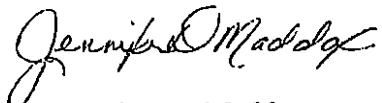
3. Beyond the requirements of the Smart Growth Zoning and state and local approvals pertaining to the basic utilities and infrastructure as discussed in the application, there is no local rule, regulation or ordinance, and there is no agreement that would prevent the 632 Future Zoned Units identified in the application (i.e., all units that would otherwise be allowed under the Smart Growth Zoning) from being developed in the District.

4. DHCD must approve any additional Design Standards, rules, regulations, guidelines, application forms and any associated amendments that are adopted by the designated Plan Approval Authority or otherwise required of applicants seeking Plan Approval under the Smart Growth Zoning. Any such additional, DHCD-approved Design Standards, rules, regulations, guidelines, and application forms must be filed with the Department and the Town Clerk.

5. Please be advised that for any 40R Plan Approval application filed after the release of the 2019 Income Limits, in order for any associated units to qualify as Bonus Units, DHCD shall require that the maximum affordable monthly rent (including any applicable utility allowance) not exceed the lower of (1) 30% of 1/12 of 80% of the area median income, or (2) the Section 8 payment standard established by or on behalf of the applicable local housing authority. This condition may be waived by DHCD for a given Project if there is sufficient evidence that compliance would Render Development Infeasible.

We appreciate the initiative that the Town of Middleborough is taking to expand housing opportunities within the proposed District. If you have any questions regarding this Letter of Conditional Eligibility, please contact Bill Reyelt at (617) 564-3105 or william.reyelt@mass.gov.

Sincerely,



Jennifer D. Maddox
Undersecretary

cc: Leeann Bradley, Town Planner
Janis Akerstrom, Director of Economic and Community Development
Eric Arbeene, Principal Comprehensive Planner, SRPEDD



Commonwealth of Massachusetts
**DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT**

Charles D. Baker, Governor ♦ Karyn E. Polito, Lt. Governor ♦ Jennifer D. Maddox, Undersecretary

July 8, 2022

Robert G. Nunes
Town Manager
Town Hall
10 Nickerson Avenue
Middleborough, MA 02346

RE: Middleborough Smart Growth Overlay District – Letter of Conditional Approval

Dear Mr. Nunes:

Pursuant to MGL, Chapter 40R and 760 CMR 59.05(4), the Department of Housing and Community Development (DHCD) is pleased to issue this non-expiring Letter of Conditional Approval to the Town of Middleborough (Town) for its adoption on October 4, 2021 of the Middleborough Smart Growth Overlay District (District). The District allows for an estimated 549 additional as-of-right housing units, 181 of which can qualify as Incentive Units, making the Town eligible for an initial Zoning Incentive Payment of up to \$200,000, subject to the applicable conditions contained herein and/or in the Department's Letter of Conditional Eligibility, dated April 23, 2021 (attached). As indicated in the Letter of Conditional Eligibility, to the extent the respective conditions (e.g., evidence of sufficient infrastructure) are satisfied and the number of eligible Bonus Units exceeds the minimum number of Incentive Units necessary to qualify for a larger Zoning Incentive Payment, the Town will be eligible for a corresponding payment increase.

With this Letter of Conditional Approval, DHCD confirms that the District is otherwise in full effect with respect to the requirements and benefits of Final Approval, and the Town can proceed to accept, review, and issue determinations on Project applications for Plan Approval, under the Smart Growth Zoning.

This Letter of Conditional Approval is further subject to the following standard conditions:

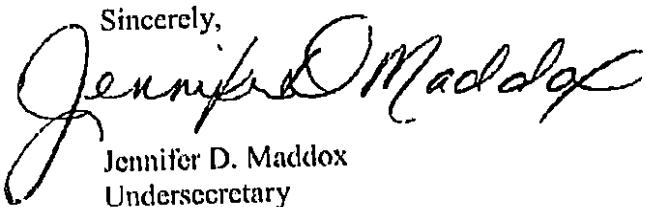
1. The Town designates a smart growth reporting officer required by MGL, Chapter 40S. Such officer is responsible for preparing a smart growth address list, based on occupancy permits issued in the District, and transmitting such list and supporting documentation to DHCD.
2. The Town designates a municipal official responsible for filing its 40R Annual Update with DHCD on or before July 31 of each year. The Annual Update shall contain the information specified in 760 CMR 59.07.
3. Prior to the issuance of a building permit and marketing of any units within a Project, the affordable units and the distribution thereof across the Project's overall unit mix, shall be made subject to an Affirmative Fair Housing Marketing Plan approved by DHCD 40R program staff as compliant with the associated 40R

requirements under 760 CMR 56.00. Such Plan must describe the resident selection process for the affordable units and must set forth a plan for affirmative marketing that provides maximum opportunity to low or moderate income households, including minority households. The applicable DHCD *Affirmative Fair Housing Marketing and Resident Selection Plan Guidelines* can be found on the Department's website.

4. In order to ensure that any otherwise eligible 40R Bonus Units qualify the Town for an associated Density Bonus Payment, a corresponding Affordable Housing Restriction must receive approval from DHCD, under the 40R program specifically, as compliant with the requirements of 760 CMR 59.00 and the 40R Guidelines. Such approval is distinct from approvals associated with any applicable project-related affordable housing subsidy programs, including such subsidy programs that may be administered by DHCD.

Congratulations on the Town's adoption of Middleborough Smart Growth Overlay District and thank you for helping to expand housing opportunities and encourage Smart Growth in Massachusetts. Should the Town have any questions regarding this Letter of Conditional Approval, please contact Bill Reyelt at (617) 573-1355 or william.reyelt@mass.gov.

Sincerely,



Jennifer D. Maddox
Undersecretary

cc: Senator Marc R. Pacheco
Rep. Norman J. Orrall
Mark Germain, Chairman, Board of Selectmen
Leeann Bradley, Town Planner

Exhibit C

An official website of the United States government [Here's how you know](#)



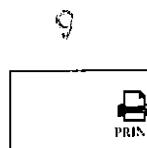
QuickFacts

Middleborough town, Plymouth County, Massachusetts

QuickFacts provides statistics for all states and counties. Also for cities and towns with a *population of 5,000 or more*.

Enter state, county, city, town, or zip code

— Select a fact —



Middleborough
town, Plymouth
County,
Massachusetts

Table

All Topics



① Total accommodation and food services sales, 2022 (\$1,000) (c)	71,949
① (c) (1) (i) (1).	
Population	
① Population estimates, July 1, 2024, (V2024)	△ N/A
① Population estimates, July 1, 2023, (V2023)	△ 24,504
① Population estimates base, April 1, 2020, (V2024)	△ N/A
① Population estimates base, April 1, 2020, (V2023)	△ 24,246
① Population, percent change - April 1, 2020 (estimates base) to July 1, 2024, (V2024)	△ N/A
① Population, percent change - April 1, 2020 (estimates base) to July 1, 2023, (V2023)	△ 1.1%
① Population, Census, April 1, 2020	24,245
① Population, Census, April 1, 2010	23,116
Age and Sex	
① Persons under 5 years, percent	△ 4.7%
① Persons under 18 years, percent	△ 19.1%
① Persons 65 years and over, percent	△ 20.9%
① Female persons, percent	△ 50.1%
Race and Hispanic Origin	
① White alone, percent	△ 91.2%
① Black alone, percent (a) (a)	△ 1.0%
① American Indian and Alaska Native alone, percent (a) (a)	△ 0.0%
① Asian alone, percent (a) (a)	△ 1.5%
① Native Hawaiian and Other Pacific Islander alone, percent (a) (a)	△ 0.2%
① Two or More Races, percent	△ 3.6%
① Hispanic or Latino, percent (b) (b)	△ 4.4%
① White alone, not Hispanic or Latino, percent	△ 88.3%
Population Characteristics	
① Veterans, 2019-2023	1,524
① Foreign-born persons, percent, 2019-2023	4.9%
Housing	
① Housing Units, July 1, 2023, (V2023)	X
① Owner-occupied housing unit rate, 2019-2023	77.0%
① Median value of owner-occupied housing units, 2019-2023	\$426,800
① Median selected monthly owner costs - with a mortgage, 2019-2023	\$2,346
① Median selected monthly owner costs - without a mortgage, 2019-2023	\$894
① Median gross rent, 2019-2023	\$1,692
① Building Permits, 2023	X
Families & Living Arrangements	
① Households, 2019-2023	9,796
① Persons per household, 2019-2023	2.44
① Living in the same house 1 year ago, percent of persons age 1 year+, 2019-2023	90.7%
① Language other than English spoken at home, percent of persons age 5 years+, 2019-2023	1.2%
Computer and Internet Use	
① Households with a computer, percent, 2019-2023	

Is this page helpful? Yes No

U.S. Census Bureau QuickFacts: Middleborough town, Plymouth County, Massachusetts

① Households with a broadband Internet subscription, percent, 2019-2023	93.6%
Education	
① High school graduate or higher, percent of persons age 25 years+, 2019-2023	93.7%
② Bachelor's degree or higher, percent of persons age 25 years+, 2019-2023	30.3%
Health	
① With a disability, under age 65 years, percent, 2019-2023	9.6%
① Persons without health insurance, under age 65 years, percent	△ 3.8%
Economy	
① In civilian labor force, total, percent of population age 16 years+, 2019-2023	66.0%
① In civilian labor force, female, percent of population age 16 years+, 2019-2023	61.3%
① Total accommodation and food services sales, 2022 (\$1,000) (c)	71,949
① Total health care and social assistance receipts/revenue, 2022 (\$1,000) (c)	88,646
① Total transportation and warehousing receipts/revenue, 2022 (\$1,000) (c)	63,785
① Total retail sales, 2022 (\$1,000) (c)	343,956
① Total retail sales per capita, 2022 (c)	\$14,102
Transportation	
① Mean travel time to work (minutes), workers age 16 years+, 2019-2023	32.4
Income & Poverty	
① Median household income (in 2023 dollars), 2019-2023	\$91,914
① Per capita income in past 12 months (in 2023 dollars), 2019-2023	\$48,381
① Persons in poverty, percent	△ 7.7%
BUSINESSES	
Businesses	X
① Total employer establishments, 2022	X
① Total employment, 2022	X
① Total annual payroll, 2022 (\$1,000)	X
① Total employment, percent change, 2021-2022	X
① Total nonemployer establishments, 2022	758
① All employer firms, Reference year 2022	482
① Men-owned employer firms, Reference year 2022	129
① Women-owned employer firms, Reference year 2022	8
① Minority-owned employer firms, Reference year 2022	647
① Nonminority-owned employer firms, Reference year 2022	5
① Veteran-owned employer firms, Reference year 2022	702
① Nonveteran-owned employer firms, Reference year 2022	
Geography	
① Population per square mile, 2020	351.2
① Population per square mile, 2010	334.7
① Land area in square miles, 2020	69.04
① Land area in square miles, 2010	69.07
① FIPS Code	2502340850

About datasets used in this table

Value Notes

△ Methodology differences may exist between data sources, and so estimates from different sources are not comparable.

Some estimates presented here come from sample data, and thus have sampling errors that may render some apparent differences between geographies statistically indistinguishable. Click the Quick Info ⓘ icon to the left of each item about sampling error.

The vintage year (e.g., V2024) refers to the final year of the series (2020 thru 2024). Different vintage years of estimates are not comparable.

Users should exercise caution when comparing 2019-2023 ACS 5-year estimates to other ACS estimates. For more information, please visit the [2023 5-year ACS Comparison Guidance](#) page.

Fact Notes

- (a) Includes persons reporting only one race
- (b) Hispanics may be of any race, so also are included in applicable race categories
- (c) Economic Census - Puerto Rico data are not comparable to U.S. Economic Census data

Value Flags

- D Suppressed to avoid disclosure of confidential information
- F Fewer than 25 firms
- FN Footnote on this item in place of data
- NA Not available

Is this page helpful?  Yes  No

2/28/25, 8:07 AM

U.S. Census Bureau QuickFacts: Middleborough town, Plymouth County, Massachusetts

S Suppressed; does not meet publication standards

X Not applicable

Z Value greater than zero but less than half unit of measure shown

- Either no or too few sample observations were available to compute an estimate, or a ratio of medians cannot be calculated because one or both of the median estimates falls in the lowest or upper interval of a

N Data for this geographic area cannot be displayed because the number of sample cases is too small.

QuickFacts data are derived from: Population Estimates, American Community Survey, Census of Population and Housing, Current Population Survey, Small Area Health Insurance Estimates, Small Area Income and Poverty Estimates, County Business Patterns, Nonemployer Statistics, Economic Census, Survey of Business Owners, Building Permits.

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Measuring America's People, Places, and Economy

Is this page helpful? 

 Yes

 No

Exhibit D

EXECUTIVE OFFICE OF HOUSING AND LIVABLE COMMUNITIES CH40B SUBSIDIZED HOUSING INVENTORY

Middleborough

DHCD ID #	Project Name	Address	Type	Total SHI Units	Affordability Expires	Built w/ Comp. Permit?	Subsidizing Agency
1960	n/a	Archer Court	Rental	28	Perp	No	EOHLC
1961	n/a	Frank/Park/Sprout	Rental	40	Perp	No	EOHLC
1962	n/a	Off Sproate & Maple	Rental	50	Perp	No	EOHLC
1963	n/a	8 Benton St.	Rental	64	Perp	No	EOHLC
1964	n/a	Woodland Ave.	Rental	8	Perp	No	EOHLC
1967	ARC of Greater Fall River	Peirce Lane	Rental	4	2026	No	EOHHS
1969	Middlebury Arms	89 East Grove St.	Rental	64	2055	No	EOHLC
							MassHousing
1972	Windsor Village	28 Taunton Street	Ownership	3	Perp	Yes	EOHLC
3808	Greystone Estates	Plymouth St	Ownership	8	perp	Yes	FHLBB
4367	DDS Group Homes	Confidential	Rental	50	N/A	No	DDS
5112	The Groves	136 West Grove St	Mix	49	Perp	Yes	MassHousing
							MHP
5113	South Main Street	South Main Street	Rental	7	2024	No	EOHLC
6656	Tispaquin Farms	Tispaquin Street	Ownership	20	perp	Yes	MassHousing
6663	Habitat for Humanity	Oak Street	Ownership	1	perp	No	EOHLC
7931	The Woodlands	West Grove St	Rental	234	perp	YES	MassHousing
7932	Eastwood Estates	Purchase St	Ownership	7	perp	YES	MassHousing
9022	Cinnamon Ridge	Highland St	Ownership	6	Perp	YES	MassHousing

Middleborough
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12/12/2024

This data is derived from information provided to the Executive Office of Housing and Livable Communities (EOHLC) by individual communities and is subject to change as new information is obtained and use restrictions expire.

EXECUTIVE OFFICE OF HOUSING AND LIVABLE COMMUNITIES CH40B SUBSIDIZED HOUSING INVENTORY

Middleborough

DHCD ID #	Project Name	Address	Type Ownership	Total SHI Units	Affordability Expires	Built w/ Comp. Permit?	Subsidizing Agency
9023	Keith Street Condominiums	Keith Street Extension		5	Perp	YES	MassHousing
9719	The Residences at Star Mill	33 East Main Street	Rental	69	Perp	NO	EOHLC
9720	Shoe Shop Place	151 Peirce Street	Rental	25	Perp	YES	MassHousing
							MHP
							EOHLC
9721	Crimson Estates	Spruce St	Ownership	0	Perp	YES	MassHousing
10128	Roberts Estates	711 Plymouth Street	Ownership	2	Perp	YES	MassHousing
10129	Mayflower Manor	84 South Main Street	Rental	44	Perp	YES	EOHLC
10136	153 Center Street	153 Center Street	Rental	4	2026	NO	EOHLC
10772	Residences at Station Street	8 Station Street	Rental	2610	2052	NO	EOHLC
10838	West Grove Street Apartments	114 West Grove Street	Rental	135	perp	YES	EOHLC
10930	The Oasis	162 East Grove St	Rental	296	Perp	YES	EOHLC

Middleborough Totals

1,239	Census 2020 Year Round Housing Units	9,732
1,242	Percent Subsidized	12.70%
+ 148		
<u>1,390</u>		

New unit *Residences at Pilgrim Junction* 108
 Form 2/18 *Residences at Glass Square* 40
 emailed 2/18 *148* *1,390* *14.28%*

Exhibit E



Commonwealth of Massachusetts EXECUTIVE OFFICE OF HOUSING & LIVABLE COMMUNITIES

Maura T. Healey, Governor • Kimberley Driscoll, Lieutenant Governor • Edward M. Augustus, Jr., Secretary

Issue Date: August 10, 2022

Revised: October 21, 2022

Revised: August 17, 2023

Compliance Guidelines for Multi-family Zoning Districts Under Section 3A of the Zoning Act

1. Overview of Section 3A of the Zoning Act

Section 3A of the Zoning Act provides: *An MBTA community 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; provided, however, that such multi-family housing shall be without age restrictions and shall be suitable for families with children. For the purposes of this section, a district of reasonable size shall: (i) have a minimum gross density of 15 units per acre, subject to any further limitations imposed by section 40 of chapter 131 and title 5 of the state environmental code established pursuant to section 13 of chapter 21A; and (ii) be located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable.*

The purpose of Section 3A is to encourage the production of multi-family housing by requiring MBTA communities to adopt zoning districts where multi-family housing is allowed as of right, and that meet other requirements set forth in the statute.

The Executive Office of Housing and Livable Communities (EOHLC), in consultation with the Executive Office of Economic Development, the Massachusetts Bay Transportation Authority and the Massachusetts Department of Transportation, is required to promulgate guidelines to determine if an MBTA community is in compliance with Section 3A. EOHLC promulgated preliminary guidance on January 29, 2021. EOHLC updated that preliminary guidance on December 15, 2021, and on that same date issued draft guidelines for public comment. These final guidelines supersede all prior guidance and set forth how MBTA communities may achieve compliance with Section 3A.

2. Definitions

“Adjacent community” means an MBTA community that (i) has within its boundaries less than 100 acres of developable station area, and (ii) is not an adjacent small town.

“Adjacent small town” means an MBTA community that (i) has within its boundaries less than 100 acres of developable station area, and (ii) either has a population density of less than 500 persons per square mile, or a population of not more than 7,000 year-round residents as determined in the most recently published United States Decennial Census of Population and Housing.

“Affordable unit” means a multi-family housing unit that is subject to a restriction in its chain of title limiting the sale price or rent, or limiting occupancy to an individual or household of a specified income, or both. Affordable units may be, but are not required to be, eligible for inclusion on EOHLC’s Subsidized Housing Inventory. Nothing in these Guidelines changes the Subsidized Housing Inventory eligibility criteria, and no affordable unit shall be counted on the Subsidized Housing Inventory unless it satisfies the requirements for inclusion under 760 CMR 56.03(2) or any other regulation or guidance issued by EOHLC.

“Age-restricted housing” means any housing unit encumbered by a title restriction requiring a minimum age for some or all occupants.

“As of right” means development that may proceed under a zoning ordinance or by-law without the need for a special permit, variance, zoning amendment, waiver, or other discretionary zoning approval.

“Bus station” means a location with a passenger platform and other fixed infrastructure serving as a point of embarkation for the MBTA Silver Line. Upon the request of an MBTA community, EOHLC, in consultation with the MBTA, may determine that other locations qualify as a bus station if (i) such location has a sheltered platform or other fixed infrastructure serving a point of embarkation for a high-capacity MBTA bus line, and (ii) the area around such fixed infrastructure is highly suitable for multi-family housing.

“Commuter rail community” means an MBTA community that (i) does not meet the criteria for a rapid transit community, and (ii) has within its borders at least 100 acres of developable station area associated with one or more commuter rail stations.

“Commuter rail station” means any MBTA commuter rail station with year-round, rather than intermittent, seasonal, or event-based, service, including stations under construction and scheduled to be in service before the end of 2023, but not including existing stations at which service will be terminated, or reduced below regular year-round service, before the end of 2023.

“Compliance model” means the model created by EOHLC to determine compliance with Section 3A’s reasonable size, gross density, and location requirements. The compliance model is described in further detail in Appendix 2.

“Determination of compliance” means a determination made by EOHLC as to whether an MBTA community has a multi-family zoning district that complies with the requirements of Section 3A. A determination of compliance may be determination of interim compliance or a determination of district compliance, as described in section 9.

“Developable land” means land on which multi-family housing can be permitted and constructed. For purposes of these guidelines, developable land consists of: (i) all privately-owned land except lots or portions of lots that meet the definition of excluded land, and (ii) developable public land.

“Developable public land” means any publicly-owned land that (i) is used by a local housing authority; (ii) has been identified as a site for housing development in a housing production plan

approved by EOHLC; or (iii) has been designated by the public owner for disposition and redevelopment. Other publicly-owned land may qualify as developable public land if EOHLC determines, at the request of an MBTA community and after consultation with the public owner, that such land is the location of obsolete structures or uses, or otherwise is suitable for conversion to multi-family housing, and will be converted to or made available for multi-family housing within a reasonable period of time.

“Developable station area” means developable land that is within 0.5 miles of a transit station.

“EOHLC” means the Executive Office of Housing and Livable Communities.

“EOED” means the Executive Office of Economic Development.

“Excluded land” means land areas on which it is not possible or practical to construct multi-family housing. For purposes of these guidelines, excluded land is defined by reference to the ownership, use codes, use restrictions, and hydrological characteristics in MassGIS and consists of the following:

- (i) All publicly-owned land, except for lots or portions of lots determined to be developable public land.
- (ii) All rivers, streams, lakes, ponds and other surface waterbodies.
- (iii) All wetland resource areas, together with a buffer zone around wetlands and waterbodies equivalent to the minimum setback required by title 5 of the state environmental code.
- (iv) Protected open space and recreational land that is legally protected in perpetuity (for example, land owned by a local land trust or subject to a conservation restriction), or that is likely to remain undeveloped due to functional or traditional use (for example, cemeteries).
- (v) All public rights-of-way and private rights-of-way.
- (vi) Privately-owned land on which development is prohibited to protect private or public water supplies, including, but not limited to, Zone I wellhead protection areas and Zone A surface water supply protection areas.
- (vii) Privately-owned land used for educational or institutional uses such as a hospital, prison, electric, water, wastewater or other utility, museum, or private school, college or university.

“Ferry terminal” means the location where passengers embark and disembark from regular, year-round MBTA ferry service.

“Gross density” means a units-per-acre density measurement that includes land occupied by public rights-of-way and any recreational, civic, commercial, and other nonresidential uses.

“Housing suitable for families” means housing comprised of residential dwelling units that are not age-restricted housing, and for which there are no zoning restriction on the number of bedrooms, the size of bedrooms, or the number of occupants.

“Listed funding sources” means (i) the Housing Choice Initiative as described by the governor in a message to the general court dated December 11, 2017; (ii) the Local Capital Projects Fund established in section 2EEEE of chapter 29; and (iii) the MassWorks infrastructure program established in section 63 of chapter 23A.

“Lot” means an area of land with definite boundaries that is used or available for use as the site of a building or buildings.

“MassGIS data” means the comprehensive, statewide database of geospatial information and mapping functions maintained by the Commonwealth’s Bureau of Geographic Information, within the Executive Office of Technology Services and Security, including the lot boundaries and use codes provided by municipalities.

“MBTA” means the Massachusetts Bay Transportation Authority.

“MBTA community” means a city or town that is: (i) one of the 51 cities and towns as defined in section 1 of chapter 161A; (ii) one of the 14 cities and towns as defined in said section 1 of said chapter 161A; (iii) other served communities as defined in said section 1 of said chapter 161A; or (iv) a municipality that has been added to the Massachusetts Bay Transportation Authority under section 6 of chapter 161A or in accordance with any special law relative to the area constituting the authority.

“Mixed-use development” means development containing a mix of residential uses and non-residential uses, including, without limitation, commercial, institutional, industrial or other uses.

“Mixed-use development zoning district” means a zoning district where multiple residential units are allowed as of right if, but only if, combined with non-residential uses, including, without limitation, commercial, institutional, industrial or other uses.

“Multi-family housing” means a building with 3 or more residential dwelling units or 2 or more buildings on the same lot with more than 1 residential dwelling unit in each building.

“Multi-family unit capacity” means an estimate of the total number of multi-family housing units that can be developed as of right within a multi-family zoning district, made in accordance with the requirements of section 5.b below.

“Multi-family zoning district” means a zoning district, including a base district or an overlay district, in which multi-family housing is allowed as of right; provided that the district shall be in a fixed location or locations, and shown on a map that is part of the zoning ordinance or by-law.

“One Stop Application” means the single application portal for the Community One Stop for Growth through which (i) the Executive Office of Housing and Economic Development considers requests for funding from the MassWorks infrastructure program; (ii) EOHLC considers requests for funding from the Housing Choice Initiative, (iii) EOED, EOHLIC and other state agencies consider requests for funding from other discretionary grant programs.

“Private rights-of-way” means land area within which private streets, roads and other ways have been laid out and maintained, to the extent such land areas can be reasonably identified by examination of available tax parcel data.

“Publicly-owned land” means (i) any land owned by the United States or a federal agency or authority; (ii) any land owned by the Commonwealth of Massachusetts or a state agency or authority; and (iii) any land owned by a municipality or municipal board or authority.

“Public rights-of-way” means land area within which public streets, roads and other ways have been laid out and maintained, to the extent such land areas can be reasonably identified by examination of available tax parcel data.

“Rapid transit community” means an MBTA community that has within its borders at least 100 acres of developable station area associated with one or more subway stations, or MBTA Silver Line bus rapid transit stations.

“Residential dwelling unit” means a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

“Section 3A” means section 3A of the Zoning Act.

“Sensitive land” means developable land that, due to its soils, slope, hydrology, or other physical characteristics, has significant conservation values that could be impaired, or vulnerabilities that could be exacerbated, by the development of multi-family housing. It also includes locations where multi-family housing would be at increased risk of damage caused by flooding. Sensitive land includes, but is not limited to, wetland buffer zones extending beyond the title 5 setback area; land subject to flooding that is not a wetland resource area; priority habitat for rare or threatened species; DEP-approved wellhead protection areas in which development may be restricted, but is not prohibited (Zone II and interim wellhead protection areas); and land areas with prime agricultural soils that are in active agricultural use.

“Site plan review” means a process established by local ordinance or by-law by which a local board reviews, and potentially imposes conditions on, the appearance and layout of a specific project prior to the issuance of a building permit.

“Subway station” means any of the stops along the MBTA Red Line, Green Line, Orange Line, or Blue Line, including any extensions to such lines now under construction and scheduled to begin service before the end of 2023.

“Transit station” means an MBTA subway station, commuter rail station, ferry terminal or bus station.

“Transit station area” means the land area within 0.5 miles of a transit station.

“Zoning Act” means chapter 40A of the Massachusetts General Laws.

3. General Principles of Compliance

These compliance guidelines describe how an MBTA community can comply with the requirements of Section 3A. The guidelines specifically address:

- What it means to allow multi-family housing “as of right.”
- The metrics that determine if a multi-family zoning district is “of reasonable size.”
- How to determine if a multi-family zoning district has a minimum gross density of 15 units per acre, subject to any further limitations imposed by section 40 of chapter 131 and title 5 of the state environmental code.
- The meaning of Section 3A’s mandate that “such multi-family housing shall be without age restrictions and shall be suitable for families with children.”
- The extent to which MBTA communities have flexibility to choose the location of a multi-family zoning district.

The following general principles have informed the more specific compliance criteria that follow:

- MBTA communities with subway stations, commuter rail stations and other transit stations benefit from having these assets located within their boundaries and should provide opportunity for multi-family housing development around these assets. MBTA communities with no transit stations within their boundaries benefit from proximity to transit stations in nearby communities.
- The multi-family zoning districts required by Section 3A should encourage the development of multi-family housing projects of a scale, density and aesthetic that are compatible with existing surrounding uses, and minimize impacts to sensitive land.
- “Reasonable size” is a relative rather than an absolute determination. Because of the diversity of MBTA communities, a multi-family zoning district that is “reasonable” in one city or town may not be reasonable in another city or town.
- When possible, multi-family zoning districts should be in areas that have safe, accessible, and convenient access to transit stations for pedestrians and bicyclists.

4. Allowing Multi-Family Housing “As of Right”

To comply with Section 3A, a multi-family zoning district must allow multi-family housing “as of right,” meaning that the construction and occupancy of multi-family housing is allowed in that district without the need for a special permit, variance, zoning amendment, waiver, or other discretionary approval. EOHLC will determine whether zoning provisions allow for multi-family housing as of right consistent with the following guidelines.

a. Site plan review

The Zoning Act does not establish nor recognize site plan review as an independent method of regulating land use. However, the Massachusetts courts have recognized site plan review as a permissible regulatory tool, including for uses that are permitted as of right. The court decisions establish that when site plan review is required for a use permitted as of right, site plan review involves the regulation of a use and not its outright prohibition. The scope of review is therefore limited to imposing reasonable terms and conditions on the proposed use, consistent with applicable case law.¹ These guidelines similarly recognize that site plan review may be required for multi-family housing projects that are allowed as of right, within the parameters established by the applicable case law. Site plan approval may regulate matters such as vehicular access and circulation on a site, architectural design of a building, and screening of adjacent properties. Site plan review should not unreasonably delay a project nor impose conditions that make it infeasible or impractical to proceed with a project that is allowed as of right and complies with applicable dimensional regulations.

b. Affordability requirements

Section 3A does not include any express requirement or authorization for an MBTA community to require affordable units in a multi-family housing project that is allowed as of right. It is a common practice in many cities and towns to require affordable units in a multi-family project that requires a special permit, or as a condition for building at greater densities than the zoning otherwise would allow. These inclusionary zoning requirements serve the policy goal of increasing affordable housing production. If affordability requirements are excessive, however, they can make it economically infeasible to construct new multi-family housing.

For purposes of making compliance determinations with Section 3A, EOHLC 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. Notwithstanding the foregoing, EOHLC may, in its discretion, approve a greater percentage of affordable units, or deeper affordability for some or all of the affordable units, in either of the following circumstances:

- (i) The affordability requirements applicable in the multi-family zoning district are reviewed and approved by EOHLC as part of a smart growth district under chapter 40R, or under another zoning incentive program administered by EOHLC; or
- (ii) 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 EOHLC, and using a methodology and format acceptable to EOHLC. The analysis must demonstrate that a reasonable

¹ See, e.g., *Y.D. Dugout, Inc. v. Board of Appeals of Canton*, 357 Mass. 25 (1970); *Prudential Insurance Co. of America v. Board of Appeals of Westwood*, 23 Mass. App. Ct. 278 (1986); *Osberg v. Planning Bd. of Sturbridge*, 44 Mass. App. Ct. 56, 59 (1997) (Planning Board “may impose reasonable terms and conditions on the proposed use, but it does not have discretionary power to deny the use”).

variety of multi-family housing types can be feasibly developed at the proposed affordability levels, taking into account the densities allowed as of right in the district, the dimensional requirements applicable within the district, and the minimum number of parking spaces required.

In no case will EOHLC approve alternative affordability requirements that require more than 20 percent of the units in a project to be affordable units, except in a smart growth zoning district under chapter 40R with a 25 percent affordability requirement approved and adopted prior to the issuance of these guidelines, including any such existing district that is expanded or amended to comply with these guidelines.

c. *Other requirements that do not apply uniformly in the multi-family zoning district*

Zoning will not be deemed compliant with Section 3A's requirement that multi-family housing be allowed as of right if the zoning imposes requirements on multi-family housing that are not generally applicable to other uses. The following are examples of requirements that would be deemed to be inconsistent with "as of right" use: (i) a requirement that multi-family housing meet higher energy efficiency standards than other uses; (ii) a requirement that a multi-family use achieve a third party certification that is not required for other uses in the district; and (iii) a requirement that multi-family use must be combined with commercial or other uses on the same lot or as part of a single project. Mixed use projects may be allowed as of right in a multi-family zoning district, as long as multi-family housing is separately allowed as of right.

5. **Determining "Reasonable Size"**

In making determinations of "reasonable size," EOHLC will take into consideration both the land area of the multi-family zoning district, and the multi-family zoning district's multi-family unit capacity.

a. *Minimum land area*

A zoning district is a specifically delineated land area with uniform regulations and requirements governing the use of land and the placement, spacing, and size of buildings. For purposes of compliance with Section 3A, a multi-family zoning district should be a neighborhood-scale district, not a single development site on which the municipality is willing to permit a particular multi-family project. EOHLC will certify compliance with Section 3A only if an MBTA community's multi-family zoning district meets the minimum land area applicable to that MBTA community, if any, as set forth in Appendix 1. The minimum land area for each MBTA community has been determined as follows:

- (i) In rapid transit communities, commuter rail communities, and adjacent communities, the minimum land area of the multi-family zoning district is 50 acres, or 1.5% of the developable land in an MBTA community, whichever is *less*. In certain cases, noted in Appendix 1, a smaller minimum land area applies.
- (ii) In adjacent small towns, there is no minimum land area. In these communities, the multi-family zoning district may comprise as many or as few acres as the community

determines is appropriate, as long as the district meets the applicable minimum multi-family unit capacity and the minimum gross density requirements.

In all cases, at least half of the multi-family zoning district land areas must comprise contiguous lots of land. No portion of the district that is less than 5 contiguous acres land will count toward the minimum size requirement. If the multi-family unit capacity and gross density requirements can be achieved in a district of fewer than 5 acres, then the district must consist entirely of contiguous lots.

b. *Minimum multi-family unit capacity*

A reasonably sized multi-family zoning district must also be able to accommodate a reasonable number of multi-family housing units as of right. For purposes of determinations of compliance with Section 3A, EOHLIC will consider a reasonable multi-family unit capacity for each MBTA community to be a specified percentage of the total number of housing units within the community, with the applicable percentage based on the type of transit service in the community, as shown on Table 1:

Table 1.

Category	Percentage of total housing units
Rapid transit community	25%
Commuter rail community	15%
Adjacent community	10%
Adjacent small town	5%

To be deemed in compliance with Section 3A, each MBTA community must have a multi-family zoning district with a multi-family unit capacity equal to or greater than the minimum unit capacity shown for it in Appendix 1. The minimum multi-family unit capacity for each MBTA community has been determined as follows:

- (i) First, by multiplying the number of housing units in that community by 0.25, 0.15, 0.10, or .05 depending on the MBTA community category. For example, a rapid transit community with 7,500 housing units is required to have a multi-family zoning district with a multi-family unit capacity of $7,500 \times 0.25 = 1,875$ multi-family units. For purposes of these guidelines, the number of total housing units in each MBTA community has been established by reference to the most recently published United States Decennial Census of Population and Housing.
- (ii) Second, when there is a minimum land area applicable to an MBTA community, by multiplying that minimum land area (up to 50 acres) by Section 3A's minimum gross density requirement of 15 units per acre. The product of that multiplication creates a floor on multi-family unit capacity. For example, an MBTA community with a minimum land area of 40 acres must have a district with a multi-family unit capacity of at least 600 (40×15) units.
- (iii) The minimum unit capacity applicable to each MBTA community is *the greater* of the numbers resulting from steps (i) and (ii) above, but subject to the following limitation: In no case does the minimum multi-family unit capacity exceed 25% of the total housing

units in that MBTA community.

Example: The minimum multi-family unit capacity for an adjacent community with 1,000 housing units and a minimum land area of 50 acres is determined as follows: (i) first, by multiplying $1,000 \times .1 = 100$ units; (ii) second, by multiplying $50 \times 15 = 750$ units; (iii) by taking the larger number, but adjusting that number down, if necessary, so that unit capacity is no more than 25% of 1,000 = 250 units. In this case, the adjustment in step (iii) results in a minimum unit capacity of 250 units.

c. Reasonable Size – Consideration Given to Unit Capacity in Mixed-Use Development Districts

In making determinations of whether an MBTA Community has a multi-family zoning district of “reasonable size” under this section, EOHLC shall also take into consideration the existence and impact of mixed-use development zoning districts, subject to the requirements below.

EOHLC shall take these mixed-use development districts into consideration as reducing the unit capacity needed for a multi-family zoning district to be “reasonable” (as listed in Appendix I) where:

- (i) the mixed-use development zoning district is in an eligible location where existing village-style or downtown development is essential to preserve pedestrian access to amenities;
- (ii) there are no age restrictions or limits on unit size, number of bedrooms, bedroom size or number of occupants and the residential units permitted are suitable for families with children;
- (iii) mixed-used development in the district is allowed “as of right” as that phrase has been interpreted by EOHLC (for example, in section 4(c) with respect to affordability requirements);
- (iv) the requirement for non-residential uses is limited to the ground floor of buildings, and in no case represents a requirement that more than thirty-three percent of the floor area of a building, lot, or project must be for non-residential uses;
- (v) the requirement for non-residential uses does not preclude a minimum of three residential dwelling units per lot;
- (vi) the requirement for non-residential uses allows a broad mix of non-residential uses as-of-right in keeping with the nature of the area; and
- (vii) there are no minimum parking requirements associated with the non-residential uses allowed as of right.

An MBTA community asking to reduce the unit capacity requirement for its multi-family zoning district(s) based on the unit capacity for one or more mixed-use development districts shall submit to EOHLC, on a form to be provided by EOHLC, a request for a determination that the mixed-use development district is in an eligible location meeting the requirements of subparagraph (i). This request must be submitted at least 90 days prior to the vote of the MBTA community’s legislative body.

An MBTA community also may submit a broader inquiry as to Section 3A compliance in accordance with section 9(b). EOHLC shall respond prior to the vote of the MBTA community's legislative body if the request is timely submitted.

In any community with both a multi-family zoning district and a mixed-use development district that meets these considerations, the unit capacity requirement for the multi-family zoning district listed in Appendix I shall be reduced by the lesser of

- (i) the unit capacity of residential dwelling units in the mixed-use development district or subdistrict (as calculated by EOHLC using a methodology similar to that in section 5(d) which takes into account the impact of non-residential uses), or
- (ii) twenty five percent of the unit capacity requirement listed in Appendix I. This consideration shall not affect the minimum land area acreage or contiguity requirements for a multi-family zoning district otherwise required by these Guidelines.

d. *Methodology for determining a multi-family zoning district's multi-family unit capacity*

MBTA communities seeking a determination of compliance must use the EOHLC compliance model to provide an estimate of the number of multi-family housing units that can be developed as of right within the multi-family zoning district. The multi-family unit capacity of an existing or proposed district shall be calculated using the unit capacity worksheet described in Appendix 2. This worksheet produces an estimate of a district's multi-family unit capacity using inputs such as the amount of developable land in the district, the dimensional requirements applicable to lots and buildings (including, for example, height limitations, lot coverage limitations, and maximum floor area ratio), and the parking space requirements applicable to multi-family uses.

Minimum unit capacity is a measure of whether a multi-family zoning district is of a reasonable size, not a requirement to produce housing units. Nothing in Section 3A or these guidelines should be interpreted as a mandate to construct a specified number of housing units, nor as a housing production target. Demonstrating compliance with the minimum multi-family unit capacity requires only that an MBTA community show that the zoning allows multi-family housing as of right and that a sufficient number of multi-family housing units could be added to or replace existing uses and structures over time—even though such additions or replacements may be unlikely to occur soon.

If an MBTA community has two or more zoning districts in which multi-family housing is allowed as of right, then two or more districts may be considered cumulatively to meet the minimum land area and minimum multi-family unit capacity requirements, as long as each district independently complies with Section 3A's other requirements.

e. *Water and wastewater infrastructure within the multi-family zoning district*

MBTA communities are encouraged to consider the availability of water and wastewater infrastructure when selecting the location of a new multi-family zoning district. But compliance with Section 3A does not require a municipality to install new water or wastewater infrastructure, or add to the capacity of existing infrastructure, to accommodate future multi-family housing production within

the multi-family zoning district. In most cases, multi-family housing can be created using private septic and wastewater treatment systems that meet state environmental standards. Where public systems currently exist, but capacity is limited, private developers may be able to support the cost of necessary water and sewer extensions. While the zoning must allow for gross average density of at least 15 units per acre, there may be other legal or practical limitations, including lack of infrastructure or infrastructure capacity, that result in actual housing production at lower density than the zoning allows.

The multi-family unit capacity analysis does not need to take into consideration limitations on development resulting from existing water or wastewater infrastructure within the multi-family zoning district, or, in areas not served by public sewer, any applicable limitations under title 5 of the state environmental code. For purposes of the unit capacity analysis, it is assumed that housing developers will design projects that work within existing water and wastewater constraints, and that developers, the municipality, or the Commonwealth will provide funding for infrastructure upgrades as needed for individual projects.

6. Minimum Gross Density

Section 3A expressly requires that a multi-family zoning district—not just the individual lots of land within the district—must have a minimum gross density of 15 units per acre, subject to any further limitations imposed by section 40 of chapter 131 and title 5 of the state environmental code established pursuant to section 13 of chapter 21A. The Zoning Act defines “gross density” as “a units-per-acre density measurement that includes land occupied by public rights-of-way and any recreational, civic, commercial and other nonresidential uses.”

a. *District-wide gross density*

To meet the district-wide gross density requirement, the dimensional restrictions and parking requirements for the multi-family zoning district must allow for a gross density of 15 units per acre of land within the district. By way of example, to meet that requirement for a 40-acre multi-family zoning district, the zoning must allow for at least 15 multi-family units per acre, or a total of at least 600 multi-family units.

For purposes of determining compliance with Section 3A’s gross density requirement, the EOHLG compliance model will not count in the denominator any excluded land located within the multi-family zoning district, except public rights-of-way, private rights-of-way, and publicly-owned land used for recreational, civic, commercial, and other nonresidential uses. This method of calculating minimum gross density respects the Zoning Act’s definition of gross density—“a units-per-acre density measurement that includes land occupied by public rights-of-way and any recreational, civic, commercial and other nonresidential uses”—while making it unnecessary to draw patchwork multi-family zoning districts that carve out wetlands and other types of excluded land that are not developed or developable.

b. *Achieving district-wide gross density by sub-districts*

Zoning ordinances and by-laws typically limit the unit density on individual lots. To comply with Section 3A’s gross density requirement, an MBTA community may establish reasonable sub-

districts within a multi-family zoning district, with different density limits for each sub-district, provided that the gross density for the district as a whole meets the statutory requirement of not less than 15 multi-family units per acre. EOHLC will review sub-districts to ensure that the density allowed as of right in each sub-district is reasonable and not intended to frustrate the purpose of Section 3A by allowing projects of a such high density that they are not likely to be constructed.

c. *Wetland and septic considerations relating to density*

Section 3A provides that a district of reasonable size shall have a minimum gross density of 15 units per acre, “subject to any further limitations imposed by section 40 of chapter 131 and title 5 of the state environmental code established pursuant to section 13 of chapter 21A.” This directive means that even though the zoning district must permit 15 units per acre as of right, any multi-family housing produced within the district is subject to, and must comply with, the state wetlands protection act and title 5 of the state environmental code—even if such compliance means a proposed project will be less dense than 15 units per acre.

7. **Determining Suitability for Families with Children**

Section 3A states that a compliant multi-family zoning district must allow multi-family housing as of right, and that “such multi-family housing shall be without age restrictions and shall be suitable for families with children.” EOHLC will deem a multi-family zoning district to comply with these requirements as long as the zoning does not require multi-family uses to include units with age restrictions, and does not limit or restrict the size of the units, cap the number of bedrooms, the size of bedrooms, or the number of occupants, or impose a minimum age of occupants. Limits, if any, on the size of units or number of bedrooms established by state law or regulation are not relevant to Section 3A or to determinations of compliance made pursuant to these guidelines.

8. **Location of Districts**

a. *General rule for determining the applicability of Section 3A's location requirement*

Section 3A states that a compliant multi-family zoning district shall “be located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable.” When an MBTA community has only a small amount of transit station area within its boundaries, it may not be possible or practical to locate all of the multi-family zoning district within 0.5 miles of a transit station. Transit station area may not be a practical location for a multi-family zoning district if it does not include developable land where multi-family housing can actually be constructed. Therefore, for purposes of determining compliance with Section 3A, EOHLC will consider the statute’s location requirement to be “applicable” to a particular MBTA community only if that community has within its borders at least 100 acres of developable station area. EOHLC will require more or less of the multi-family zoning district to be located within transit station areas depending on how much total developable station area is in that community, as shown on Table 2:

Table 2.

<u>Total developable station area within the MBTA community (acres)</u>	<u>Portion of the multi-family zoning district that must be within a transit station area</u>
0-100	0%
101-250	20%
251-400	40%
401-600	50%
601-800	75%
801+	90%

The percentages specified in this table apply to both the minimum land area and the minimum multi-family unit capacity. For example, in an MBTA community that has a total of 500 acres of transit station area within its boundaries, a multi-family zoning district will comply with Section 3A's location requirement if at least 50 percent of the district's minimum land area is located within the transit station area, *and* at least 50 percent of the district's minimum multi-family unit capacity is located within the transit station area.

A community with transit station areas associated with more than one transit station may locate the multi-family zoning district in any of the transit station areas. For example, a rapid transit community with transit station area around a subway station in one part of town, and transit station area around a commuter rail station in another part of town, may locate its multi-family zoning district in either or both transit station areas.

b. MBTA communities with limited or no transit station area

When an MBTA community has less than 100 acres of developable station area within its boundaries, the MBTA community may locate the multi-family zoning district anywhere within its boundaries. To encourage transit-oriented multi-family housing consistent with the general intent of Section 3A, MBTA communities are encouraged to consider locating the multi-family zoning district in an area with reasonable access to a transit station based on existing street patterns, pedestrian connections, and bicycle lanes, or in an area that qualifies as an "eligible location" as defined in Chapter 40A—for example, near an existing downtown or village center, near a regional transit authority bus stop or line, or in a location with existing under-utilized facilities that can be redeveloped into new multi-family housing.

c. General guidance on district location applicable to all MBTA communities

When choosing the location of a new multi-family zoning district, every MBTA community should consider how much of a proposed district is sensitive land on which permitting requirements and other considerations could make it challenging or inadvisable to construct multi-family housing. For example, an MBTA community may want to avoid including in a multi-family zoning district areas that are subject to flooding, or are known habitat for rare or threatened species, or have prime agricultural soils in active agricultural use.

9. Determinations of Compliance

Section 3A provides that any MBTA community that fails to comply with Section 3A's requirements will be ineligible for funding from any of the listed funding sources. EOHLC will make determinations of compliance with Section 3A in accordance with these guidelines to inform state agency decisions on which MBTA communities are eligible to receive funding from the listed funding sources. The following discretionary grant programs will take compliance with Section 3A into consideration when making grant award recommendations:

- i. Community Planning Grants, EOHLC,
- ii. Massachusetts Downtown Initiative, EOED,
- iii. Urban Agenda, EOED,
- iv. Rural and Small Town Development Fund, EOED,
- v. Brownfields Redevelopment Fund, MassDevelopment,
- vi. Site Readiness Program, MassDevelopment,
- vii. Underutilized Properties Program, MassDevelopment,
- viii. Collaborative Workspace Program, MassDevelopment,
- ix. Real Estate Services Technical Assistance, MassDevelopment,
- x. Commonwealth Places Programs, MassDevelopment,
- xi. Land Use Planning Grants, EOEEA,
- xii. Local Acquisitions for Natural Diversity (LAND) Grants, EOEEA, and
- xiii. Municipal Vulnerability Preparedness (MVP) Planning and Project Grants, EOEEA

Determinations of compliance also may inform other funding decisions by EOED, EOHLC, the MBTA and other state agencies which consider local housing policies when evaluating applications for discretionary grant programs or making other discretionary funding decisions.

EOHLC interprets Section 3A as allowing every MBTA community a reasonable opportunity to enact zoning amendments as needed to come into compliance. Accordingly, EOHLC will recognize both *interim* compliance, which means an MBTA community is taking active steps to enact a multi-family zoning district that complies with Section 3A, and *district* compliance, which is achieved when EOHLC determines that an MBTA community has a multi-family zoning district that complies with Section 3A. The requirements for interim and district compliance are described in more detail below.

Table 3.

Transit Category (# of municipalities)	Deadline to Submit Action Plan	Deadline to Submit District Compliance Application
Rapid transit community (12)	January 31, 2023	December 31, 2023
Commuter rail community (71)	January 31, 2023	December 31, 2024
Adjacent community (58)	January 31, 2023	December 31, 2024
Adjacent small town (34)	January 31, 2023	December 31, 2025

a. *Process to achieve interim compliance*

Many MBTA communities do not currently have a multi-family zoning district of reasonable size that complies with the requirements of Section 3A. Prior to achieving district compliance (but no later than the deadlines set forth in Table 3), these MBTA communities can achieve interim compliance by taking the following affirmative steps towards the creation of a compliant multi-family zoning district.

- i. *Creation and submission of an action plan.* An MBTA community seeking to achieve interim compliance must first submit an action plan on a form to be provided by EOHLC. An MBTA community action plan must provide information about current zoning, past planning for multi-family housing, if any, and potential locations for a multi-family zoning district. The action plan also will require the MBTA community to establish a timeline for various actions needed to create a compliant multi-family zoning district.
- ii. *EOHLC approval of an action plan.* EOHLC will review each submitted action plan for consistency with these guidelines, including but not limited to the timelines in Table 3. If EOHLC determines that the MBTA community's action plan is reasonable and will lead to district compliance in a timely manner, EOHLC will issue a determination of interim compliance. EOHLC may require modifications to a proposed action plan prior to approval.
- iii. *Implementation of the action plan.* After EOHLC approves an action plan and issues a determination of interim compliance, an MBTA community must diligently implement the action plan. EOHLC may revoke a determination of interim compliance if an MBTA community has not made sufficient progress in implementing an approved action plan. EOHLC and EOED will review an MBTA community's progress in implementing its action plan prior to making an award of funds under the Housing Choice Initiative and Massworks infrastructure program.
- iv. *Deadlines for submitting action plans.* To achieve interim compliance for grants made through the 2023 One Stop Application, action plans must be submitted by no later than January 31, 2023. An MBTA community that does not submit an action plan by that date may not receive a EOHLC determination of interim compliance in time to receive an award of funds from the listed funding sources in 2023. An MBTA community that does not achieve interim compliance in time for the 2023 One Stop Application may submit an action plan to become eligible for a subsequent round of the One Stop Application, provided that an action plan must be submitted by no later than January 31 of the year in which the MBTA community seeks to establish grant eligibility; and provided further that no action plan may be submitted or approved after the applicable district compliance application deadline set forth in Table 3.

b. *Assistance for communities implementing an action plan.*

MBTA communities are encouraged to communicate as needed with EOHLC staff throughout the process of implementing an action plan, and may inquire about whether a proposed multi-family zoning district complies with Section 3A prior to a vote by the municipal legislative body to create or

modify such a district. Such requests shall be made on a form to be provided by EOHLC. If a request is submitted at least 90 days prior to the vote of the legislative body, EOHLC shall respond prior to the vote.

c. Requests for determination of district compliance

When an MBTA community believes it has a multi-family zoning district that complies with Section 3A, it may request a determination of district compliance from EOHLC. Such a request may be made for a multi-family zoning district that was in existence on the date that Section 3A became law, or for a multi-family zoning district that was created or amended after the enactment of Section 3A. In either case, such request shall be made on an application form required by EOHLC and shall include, at a minimum, the following information. Municipalities will need to submit:

- (i) A certified copy of the municipal zoning ordinance or by-law and zoning map, including all provisions that relate to uses and structures in the multi-family zoning district.
- (ii) An estimate of multi-family unit capacity using the compliance model.
- (iii) GIS shapefile for the multi-family zoning district.
- (iv) In the case of a by-law enacted by a town, evidence that the clerk has submitted a copy of the adopted multi-family zoning district to the office of the Attorney General for approval as required by state law, or evidence of the Attorney General's approval.

After receipt of a request for determination of district compliance, EOHLC will notify the requesting MBTA community within 30 days if additional information is required to process the request. Upon reviewing a complete application, EOHLC will provide the MBTA community a written determination either stating that the existing multi-family zoning district complies with Section 3A, or identifying the reasons why the multi-family zoning district fails to comply with Section 3A and the steps that must be taken to achieve compliance. An MBTA community that has achieved interim compliance prior to requesting a determination of district compliance shall remain in interim compliance for the period during which a request for determination of district compliance, with all required information, is pending at EOHLC.

10. Ongoing Obligations; Rescission of a Determination of Compliance

After receiving a determination of compliance, an MBTA community must notify EOHLC in writing of any zoning amendment or proposed zoning amendment that affects the compliant multi-family zoning district, or any other by-law, ordinance, rule or regulation that limits the development of multi-family housing in the multi-family zoning district. EOHLC may rescind a determination of district compliance, or require changes to a multi-family zoning district to remain in compliance, if EOHLC determines that:

- (i) The MBTA community submitted inaccurate information in its application for a determination of compliance;
- (ii) The MBTA community failed to notify EOHLC of a zoning amendment that affects the multi-family zoning district;

- (iii) The MBTA community enacts or amends any by-law or ordinance, or other rule or regulation, that materially alters the minimum land area and/or the multi-family unit capacity in the multi-family zoning district;
- (iv) A board, authority or official in the MBTA community does not issue permits, or otherwise acts or fails to act, to allow construction of a multi-family housing project that is allowed as of right in the multi-family zoning district (or any mixed-use zoning development district taken into account in determining the required multi-family unit capacity in the multi-family zoning district);
- (v) The MBTA community takes other action that causes the multi-family zoning district to no longer comply with Section 3A; or
- (vi) An MBTA community with an approved multi-family zoning district has changed transit category as a result of a newly opened or decommissioned transit station, or the establishment of permanent, regular service at a transit station where there was formerly intermittent or event-based service.

11. Changes to MBTA Service

Section 3A applies to the 177 MBTA communities identified in section 1A of the Zoning Act and section 1 of chapter 161A of the General Laws. When MBTA service changes, the list of MBTA communities and/or the transit category assignments of those MBTA communities in Appendix 1 may change as well.

The transit category assignments identified in Appendix 1 of these guidelines reflect certain MBTA service changes that will result from new infrastructure now under construction in connection with the South Coast Rail and Green Line Extension projects. These service changes include the opening of new Green Line stations and commuter rail stations, as well as the elimination of regular commuter rail service at the Lakeville station. These changes are scheduled to take effect in all cases a year or more before any municipal district compliance deadline. Affected MBTA communities are noted in Appendix 1.

Municipalities that are not now identified as MBTA communities and may be identified as such in the future are not addressed in these guidelines or included in Appendix 1. New MBTA communities will be addressed with revisions to Appendix 1, and separate compliance timelines, in the future.

Future changes to Silver Line routes or stations may change district location requirements when expanded high-capacity service combined with new facilities creates a bus station where there was not one before. Changes to other bus routes, including the addition or elimination of bus stops or reductions or expansions of bus service levels, do not affect the transit categories assigned to MBTA communities and will not affect location requirements for multi-family zoning districts. Any future changes to MBTA transit service, transit routes and transit service levels are determined by the MBTA Board of Directors consistent with the MBTA's Service Delivery Policy.

List of Appendices:

- Appendix 1: MBTA Community Categories and Requirements
- Appendix 2: Compliance Methodology/Model

Appendix 1:
MBTA Community Categories and Requirements

Community	Community category	2020 Housing Units	Minimum multi-family unit capacity*	Minimum land area**	Developable station area***	% of district to be located in station area
Abington	Commuter Rail	6,811	1,022	50	307	40%
Acton	Commuter Rail	9,219	1,383	50	246	20%
Amesbury	Adjacent Community	7,889	789	50	-	0%
Andover	Commuter Rail	13,541	2,031	50	587	50%
Arlington	Adjacent Community	20,461	2,046	32	58	0%
Ashburnham	Adjacent Small Town	2,730	137	-	-	0%
Ashby	Adjacent Small Town	1,243	62	-	-	0%
Ashland	Commuter Rail	7,495	1,124	50	272	40%
Attleboro	Commuter Rail	19,097	2,865	50	467	50%
Auburn	Adjacent Community	6,999	750	50	-	0%
Ayer	Commuter Rail	3,807	750	50	284	40%
Bedford	Adjacent Community	5,444	750	50	-	0%
Bellingham	Adjacent Community	6,749	750	50	-	0%
Belmont	Commuter Rail	10,882	1,632	27	502	50%
Berkley	Adjacent Small Town	2,360	118	-	79	0%
Beverly	Commuter Rail	17,887	2,683	50	1,435	90%
Billerica	Commuter Rail	15,485	2,323	50	308	40%
Bourne	Adjacent Small Town	11,140	557	-	-	0%
Boxborough	Adjacent Small Town	2,362	118	-	-	0%
Boxford	Adjacent Small Town	2,818	141	-	-	0%
Braintree	Rapid Transit	15,077	3,769	50	485	50%
Bridgewater	Commuter Rail	9,342	1,401	50	181	20%
Brockton	Commuter Rail	37,304	5,596	50	995	90%
Brookline	Rapid Transit	27,961	6,990	41	1,349	90%

Community	Community category	2020 Housing Units	Minimum multi-family unit capacity*	Minimum land area**	Developable station area***	% of district to be located in station area
Burlington	Adjacent Community	10,431	1,043	50	-	0%
Cambridge	Rapid Transit	53,907	13,477	32	1,392	90%
Canton	Commuter Rail	9,930	1,490	50	451	50%
Carlisle	Adjacent Small Town	1,897	95	-	-	0%
Carver	Adjacent Small Town	4,701	235	-	-	0%
Chelmsford	Adjacent Community	14,769	1,477	50	-	0%
Chelsea	Rapid Transit	14,554	3,639	14	608	75%
Cohasset	Commuter Rail	3,341	638	43	241	20%
Concord	Commuter Rail	7,295	1,094	50	519	50%
Danvers	Adjacent Community	11,763	1,176	50	-	0%
Dedham	Commuter Rail	10,459	1,569	49	507	50%
Dover	Adjacent Small Town	2,046	102	-	-	0%
Dracut	Adjacent Community	12,325	1,233	50	-	0%
Duxbury	Adjacent Community	6,274	750	50	-	0%
East Bridgewater	Adjacent Community	5,211	750	50	-	0%
Easton	Adjacent Community	9,132	913	50	-	0%
Essex	Adjacent Small Town	1,662	83	-	-	0%
Everett	Rapid Transit	18,208	4,552	22	200	20%
Fall River	Commuter Rail	44,346	6,652	50	324	40%
Fitchburg	Commuter Rail	17,452	2,618	50	601	75%
Foxborough	Adjacent Community	7,682	768	50	-	0%
Framingham	Commuter Rail	29,033	4,355	50	270	40%
Franklin	Commuter Rail	12,551	1,883	50	643	75%
Freetown	Commuter Rail	3,485	750	50	346	40%
Georgetown	Adjacent Community	3,159	750	50	-	0%
Gloucester	Commuter Rail	15,133	2,270	50	430	50%
Grafton	Adjacent Community	7,760	776	50	82	0%

Community	Community category	2020 Housing Units	Minimum multi-family unit capacity*	Minimum land area**	Developable station area***	% of district to be located in station area
Groton	Adjacent Small Town	4,153	208	-	-	0%
Groveland	Adjacent Small Town	2,596	130	-	-	0%
Halifax	Commuter Rail	3,107	750	50	300	40%
Hamilton	Commuter Rail	2,925	731	49	184	20%
Hanover	Adjacent Community	5,268	750	50	-	0%
Hanson	Commuter Rail	3,960	750	50	218	20%
Harvard	Adjacent Small Town	2,251	113	-	-	0%
Haverhill	Commuter Rail	27,927	4,189	50	415	50%
Hingham	Commuter Rail	9,930	1,490	50	757	75%
Holbrook	Commuter Rail	4,414	662	41	170	20%
Holden	Adjacent Community	7,439	750	50	-	0%
Holliston	Adjacent Community	5,562	750	50	-	0%
Hopkinton	Adjacent Community	6,645	750	50	79	0%
Hull	Adjacent Community	5,856	586	7	34	0%
Ipswich	Commuter Rail	6,476	971	50	327	40%
Kingston	Commuter Rail	5,364	805	50	345	40%
Lakeville	Adjacent Small Town	4,624	231	-	30	0%
Lancaster	Adjacent Small Town	2,788	139	-	-	0%
Lawrence	Commuter Rail	30,008	4,501	39	271	40%
Leicester	Adjacent Small Town	4,371	219	-	-	0%
Leominster	Commuter Rail	18,732	2,810	50	340	40%
Lexington	Adjacent Community	12,310	1,231	50	-	0%
Lincoln	Commuter Rail	2,771	635	42	130	20%
Littleton	Commuter Rail	3,889	750	50	244	20%
Lowell	Commuter Rail	43,482	6,522	50	274	40%
Lunenburg	Adjacent Small Town	4,805	240	-	-	0%
Lynn	Commuter Rail	36,782	5,517	50	637	75%

Community	Community category	2020 Housing Units	Minimum multi-family unit capacity*	Minimum land area**	Developable station area***	% of district to be located in station area
Lynnfield	Adjacent Community	4,773	607	40	-	0%
Malden	Rapid Transit	27,721	6,930	31	484	50%
Manchester	Commuter Rail	2,433	559	37	305	40%
Mansfield	Commuter Rail	9,282	1,392	50	327	40%
Marblehead	Adjacent Community	8,965	897	27	-	0%
Marlborough	Adjacent Community	17,547	1,755	50	-	0%
Marshfield	Adjacent Community	11,575	1,158	50	-	0%
Maynard	Adjacent Community	4,741	474	21	-	0%
Medfield	Adjacent Community	4,450	750	50	-	0%
Medford	Rapid Transit	25,770	6,443	35	714	75%
Medway	Adjacent Community	4,826	750	50	-	0%
Melrose	Commuter Rail	12,614	1,892	25	774	75%
Merrimac	Adjacent Small Town	2,761	138	-	-	0%
Methuen	Adjacent Community	20,194	2,019	50	-	0%
Middleborough	Commuter Rail	9,808	1,471	50	260	40%
Middleton	Adjacent Community	3,359	750	50	-	0%
Millbury	Adjacent Community	5,987	750	50	-	0%
Millis	Adjacent Community	3,412	750	50	-	0%
Milton	Rapid Transit	9,844	2,461	50	404	50%
Nahant	Adjacent Small Town	1,680	84	-	-	0%
Natick	Commuter Rail	15,680	2,352	50	680	75%
Needham	Commuter Rail	11,891	1,784	50	1,223	90%
New Bedford	Commuter Rail	44,588	6,688	50	744	75%
Newbury	Adjacent Small Town	3,072	154	-	69	0%
Newburyport	Commuter Rail	8,615	1,292	35	213	20%
Newton	Rapid Transit	33,320	8,330	50	2,833	90%
Norfolk	Commuter Rail	3,601	750	50	333	40%

Community	Community category	2020 Housing Units	Minimum multi-family unit capacity*	Minimum land area**	Developable station area***	% of district to be located in station area
North Andover	Adjacent Community	11,914	1,191	50	5	0%
North Attleborough	Adjacent Community	12,551	1,255	50	-	0%
North Reading	Adjacent Community	5,875	750	50	-	0%
Northborough	Adjacent Community	5,897	750	50	-	0%
Northbridge	Adjacent Community	6,691	750	50	-	0%
Norton	Adjacent Community	6,971	750	50	-	0%
Norwell	Adjacent Community	3,805	750	50	-	0%
Norwood	Commuter Rail	13,634	2,045	50	861	90%
Paxton	Adjacent Small Town	1,689	84	-	-	0%
Peabody	Adjacent Community	23,191	2,319	50	-	0%
Pembroke	Adjacent Community	7,007	750	50	-	0%
Plymouth	Adjacent Community	28,074	2,807	50	-	0%
Plympton	Adjacent Small Town	1,068	53	-	-	0%
Princeton	Adjacent Small Town	1,383	69	-	-	0%
Quincy	Rapid Transit	47,009	11,752	50	1,222	90%
Randolph	Commuter Rail	12,901	1,935	48	182	20%
Raynham	Adjacent Community	5,749	750	50	-	0%
Reading	Commuter Rail	9,952	1,493	43	343	40%
Rehoboth	Adjacent Small Town	4,611	231	-	-	0%
Revere	Rapid Transit	24,539	6,135	27	457	50%
Rochester	Adjacent Small Town	2,105	105	-	-	0%
Rockland	Adjacent Community	7,263	726	47	-	0%
Rockport	Commuter Rail	4,380	657	32	252	40%
Rowley	Commuter Rail	2,405	601	40	149	20%
Salem	Commuter Rail	20,349	3,052	41	266	40%
Salisbury	Adjacent Community	5,305	750	50	-	0%
Saugus	Adjacent Community	11,303	1,130	50	11	0%

Community	Community category	2020 Housing Units	Minimum multi-family unit capacity*	Minimum land area**	Developable station area***	% of district to be located in station area
Scituate	Commuter Rail	8,260	1,239	50	373	40%
Seekonk	Adjacent Community	6,057	750	50	-	0%
Sharon	Commuter Rail	6,581	987	50	261	40%
Sherborn	Adjacent Small Town	1,562	78	-	-	0%
Shirley	Commuter Rail	2,599	650	43	338	40%
Shrewsbury	Adjacent Community	14,966	1,497	50	52	0%
Somerville	Rapid Transit	36,269	9,067	24	1,314	90%
Southborough	Commuter Rail	3,763	750	50	167	20%
Sterling	Adjacent Small Town	3,117	156	-	-	0%
Stoneham	Adjacent Community	10,159	1,016	27	12	0%
Stoughton	Commuter Rail	11,739	1,761	50	317	40%
Stow	Adjacent Small Town	2,770	139	-	-	0%
Sudbury	Adjacent Community	6,556	750	50	-	0%
Sutton	Adjacent Small Town	3,612	181	-	-	0%
Swampscott	Commuter Rail	6,362	954	20	236	20%
Taunton	Commuter Rail	24,965	3,745	50	269	40%
Tewksbury	Adjacent Community	12,139	1,214	50	-	0%
Topsfield	Adjacent Small Town	2,358	118	-	-	0%
Townsend	Adjacent Small Town	3,566	178	-	-	0%
Tyngsborough	Adjacent Community	4,669	750	50	-	0%
Upton	Adjacent Small Town	2,995	150	-	-	0%
Wakefield	Commuter Rail	11,305	1,696	36	630	75%
Walpole	Commuter Rail	10,042	1,506	50	638	75%
Waltham	Commuter Rail	26,545	3,982	50	470	50%
Wareham	Adjacent Community	12,967	1,297	50	-	0%
Watertown	Adjacent Community	17,010	1,701	24	27	0%
Wayland	Adjacent Community	5,296	750	50	-	0%

Community	Community category	2020 Housing Units	Minimum multi-family unit capacity*	Minimum land area**	Developable station area***	% of district to be located in station area
Wellesley	Commuter Rail	9,282	1,392	50	921	90%
Wenham	Commuter Rail	1,460	365	24	111	20%
West Boylston	Adjacent Community	3,052	587	39	-	0%
West Bridgewater	Adjacent Small Town	2,898	145	-	-	0%
West Newbury	Adjacent Small Town	1,740	87	-	-	0%
Westborough	Commuter Rail	8,334	1,250	50	194	20%
Westford	Adjacent Community	9,237	924	50	-	0%
Westminster	Adjacent Small Town	3,301	165	-	30	0%
Weston	Commuter Rail	4,043	750	50	702	75%
Westwood	Commuter Rail	5,801	870	50	470	50%
Weymouth	Commuter Rail	25,419	3,813	50	713	75%
Whitman	Commuter Rail	5,984	898	37	242	20%
Wilmington	Commuter Rail	8,320	1,248	50	538	50%
Winchester	Commuter Rail	8,135	1,220	37	446	50%
Winthrop	Adjacent Community	8,821	882	12	14	0%
Woburn	Commuter Rail	17,540	2,631	50	702	75%
Worcester	Commuter Rail	84,281	12,642	50	290	40%
Wrentham	Adjacent Community	4,620	750	50	-	0%
			296,806			

Minimum multi-family unit capacity for most communities will be based on the 2020 housing stock and the applicable percentage for that municipality's community type. In some cases, the minimum unit capacity is derived from an extrapolation of the required minimum land area multiplied by the statutory minimum gross density of 15 dwelling units per acre. In cases where the required unit capacity from these two methods would exceed 25% of the community's housing stock, the required unit capacity has

* instead been capped at that 25% level.

Minimum land area is 50 acres for all communities in the rapid transit, commuter rail and adjacent community types. There is no minimum land area requirement for adjacent small towns. Where 50 acres exceeds 1.5% of the developable land area in a town, a cap has been instituted that sets minimum land area to 1.5% of developable land area in the town.

** Developable station area is derived by taking the area of a half-mile circle around an MBTA commuter rail station, rapid transit station, or ferry terminal and removing any areas comprised of excluded land.

Community	Community category	2020 Housing Units	Minimum multi-family unit capacity*	Minimum land area**	Developable station area***	% of district to be located in station area
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This Appendix was updated on 3/13/2023 to add two new MBTA communities (Fall River and New Bedford, which became MBTA communities on 1/1/2023)

- 72.01: Background and Purpose
- 72.02: Definitions
- 72.03: General Principles of Compliance
- 72.04: Allowing Multi-Family As of Right
- 72.05: Determining Reasonable Size
- 72.06: Minimum Gross Density
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- 72.08: Location of Districts
- 72.09: Determinations of Compliance
- 72.10: Ongoing Obligations; Rescission of a Determination of Compliance
- 72.11: Changes to MBTA Service

72.01: Background and Purpose

G.L. c 40A, §3A provides: An MBTA community 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; provided, however, that such multi-family housing shall be without age restrictions and shall be suitable for families with children. For the purposes of this section, a district of reasonable size shall: (i) have a minimum gross density of 15 units per acre, subject to any further limitations imposed by section 40 of chapter 131 and title 5 of the state environmental code established pursuant to section 13 of chapter 21A; and (ii) be located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable.

The purpose of G.L. c. 40A, § 3A is to encourage the production of Multi-family housing by requiring MBTA communities to adopt zoning districts where Multi-family housing is allowed As of right, and that meet other requirements set forth in the statute. 760 CMR 72.00 establishes rules, standards, and procedures to set forth how MBTA communities may achieve compliance with G.L. c. 40A, §3A. Pursuant to G.L. c. 40A, § 3A(c), the Executive Office of Housing and Livable Communities (EOHLC) is the regulatory agency for the program and is expressly authorized to issue guidelines, in consultation with the Executive Office of Economic Development, the Massachusetts Bay Transportation Authority and the Massachusetts Department of Transportation, to determine if an MBTA community is in compliance with G.L. c. 40A, § 3A. EOHLC is adopting these regulations pursuant to its authority under G.L. c. 6A, §16G ½ and pursuant to the Decision issued by the Supreme Judicial Court in Attorney General v. Town of Milton, et al. SJC-13580, slip op. (Jan. 8, 2025), holding that the guidelines issued by EOHLC on August 17, 2023 are unenforceable and must be promulgated in accordance with G.L. c. 30A, § 3.

72.02: Definitions

“Adjacent community” means an MBTA community that (i) has within its boundaries less than 100 acres of Developable station area, and (ii) is not an Adjacent small town.

“Adjacent small town” means an MBTA community that (i) has within its boundaries less than 100 acres of Developable station area, and (ii) either has a population density of less than 500 persons per square mile, or a population of not more than 7,000 year-round residents as determined in the most recently published United States Decennial Census of Population and Housing.

“Affordable unit” means a Multi-family housing unit that is subject to a restriction in its chain of title limiting the sale price or rent, or limiting occupancy to an individual or household of a specified income, or both. Affordable units may be, but are not required to be, eligible for inclusion on EOHLC’s Subsidized Housing Inventory. Nothing in 760 CMR 72.00 changes the Subsidized Housing Inventory eligibility criteria, and no affordable unit shall be counted on the Subsidized Housing Inventory unless it satisfies the requirements for inclusion under 760 CMR 56.03(2) or any other regulation or guidance issued by EOHLC.

“Age-restricted housing” means any housing unit encumbered by a title restriction requiring a minimum age for some or all occupants.

“As of right” means development that may proceed under a zoning ordinance or by-law without the need for a special permit, variance, zoning amendment, waiver, or other discretionary zoning approval.

“Bus station” means a location with a passenger platform and other fixed infrastructure serving as a point of embarkation for the Massachusetts Bay Transportation Authority Silver Line. Upon the request of an MBTA community, EOHLC, in consultation with the Massachusetts Bay Transportation Authority, may determine that other locations qualify as a bus station if (i) such location has a sheltered platform or other fixed infrastructure serving a point of embarkation for a high-capacity Massachusetts Bay Transportation Authority bus line, and (ii) the area around such fixed infrastructure is highly suitable for Multi-family housing.

“Commuter rail community” means an MBTA community that (i) does not meet the criteria for a Rapid transit community, and (ii) has within its borders at least 100 acres of Developable station area associated with one or more Commuter rail stations.

“Commuter rail station” means any Massachusetts Bay Transportation Authority Commuter rail station with year-round, rather than intermittent, seasonal, or event-based, service, including stations and any extensions to such lines under construction and scheduled to begin service before the end of 2025.

“Compliance model” means the model created by EOHLC to determine compliance with G.L. c. 40A, § 3A’s reasonable size, gross density, and location requirements. The compliance model is described in further detail in the Compliance Methodology Model, which is a model prescribed by EOHLC.

“Determination of compliance” means a determination made by EOHLC as to whether an MBTA community has a Multi-family zoning district that complies with the requirements of G.L. c. 40A, § 3A. A Determination of compliance may be a determination of interim compliance or a determination of district compliance, as described in 760 CMR 72.09.

“Developable land” means land on which Multi-family housing can be permitted and constructed. For purposes of 760 CMR 72.00, Developable land consists of: (i) all privately-owned land except Lots or portions of Lots that meet the definition of Excluded land, and (ii) Developable public land.

“Developable public land” means any Publicly-owned land that (i) is used by a local housing authority; (ii) has been identified as a site for housing development in a housing production plan approved by EOHLC; or (iii) has been designated by the public owner for disposition and redevelopment. Other Publicly-owned land may qualify as Developable public land if EOHLC determines, at the request of an MBTA community and after consultation with the public owner, that such land is the location of obsolete structures or uses, or otherwise is suitable for conversion to Multi-family housing, and will be converted to or made available for Multi-family housing within a reasonable period of time.

“Developable station area” means Developable land that is within 0.5 miles of a Transit station.

“EOED” means the Executive Office of Economic Development.

“EOHLC” means the Executive Office of Housing and Livable Communities.

“Excluded land” means land areas on which it is not possible or practical to construct Multi-family housing. For purposes of 760 CMR 72.00, Excluded land is defined by reference to the ownership, use codes, use restrictions, and hydrological characteristics in MassGIS and consists of the following:

- (1) All Publicly-owned land, except for Lots or portions of Lots determined to be Developable public land.
- (2) All rivers, streams, lakes, ponds and other surface waterbodies.
- (3) All wetland resource areas, together with a buffer zone around wetlands and waterbodies equivalent to the minimum setback required by title 5 of the state environmental code.
- (4) Protected open space and recreational land that is legally protected in perpetuity (for example, land owned by a local land trust or subject to a conservation restriction), or that is likely to remain undeveloped due to functional or traditional use (for example, cemeteries).
- (5) All Public rights-of-way and Private rights-of-way.
- (6) Privately-owned land on which development is prohibited to protect private or public water supplies, including, but not limited to, Zone I wellhead protection areas and Zone A surface water supply protection areas.
- (7) Privately-owned land used for educational or institutional uses such as a hospital, prison, electric, water, wastewater or other utility, museum, or private school, college or university.

“Ferry terminal” means the location where passengers embark and disembark from regular, year-round Massachusetts Bay Transportation Authority ferry service.

“Gross density” means a units-per-acre density measurement that includes land occupied by Public rights-of-way and any recreational, civic, commercial, and other nonresidential uses.

“Housing suitable for families” means housing comprised of residential dwelling units that are not age-restricted housing, and for which there are no zoning restriction on the number of bedrooms, the size of bedrooms, or the number of occupants.

“Listed funding sources” means (i) the Housing Choice Initiative as described by the governor in a message to the general court dated December 11, 2017; (ii) the Local Capital Projects Fund established in G.L. c. 29, § 2EEEE; and (iii) the MassWorks infrastructure program established in G.L. c. 23A, § 63.

“Lot” means an area of land with definite boundaries that is used or available for use as the site of a building or buildings.

“MassGIS data” means the comprehensive, statewide database of geospatial information and mapping functions maintained by the Commonwealth's Bureau of Geographic Information, within the Executive Office of Technology Services and Security, including the lot boundaries and use codes provided by municipalities.

“MBTA Community Categories and Requirements” means the table of MBTA communities adopted and updated by EOHLC, identifying the community category assignment, minimum land area, minimum Multi-family unit capacity, Developable station area, and percentage of the Multi-family zoning district to be located in the Developable station area, applicable to MBTA communities.

“MBTA community” means a city or town that is: (i) one of the 51 cities and towns as defined in G.L. c. 161A, § 1; (ii) one of the 14 cities and towns as defined in G.L. c. 161A, § 1; (iii) other served communities as defined in G.L. c. 161A, § 1; or (iv) a municipality that has been added to the Massachusetts Bay Transportation Authority under G.L. c. 161A, § 6 or in accordance with any special law relative to the area constituting the authority.

“Mixed-use development” means development containing a mix of residential uses and non-residential uses, including, without limitation, commercial, institutional, industrial or other uses.

“Mixed-use development zoning district” means a zoning district where multiple residential units are allowed as of right if, but only if, combined with non-residential uses, including, without limitation, commercial, institutional, industrial or other uses.

“Multi-family housing” means 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.

“Multi-family unit capacity” means an estimate of the total number of Multi-family housing units that can be developed As of right within a Multi-family zoning district, made in accordance with the requirements of 760 CMR 72.05(1)(b).

“Multi-family zoning district” means a zoning district, including a base district or an overlay district, in which Multi-family housing is allowed as of right; provided that the district shall be in a fixed location or locations, and shown on a map that is part of the zoning ordinance or by-law.

“One Stop Application” means the single application portal for the Community One Stop for Growth through which (i) EOED considers requests for funding from the MassWorks infrastructure program; (ii) EOHLC considers requests for funding from the Housing Choice Initiative, (iii) EOED, EOHLC and other state agencies consider requests for funding from other discretionary grant programs.

“Private rights-of-way” means land area within which private streets, roads and other ways have been laid out and maintained, to the extent such land areas can be reasonably identified by examination of available tax parcel data.

“Publicly-owned land” means (i) any land owned by the United States or a federal agency or authority; (ii) any land owned by the Commonwealth of Massachusetts or a state agency or authority; and (iii) any land owned by a municipality or municipal board or authority.

“Public rights-of-way” means land area within which public streets, roads and other ways have been laid out and maintained, to the extent such land areas can be reasonably identified by examination of available tax parcel data.

“Rapid transit community” means an MBTA community that has within its borders at least 100 acres of Developable station area associated with one or more Subway stations, or Massachusetts Bay Transportation Authority Silver Line bus rapid transit stations.

“Residential dwelling unit” means a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

“Sensitive land” means Developable land that, due to its soils, slope, hydrology, or other physical characteristics, has significant conservation values that could be impaired, or vulnerabilities that could be exacerbated, by the development of Multi-family housing. It also includes locations where Multi-family housing would be at increased risk of damage caused by flooding. Sensitive land includes, but is not limited to, wetland buffer zones extending beyond the title 5 setback area; land subject to flooding that is not a wetland resource area; priority habitat for rare or threatened species; Department of Environmental Protection-approved wellhead protection areas in which development may be restricted, but is not prohibited (Zone II and interim wellhead protection areas); and land areas with prime agricultural soils that are in active agricultural use.

“Site plan review” means a process established by local ordinance or by-law by which a local board reviews, and potentially imposes conditions on, the appearance and layout of a specific project prior to the issuance of a building permit.

“Subway station” means any of the stops along the Massachusetts Bay Transportation Authority Red Line, Green Line, Orange Line, or Blue Line, including but not limited to the Mattapan High Speed Line and any extensions to such lines.

“Transit station” means a Massachusetts Bay Transportation Authority Subway station, Commuter rail station, Ferry terminal or Bus station.

“Transit station area” means the land area within 0.5 miles of a Transit station.

72.03: General Principles of Compliance

(1) 760 CMR 72.00 describes how an MBTA community can comply with the requirements of G.L. c. 40A, § 3A. 760 CMR 72.00 specifically addresses:

- (a) What it means to allow Multi-family housing “As of right.”
- (b) The metrics that determine if a Multi-family zoning district is “of reasonable size.”
- (c) How to determine if a Multi-family zoning district has a minimum gross density of 15 units per acre, subject to any further limitations imposed by G.L. c. 131, § 40 of and title 5 of the state environmental code.
- (d) The meaning of G.L. c. 40A, § 3A’s mandate that “such multi-family housing shall be without age restrictions and shall be suitable for families with children.”
- (e) The extent to which MBTA communities have flexibility to choose the location of a Multi-family zoning district.

(2) The following general principles have informed the more specific compliance criteria that follow:

- (a) MBTA communities with Subway stations, Commuter rail stations and other Transit stations benefit from having these assets located within their boundaries and should provide opportunity for Multi-family housing development around these assets. MBTA communities with no Transit stations within their boundaries benefit from proximity to Transit stations in nearby communities.
- (b) The Multi-family zoning districts required by G.L. c. 40A, § 3A should encourage the development of Multi-family housing projects of a scale, density and aesthetic that are compatible with existing surrounding uses, and minimize impacts to Sensitive land.
- (c) “Reasonable size” is a relative rather than an absolute determination. Because of the diversity of MBTA communities, a Multi-family zoning district that is “reasonable” in one city or town may not be reasonable in another city or town.
- (d) When possible, Multi-family zoning districts should be in areas that have safe, accessible, and convenient access to Transit stations for pedestrians and bicyclists.

72.04: Allowing Multi-Family Housing “As of Right”

(1) To comply with G.L. c. 40A, § 3A, a Multi-family zoning district must allow Multi-family housing As of right, meaning that the construction and occupancy of multi-family housing is allowed in that district without the need for a special permit, variance, zoning amendment, waiver, or other discretionary approval. EOHLC will determine whether zoning provisions allow for Multi-family housing as of right consistent with the following requirements.

(a) Site plan review. G.L. c. 40A does not establish nor recognize site plan review as an independent method of regulating land use. However, the Massachusetts courts have recognized Site plan review as a permissible regulatory tool, including for uses that are permitted as of right. The court decisions establish that when Site plan review is required for a use permitted As of right, site plan review involves the regulation of a use and not its outright prohibition. The scope of review is therefore limited to imposing reasonable terms and conditions on the proposed use, consistent with applicable case law. 760 CMR 72.00 similarly recognizes that Site plan review may be required for Multi-family housing projects that are allowed As of right, within the parameters established by the applicable case law. Site plan approval may regulate matters such as vehicular access and circulation on a site, architectural design of a building, and screening of adjacent properties. Site plan review should not unreasonably delay a project nor impose conditions that make it infeasible or impractical to proceed with a project that is allowed As of right and complies with applicable dimensional regulations.

(b) Affordability requirements. G.L. c. 40A, § 3A does not include any express requirement or authorization for an MBTA community to require Affordable units in a Multi-family housing project that is allowed As of right. It is a common practice in many cities and towns to require Affordable units in a Multi-family project that requires a special permit, or as a condition for building at greater densities than the zoning otherwise would allow. These inclusionary zoning requirements serve the policy goal of increasing affordable housing production. If affordability requirements are excessive, however, they can make it economically infeasible to construct new Multi-family housing.

1. For purposes of making compliance determinations with G.L. c. 40A, § 3A, EOHLC will consider an affordability requirement to be consistent with As of right zoning as long as the zoning requires not more than ten 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 eighty percent of area median income. Notwithstanding the foregoing, EOHLC may, in its discretion, approve a greater percentage of affordable units, or deeper affordability for some or all of the affordable units, in either of the following circumstances:

- a. The affordability requirements applicable in the Multi-family zoning district are reviewed and approved by EOHLC as part of a smart growth district under G.L. c. 40R, or under another zoning incentive program administered by EOHLC; or
- b. 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 EOHLC, and using a methodology and format acceptable to EOHLC. The analysis must demonstrate that a reasonable variety of Multi-family housing types can be feasibly developed at the proposed affordability levels, taking into account the densities allowed As of right in the district, the dimensional requirements applicable within the district, and the minimum number of parking spaces required.

2. In no case will EOHLC approve alternative affordability requirements that require more than 20 percent of the units in a project to be Affordable units, except in a smart growth zoning district under G.L. c. 40R with a 25 percent affordability requirement approved and adopted prior to August 10, 2022 (the date of issuance by EOHLC of Compliance Guidelines for Multi-family Zoning Districts Under Section 3A of the Zoning Act which have been superseded by 760 CMR 72.00), including any such existing district that is expanded or amended to comply with G.L. c. 40A, § 3A and 760 CMR 72.00.

(c) Other requirements that do not apply uniformly in the Multi-family zoning district.

Zoning will not be deemed compliant with G.L. c. 40A, § 3A's requirement that Multi-family housing be allowed As of right if the zoning imposes requirements on Multi-family housing that are not generally applicable to other uses. The following are examples of requirements that would be deemed to be inconsistent with As of right use: (i) a requirement that Multi-family housing meet higher energy efficiency standards than other uses; (ii) a requirement that a Multi-family use achieve a third party certification that is not required for other uses in the district; and (iii) a requirement that Multi-family use must be combined with commercial or other uses on the same Lot or as part of a single project. Mixed use projects may be allowed As of right in a Multi-family zoning district, as long as Multi-family housing is separately allowed As of right.

72.05: Determining “Reasonable Size”

(1) In making determinations of “reasonable size,” EOHLC will take into consideration both the land area of the Multi-family zoning district, and the Multi-family zoning district’s Multi-family unit capacity.

(a) Minimum land area. A zoning district is a specifically delineated land area with uniform regulations and requirements governing the use of land and the placement, spacing, and size of buildings. For purposes of compliance with G.L. c. 40A, § 3A, a Multi-family zoning district should be a neighborhood-scale district, not a single development site on which the municipality is willing to permit a particular Multi-family project. EOHLC will certify compliance with G.L. c. 40A, § 3A only if an MBTA community’s Multi-family zoning district meets the minimum land area applicable to that MBTA community, if any, as set forth in the MBTA Community Categories and Requirements. The minimum land area for each MBTA community has been determined as follows:

1. In Rapid transit communities, Commuter rail communities, and Adjacent communities, the minimum land area of the Multi-family zoning district is 50 acres, or 1.5% of the

Developable land in an MBTA community, whichever is less. In certain cases, as set forth in the MBTA Community Categories and Requirements a smaller minimum land area applies.

2. In Adjacent small towns, there is no minimum land area. In these communities, the Multi-family zoning district may comprise as many or as few acres as the community determines is appropriate, as long as the district meets the applicable minimum Multi-family unit capacity and the minimum Gross density requirements.

3. In all cases, at least half of the Multi-family zoning district land areas must comprise contiguous Lots of land. No portion of the district that is less than 5 contiguous acres land will count toward the minimum size requirement. If the Multi-family unit capacity and Gross density requirements can be achieved in a district of fewer than 5 acres, then the district must consist entirely of contiguous Lots.

(b) Minimum Multi-family unit capacity. A reasonably sized Multi-family zoning district must also be able to accommodate a reasonable number of Multi-family housing units As of right. For purposes of determinations of compliance with G.L. c. 40A, § 3A, EOHLC will consider a reasonable Multi-family unit capacity for each MBTA community to be a specified percentage of the total number of housing units within the community, with the applicable percentage based on the type of Transit service in the community, as shown on Table 1:

Table 1.

Category	Percentage of total housing units
Rapid transit community	25%
Commuter rail community	15%
Adjacent community	10%
Adjacent small town	5%

1. To be deemed in compliance with G.L. c. 40A, § 3A, each MBTA community must have a Multi-family zoning district with a Multi-family unit capacity equal to or greater than the minimum unit capacity as determined by EOHLC in accordance with the MBTA Community Categories and Requirements. The minimum Multi-family unit capacity for each MBTA community has been determined as follows:

a. First, by multiplying the number of housing units in that community by 0.25, 0.15, 0.10, or .05 depending on the MBTA community category. For example, a Rapid transit community with 7,500 housing units is required to have a Multi-family zoning district with a Multi-family unit capacity of $7,500 \times 0.25 = 1,875$ Multi-family units. For purposes of 760 CMR 72.00, the number of total housing units in each MBTA community has been established by reference to the most recently published United States Decennial Census of Population and Housing.

b. Second, when there is a minimum land area applicable to an MBTA community, by multiplying that minimum land area (up to 50 acres) by G.L. c. 40A, § 3A's minimum gross density requirement of 15 units per acre. The product of that multiplication creates a floor on Multi-family unit capacity. For example, an MBTA community with a minimum land area of 40 acres must have a district with a Multi-family unit capacity of at least 600 (40 x 15) units.

c. The minimum unit capacity applicable to each MBTA community is the greater of the numbers resulting from steps (i) and (ii) above, but subject to the following limitation: In no case does the minimum Multi-family unit capacity exceed 25% of the total housing units in that MBTA community.

Example: The minimum multi-family unit capacity for an Adjacent community with 1,000 housing units and a minimum land area of 50 acres is determined as follows:(i) first, by multiplying $1,000 \times .1 = 100$ units; (ii) second, by multiplying $50 \times 15 = 750$ units;(iii) by taking the larger number, but adjusting that number down, if necessary, so that unit capacity is no more than 25% of 1,000 = 250 units. In this case, the adjustment in step (iii) results in a minimum unit capacity of 250 units.

(c) Unit Capacity in Mixed-Use Development Districts

1. In making determinations of whether an MBTA community has a Multi-family zoning district of "reasonable size" under this section, EOHLC shall also take into consideration the existence and impact of Mixed-use development zoning districts, subject to the requirements below.

2. EOHLC shall take these Mixed-use development districts into consideration as reducing the unit capacity needed for a Multi-family zoning district to be "reasonable" (in accordance with the MBTA Community Categories and Requirements) where:

- a. the Mixed-use development zoning district is in an eligible location where existing village-style or downtown development is essential to preserve pedestrian access to amenities;
- b. there are no age restrictions or limits on unit size, number of bedrooms, bedroom size or number of occupants and the residential units permitted are suitable for families with children;
- c. Mixed-used development in the district is allowed As of right as that phrase has been interpreted by EOHLC (for example, in 760 CMR 72.04(1)(b) with respect to affordability requirements);
- d. the requirement for non-residential uses is limited to the ground floor of buildings, and in no case represents a requirement that more than thirty-three percent of the floor area of a building, Lot, or project must be for non-residential uses;
- e. the requirement for non-residential uses does not preclude a minimum of three residential dwelling units per Lot;
- f. the requirement for non-residential uses allows a broad mix of non-residential uses As-of-right in keeping with the nature of the area; and

- g. there are no minimum parking requirements associated with the non-residential uses allowed As of right.
- 2. An MBTA community asking to reduce the unit capacity requirement for its Multi-family zoning district(s) based on the unit capacity for one or more Mixed-use development districts shall submit to EOHLC, on a form to be provided by EOHLC, a request for a determination that the Mixed-use development district is in an eligible location meeting the requirements of 760 CMR 72.05(1)(c)2.a. This request must be submitted at least 90 days prior to the vote of the MBTA community's legislative body. An MBTA community also may submit a broader inquiry as to G.L. c. 40A, § 3A compliance in accordance with 760 CMR 72.09(5). EOHLC shall respond prior to the vote of the MBTA community's legislative body if the request is timely submitted.
- 3. In any community with both a Multi-family zoning district and a Mixed-use development district that meets these considerations, the unit capacity requirement for the Multi-family zoning district, as stated in the MBTA Community Categories and Requirements, shall be reduced by the lesser of:

- a. the unit capacity of Residential dwelling units in the Mixed-use development district or subdistrict (as calculated by EOHLC using a methodology similar to that in 760 CMR 72.05(1)(d) which takes into account the impact of non-residential uses), or
- b. twenty five percent of the unit capacity requirement as stated in the MBTA Community Categories and Requirements. This consideration shall not affect the minimum land area acreage or contiguity requirements for a Multi-family zoning district otherwise required by 760 CMR 72.00.

(d) Methodology for determining a Multi-family zoning district's multi-family unit capacity.

- 1. MBTA communities seeking a determination of compliance must use the EOHLC Compliance model to provide an estimate of the number of Multi-family housing units that can be developed As of right within the Multi-family zoning district. The Multi-family unit capacity of an existing or proposed district shall be calculated using the unit capacity worksheet described in the Compliance Methodology Model. This worksheet produces an estimate of a district's Multi-family unit capacity using inputs such as the amount of Developable land in the district, the dimensional requirements applicable to Lots and buildings (including, for example, height limitations, lot coverage limitations, and maximum floor area ratio), and the parking space requirements applicable to Multi-family uses.
- 2. Minimum unit capacity is a measure of whether a Multi-family zoning district is of a reasonable size, not a requirement to produce housing units. Nothing in G.L. c. 40A, § 3A or 760 CMR 72.00 should be interpreted as a mandate to construct a specified number of housing units, nor as a housing production target. Demonstrating compliance with the minimum multi-family unit capacity requires only that an MBTA community show that the zoning allows multi-family housing as of right and that a sufficient number of multi-

family housing units could be added to or replace existing uses and structures over time—even though such additions or replacements may be unlikely to occur soon.

3. If an MBTA community has two or more zoning districts in which Multi-family housing is allowed As of right, then two or more districts may be considered cumulatively to meet the minimum land area and minimum Multi-family unit capacity requirements, as long as each district independently complies with G.L. c. 40A, § 3A's other requirements and 760 CMR 72.00.

(e) Water and wastewater infrastructure within the multi-family zoning district

1. MBTA communities are encouraged to consider the availability of water and wastewater infrastructure when selecting the location of a new Multi-family zoning district. Compliance with G.L. c. 40A, § 3A does not require a municipality to install new water or wastewater infrastructure, or add to the capacity of existing infrastructure, to accommodate future Multi-family housing production within the Multi-family zoning district. In most cases, Multi-family housing can be created using private septic and wastewater treatment systems that meet state environmental standards. Where public systems currently exist, but capacity is limited, private developers may be able to support the cost of necessary water and sewer extensions. While the zoning must allow for gross average density of at least 15 units per acre, there may be other legal or practical limitations, including lack of infrastructure or infrastructure capacity, that result in actual housing production at lower density than the zoning allows.

2. The Multi-family unit capacity analysis does not need to take into consideration limitations on development resulting from existing water or wastewater infrastructure within the Multi-family zoning district, or, in areas not served by public sewer, any applicable limitations under title 5 of the state environmental code. For purposes of the unit capacity analysis, it is assumed that housing developers will design projects that work within existing water and wastewater constraints, and that developers, the municipality, or the Commonwealth will provide funding for infrastructure upgrades as needed for individual projects.

72.06: Minimum Gross Density

(1) G.L. c. 40A, § 3A expressly requires that a Multi-family zoning district—not just the individual lots of land within the district—must have a minimum Gross density of 15 units per acre, subject to any further limitations imposed by G.L. c. 131 and title 5 of the state environmental code established pursuant to G.L. c. 21A. G.L. c. 40A, § 1A defines “Gross density” as “a units-per-acre density measurement that includes land occupied by public rights-of-way and any recreational, civic, commercial and other nonresidential uses.”

(2) District-wide Gross density.

(a) To meet the district-wide Gross density requirement, the dimensional restrictions and parking requirements for the Multi-family zoning district must allow for a Gross density of

15 units per acre of land within the district. By way of example, to meet that requirement for a 40-acre Multi-family zoning district, the zoning must allow for at least 15 multi-family units per acre, or a total of at least 600 Multi-family housing units.

(b) For purposes of determining compliance with G.L. c. 40A, § 3A's Gross density requirement, the EOHLC Compliance model will not count in the denominator any excluded land located within the Multi-family zoning district, except public rights-of-way, private rights-of-way, and publicly-owned land used for recreational, civic, commercial, and other nonresidential uses. This method of calculating minimum Gross density respects G.L. c. 40A, § 1A's definition of Gross density—"a units-per-acre density measurement that includes land occupied by public rights-of-way and any recreational, civic, commercial and other nonresidential uses"—while making it unnecessary to draw patchwork Multi-family zoning districts that carve out wetlands and other types of excluded land that are not developed or developable.

(3) Achieving district-wide gross density by sub-districts. Zoning ordinances and by-laws typically limit the unit density on individual lots. To comply with G.L. c. 40A, § 3A's Gross density requirement, an MBTA community may establish reasonable sub-districts within a Multi-family zoning district, with different density limits for each sub-district, provided that the Gross density for the district as a whole meets the statutory requirement of not less than 15 Multi-family units per acre. EOHLC will review sub-districts to ensure that the density allowed As of right in each sub-district is reasonable and not intended to frustrate the purpose of G.L. c. 40A, § 3A by allowing projects of a such high density that they are not likely to be constructed.

(4) Wetland and septic considerations relating to density. G.L. c. 40A, § 3A provides that a district of reasonable size shall have a minimum Gross density of 15 units per acre, "subject to any further limitations imposed by section 40 of chapter 131 and title 5 of the state environmental code established pursuant to G.L. c. 21A, § 13." This directive means that even though the zoning district must permit 15 units per acre As of right, Multi-family housing produced within the district is subject to, and must comply with, the state wetlands protection act and title 5 of the state environmental code—even if such compliance means a proposed project will be less dense than 15 units per acre.

72.07: Determining Suitability for Families with Children

G.L. c. 40A, § 3A states that a compliant Multi-family zoning district must allow Multi-family housing As of right, and that such multi-family housing shall be without age restrictions and shall be suitable for families with children. EOHLC will deem a Multi-family zoning district to comply with these requirements as long as the zoning does not require Multi-family uses to include units with age restrictions, and does not limit or restrict the size of the units, cap the number of bedrooms, the size of bedrooms, or the number of occupants, or impose a minimum age of occupants. Limits, if any, on the size of units or number of bedrooms established by state law or regulation are not relevant to G.L. c. 40A, §3A or to determinations of compliance made pursuant to 760 CMR 72.00.

72.08: Location of Districts

(1) General rule for determining the applicability of G.L. c. 40A, § 3A's location requirement.

(a) A Multi-family zoning district shall “be located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable.” When an MBTA community has only a small amount of Transit station area within its boundaries, it may not be possible or practical to locate all of the Multi-family zoning district within 0.5 miles of a Transit station. Transit station area may not be a practical location for a Multi-family zoning district if it does not include Developable land where Multi-family housing can actually be constructed. Therefore, for purposes of determining compliance with G.L. c. 40A, § 3A and 760 CMR 72.00, EOHLC will consider the statute’s location requirement to be “applicable” to a particular MBTA community only if that community has within its borders at least 100 acres of Developable station area. A Multi-family zoning district shall be located within transit station areas depending on how much total developable station area is in that community, in accordance with Table 2:

Table 2.

<u>Total Developable station area within the MBTA community (acres)</u>	<u>Portion of the Multi-family zoning district that must be within a transit station area</u>
0-100	0%
101-250	20%
251-400	40%
401-600	50%
601-800	75%
801+	90%

(b) The percentages specified in this table apply to both the minimum land area and the minimum Multi-family unit capacity. For example, in an MBTA community that has a total of 500 acres of Transit station area within its boundaries, a Multi-family zoning district will comply with G.L. c. 40A, § 3A’s location requirement if at least 50 percent of the district’s minimum land area is located within the Transit station area, and at least 50 percent of the district’s minimum Multi-family unit capacity is located within the Transit station area.

(c) A community with Transit station areas associated with more than one Transit station may locate the Multi-family zoning district in any of the Transit station areas. For example, a Rapid transit community with Transit station area around a Subway station in one part of town, and Transit station area around a Commuter rail station in another part of town, may locate its Multi-family zoning district in either or both Transit station areas.

(d) MBTA communities with limited or no Transit station area. When an MBTA community has less than 100 acres of Developable station area within its boundaries, the MBTA community may locate the Multi-family zoning district anywhere within its boundaries. To encourage transit-oriented Multi-family housing consistent with the general intent of G.L. c. 40A, § 3A, MBTA communities are encouraged to consider locating the Multi-family zoning

district in an area with reasonable access to a Transit station based on existing street patterns, pedestrian connections, and bicycle lanes, or in an area that qualifies as an “eligible location” as defined in G.L. c. 40A—for example, near an existing downtown or village center, near a regional transit authority bus stop or line, or in a location with existing underutilized facilities that can be redeveloped into new Multi-family housing.

(2) General guidance on district location applicable to all MBTA communities. When choosing the location of a new Multi-family zoning district, every MBTA community should consider how much of a proposed district is Sensitive land on which permitting requirements and other considerations could make it challenging or inadvisable to construct Multi-family housing. For example, an MBTA community should avoid including in a Multi-family zoning district areas that are subject to flooding, or are known habitat for rare or threatened species, or have prime agricultural soils in active agricultural use.

72.09: Determinations of Compliance

(1) G.L. c. 40A, §3A provides that any MBTA community that fails to comply with G.L. c. 40A, § 3A’s requirements will be ineligible for funding from any of the Listed funding sources. EOHLC will make determinations of compliance with G.L. c. 40A, § 3A in accordance with 760 CMR 72.00 to inform state agency decisions on which MBTA communities are eligible to receive funding from the Listed funding sources. The following discretionary grant programs will take compliance with G.L. c. 40A, § 3A into consideration when making grant award recommendations:

- (a) Community Planning Grants, EOHLC,
- (b) Massachusetts Downtown Initiative, EOED,
- (c) Urban Agenda, EOED,
- (d) Rural and Small Town Development Fund, EOED,
- (e) Brownfields Redevelopment Fund, MassDevelopment,
- (f) Site Readiness Program, MassDevelopment,
- (g) Underutilized Properties Program, MassDevelopment,
- (h) Collaborative Workspace Program, MassDevelopment,
- (i) Real Estate Services Technical Assistance, MassDevelopment,
- (j) Commonwealth Places Programs, MassDevelopment,
- (k) Land Use Planning Grants, EOEEA,
- (l) Local Acquisitions for Natural Diversity (LAND) Grants, EOEEA, and
- (m) Municipal Vulnerability Preparedness (MVP) Planning and Project Grants, EOEEA

(2) Determinations of compliance also may inform other funding decisions by EOED, EOHLC, the MBTA and other state agencies which consider local housing policies when evaluating applications for discretionary grant programs or making other discretionary funding decisions.

(3) EOHLC will recognize both interim compliance, which means an MBTA community is taking active steps to enact a Multi-family zoning district that complies with G.L. c. 40A, § 3A, and District compliance is achieved when EOHLC determines that an MBTA community has a Multi-family zoning district that complies with G.L. c. 40A, § 3A and the requirements set forth

below. Table 3 includes deadlines, shown with an asterisk, established under prior guidelines that many municipalities have met, and prospective deadlines for certain categories of municipalities as shown without an asterisk.

Table 3.

Transit Category	Deadline to Submit Action Plan	Deadline to Submit District Compliance Application
Rapid transit community	January 31, 2023*	December 31, 2023*
Commuter rail community	January 31, 2023*	December 31, 2024*
Adjacent community	January 31, 2023*	December 31, 2024*
Adjacent small town	January 31, 2023*	December 31, 2025
Rapid transit community that has not submitted a district compliance application to EOHLC as of December 31, 2023	February 13, 2025	July 14, 2025
Commuter rail community that has not submitted a district compliance application to EOHLC as of December 31, 2024	February 13, 2025	July 14, 2025
Adjacent community that has not submitted a district compliance application to EOHLC as of December 31, 2024	February 13, 2025	July 14, 2025

(4) Process to achieve interim compliance. Prior to achieving district compliance (but no later than the deadlines set forth in Table 3), these MBTA communities can achieve interim compliance by taking the following affirmative steps towards the creation of a compliant Multi-family zoning district.

(a) Creation and submission of an action plan. An MBTA community seeking to achieve interim compliance must first submit an action plan on a form to be provided by EOHLC. An MBTA community action plan must provide information about current zoning, past planning for Multi-family housing, if any, and potential locations for a Multi-family zoning district. The action plan also will require the MBTA community to establish a timeline for various actions needed to create a compliant Multi-family zoning district.

(b) EOHLC approval of an action plan. EOHLC will review each submitted action plan for consistency with 760 CMR 72.00, including but not limited to the timelines in Table 3. If EOHLC determines that the MBTA community's action plan is reasonable and will lead to district compliance in a timely manner, EOHLC will issue a determination of interim

compliance. EOHLC may require modifications to a proposed action plan prior to approval.

(c) Implementation of the action plan. After EOHLC approves an action plan and issues a determination of interim compliance, an MBTA community must diligently implement the action plan. EOHLC may revoke a determination of interim compliance if an MBTA community has not made sufficient progress in implementing an approved action plan. EOHLC and EOED will review an MBTA community's progress in implementing its action plan prior to making an award of funds under the Housing Choice Initiative and Massworks infrastructure program.

(d) Deadlines for submitting action plans. An MBTA community that does not submit an action plan by the applicable deadline set forth in Table 3 may not receive a EOHLC determination of interim compliance in time to receive an award of funds from the listed funding sources. An MBTA community that does not achieve interim compliance in time for the Community One Stop for Growth Application deadline may submit an action plan to become eligible for a subsequent round of the One Stop Application, provided that an action plan must be submitted by no later than the applicable deadline of the year in which the MBTA community seeks to establish grant eligibility; and provided further that no action plan may be submitted or approved after the applicable district compliance application deadline set forth in Table 3.

(5) Assistance for communities implementing an action plan. MBTA communities are encouraged to communicate as needed with EOHLC staff throughout the process of implementing an action plan, and may inquire about whether a proposed Multi-family zoning district complies with G.L. c. 40A, § 3A prior to a vote by the municipal legislative body to create or modify such a district. Such requests shall be made on a form to be provided by EOHLC. If a request is submitted at least 90 days prior to the vote of the legislative body, EOHLC shall respond prior to the vote.

(6) Requests for determination of district compliance. An MBTA community must request a determination of district compliance from EOHLC by submitting an application form required by EOHLC and shall include, at a minimum, the following information:

- (a) A certified copy of the municipal zoning ordinance or by-law and zoning map, including all provisions that relate to uses and structures in the multi-family zoning district.
- (b) An estimate of multi-family unit capacity using the compliance model.
- (c) GIS shapefile for the multi-family zoning district.
- (d) In the case of a by-law enacted by a town, evidence that the clerk has submitted a copy of the adopted multi-family zoning district to the office of the Attorney General for approval as required by state law, or evidence of the Attorney General's approval.

(7) After receipt of a request for determination of district compliance, EOHLC will notify the requesting MBTA community within 30 days if additional information is required to process the request. Upon reviewing a complete application, EOHLC will provide the MBTA community a written determination stating one of the following:

- (a) that the existing Multi-family zoning district complies with G.L. c. 40A, § 3A and 760 CMR 72.00;
- (b) that the Multi-family zoning district has been determined to be conditionally compliant with G.L. c. 40A, § 3A and 760 CMR 72.00, provided that the MBTA community meets the conditions expressed by EOHLC in its determination; or
- (c) that the Multi-family zoning district fails to comply with G.L. c. 40A, § 3A and 760 CMR 72.00 and the steps that must be taken to achieve compliance.

(8) An MBTA community that has achieved interim compliance prior to requesting a determination of district compliance shall remain in interim compliance for the period during which a request for determination of district compliance, with all required information, is pending at EOHLC.

72.10: Ongoing Obligations; Rescission of a Determination of Compliance

- (1) After receiving a determination of compliance, an MBTA community must notify EOHLC in writing of any zoning amendment or proposed zoning amendment that affects the compliant Multi-family zoning district, or any other by-law, ordinance, rule or regulation that limits the development of Multi-family housing in the Multi-family zoning district.
- (2) EOHLC may rescind a determination of district compliance, or require changes to a Multi-family zoning district to remain in compliance, if EOHLC determines that:
 - (a) The MBTA community submitted inaccurate information in its application for a determination of compliance;
 - (b) The MBTA community failed to notify EOHLC of a zoning amendment that affects the Multi-family zoning district;
 - (c) The MBTA community enacts or amends any by-law or ordinance, or other rule or regulation, that materially alters the minimum land area and/or the Multi-family unit capacity in the Multi-family zoning district;
 - (d) A board, authority or official in the MBTA community does not issue permits, or otherwise acts or fails to act, to allow construction of a Multi-family housing project that is allowed As of right in the Multi-family zoning district (or any Mixed-use zoning development district taken into account in determining the required Multi-family unit capacity in the Multi-family zoning district);
 - (e) The MBTA community takes other action that causes the Multi-family zoning district to no longer comply with G.L. c. 40A, § 3A; or
 - (f) An MBTA community with an approved Multi-family zoning district has changed transit category as a result of a newly opened or decommissioned Transit station, or the establishment of permanent, regular service at a Transit station where there was formerly intermittent or event-based service.

72.11: Changes to MBTA Service

- (1) G.L. c. 40A, § 3A applies to the MBTA communities identified in G.L. c. 40A, § 1A and G.L. c. 161A, § 1. When MBTA service changes, the list of MBTA communities and/or the

transit category assignments of those MBTA communities in the MBTA Community Categories and Requirements may change as well.

(2) The community category assignments identified in the MBTA Community Categories and Requirements reflect certain MBTA service changes that are expected to result from the South Coast Rail and Green Line Extension projects. Affected MBTA communities are noted in the MBTA Community Categories and Requirements.

(3) Municipalities that are not now identified as MBTA communities and may be identified as such in the future are not addressed in 760 CMR 72.00 or included in the MBTA Community Categories and Requirements. New MBTA communities will be addressed with revisions to the MBTA Community Categories and Requirements, and separate compliance timelines.

(4) Future changes to Silver Line routes or stations may change district location requirements when expanded high-capacity service combined with new facilities creates a bus station where there was not one before. Changes to other bus routes, including the addition or elimination of bus stops or reductions or expansions of bus service levels, do not affect the transit categories assigned to MBTA communities and will not affect location requirements for Multi-family zoning districts. Any future changes to MBTA transit service, transit routes and transit service levels are determined by the MBTA Board of Directors consistent with the MBTA's Service Delivery Policy.

REGULATORY AUTHORITY

760 CMR 72.00: M.G.L. c. 23B, M.G.L. c. 40A, § 3A

Exhibit F

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PRESS STATEMENT

AG Campbell Issues Statement On Victory In Attorney General v. Town Of Milton

1/08/2025

Office of the Attorney General

MEDIA CONTACT

Molly McGlynn, Communications Director**Phone**617-727-2543 (tel:6177272543)**Online**Molly.McGlynn@mass.gov (mailto:Molly.McGlynn@mass.gov)

BOSTON — Today, the Supreme Judicial Court ruled in *Attorney General v. Town of Milton*, resolving Attorney General Andrea Joy Campbell's lawsuit against Milton for failure to comply with the MBTA Communities Law by declaring that Milton now must do so. Attorney General Andrea Joy Campbell issued the following statement on today's decision

(/doc/attorney-general-v-town-of-milton-executive-office-of-housing-and-livable-communities-sjc-13580/download):

"Today's decision is a resounding victory for the Commonwealth and a major step forward in our work to address the unacceptably high cost of housing for our residents. The state's highest court has made clear that communities subject to the law must allow for additional, responsible development - and that the law is mandatory, not voluntary. I applaud the residents, municipal officials, and communities that have already adopted zoning to help relieve our statewide housing crisis. Following the court's ruling, we will work with the Executive Office of Housing and Livable Communities to assist with the issuance of regulations."

Media Contact

Molly McGlynn, Communications Director

Phone

617-727-2543 (tel:6177272543)

Online

Molly.McGlynn@mass.gov (mailto:Molly.McGlynn@mass.gov)



Office of the Attorney General

The Attorney General is the chief lawyer and law enforcement officer of the Commonwealth of Massachusetts.



All

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Exhibit G

PUBLIC NOTICE

EXECUTIVE OFFICE OF HOUSING AND LIVABLE COMMUNITIES (EOHLC)

Under the provisions of M.G.L. c. 30A, § 3, notice is hereby given of the proposed promulgation of amendments to regulation 760 CMR 56.00 – Comprehensive Permit; Low or Moderate Income Housing. EOHLC's regulatory authority for this action is provided under M.G.L. c. 23B and c. 40B. In accordance with M.G.L. c. 30A, § 5, the proposed amendments to the regulations have a minimal or non-existent Small Business Impact. The purpose of the proposed amendments is to eliminate the interlocutory appeal procedure regarding statutory and regulatory safe harbors.

Written comments on the proposed regulation may be submitted at any time before 5:00 pm on January 31, 2025, by sending the same electronically to EOHLCRegulationComments@mass.gov, including "Comments on 760 CMR 56" in the subject line. A copy of the regulation with the proposed amendments is posted on EOHLC's website at <https://www.mass.gov/info-details/ehlc-regulations-current-regulations-and-proposed-amendments>.

Exhibit H

Attachment 1-1: Locator Map



Parcels Comprising the Middleborough Smart Growth Zoning Overlay District

<input type="checkbox"/> Eligible Location	:	Proposed MBTA Station
<input type="checkbox"/> Within 0.25 Miles of Train Station		
<input type="checkbox"/> Within 0.5 Miles of Train Station		
 MBTA Commuter Rail Line		
 Proposed MBTA Commuter Rail Line		

Data sources: MassGIS, MassCICT and the Town of Middleborough. This map is for the sole purpose of planning regional decisions and is not warranted for any other use.

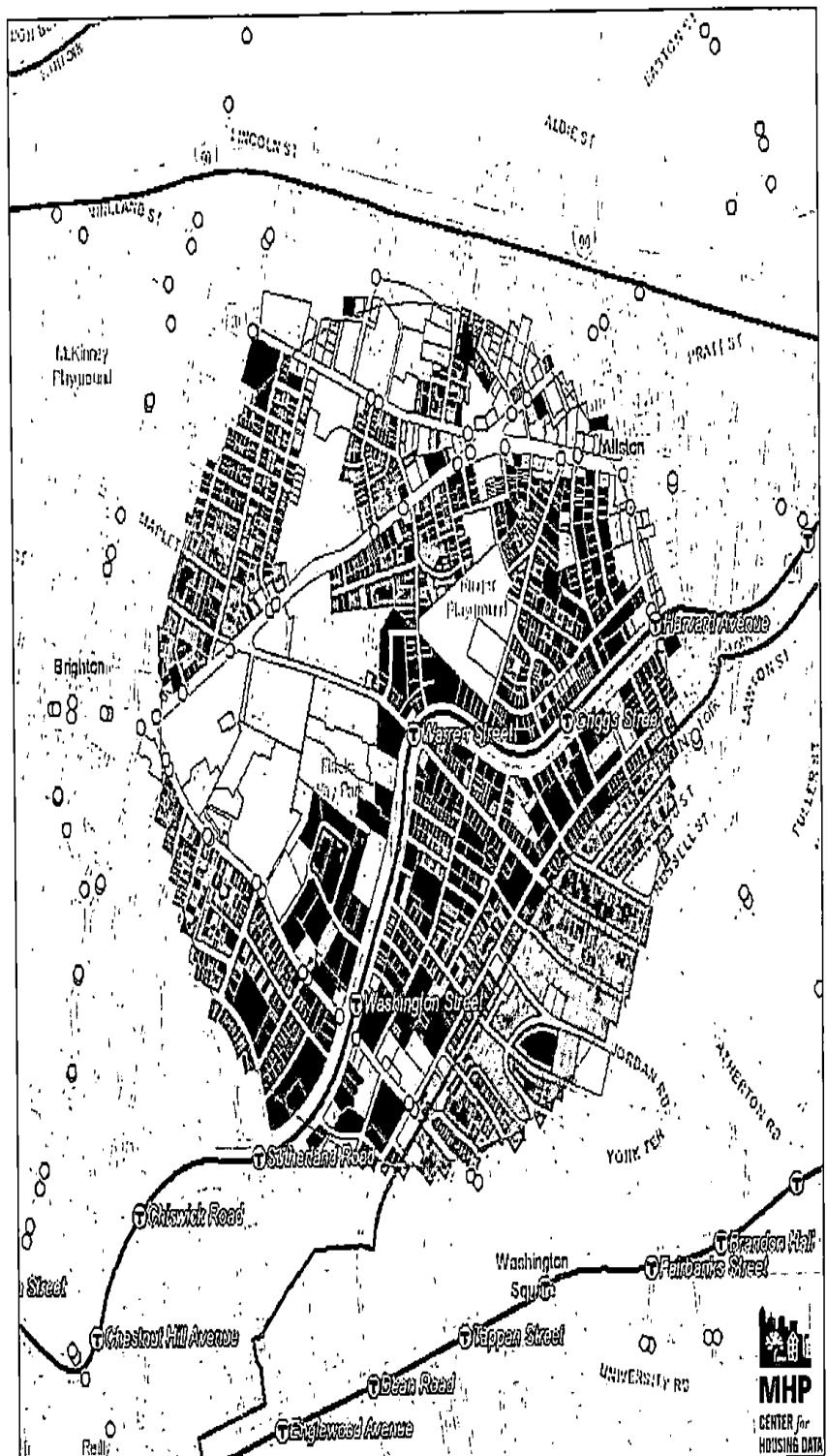
August 2020 [REDACTED] 600 Feet



Exhibit I

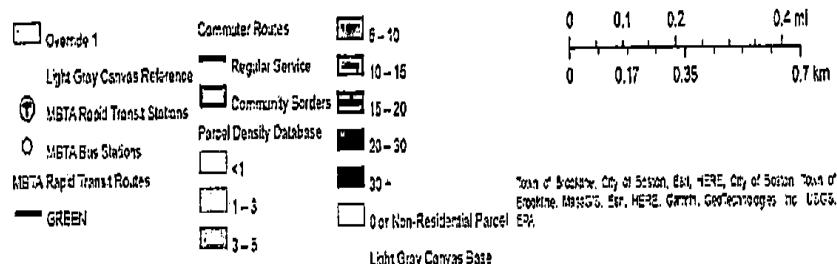
Total Residential Units: 12354 Units
Neighborhood Area: 501.74 Acres
Neighborhood Density: 24.62 Units per Acre

Use Description	Residential Units	Parcel Acres	Avg. Parcel Density
Apartments over eight units	3773	35.15	107.34
Condominium	3305	56.08	58.93
Mixed-use -- residential with commercial	1149	13.10	87.74
Two-family	1048	54.79	19.13
Housing authority	745	15.72	47.39
Three-family	714	21.33	33.48
Boarding house or other congregate housing	583	7.05	82.70
Apartments with four to eight units	503	10.09	49.84
Single-family	393	41.48	9.47
Unknown residential; Condominium	95	1.14	83.10
Multiple houses on parcel	28	1.36	20.59
Mixed-use -- commercial with residential	16	0.94	16.94
Mixed-use -- residential with tax-exempt	2	0.14	13.90
Commercial	0	62.96	0.00
Accessory land with improvement	0	1.20	0.00
Undevelopable residential land	0	2.23	0.00
Tax-exempt; public; charitable; institutional	0	66.51	0.00
Developable residential land	0	1.37	0.00
Unknown residential	0	5.38	0.00



February 26, 2025

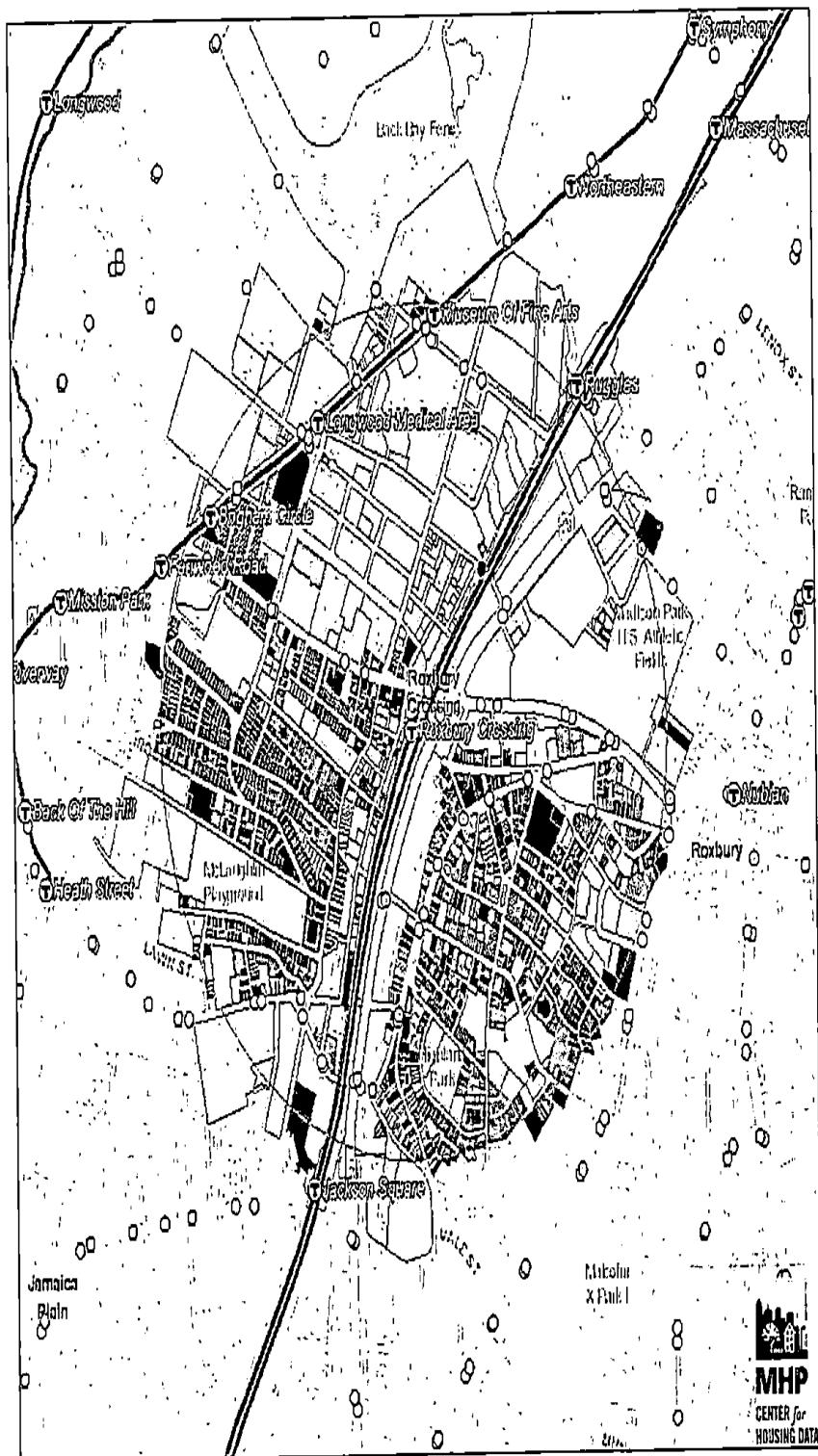
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Residential open space	0	11.58	0.00
Commercial; Tax-exempt; public; charitable; institutional	0	3.01	0.00
Condominium; Housing authority; Mixed-use – commercial with residential	0	1.62	0.00
Industrial	0	2.51	0.00
Housing authority; Apartments with four to eight units	0	0.07	0.00

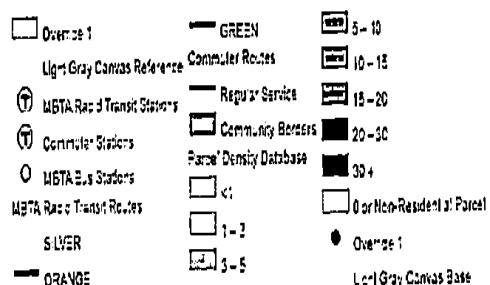
Total Residential Units: 5303 Units
Neighborhood Area: 501.74 Acres
Neighborhood Density: 10.57 Units per Acre

Use Description	Residential Units	Parcel Acres	'Avg' Parcel Density
Three-family	1406	27.54	51.05
Mixed-use – residential with commercial	697	13.06	53.39
Boarding house or other congregate housing	651	8.39	77.58
Two-family	636	24.89	25.55
Condominium	537	15.36	34.97
Apartments with four to eight units	437	6.71	65.17
Apartments over eight units	295	8.93	33.04
Single-family	240	16.17	14.84
Housing authority	156	7.73	20.19
Condominium; Other exempt housing	88	0.27	329.78
Boarding house or other congregate housing; Mixed-use -- residential with commercial	60	1.11	54.04
Mixed-use -- commercial with residential	56	4.31	12.99
Multiple houses on parcel	18	0.46	38.86
Condominium; Mixed-use – residential with commercial; Boarding house or other congregate housing	13	0.60	21.82
Unknown residential; Condominium	11	0.57	19.17
Student housing	2	0.07	30.35
Tax-exempt; public; charitable; institutional	0	358.71	0.00
Undevelopable residential land	0	7.12	0.00



February 26, 2025

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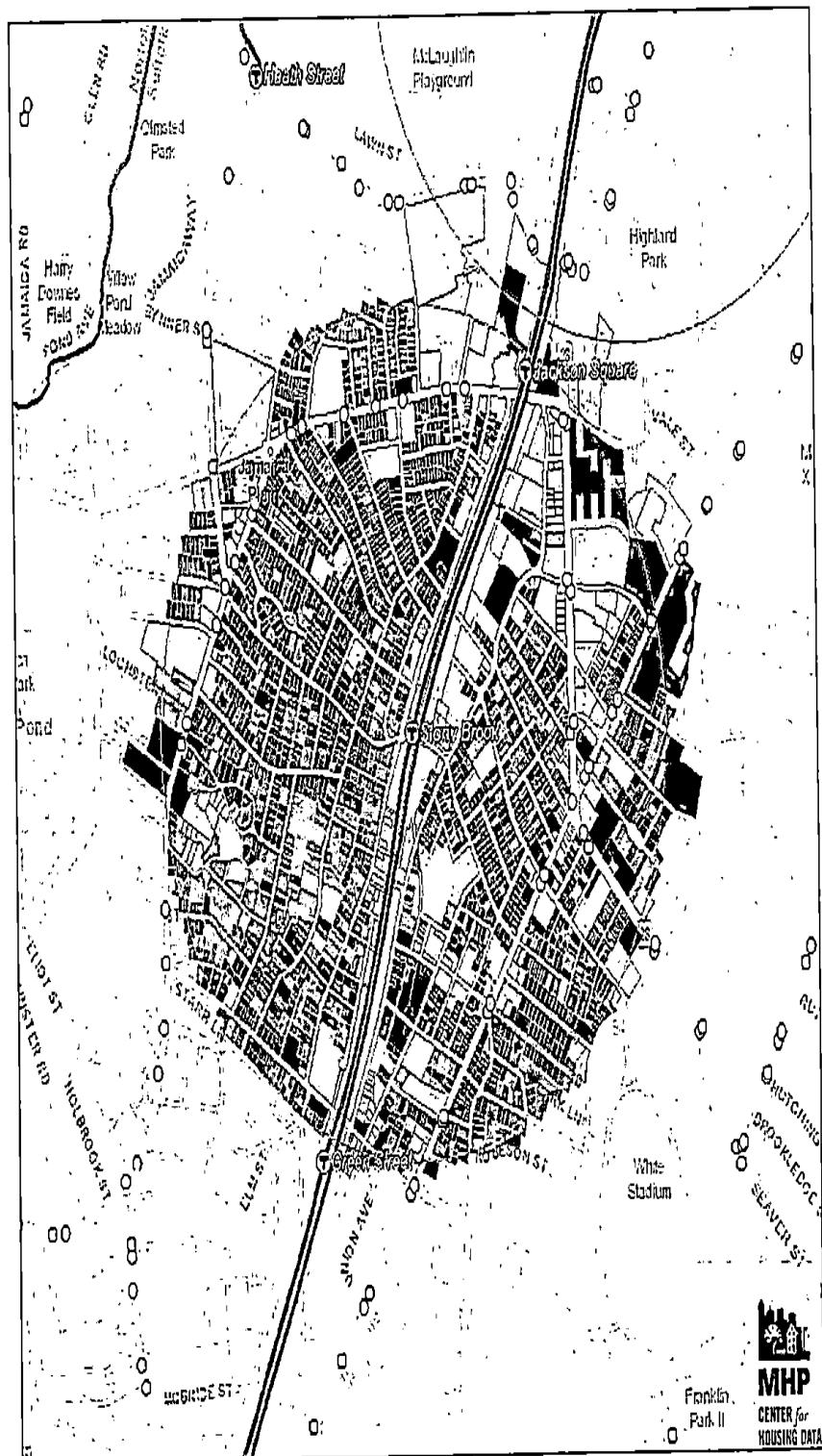


Harvard University, City of Boston, MASS. 02130, HERE, Garton GeoTechnologies, Inc., USGS, EPA, Harvard University, City of Boston, HERE

Commercial	0	19.40	0.00
Industrial; Tax-exempt; public; charitable; institutional	0	1.09	0.00
Tax-exempt; public; charitable; institutional; Commercial	0	11.52	0.00
Industrial	0	3.01	0.00
Developable residential land	0	2.61	0.00
Accessory land with improvement	0	1.39	0.00
Potentially developable residential land	0	0.26	0.00
Apartments over eight units; Boarding house or other congrégate housing	0	1.46	0.00
Residential open space	0	2.00	0.00
Unknown residential	0	0.13	0.00
Commercial; Tax-exempt; public; charitable; institutional	0	17.48	0.00
Tax-exempt; public; charitable; institutional; Industrial	0	1.53	0.00

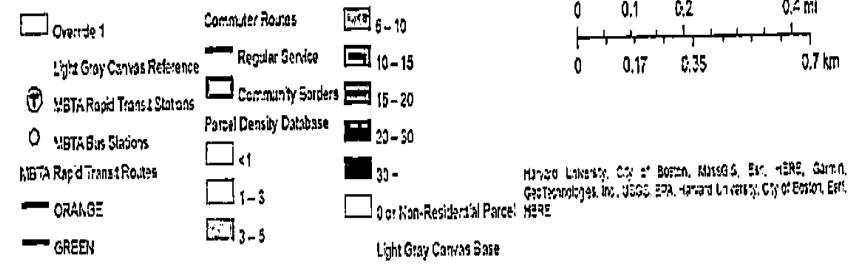
Total Residential Units: 9076 Units
Neighborhood Area: 501.74 Acres
Neighborhood Density: 18.09 Units per Acre

Use Description	Residential Units	Parcel Acres	Avg. Parcel Density
Three-family	1871	45.18	41.41
Condominium	1809	66.71	27.12
Two-family	1191	49.79	23.92
Boarding house or other congregate housing	1126	25.72	43.78
Mixed-use – residential with commercial	1110	18.26	60.79
Apartments with four to eight units	603	10.70	56.38
Single-family	574	46.53	12.34
Housing authority	292	9.41	31.03
Residential open space; Boarding house or other congregate housing	144	1.06	135.92
Apartments over eight units	120	2.49	48.20
Unknown residential; Condominium	112	3.88	28.84
Mixed-use – commercial with residential	106	3.24	32.68
Multiple houses on parcel	15	0.76	19.77
Condominium; Mixed-use – residential with commercial	3	0.75	4.01
Commercial	0	27.01	0.00
Tax-exempt; public; charitable; institutional	0	98.78	0.00
Accessory land with improvement	0	1.14	0.00
Undevelopable residential land	0	7.65	0.00
Developable residential land	0	1.35	0.00



February 26, 2025

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Map data: © 2025 Boston, MA 02105, MA, USA. HERE, GEOFONDS, INC., USGS, EPA, Harvard University, City of Boston, Esri, GeoTechnologies, Inc., USGS, EPA, Harvard University, City of Boston, Esri, HERE

Light Gray Canvas Base

Industrial	0	9.73	0.00
Condominium; Student housing; Boarding house or other congregate housing; Apartments over eight units	0	3.12	0.00
Tax-exempt; public; charitable; institutional; Commercial; Industrial	0	0.52	0.00
Industrial; Tax-exempt; public; charitable; institutional	0	9.13	0.00
Potentially developable residential land	0	0.13	0.00
Unknown residential	0	4.74	0.00
Tax-exempt; public; charitable; institutional; Commercial	0	0.17	0.00
Commercial; Tax-exempt; public; charitable; institutional	0	0.32	0.00
Residential open space	0	0.07	0.00
Mixed-use -- commercial with residential; Boarding house or other congregate housing	0	1.01	0.00

Community	AvgResParD	TopUse	SecondUse	POP2010	POP2020	X10YrPopC	TotalUnit
Salem	11.2371802	Single-family	Two-family	41340	44480	7.60%	20144
Newton	5.48530758	Single-family	Two-family	85146	88923	4.44%	33215
Brookline	10.9489214	Single-family	Condominium	58732	63191	7.59%	27441
Watertown	15.5272178	Single-family	Two-family	31915	35329	10.70%	17616
Revere	18.3337024	Single-family	Two-family	51755	62186	20.15%	24902
Everett	22.1887631	Single-family	Two-family	41667	49075	17.78%	17329

Exhibit J

*Incorporated 1669
300 Years of Progress*



CRANBERRY CAPITAL
OF THE WORLD



**Town of Middleborough
Massachusetts**

SELECT BOARD

September 12, 2024

Diana DiZoglio, State Auditor
Massachusetts State House
Room 230
Boston, MA 02133

RE: Request for opinion on MBTA Communities Funding

Auditor DiZoglio:

On behalf of the residents and taxpayers of the Town of Middleborough, we the Select Board, request that the State Auditor provide a determination of the fiscal impact of the potential mandate under the provisions of G.L. c. 29, s. 27c, including all expenses, direct and indirect, with respect to Massachusetts General Law Chapter 40A Section 3A known as the MBTA Communities Act.

The MBTA Communities Act is a mandate by the Commonwealth requiring high density "family friendly" housing zoning in all cities in towns designated by the Act to increase housing stock in the state.

The Town of Middleborough is currently one of the 177 communities in the Commonwealth of Massachusetts identified under MBTA Communities Act. More specifically, Middleborough is designated as a commuter rail host community with a zoning compliance mandate of December 31, 2024.

The Town of Middleborough is holding its Special Town Meeting on Monday, October 7, 2024. The MBTA Communities zoning change is on the warrant. The State Auditor's fiscal impact determination will provide the voters critical information to explain how all extraordinary costs resulting from the Act will be paid for by the Commonwealth.

Information with respect to the Town of Middleborough and the MBTA Communities Act follows. This information may not be all inclusive:

1. Mass General Laws Chapter 59, Section 21C, known as Proposition 2½, was passed in 1980 by the voters and forbids the Commonwealth from creating unfunded mandates on unwilling Massachusetts communities.
2. In 2016, the Commonwealth Legislature amended Chapter 40R to further encourage housing development but no communities chose to opt-in.
3. In 2021, MBTA Communities was promulgated by the Legislature and signed into law by then Governor Baker.
4. Regulatory agencies of the Commonwealth created a mandatory zoning requirement with a density of no less than 15 units per acre in all identified MBTA communities except Boston.
5. The Attorney General of the Commonwealth of Massachusetts in their June 3, 2024 brief in Commonwealth v. Town of Milton specifically refers to the MBTA Communities law as a “Mandate” by the Commonwealth of Massachusetts. They refer to the MBTA Communities Law as a “Legislative Mandate” on pages 37, 41, 56.
6. The Attorney General of the Commonwealth in their brief discusses “zoning in the Commonwealth” beginning on page 12. On page 14, they discuss “the legislative attempts to address the crisis (housing) through voluntary means.” This was done through “opt-in” zoning programs such as Chapter 40R in 2004.

“Opt-in” is not “mandated”.
7. The Town of Middleborough has unwillingly participated in the Commonwealth MBTA Communities Act mandate every step of the way.
8. At no time has the Town of Middleborough willingly accepted any provision of the MBTA Communities Act mandates.
9. The Town of Middleborough is unable to find compensation measures within the law or current budget of the Commonwealth of Massachusetts for the MBTA mandate to cover all direct and indirect costs associated with the Act which we believe would be an unfunded mandate pursuant to Proposition 2½.
10. Former State Auditor Joseph DiNucci stated that the Commonwealth Legislature’s change in United States Senatorial replacement from Gubernatorial appointment to special election in 2004 was an unfunded mandate when the late Senator Kennedy passed away and a special election was called. The Commonwealth was required to reimburse all costs to communities for that election.

11. The MBTA Communities Act mandates requirement specific to the Town of Middleborough is to zone by right 1,471 family friendly (3 or more bedrooms) units on 50 acres of land within 0.5 miles of the MBTA station.
12. The Act's mandated zoning could potentially amount to approximate 1,250 units in addition to units that could be constructed under current zoning.
13. If constructed, the Town of Middleborough could be subjected to potential extraordinary immediate expenses in excess of half a billion dollars (\$617,500,000) and annual budget expenses of \$21.8M (see Potential Extraordinary MBTA Communities Expenses - Town of Middleborough breakdown attached).

Your determination of the fiscal impacts of the MBTA Zoning requirements under the provisions of G.L. c. 29, s. 27c will be paramount to provide the voters at Town Meeting the information necessary to make an educated decision.

Thank you for your assistance,

Middleborough Select Board

cc: Senator Marc Pacheco
Representative Susan Gifford
Representative Norman Orrall
Representative Katherin Lanatra
Middleborough Planning Board
Middleborough Zoning Board
Jonathan G. Murray, Esq. KP Law

Potential Extraordinary MBTA Communities Expenses - Town of Middleborough

This is a simple analysis of immediate and obvious potential extraordinary expenses that the Town of Middleborough may incur if the build out of the area zoned under the MBTA Communities Act is passed at Town Meeting and Election. Furthermore, it does not take into account possible changes in the Act if the Legislature makes changes in the future that had even more costs that cannot be anticipated at this time. It is not a professional accounting or engineering estimate but based on information available publicly.

Annual Budget Costs are estimated using a per capita basis. School is based on the "family friendly" 3-bedroom by right zoning and General Government is based on 3.5 persons per unit.

Regardless of the one-time or annual costs estimated herein, we are unable to find 100% funding sources for any of these potential costs (shown below) within the budget of the Commonwealth.

Perpetual Annual Budget Costs: \$21,750,000 (2024 dollars)

One Time Costs: \$617,500,00 (2024 dollars)

School Needs – \$16.5 Million annually inflated every year, \$475 Million in 2024 One Time School Building Costs

Annual Budget:

Assume a minimum of 1.25 children for each of the 1,250 additional "family friendly" homes to be built results in 1,563 additional children in the Middleborough School District. With 3,036 students enrolled (MA DESE School and District Profiles 2022-2023) We would see an enrollment increase of 51.5% (1,563/3036). This growth is beyond natural organic growth of current zoning in Middleborough.

FY 2023 Budget Numbers for the School

\$18 M –Operating Budget less Chapter 70

\$4 M – Transportation

\$10 M – Employee Benefits

\$32 M Current Town Cost of Education Mandated by the State

\$32 M x 51.5% Enrollment Increase = \$16.5 Million in New State Aid to Offset Mandate Annually plus inflation

Additional School Construction:

If used, the Massachusetts School Building Authority (MSBA) would need to change their current process in order cover 100% of costs associated with additional school construction (building, infrastructure and land acquisition) without restraint of per pupil caps that are not feasible to build any usable school. Furniture, Fixtures and Equipment (FF&E) per pupil cost reimbursement rates of the MSBA do not reflect the current actual reality.

Middleborough High School houses 4 grades, the futures program and post graduate Special Education programs. It was designed and built in 2019 for \$100 M students (originally a 550 school by MISER inaccurate projection built for 720 and opened with 800 students).

We estimate the cost of a new high school, with land acquisition, for the 4 grades/13 grades x 1,563 for a total of 483 students will cost about **\$175 M (2024 dollars)**. Nashoba construction (925 Students) is \$241.7 M (per MSBA Website).

We estimate the cost of a addition/renovation of the current middle school, for 3 grades/13 grades x 1,563 for a total of 360 students will cost about **\$125 M (2024 dollars)**. Brookline addition/renovation (725 students) is \$211.9 M (per MSBA Website).

We estimate the cost of a new elementary complex, with land acquisition and infrastructure upgrades, for 6 grades/13 grades x 1,563 for a total of 720 students will cost about **\$175 Million (2024 Dollars)**. New Bedford construction (760 student) without land acquisition nor infrastructure expansion is \$119.7 M (per MSBA Website).

General Government Needs - \$5.25 Million annually inflated every year

Estimated Population Increase:

1,250 additional “family Friendly” homes x 3.5 persons = 5,148.

Percent Increase – 4,375 / 24,219 (US Census DP05) = 18.1% Increase beyond organic current zoning growth.

With an 18.1% population increase, there will be increased needs across all town departments and the accelerated plan by the MBTA communities mandate could result in budget increase based on the increase in population. We estimate the increase in unrestricted aid from the Commonwealth as follows.

FY 2023 Budget Numbers for the General Government

\$12M – Public Safety
\$2 M – Human Services

\$1 M – Cultural Services
\$4 M – General Government
\$10 M – Employee Benefits
\$29 M Current Town Cost of General Government

\$29 M x 18.1% Population Increase = \$5.25 Million in New Unrestricted State Aid to Offset the Mandate

Water Needs - \$62.5 Million for infrastructure

1,250 “family friendly” units x 3 Bedroom x 2 persons x 65 residential gallons per capita day = 487,500 gallons per day (gpd) of new demand.

MA DEP requires infrastructure to be designed for summer peaks. Using a peaking factor of 1.5 times, the 1,250 potential new units demand for $1.5 \times 487,500 = 731,250$ gpd in new peak demand

In order to meet the potential demands of the new units, Two new wells would have to be built at 400,000 to 500,000 gpd each at a cost of \$20M to \$25M to acquire land and Zone II rights, build transmission mains, develop and construct the well and treatment for potability. Basis of pricing is cost for land, well construction cost, current estimate for treatment plant in Middleborough.

2 wells x \$25M for \$50 Million

An additional Storage Tank would be needed in order to sustain peak hour flows and fire flows especially in a mandated high-density zoning on 50 acres which would require about 2,500 gallons per minute over 2 hours. The current cost to acquire land, install transmission mains and build the new elevated storage tank would be at \$10M to \$12.5M Basis of pricing is the cost for land, infrastructure costs, and the recent water tank in Middleborough.

1 new tank for \$12.5 Million

All ratepayers would pick up the cost of operational increases and staffing through the water rates as the town uses an enterprise fund for the Water Department

Sewer Needs - \$90 Million for infrastructure

1,250 x 3 Bedrooms x 2 persons per bedroom x 55 gallons per day per person (310 CMR 15 = Title V) = 412,500 gpd in new flow

To accommodate the new flow, the current sewer treatment plant would need to be upgraded for basic treatment at \$40M to \$60M and if a stricter discharge permit for Nitrogen and Phosphates into the Nemasket River (headwaters of Mount Hope Bay) is required, an additional \$15M might be needed. The cost is an estimate based on land acquisition for treatment plant expansion, advanced treatment of all sewer because of the increased flow and unknown regulatory issues.

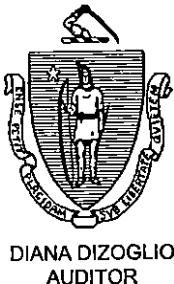
Upgraded Sewer Plant \$70 Million

To collect the flows and pump from the area around the MBTA station will require pump station and sewer pipe improvements that has been estimated at between \$15M and \$25M. The Town of Middleborough has studied the cost associated with sewer provided to the area around the MBTA station under current zoning, the increased zoning will cause additional issues along the interceptor corridor.

Upgraded Sewer Collection \$20M.

All ratepayers would pick up the cost of operational increases and staffing through the sewer rates as the town uses an enterprise fund for the Sewer Department.

Exhibit K



DIANA DIZOGLIO
AUDITOR

The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

DIVISION OF LOCAL MANDATES

ONE WINTER STREET, 9TH FLOOR
BOSTON, MASSACHUSETTS 02108

TEL (617) 727-0025
FAX (617) 727-0984

February 21, 2025

By First-Class Mail & Email <c/o MCoylc@middleboroughma.gov>

Town of Middleborough Select Board
10 Nickerson Avenue
Middleborough, MA 02346

RE: Mandate Determination related to MBTA Communities Act (M.G.L. c. 40A, § 3A)

Dear Select Board Members:

The Office of the State Auditor's Division of Local Mandates (DLM) acknowledged receipt of your letter, postmarked October 1, 2024, sent on behalf of the Town of Middleborough, requesting a determination of the fiscal impact of the potential mandate under the provisions of M.G.L. c. 29, § 27C (the Local Mandate Law), with respect to M.G.L. c. 40A, § 3A (the MBTA Communities Act, the Act, or § 3A). In response to your request, this office sent correspondence dated November 27, 2024, requesting a waiver of the 60-day timeline under M.G.L. c. 29, § 27C, due to litigation in connection with the MBTA Communities Act that was before the Supreme Judicial Court of Massachusetts at that time. Approval of our waiver request was confirmed via email correspondence with James McGrail, Middleborough Town Manager, on December 2, 2024. The Court issued its decision in *Attorney General v. Town of Milton*, No. SJC-13580, on January 8, 2025.¹

DLM has conducted extensive legal and policy review regarding the requested matter, including review of the *Milton* decision and the emergency regulations filed thereafter by the

¹ *Attorney General v. Town of Milton & another; Executive Office of Housing and Livable Communities, third-party defendant*, Mass., No. SJC-13580, slip op. (January 8, 2025), available at <https://www.mass.gov/doc/attorney-general-v-town-of-milton-executive-office-of-housing-and-livable-communities-sjc-13580/download> (accessed February 18, 2025).

Administration,² and determines that the MBTA Communities Act constitutes an unfunded mandate. DLM's analysis in arriving at said determination is set forth below. Regarding the fiscal impact, the Court in its decision noted the absence of the required statements under M.G.L. c. 30A, § 5, estimating the fiscal effect of proposed regulations on the public and private sector, and considering the impact of such regulations on small business, rendering the guidelines promulgated by the Executive Office of Housing and Livable Communities (EOHLC) ineffective.³ DLM requires additional time to perform a thorough analysis of the costs imposed as the impact of the MBTA Communities Act is still being determined. Such analysis will include review of the required fiscal impact statements by EOHLC and implementing other data collection measures as necessary.

M.G.L. c. 29, § 27C — the Local Mandate Law

In general terms, the Local Mandate Law provides that any post-1980 state law, rule, or regulation that imposes additional costs, excluding incidental local administration expenses, upon any city or town is conditional on local acceptance or being fully funded by the Commonwealth.⁴ A city or town may request that DLM determine whether a law, rule, or regulation imposes a mandate within the meaning of the Local Mandate Law and, if so, the costs of compliance and the amount of any deficiency in funding by the Commonwealth.⁵ Alternatively, or in addition to asking DLM for such a determination, a community alleging an unfunded mandate may petition the Superior Court for a determination of deficiency and an exemption from compliance until the Commonwealth provides sufficient funding.⁶

In order to determine that a state law imposes a mandate within the meaning of the Local Mandate Law, the law must take effect on or after January 1, 1981, must be a new law changing existing law, and must result in a direct service or cost obligation imposed on municipalities by the Commonwealth that amounts to more than an incidental local administration expense.⁷ Moreover, the challenged law must not be exempted from application of the Local Mandate Law, whether by express override of the Legislature, application of federal law or regulation, or other exemption.

² 760 CMR 72.00: Multi-Family Zoning Requirement for MBTA Communities (2025), available at <https://www.mass.gov/regulations/760-CMR-7200-multi-family-zoning-requirement-for-mbta-communities> (accessed February 18, 2025).

³ See Milton at 7, 22.

⁴ See M.G.L. c. 29, §§ 27C(a)–(c).

⁵ See M.G.L. c. 29, § 27C(d).

⁶ See M.G.L. c. 29, § 27C(e).

⁷ See *City of Worcester v. the Governor*, 416 Mass. 751 (1994).

Once DLM has determined that a law imposes a mandate within the meaning of the Local Mandate Law, the analysis turns to whether the Commonwealth has provided sufficient funding to assume the costs imposed by the law in question. The Local Mandate Law clearly states that “the general court, at the *same session* in which such law is enacted, [must provide], *by general law and by appropriation*, for the assumption by the commonwealth of such cost[s], . . . and . . . by appropriation in *each successive year* for such assumption” (emphasis added).⁸ The Supreme Judicial Court has recognized that “the ‘plain meaning’ of [M.G.L.] c. 29, Section 27C(a), is that funding be provided at the *same time* that [the] mandate is imposed on cities and towns,” and that the language of the statute “means that the Legislature envisioned a scheme wherein cities and towns would be reimbursed *in advance — or, at least, contemporaneously* — for costs incurred pursuant to the mandate” (emphasis added).⁹ Furthermore, funding must be provided by a specific allocation of funds and cannot be fulfilled merely by increasing unrestricted local aid, as “[s]uch an approach would render the [Local Mandate Law] meaningless, for it would always be possible to attribute undesigned increases in State aid to the local mandate being challenged.”¹⁰ In short, for funding to be sufficient, the imposed costs must be assumed by the Commonwealth and appropriation made contemporaneously with and specific to the mandate in question.

M.G.L. c. 40A, § 3A — the MBTA Communities Act

The MBTA Communities Act provides as follows:

“Section 3A: Multi-family zoning as-of-right in MBTA communities

Section 3A. (a)(1) An MBTA community 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; provided, however, that such multi-family housing shall be without age restrictions and shall be suitable for families with children. For the purposes of this section, a district of reasonable size shall: (i) have a minimum gross density of 15 units per acre, subject to any further limitations imposed by section 40 of chapter 131 and title 5 of the state environmental code established pursuant to section 13 of chapter 21A; and (ii) be located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable.

(b) An MBTA community that fails to comply with this section shall not be eligible for funds from: (i) the Housing Choice Initiative as described by the governor in a message to the general court dated December 11, 2017; (ii) the Local Capital Projects Fund established in section 2EEEE of chapter 29; (iii) the MassWorks infrastructure program established in section 63 of

⁸ See M.G.L. c. 29, § 27C(a).

⁹ See *Town of Lexington v. Commissioner of Education*, 393 Mass. 693, 698–701 (1985).

¹⁰ See *id.* at 701.

chapter 23A, or (iv) the HousingWorks infrastructure program established in section 27 ½ of chapter 23B.

(c) The executive office of housing and livable communities, in consultation with the executive office of economic development, the Massachusetts Bay Transportation Authority and the Massachusetts Department of Transportation, shall promulgate guidelines to determine if an MBTA community is in compliance with this section.”¹¹

An MBTA community is defined as “a city or town that is: (i) one of the 51 cities and towns as defined in section 1 of chapter 161A; (ii) one of the 14 cities and towns as defined in said section 1 of said chapter 161A; (iii) other served communities as defined in said section 1 of said chapter 161A; or (iv) a municipality that has been added to the Massachusetts Bay Transportation Authority under section 6 of chapter 161A or in accordance with any special law relative to the area constituting the authority.”¹² The Town of Middleborough is specified as one of the other served communities in clause (iii).¹³

Application of the Local Mandate Law to the MBTA Communities Act

The MBTA Communities Act provisions contained in § 3A were added by § 18 of Chapter 358 of the Acts of 2020, effective January 14, 2021, amended by § 10 of Chapter 29 of the Acts of 2021, effective July 29, 2021, further amended by §§ 152-153 of Chapter 7 of the Acts of 2023, effective May 30, 2023, and further amended by § 9 of Chapter 150 of the Acts of 2024, effective August 6, 2024.¹⁴ Accordingly, the MBTA Communities Act is a law that took effect on or after January 1, 1981.

Furthermore, the MBTA Communities Act is a new law changing, not merely clarifying, existing law.¹⁵ The MBTA Communities Act creates a new zoning requirement, requiring that all MBTA communities zone at least 1 district in which multi-family housing is permitted as of right, subject to other requirements.¹⁶ Prior to enactment of the MBTA Communities Act, no such district was required. Emergency regulations filed by EOHLC on January 14, 2025, provide significant context regarding the breadth of considerations necessary for compliance with the Act – “[w]hat it means to allow Multi-family housing ‘as of right’ ... [t]he metrics that determine if a Multi-

¹¹ M.G.L. c. 40A, § 3A; St. 2020, c. 358, § 18; amended St. 2021, c. 29, § 10; amended St. 2023, c. 7, §§ 152-153; amended St. 2024, c. 150, § 9.

¹² M.G.L. c. 40A, § 1A; St. 2020, c. 358, § 16. *See Appendix A.*

¹³ M.G.L. c. 161A, § 1.

¹⁴ St. 2020, c. 358, § 18; amended St. 2021, c. 29, § 10; amended St. 2023, c. 7, §§ 152-153; amended St. 2024, c. 150, § 9.

¹⁵ *See Worcester*, 416 Mass. at 756; *see also Lexington*, 393 Mass. at 697.

¹⁶ M.G.L. c. 40A, § 3A(a)(1).

family zoning district is ‘of reasonable size’ … [h]ow to determine if a Multi-family zoning district has a minimum gross density of 15 units per acre … [t]he meaning of M.G.L. c. 40A, § 3A’s mandate that ‘such multi-family housing shall be without age restrictions and suitable for families with children’ … [t]he extent to which MBTA communities have flexibility to choose the location of a Multi-family zoning district” – as well as permissible steps toward compliance, all of which constitute a substantive change in municipal zoning authority.¹⁷

The analysis continues with an evaluation of whether the MBTA Communities Act *imposes* a direct service or cost obligation on municipalities by the Commonwealth that amounts to more than an incidental local administration expense. The MBTA Communities Act provides in relevant part that “[a]n MBTA community *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” (emphasis added). M.G.L. c. 4, § 6 provides that “[w]ords and phrases shall be construed according to the common and approved usage of the language.” Given this, “[t]he word ‘shall’ is ordinarily interpreted as having a mandatory or imperative obligation.”¹⁸

Neither is the MBTA Communities Act conditional upon local acceptance. M.G.L. c. 4, § 4 provides that “[w]herever a statute is to take effect upon its acceptance by a municipality or district, or is to be effective in municipalities or districts accepting its provisions, this *acceptance shall be*, except as otherwise provided in that statute, in a municipality, *by vote of the legislative body*, subject to the charter of the municipality, or, in a district, by vote of the district at a district meeting” (emphasis added). The Commonwealth has specifically included language in various statutes conditioning effectiveness upon local acceptance (local option statutes).¹⁹ In contrast, the MBTA Communities Act applies to all municipalities meeting the definition of an “MBTA community.”²⁰

The Court in *Milton* confirmed this interpretation of the MBTA Communities Act as imposing an obligation on MBTA communities, concluding that the town’s proposed reading that the only consequence to an MBTA community for failing to comply would be the loss of certain funding opportunities would “thwart the Legislature’s purpose by converting a *legislative mandate* into a matter of fiscal choice” (emphasis added).²¹

As for costs of implementation, the MBTA Communities Act requires MBTA communities to have “a zoning ordinance or by-law” providing for a district that meets specific criteria.

¹⁷ See 760 CMR 72.03 et seq.

¹⁸ *Galenski v. Town of Erving*, 471 Mass. 305, 309 (2015), quoting *Hashimi v. Kalil*, 388 Mass. 607, 609 (1983).

¹⁹ See *Galenski*, 471 Mass. 305; see also *Adams v. City of Boston*, 461 Mass. 602 (2012).

²⁰ M.G.L. c. 40A, § 1A; St. 2020, c. 358, § 16. See Appendix A.

²¹ *Milton* at 17.

Although the total fiscal impact of implementation cannot be determined without further data collection, it is apparent that, at a minimum, direct costs exist in developing compliant zoning that amount to more than incidental local administration expenses. Incidental local administration expenses “are relatively minor expenses related to the management of municipal service and . . . are subordinate consequences of a municipality’s *fulfilment of primary obligations*” (emphasis added).²² The implication is that expenses incurred by a municipality in fulfilling its primary obligations are not incidental local administration expenses and, consequently, one must look to the purpose of the statute to determine the primary obligation imposed on the municipality. The purpose of the MBTA Communities Act as stated in the emergency regulations is “to encourage the production of Multi-family housing by requiring MBTA communities to adopt zoning districts where Multi-family housing is allowed As of right....”²³ The Commonwealth through EOHLC, after review of submitted applications, awarded “technical assistance” grant funding to some MBTA communities for the very purpose of developing zoning compliant with the Act.²⁴ Accordingly, DLM determines that the MBTA Communities Act imposes direct service or cost obligations on municipalities by the Commonwealth that amount to more than incidental local administration expenses.

MBTA Communities Act Funding

The MBTA Communities Act does not provide a funding mechanism for compliance with its provisions.²⁵ The statutory language of § 3A and the original enacting legislation of Chapter 358 of the Acts of 2020 fail to provide for the assumption by the Commonwealth of the costs imposed by the MBTA Communities Act and did not contain an appropriation for § 3A.²⁶ The FY 2022 budget, passed during the same annual session as when the MBTA Communities Act became effective (the first annual session of the 2021–2022 biennial legislative session), and all other appropriations bills passed during the same annual session, likewise did not contain an

²² See *Worcester*, 416 Mass. at 758–759 (where the primary obligation imposed by a regulation was “to identify children in need of special education,” written parental notification was “a subordinate administrative task”; where the primary obligation of a law was “to provide school accessibility to students with limited mobility,” the requirement for the annual submission of school building access plan imposed “only administrative expenses incidental (subordinate) to the primary obligation”).

²³ 760 CMR 72.01.

²⁴ See Executive Office of Housing and Livable Communities, *3A Technical Assistance Awards & Resources*, available at <https://www.mass.gov/info-details/3a-technical-assistance-awards-resources> (accessed February 18, 2025).

²⁵ Cf. St. 1983, c. 503, *An Act Extending the Time of Voting in Certain Elections* (“SECTION 3. As hereinafter provided, the commonwealth shall pay to each city and town an amount sufficient to defray the additional costs imposed on the city or town under the provisions of this act.”).

²⁶ See M.G.L. c. 40A, § 3A; St. 2020, c. 358.

appropriation for § 3A.²⁷ Neither was the MBTA Communities Act specifically exempted from application of the Local Mandate Law by the Commonwealth.²⁸

As stated above, the Commonwealth has already provided grant funding to some MBTA communities for certain costs of drafting compliant zoning. In addition, the Commonwealth continues to anticipate that the MBTA Communities Act will impose costs on MBTA communities. Section 2A of Chapter 150 of the Acts of 2024 includes the following line item:

7004-0077.. For a local capital projects grant program to support and encourage implementation of the housing choice designation for communities that have demonstrated housing production and adoption of housing best practices, *including a grant program to assist MBTA communities in complying with the multi-family zoning requirement in section 3A of chapter 40A of the General Laws.....*
\$50,000,000 (emphasis added)

Further, Section 4 of said chapter 150 provides in part:

(a) There shall be in the executive office of housing and livable communities a HousingWorks infrastructure program to: (i) issue infrastructure grants that support housing to municipalities and other public entities ... ; or (ii) assist municipalities to advance projects that support housing development, preservation or rehabilitation. Preference for grants or assistance under this section shall be given to: ... (C) *multi-family zoning districts that comply with section 3A of said chapter 40A* (emphasis added)

However, establishment of the grant programs above did not occur contemporaneously with the enactment of § 3A, nor did they provide the required specific allocation of funds to municipalities for the costs of compliance with § 3A.²⁹ Moreover, there are questions as to whether a grant

²⁷ See St. 2021, c. 24; St. 2021, c. 23; St. 2021, c. 29; St. 2021, c. 76.

²⁸ Cf. St. 1993, c. 71, *An Act Establishing the Education Reform Act of 1993* ("SECTION 67. This act shall apply to all cities, towns, and regional school districts, notwithstanding section twenty-seven C of chapter twenty-nine of the General Laws and without regard to any acceptance or appropriation by a city, town, or regional school district or to any appropriation by the general court.") *See Lexington*, 393 Mass. at 698 ("[the challenged law] does not indicate any express amendment or repeal of section 27C"); *see also School Committee of Lexington v. Commissioner of Education*, 397 Mass. 593, 595-596 (1986) ("One option was to provide specifically that [the challenged law] supersedes [the Local Mandate Law]. . . . [T]he Legislature could either have repealed or superseded an aspect of [the Local Mandate Law] directly.").

²⁹ *See Lexington*, 393 Mass. at 699-700 (where the Supreme Judicial Court of Massachusetts recognized that a method by which reimbursement may be sought by cities and towns *after the costs have been incurred and without an appropriation of funds specifically targeted to the assumption of incurred costs* does not pass muster under M.G.L. c. 29, § 27C(a) (emphasis added)).

program requiring municipalities to compete for funding to support and encourage compliance with a law, even if created and funded contemporaneously with the law in question, would satisfy the Local Mandate Law because such a program is not intended to assume all costs imposed.³⁰

The emergency regulations also make reference to potentially necessary funding for compliance with § 3A: “For purposes of the unit capacity analysis, it is assumed that housing developers will design projects that work within existing water and wastewater constraints, and that developers, *the municipality, or the Commonwealth will provide funding for infrastructure upgrades as needed* for individual projects” (emphasis added).³¹ Whether a particular expense is imposed by the MBTA Communities Act within the meaning of the Local Mandate Law will require further data collection and analysis. DLM will implement data collection measures necessary to determine the estimated and actual financial effects on each MBTA community of the MBTA Communities Act. In the interim, because the Commonwealth did not assume the costs of the MBTA Communities Act by general law and by appropriation in the 2021 session contemporaneously with the effective date of the MBTA Communities Act, DLM determines that the current method of funding by the Commonwealth of the costs of compliance with § 3A incurred by MBTA communities does not satisfy the requirements of the Local Mandate Law.

Conclusion

It is the determination of DLM that the provisions of the MBTA Communities Act *impose 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. DLM cautions that, as with all determinations, the conclusions herein are based on DLM’s interpretation and application of current law and judicial precedent and, accordingly, are subject to legislative or regulatory changes or judicial determination. As stated above, DLM will conduct data collection measures as necessary and will report on the financial effects of the MBTA Communities Act when the process concludes.

This opinion does not prejudice the right of any city or town to seek independent review of the matter in Superior Court in accordance with M.G.L. c. 29, § 27C(e). This determination does not guarantee that expenses will, in fact, be reimbursed, as the Supreme Judicial Court has opined that a municipality’s sole recourse for an unfunded mandate is to petition the Superior Court for an exemption from compliance.³²

³⁰ See *id.*

³¹ 760 CMR 72.05(1)(e)2.

³² See *Worcester*, 416 Mass. at 761–762.

Town of Middleborough Select Board

February 21, 2025

Page - 9 -

Thank you for bringing this important matter to our attention. We look forward to continuing to work with you in service to the residents of Middleborough and our Commonwealth.

Sincerely,



Jana DiNatale
Director of Division of Local Mandates
Office of State Auditor Diana DiZoglio

cc: James McGrail, Town Manager, Town of Middleborough
Kimberley Driscoll, Lieutenant Governor of the Commonwealth
Andrea Campbell, Attorney General of the Commonwealth
Karen E. Spilka, President of the Senate
Ronald Mariano, Speaker of the House
Edward M. Augustus Jr., Secretary, Executive Office of Housing and Livable Communities
Adam Chapdelaine, Massachusetts Municipal Association Executive Director and Chief Executive Officer
Elizabeth T. Greendale, President of the Massachusetts Town Clerks' Association

Appendix A: MBTA Communities³³

“51 cities and towns”, the cities and towns of Bedford, Beverly, Braintree, Burlington, Canton, Cohasset, Concord, Danvers, Dedham, Dover, Framingham, Hamilton, Hingham, Holbrook, Hull, Lexington, Lincoln, Lynn, Lynnfield, Manchester-by-the-Sea, Marblehead, Medfield, Melrose, Middleton, Nahant, Natick, Needham, Norfolk, Norwood, Peabody, Quincy, Randolph, Reading, Salem, Saugus, Sharon, Stoneham, Swampscott, Topsfield, Wakefield, Walpole, Waltham, Wellesley, Wenham, Weston, Westwood, Weymouth, Wilmington, Winchester, Winthrop and Woburn.

“Fourteen cities and towns”, the cities and towns of Arlington, Belmont, Boston, Brookline, Cambridge, Chelsea, Everett, Malden, Medford, Milton, Newton, Revere, Somerville and Watertown.

“Other served communities”, the cities and towns of Abington, Acton, Amesbury, Andover, Ashburnham, Ashby, Ashland, Attleboro, Auburn, Ayer, Bellingham, Berkley, Billerica, Boxborough [sic], Boxford, Bridgewater, Brockton, Carlisle, Carver, Chelmsford, Dracut, Duxbury, East Bridgewater, Easton, Essex, Fitchburg, Foxborough, Franklin, Freetown, Georgetown, Gloucester, Grafton, Groton, Grove land, Halifax, Hanover, Hanson, Haverhill, Harvard, Holden, Holliston, Hopkinton, Ipswich, Kingston, Lakeville, Lancaster, Lawrence, Leicester, Leominster, Littleton, Lowell, Lunenburg, Mansfield, Marlborough, Marshfield, Maynard, Medway, Merrimac, Methuen, Middleborough. [sic] Millbury, Millis, Newbury, Newburyport, North Andover, North Attleborough, Northborough, Northbridge, Norton, North Reading, Norwell, Paxton, Pembroke, Plymouth, Plympton, Princeton, Raynham, Rehoboth, Rochester, Rockland. Rockport, Rowley, Salisbury, Scituate, Seekonk, Sherborn, Shirley, Shrewsbury, Southborough, Sterling, Stoughton, Stow, Sudbury, Sutton, Taunton, Tewksbury, Townsend, Tyngsborough, Upton, Wareham, Way land, West Boylston, West Bridgewater, Westborough, West Newbury, Westford, Westminster, Whitman, Worcester, Wrentham, and such other municipalities as may be added in accordance with section 6 or in accordance with any special act to the area constituting the authority.

³³ M.G.L. c. 161A, § 1.

Exhibit L

JAN Testimony

 3
2025

In letter to governor, MMA outlines municipal priorities for FY26 state budget

[Home](#) → [Advocacy](#) → [Testimony](#)

Her Excellency Maura Healey
Governor of the Commonwealth
State House, Boston

Dear Governor Healey,

On behalf of the cities and towns of the Commonwealth, the Massachusetts Municipal Association greatly appreciates your strong support of local government. We look forward to working with you and the Legislature in developing a state spending plan for fiscal 2026 that provides cities and towns with the capacity to provide essential municipal services, while also acknowledging the difficult fiscal circumstances at the local level.

With concerns over the slowing growth in overall state tax collections, even as surtax revenue remains strong, we recognize the unique challenges you face in creating a responsible fiscal 2026 spending plan that provides new strategic investments and accommodates the existing demands of the state's budget. This cautious revenue outlook underscores the importance for a healthy state and local fiscal partnership to provide a dependable foundation for cities and towns.

With a tightly capped property tax that limits municipal revenues, cities and towns require predictable and adequate state revenue sharing in order to provide quality municipal and education services, ensure safe streets and neighborhoods, and maintain local roads and vital infrastructure. These services are fundamental to our state's economic success and competitiveness.

We are writing today to provide you with additional information on important funding priorities and investments in key municipal and school aid programs for the fiscal 2026

state budget proposal you will file later this month.

Unrestricted General Government Aid

As you know, municipal aid was cut deeply during the Great Recession, and currently remains below the fiscal 2008 level of funding, without adjusting for inflation. With total Unrestricted General Government Aid (UGGA) still trailing levels from more than 17 years ago, local dependence on the property tax remains high — furthering the challenge of housing affordability in our cities and towns.

UGGA (1233-2350) helps deliver vital services at the local level and will prevent today's municipal overreliance on the property tax from deepening. We are thankful for your support of a stable revenue sharing framework and urge its full implementation in your fiscal 2026 budget submission.

We strongly support an increase of at least 3% in Unrestricted General Government Aid, which represents an increase of at least \$39.2 million over fiscal 2025. This request matches the same percentage increase provided in the fiscal 2025 budget, first proposed by your House 2 recommendation last year. Your proposal went above the eventual consensus revenue forecast, reflecting a deep understanding of the financial challenges being faced in our cities and towns. We look forward to the Healey administration's continued commitment toward a revenue sharing framework that is sustainable while making necessary investments in the services on which our municipalities depend.

Chapter 70 School Aid

We support funding for Chapter 70 school aid (7061-0008) that continues the promises made in the Student Opportunity Act (SOA). For fiscal 2026, we support funding Chapter 70 in accordance with the SOA's goal rates, which would represent year five of the six-year rollout period.

Chapter 70 funding must be sufficient to allow all municipal and regional school districts to reach their foundation spending standard, and should also avoid unaffordable increases in minimum required local contributions, a problem that many districts may face due to significantly increased foundation budgets. Without addressing this aspect of the SOA funding challenge, districts with required increases in local contributions that exceed the percentage growth in their own local property tax revenues may be forced to cut funding for essential municipal services, which would only weaken their capacity to deliver critical non-school services to residents.

We also support funding an adequate amount of minimum aid that ensures that all schools receive a meaningful increase in fiscal 2026, which we believe should be at least \$104 per student. While the school aid calculation for next year is not yet known, it is very likely that many school districts will receive only the statutory minimum aid increase (\$30 per student), which is simply not adequate to maintain quality school programs in these districts. Higher minimum aid is necessary to ensure that no school district or student is left behind. The increase of minimum aid in the fiscal 2025 budget to \$104 per

student provided major relief for the 71% of districts that receive minimum aid, at a total cost of \$37 million (1596-2438).

Charter School Impact Mitigation Payments

We support funding the charter school impact mitigation account (7061-9010) to reimburse school districts at 100%, the rate set forth in the Student Opportunity Act implementation schedule. Increases in assessments levied on local school districts to pay tuition to charter schools has imposed a major financial burden on cities and towns. Because the great majority of K-12 students attend local public schools, underfunding the charter school reimbursement program would have a directly negative impact on the vast majority of schoolchildren. Each impacted district should be fully reimbursed in accordance with the Student Opportunity Act. While the Student Opportunity Act strengthened charter school mitigation payments, we continue to push for meaningful reforms to the charter school funding formula.

Special Education Circuit Breaker

We support full funding of the special education circuit breaker program (7061-0012), through which the state provides a measure of support for services provided to high-cost special education students. This is an essential program that provides critical funding to assist all school districts with the increasingly burdensome and volatile cost of complex and expensive special education services.

Additionally, we ask for full funding of the state's share of eligible educational and transportation costs. In fiscal 2025, the program was funded at \$493 million, with the intention of leveraging part of the \$75 million included in the fiscal 2023 closeout supplemental budget. Recently, the Massachusetts Association of School Superintendents, Massachusetts Association of School Business Officers, and Massachusetts Association of School Committees identified a significant shortfall for current fiscal year reimbursement payments. As a result, we anticipate that full funding of the Special Education Circuit Breaker program could require a substantial increase above this amount in fiscal 2026, as the cost of educating students with special education needs continues to grow.

Rural School Aid

We respectfully request full funding for the Rural School Aid account (7061-9813), which provides rural school assistance to eligible towns and regional school districts. These grants help schools facing the challenge of declining enrollment identify ways to form regional school districts or regionalize certain school services to create efficiencies. The fiscal 2025 budget funded this account at \$16 million, which was important progress toward the \$60 million goal set forth in the Commission on the Fiscal Health of Rural School Districts report, "A Sustainable Future for Rural Schools," released in July 2022. With the current Chapter 70 formula driven by student enrollment, Rural School Aid is a lifeline to assist these communities and make sure that their schools can keep pace with the rest of Massachusetts.

Student Transportation Reimbursements

Funding to assist cities, towns, and school districts with the cost of transporting school children is another critical priority. The final fiscal 2025 budget funded regional school

transportation (7035-0006) at \$99.4 million, representing a reimbursement rate of 84% of DESE's estimated costs for fiscal 2024. The fiscal 2025 budget funded the McKinney-Vento account for transportation of homeless students (7035-0008) at \$28.6 million, 71% of anticipated claims, and funded out-of-district vocational transportation (7035-0007) at \$1 million, a reimbursement of 17% of DESE's estimated costs. We are grateful for the importance you have placed on these accounts in previous budget proposals and hope to see full funding for these accounts for fiscal 2026.

Payments in Lieu of Taxes (PILOT)

We support full funding of the Commonwealth's obligations and commitments to the program for payments in lieu of taxes (PILOT) for state-owned land (1233-2400). This is a particularly important program for the cities and towns that host and provide municipal services to state facilities that are exempt from the local property tax.

Local Roads and Bridges

During the past two fiscal years, we have witnessed the exciting opportunities the voter-approved surtax has provided for dedicated funding to support the significant education and transportation needs of the Commonwealth. Of particular importance to municipalities has been the inclusion of supplemental aid for local roads and bridges (1596-2428). More than 30,000 miles of roads are under municipal control, which represents nearly 90% of all road miles in the Commonwealth. We respectfully request that you continue this critical funding, with an appropriation of \$125 million, as part of your fiscal 2026 budget proposal. The funds will be put to use immediately by cities and towns to repair crumbling local roads, advance critically needed projects, and improve safety on our neighborhood roadways.

Summary

This is a critical time for cities and towns, as inflationary pressures and the constraints of Proposition 2½ have squeezed local operating budgets and impacted key municipal and school services. We look forward to working with you to ensure that every region of the state has the resources and support to propel the Massachusetts economy forward. We believe the priorities outlined above will establish fiscal stability and sustainability at the local level, and ensure that the residents of Massachusetts receive the essential municipal and school services they expect and deserve.

If you have any questions or need additional information regarding any of these municipal priorities, please do not hesitate to have your office contact me or MMA Deputy Legislative Director Jackie Lavender Bird at jlavenderbird@mma.org at any time.

We thank you very much for your support, dedication and commitment to the cities and towns of Massachusetts.

Sincerely,

Adam Chapdelaine
MMA Executive Director & CEO

cc: The Honorable Kimberley Driscoll, Lieutenant Governor of the Commonwealth
Secretary Matthew Gorzkowicz, Executive Office of Administration and Finance
Senior Deputy Commissioner Sean Cronin, Division of Local Services

Advocacy Topics

ENERGY AND THE ENVIRONMENT

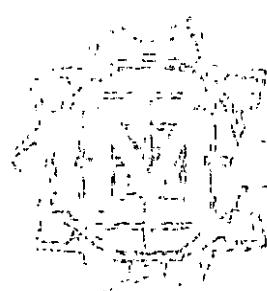
FISCAL AFF. IRS

- See all
- Capital Spending
- Fees and Non-Tax Revenues
- Local Aid
- Other Local Taxes
- Property Tax
- School Finance
- State and Federal Budgets
- State and Federal Revenues

MUNICIPAL AND REGIONAL ADMINISTRATION

PERSONNEL AND LABOR RELATIONS

PUBLIC WORKS, TRANSPORTATION AND PUBLIC UTILITIES



3 Center Plaza, Suite
610,
Boston, Massachusetts
02108



617-426-7272

Exhibit M

Menu



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PRESS STATEMENT

AG Campbell Issues Statement Clarifying Legality Of Municipal Compliance With MBTA Communities Law

Recent OSA Letter Has No Legal Effect on MBTA Communities Law

2/24/2025

Office of the Attorney General

MEDIA CONTACT

Sydney Heiberger, Press Secretary**Phone**(617) 727-2543 (tel:6177272543)**Online**Sydney.Heiberger@mass.gov<mailto:Sydney.Heiberger@mass.gov>

BOSTON — Massachusetts Attorney General Andrea Joy Campbell has issued the following statement in response to the Office of the State Auditor's recent letter to municipalities incorrectly declaring the MBTA Communities Law as an unfunded mandate.

"High housing costs burden our residents and stifle our economy – and responsible zoning is the solution to this crisis, as most of our communities understand. The Auditor's claim that the MBTA Communities Law is an unfunded mandate is wrong, and, more importantly, this letter has no effect whatsoever on implementation of the Law. If those who oppose housing affordability try to make a similar claim in court, the state will vigorously defend the law, and we intend to be successful, as we have been so far," said AG Campbell.

Media Contact

Sydney Heiberger, Press Secretary

Phone

(617) 727-2543 (tel:6177272543)

Online

Sydney.Heiberger@mass.gov (mailto:Sydney.Heiberger@mass.gov)



Office of the Attorney General

The Attorney General is the chief lawyer and law enforcement officer of the Commonwealth of Massachusetts.



All

[Topics \(/topics/massachusetts-topics\)](#)

Site

[Policies \(/massgov-site-policies\)](#)

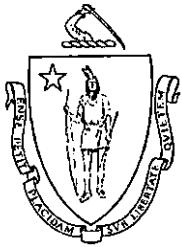
Public Records

[Requests \(/topics/public-records-requests\)](#)

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Exhibit N



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

(617) 727-2200
www.mass.gov/ago

Advisory Concerning Enforcement of the MBTA Communities Zoning Law

The Office of the Attorney General is issuing this Advisory to assist cities, towns, and residents in understanding the requirements imposed by the MBTA Communities Zoning Law (G.L. c. 40A, § 3A) (the “Law”). The Law was enacted to address the Commonwealth’s acute need for housing by facilitating the development of transit-oriented, multifamily housing. By any measure, Massachusetts is in a housing crisis that is inflicting unacceptable economic, social, and environmental harms across our state – particularly on working families and people of color. The Law directly responds to this crisis by implementing zoning reforms that require MBTA Communities to permit reasonable levels of multifamily housing development near transit stations.¹

Massachusetts cities and towns have broad authority to enact local zoning ordinances and by-laws to promote the public welfare, so long as they are not inconsistent with constitutional or statutory requirements.² The MBTA Communities Zoning Law provides one such statutory requirement: that MBTA Communities must allow at least one zoning district of reasonable size in which multifamily housing is permitted “as of right.”³ The district must generally be located within half a mile of a transit station and allow for development at a minimum gross density of fifteen units per acre.⁴ MBTA Communities cannot impose age-based occupancy limitations or other restrictions that interfere with the construction of units suitable for families with children within the zoning district.⁵ For example, the zoning district cannot have limits on the size of units or caps on the number of bedrooms or occupants. The required zoning district must also allow for the construction of multifamily units without special permits, variances, waivers or other discretionary approvals.⁶ These measures can prevent, delay, or significantly increase the costs of construction. As directed by the Legislature, the Department of Housing and Community Development has promulgated guidelines regarding compliance.⁷ These guidelines provide

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, § 1. Currently, there are 177 MBTA Communities in Massachusetts. A list of these MBTA Communities, and other information related to the Law, can be found [here](#).

² *See generally* Mass. Const. Amend. Art. 89 (amending Mass. Const. Amend. Art. 2); G.L. c. 40A, § 1 et seq. (the “Zoning Act”).

³ G.L. c. 40A, § 3A(a)(1) (requiring that MBTA Communities “shall have” a compliant zoning district).

⁴ *Id.*

⁵ *Id.*

⁶ G.L. c. 40A, § 1A.

⁷ G.L. c. 40A, § 3A(c) (“The [D]epartment . . . shall promulgate guidelines”); Department of Housing and Community Development, *Compliance Guidelines for Multi-family Zoning Districts Under Section 3A of the Zoning Act* (revised October 21, 2022).

additional information and benchmarks to be utilized in determining whether MBTA Communities are complying with the Law.

All MBTA Communities must comply with the Law. Communities that do not currently have a compliant multi-family zoning district must take steps outlined in the DHCD guidelines to demonstrate interim compliance. Communities that fail to comply with the Law may be subject to civil enforcement action.⁸ Non-compliant MBTA Communities are also subject to the administrative consequence of being rendered ineligible to receive certain forms of state funding.⁹ Importantly, MBTA Communities cannot avoid their obligations under the Law by foregoing this funding. The Law requires that MBTA Communities “shall have” a compliant zoning district and does not provide any mechanism by which a town or city may opt out of this requirement.¹⁰

MBTA Communities that fail to comply with the Law’s requirements also risk liability under federal and state fair housing laws. The Massachusetts Antidiscrimination Law¹¹ and federal Fair Housing Act¹² prohibit towns and cities from using their zoning power for a discriminatory purpose or with discriminatory effect.¹³ 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.

⁸ See, e.g., G.L. c. 12, § 10 (the Attorney General shall take notice of “all violations of law” and bring “such...civil proceedings before the appropriate state and federal courts...as [s]he may deem to be for the public interest”); G.L. c. 231A, § 2 et seq. (authorizing declaratory judgment actions to “secure determinations of right, duty, status, or other legal relations under...statute[s]”).

⁹ G.L. c. 40A, § 3A(b).

¹⁰ G.L. c. 40A, § 3A(a)(1).

¹¹ G.L. c. 151B § 1 et seq.

¹² 42 U.S.C. § 3601 et seq.

¹³ See, e.g., 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 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.”).

Exhibit O

Action Plan for MBTA Communities

Description Area Please read the Section 3A Guidelines before attempting to complete this form. Please note: Action Plan Forms must be submitted by a municipal official with authority to act on behalf of the municipality on matters of zoning, such as the municipal CEO or planning director.

Section 1: Identification

Description Area The Section 3A Guidelines establish zoning metrics that apply uniquely to each MBTA community based on its local transit stations, existing housing stock, population, and developable land. This section of the Action Plan helps to identify the transit stations that determined each community's category. Appendix 1 of the Section 3A Guidelines lists each community's category and minimum multi-family unit capacity requirement.

1.1 MBTA Community Name	Middleborough
1.2. Community Category	Commuter rail community
1.3. Multifamily Unit Capacity Requirement	1471
1.4. Does this municipality have any MBTA rapid transit stations within its boundaries?	No
1.5. Does this municipality have any MBTA commuter rail stations within its boundaries?	Yes
1.5a. Please list MBTA commuter rail stations that are located within the municipal boundaries	Middleborough/Lakeville Station is operational until the Middleborough Train Station becomes operation at the end of 2023.
1.6. Does this municipality have any other MBTA transit stations that are located outside of its municipal boundaries that may have "developable station area" within them?	No
1.7. Please provide the name of the person filling out this form	Leeann Bradley
1.7a. Title	Planning Director
1.7b. Email Address	BradleyL@middleboroughma.gov

1.7c. Phone Number	(508) 946-2425
1.8 Please provide the name of the municipal CEO	James McGrail
1.8b Mailing address of municipal CEO	Middleborough Town Hall 10 Nickerson Avenue Middleborough, MA 02346
1.8c Email address of municipal CEO	jmcgrail@middleboroughma.gov
1.9. Please briefly describe other members of the core team developing the multi-family zoning district.	SRPEDD Planning Board Town Manager Select Board

Section 2: Housing Overview

2.1. Does this municipality have any established housing related goals or strategies from municipal planning documents, such as a Housing Production Plan, Master Plan, or Economic Development Plan?	Yes
2.1a. Please briefly describe any relevant strategies, goals, or objectives, and the work that has been done to date.	<p>2001 Master Plan: -Identifying policies and strategies to provide balance of local housing opportunities for all residents of Middleborough. -Evaluating the town's needs for affordable & senior housing, assisted living, in-law apartments and other housing units. -Evaluating town-initiated development or rehabilitation projects to ensure they provide housing that fulfills the town's objectives.</p> <p>2016 Housing Production Plan -Focus on housing development in Middleborough Center. -Adopting a 40R Smart Growth Overlay District (40R adopted in October of 2021)</p> <p>2023 current Standardized Housing Inventory (SHI) is 10.6%.</p>

2.2. Is this municipality currently working on any other planning for housing?	Yes
2.2a. Please briefly describe the housing work underway.	HPP is currently being updated. A 296 unit 40B and 252 unit 40R are currently proposed.

Section 3: Preliminary Zoning Strategies

3.1. To the best of your knowledge, which of the following zoning strategies is this community most likely to use for compliance? (Select all that apply)

3.1b. Please select the changes that may be necessary for the existing district to comply. Optional: Attach any supporting documents that describe this district.

Explanation: We participated in MHP's Early Action Technical Assistance Program during the fall of 2022. The technical memo states that Middleborough could explore expanding their 40R district to accommodate the remaining unit capacity necessary to achieve compliance with Section 3A. Detailed recommendations are in the attached document.

File <https://www.formstack.com/admin/download/file/14733046070>

3.2. What non-housing characteristics are important for this community to consider in its 3A zoning district? Open space preservation, protection of natural resources, walkability, street retail, accessibility and municipal services.

Section 4: Action Plan Timeline

Description Area This section creates a framework to input preliminary plans for a zoning adoption process. On the table below, please use Column 1 (from the left) to describe a task, Column 2 to input a start date, and Column 3 to input a finish date. Every community must provide a timeline for the below-listed tasks. Additional space is provided for any other tasks that a community wishes to list. DHCD will review proposed timelines for feasibility before approving an Action Plan. Public outreachDeveloping zoning Applying DHCD's compliance model to test for density and unit capacityHolding planning board hearings Holding legislative sessions and adopt compliant zoning Submit District Compliance application to DHCD

Description Area	Task
Description Area	Start
Description Area	Finish
Short Answer	Review Technical memo and update the Compliance Model
	Jul 01, 2023
	Aug 31, 2023

Short Answer	Explore suitable areas and eligible properties for expansion of the 40R District
	Sep 01, 2023
	Dec 31, 2023
Short Answer	Implement potential 40R expansion into the Compliance Model and review results with the Planning and Select Boards
	Jan 01, 2024
	Feb 28, 2024
Short Answer	Submit the updated Compliance Model for Pre-Adoption Review by EOHLIC
	Mar 01, 2024
	Apr 15, 2024
Short Answer	Conduct public outreach on Section 3A and potential 40R expansion
	Apr 16, 2024
	Sep 30, 2024
Short Answer	Adopt zoning revisions to 40R at Fall Town Meeting
	Oct 01, 2024
	Oct 15, 2024
Short Answer	Submit zoning revisions for district compliance
	Oct 16, 2024
	Dec 31, 2024
If there is any other feedback you would like to share about the compliance process, please use this space to provide it.	The Town of Middleborough Select Board voted unwilling acceptance regarding submission of this Action Plan to comply with MGL Ch. 40A, Section 3A MBTA Multi-Family Zoning.

Exhibit P



Commonwealth of Massachusetts
EXECUTIVE OFFICE OF HOUSING &
LIVABLE COMMUNITIES

Maura T. Healey, Governor ♦ Kimberley Driscoll, Lieutenant Governor ♦ Edward M. Augustus Jr., Secretary

June 9, 2023

James McGrail
Town Manager
Town of Middleborough
10 Nickerson Avenue
Middleborough, MA 02346

RE: Determination of Interim Compliance under MGL c. 40A, Section 3A

Dear Mr. McGrail:

The Executive Office of Housing and Livable Communities (EOHLC) is in receipt of the Action Plan submitted by Middleborough on June 6, 2023. Thank you for taking this step as outlined in the Compliance Guidelines.

I am pleased to inform you that EOHLC approved the Action Plan, and that Middleborough has achieved Interim Compliance. This Interim Compliance is valid until Middleborough's due date for District Compliance, which is 12/31/2024. Please be advised that pursuant to Section 9(a)(iii) of the guidelines, a community's progress in implementing its Action Plan may be independently evaluated as part of the application review process for any of the funding sources that are subject to compliance with Section 3A.

We appreciate submittal of the Action Plan describing Middleborough's planning efforts related to Section 3A District Compliance and wish your community the best in implementation of its components. If you have any questions regarding this determination, please contact Nate Carlucci at nathan.carlucci@mass.gov.

Sincerely,

Edward M. Augustus Jr.
Secretary

cc: Nathan Carlucci, MBTA Communities Compliance Coordinator

Exhibit Q



2024 Fall Special Town Meeting Warrant

Middleborough, Massachusetts

To Joseph Perkins, Police Chief or any of the
Police Officers of the Town of Middleborough

Greetings:

In the name of the Commonwealth of Massachusetts you are hereby required to notify and warn all the inhabitants of said Town, qualified to vote in Town affairs, to meet in the **Auditorium of the Middleborough High School**, on **Monday, October 7, 2024, at 7:00 P.M.**, to act on the following articles:

ARTICLE 1. To hear the report of any committee or officer of the Town, to appoint or dissolve any committee, or act anything thereon.

ARTICLE 2. To see if the Town will vote to raise and appropriate and/or transfer \$200,000.00 from taxation, free cash, another specific available fund, the Stabilization Fund, an existing appropriation or account or other available source, to be placed into the Other Post-Employment Benefits Liability Trust Fund, or act anything thereon.

ARTICLE 3. To see if the Town will vote to raise and appropriate and/or transfer \$50,000.00 from taxation, free cash, another specific available fund, an existing appropriation or account or other available source, to be placed into the Debt Stabilization Fund, or act anything thereon.

ARTICLE 4. To see if the Town will vote to raise and appropriate and/or transfer \$42,281.00 from taxation, free cash, another specific available fund, the Stabilization Fund, an existing appropriation or account, or other available source, to the Fire Department for the purpose of providing the Town's match to the FEMA FY2022 Assistance to Firefighters Grant, for all related, relevant and necessary expenses associated with the purchase of radios and a station exhaust system, or act anything thereon.

ARTICLE 5. To see if the Town will vote to raise and appropriate and/or transfer \$42,801.00 from taxation, free cash, another specific available fund, the Stabilization Fund, an existing appropriation or account, or other available source, to the Fire Department for the purpose of providing the Town's match to the FEMA FY2022 Assistance to Firefighters Grant, for all related, relevant and necessary expenses associated with the purchase of a mini pumper truck with equipment, or act anything thereon.

ARTICLE 6. To see if the Town will vote to raise and appropriate and/or transfer \$26,566.00 from taxation, free cash, another specific available fund, the Stabilization Fund, an existing appropriation or account, or other available source, to the Fire Department for the purpose of providing the Town's match to the FEMA FY2023

Assistance to Firefighters Grant, for all related, relevant and necessary expenses associated with the purchase of RIT packs, lightweight gear and safety training, or act anything thereon.

ARTICLE 7. To see if the Town will vote to raise and appropriate and/or transfer \$10,766.00 from taxation, free cash, another specific available fund, the Stabilization Fund, an existing appropriation or account, or other available source, to the Fire Department for the purpose of providing the Town's match to the FEMA FY2023 Fire Prevention & Safety Grant, for all related, relevant and necessary expenses associated with fire prevention safety training and programs, or act anything thereon.

ARTICLE 8. To see if the Town will vote to raise and appropriate and/or transfer \$30,000.00 from taxation, free cash, another specific available fund, the Stabilization Fund, an existing appropriation or account, or other available source, to the Fire Department for all related, relevant and necessary expenses associated with building upgrades to South Fire Station, or act anything thereon.

ARTICLE 9. To see if the Town will vote to raise and appropriate and/or transfer \$35,000.00 from taxation, free cash, another specific available fund, the Stabilization Fund, an existing appropriation or account, or other available source, to the Council on Aging for all related, relevant and necessary expenses associated with painting and siding of the Senior Center building located at 558 Plymouth Street, Middleborough, MA, or act anything thereon.

ARTICLE 10. To see if the Town will vote to raise and appropriate and/or transfer a sum of money from taxation, free cash, another specific available fund, the Stabilization Fund, an existing appropriation or account or other available source, or by borrowing, to the Conservation Commission for the purpose of providing the Town's match to the Massachusetts Executive Office of Energy & Environmental Affairs FY2025 Dam & Seawall Grant, for all relevant and necessary expenses associated with the replacement of the Pratt Farm Stony Brook Dam, including but not limited to removal of the existing dam and the construction of a new dam, or act anything thereon.

ARTICLE 11. To see if the Town will vote to raise and appropriate and/or transfer \$30,000.00 from taxation, free cash, another specific available fund, the Stabilization Fund, an existing appropriation or account, or other available source, to the Highway Department for all related, relevant and necessary expenses associated with the survey and site design of 48 Wareham Street, or act anything thereon.

ARTICLE 12. To see if the Town will vote to appropriate the sum of \$750,000 for the purpose of redesigning, renovating and equipping the Middleborough Skatepark and costs incidental or related thereto, which Skatepark is located on a portion of the property located at 48 Wareham Street (book/page 2521/0362) and, as funding therefore, to authorize the Treasurer, with the approval of the Select Board, to borrow said funds and to issue bonds or notes of the Town therefor under G.L. c. 44, §7 and/or any other enabling authority; and further to dedicate the portion of said land containing the skate park, as shown on the plan entitled "Skate Park Plan", a copy of which is on file at the Office of the Town Clerk, to active recreational purposes in perpetuity under the provisions of M.G.L. Chapter 45, Section 3, as it may be hereafter amended and other Massachusetts statutes relating to recreation, with said land to be managed and controlled by the Select Board for said purposes; and further to authorize the Select Board to file on behalf of the Town to submit any and all applications deemed necessary for grants and/or reimbursements that may be available for the project or any portion thereof, including but not limited to a grant and/or reimbursement from the Commonwealth of Massachusetts under the Urban Self-Help Act (301 CMR 5.00) and/or any others in any way connected with the scope of this article; and, further, to

authorize the Select Board to enter into all agreements and execute any and all instruments as may be necessary or appropriate on behalf of the Town to undertake said project, provided, however, that the funds appropriated by this vote shall not be expended unless the Town receives grants, gifts and/or other contributions of no less than \$750,000 for said purposes, which may be in the form of a reimbursement grant as set forth above; or act anything thereon.

ARTICLE 13. To see if the Town will vote to raise and appropriate and/or transfer a sum of money from taxation, free cash, another specific available fund, the Stabilization Fund, an existing appropriation or account or other available source, or by borrowing from the Massachusetts Clean Water Trust or otherwise, for the construction and equipping of the Mayflower Sewer Interceptor, and including without limitation all costs thereof as defined in Section 1 of Chapter 29C of the General Laws and all related, relevant, and necessary expenses associated therewith; or act anything thereon.

ARTICLE 14. To see if the Town will vote to raise and appropriate and/or transfer an additional \$1,000,000.00 from taxation, free cash, another specific available fund, the Stabilization Fund, an existing appropriation or account, or other available source, or by borrowing, for all relevant and necessary expenses associated with the construction for the replacement of the Center Street Water Main Project for the Water Department, for which \$8,663,000.00 was appropriated and authorized pursuant to the vote under article 13 of the October 16, 2023 Special Town Meeting, or act anything thereon.

ARTICLE 15. To see if the Town will vote to raise and appropriate and/or transfer \$50,000.00 from taxation, free cash, another specific available fund, the Stabilization Fund, an existing appropriation or account, or other available source, to the Water Department for all related, relevant and necessary expenses associated with the replacement of a chemical tank at Rock Well, or act anything thereon.

ARTICLE 16. To see if the Town will vote to raise and appropriate and/or transfer \$160,000.00 from taxation, free cash, another specific available fund, the Stabilization Fund, an existing appropriation or account, or other available source, to the Department of Public Works for all relevant and necessary expenses associated with storm water activities required by the EPA/DEP, or act anything thereon.

ARTICLE 17. To see if the Town will vote, pursuant to Massachusetts General Law Chapter 40, Section 59, and Chapter 23A, Sections 3E and 3F, and the applicable regulations thereunder, to:

(a) approve a Tax Increment Financing Agreement between the Town, Rexa, Inc., and its affiliate, Rexa Real Estate, LLC, for all or portions of the properties identified by the Assessors as Parcels 048-533, 048-3042, 048-3832, 048-3165, and 049-955, to be subdivided and acquired (the "TIF Agreement"), which TIF Agreement provides for real estate tax exemptions at the exemption rate schedule set forth therein and, as applicable, approve an Economic Development Incentive Program ("EDIP") Local Incentive-Only Application submission to the Massachusetts Economic Assistance Coordinating Council (the "EACC"); and

(b) authorize the Select Board to execute the TIF Agreement, and any documents related thereto, and to approve submission to the EACC of the TIF Agreement and, as applicable, EDIP Local Incentive-Only Application, and any documents related thereto, and related submissions, all relating to the project as described in the TIF Agreement, and to take such other actions as necessary or appropriate to obtain approval of those documents, and carry out the purposes of this article; and

(c) or act on anything thereon.

ARTICLE 18. To see if the Town will vote to amend its Zoning Bylaw and Zoning Map, Chapter 275 Section 4.1.1 Table of Dimensional Requirements of the Zoning Bylaw as follows:

** In the GUA District and the GUB District, any Lot with ten (10) acres or more in size, the Zoning Board of Appeals, upon a finding that additional height is reasonably necessary for the use of a structure and will not be detrimental to the neighborhood may authorize by special permit a structure not to exceed sixty-five (65) feet in height.

or act on anything thereon.

ARTICLE 19. To see if the Town will vote to amend the Middleborough Zoning Bylaws (Chapter 275 – Zoning) to establish a Multi-Family Housing Overlay District, and therefore, unwillingly accept the Commonwealth's Multi-Family Housing Requirement for MBTA Communities (M.G.L. Chapter 40A, Section 3A), as follows: (1) add to Section 2.2 ("Overlay Districts") the West Grove Multi-Family Housing Overlay District (WGO) (2) amend Section 2.4 (Zoning Map) to include the West Grove Multi-Family Housing Overlay District (WGO); and (3) add to Section 8.0 ("Overlay District Regulations") a new Section 8.7 entitled "West Grove Multi-Family Housing Overlay District (WGO)," as detailed below; or act anything thereon.

1. Add to Section 2.2 ("Overlay Districts") of the Middleborough Zoning Bylaws the following language:

West Grove Multi-Family Housing Overlay District (WGO)

2. Amend Section 2.4 ("Zoning Map") of the Middleborough Zoning Bylaws to insert a new overlay district into the Town's Zoning Map entitled "West Grove Multi-Family Housing Overlay District (WGO)," as depicted on the map entitled "West Grove Multi-Family Housing Overlay District (WGO)," dated July 29, 2024, which is on file in the Office of the Town Clerk.
3. Add to Section 8.0 ("Overlay District Regulations") a new Section 8.7 entitled "West Grove Multi-Family Housing Overlay District (WGO)," as detailed below:

8.7 WEST GROVE MULTI-FAMILY HOUSING OVERLAY DISTRICT (WGO)

A. Purposes – The purpose of the West Grove Multi-Family Housing Overlay District are:

- (1) To allow multi-family housing as of right in accordance with Section 3A of the Zoning Act (Massachusetts General Laws Chapter 40A);
- (2) To encourage the development of multi-family housing projects of a scale, density; and aesthetic that are compatible with existing surrounding uses and minimize impacts to sensitive land; and
- (3) To the extent possible, multi-family housing shall allow for safe, accessible, and convenient access to transit stations for pedestrians and bicyclists.

B. Scope and Authority.

- (1) **Establishment of District.** The WGO is an overlay district that is superimposed over the underlying zoning district(s), and the boundaries of the WGO are shown on the Zoning Map on file with the Office of the Town Clerk.
- (2) **Applicability of WGO.** The provisions of the WGO shall apply to all land within the WGO and shall apply uniformly except as expressly distinguished in this Bylaw. Any matter not addressed herein shall be governed by the provisions of the Zoning Bylaw applicable to underlying zoning districts. In the event of any inconsistency between the provisions of the WGO and any other provisions of the Zoning Bylaw, the provisions of the WGO shall govern. The provisions of this

Zoning Bylaw pertaining to those zoning districts underlying this overlay district shall remain in effect.

(3) **Underlying Zoning.** The WGO 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 WGO. Uses that are not identified in Section 8.7(D) are governed by the requirements of the underlying zoning district(s).

C. Definitions – For the purposes of this Section 8.7, the following definitions shall apply:

- (1) **Affordable unit.** A multi-family housing unit that is subject to a use restriction recorded in its chain of title limiting the sale price or rent or limiting occupancy to an individual or household of a specified income, or both.
- (2) **Affordable housing.** Housing that contains Affordable Units as defined by this Section 8.7(C).
- (3) **Applicant.** A person, business, or organization that applies for a building permit, Site Plan Approval, or Special Permit.
- (4) **Area Median Income (AMI).** The median family income for the metropolitan statistical region that includes the Town of Middleborough, as defined by the U.S. Department of Housing and Urban Development (HUD).
- (5) **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.
- (6) **Compliance Guidelines.** *Compliance Guidelines for Multi-Family Zoning Districts Under Section 3A of the Zoning Act* as further revised or amended from time to time.
- (7) **EOHLC.** The Massachusetts *Executive Office of Housing and Livable Communities*, or any successor agency.
- (8) **Development standards.** Provisions of Section 8(J). General Development Standards made applicable to projects within the WGO.
- (9) **Lot.** An area of land held in one ownership, with definite boundaries, used or available for use, as the site of one or more buildings under this Zoning Bylaw.
- (10) **MBTA.** Massachusetts Bay Transportation Authority.
- (11) **Mixed-use development.** Development containing a mix of residential uses and non-residential uses, including, commercial, institutional, or other uses.
- (12) **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.
- (13) **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.
- (14) **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. A residential dwelling unit shall not be age-restricted or restricted on the number of bedrooms, the size of bedrooms, or the number of occupants.
- (15) **Section 3A.** Section 3A of the Zoning Act.
- (16) **Site plan review authority.** Planning Board.
- (17) **Sub-district.** An area within the WGO that is geographically smaller than the WGO district and differentiated from the rest of the district by use, dimensional standards, or development standards.
- (18) **Subsidized Housing Inventory (SHI).** A list of qualified Affordable Housing Units maintained by EOHLC used to measure a community's stock of low- or moderate-income housing for the purposes of M.G.L. Chapter 40B, the Comprehensive Permit Law.
- (19) **Transit station.** Any MBTA subway station, commuter rail station, or ferry terminal.

D. Uses Permitted As Of Right. The following uses are permitted as of right within the WGO:

- (1) Multi-family housing.
- (2) Mixed-use development. Development under this section may include a portion, not to exceed 50% of the total gross floor area, to be used for Non-Residential Uses including Office, Retail, Restaurant, Service, or Institutional Uses. Residential units generally must be located above the first-floor, but may be permitted in first floor portions of the Building. Where a first-floor residential portion of the Building fronts on a public way, the Planning Board then must determine, via Site Plan Review, that the public way is principally a residential street or that such first floor Residential Use would be in keeping with the character of the adjoining land Uses. However, no mixed-use development shall have industrial uses in the same building, or on the same lot, as residential uses.

E. Site Plan Review. Site Plan Review by the Planning Board shall apply to all uses in the WGO. Site Plan Review for as of right uses in the WGO may not be denied. Site Plan Review procedures shall be as follows:

- (1) Pre-Application Concept Plan. Prior to the submittal of a Site Plan Application, a "Concept Plan" may be submitted to help guide the development of the definitive submission for project build out. Such Concept Plan shall reflect the following:
 - i. Overall building envelope areas.
 - ii. Open space and natural resources areas.
 - iii. General site improvements, drainage plans, groupings of buildings, and proposed land uses.
 - iv. Anticipated parking spaces and locations.
 - v. Site vehicular access.The Concept Plan is intended to be used as a tool for both the Applicant and the Planning Board to ensure that the proposed Project design will be consistent with the Design Standards and other requirements of the WGO.
- (2) Application Procedures.
 - i. Submittal.
 1. An application for Site Plan Review shall be submitted in accordance with the requirements herein, on the form provided by the Planning Board, along with the relevant application fees. The application shall be accompanied by such plans and other documents as required to verify compliance with any of the provisions of this Section. An application for Site Plan Review shall also include all of the following:
 - a. Development narrative including all Uses, breakdown of square footage for each Use, number of housing units, and zoning summary.
 - b. Photos of adjacent properties and other properties impacted by the Development Project.
 2. All plans shall be prepared by certified architects or engineers as required by the Massachusetts Building Code and shall include all of the following:
 - a. Building plans - all levels including roof.
 - b. Building elevations - all sides including courtyards and interior Lot elevations
 - c. Massing perspective sketches or renderings illustrating the key elements of the proposed Development Project within its context.
 - d. Proposed exterior lighting plan with photometric information.
 - e. The documents shall clearly differentiate between existing and proposed work by Use of screened lines of color. Changes and revisions to subsequent submittals shall be prominently noted.
 3. An application for Site Plan Review shall be filed by the Applicant with the Town Clerk. A copy of the application, including the date of filing certified by the Town Clerk, as well as seven (7) copies of the application, shall be filed forthwith by the Applicant with the Planning Board. Application submissions must include a hard copy as well as an electronic copy in PDF or CAD format.

4. Circulation to Other Boards. The Planning Board may provide a copy of the application materials to all relevant municipal Boards, Departments, Commissions and Officials as determined by the Planning Board. These entities shall provide any written comments within 60 days of the filing of the Site Plan and application with the Town Clerk.
- ii. Public Hearing and Time Limits: The Planning Board shall hold a public hearing and provide notice of its review all applications according to the procedure specified in Massachusetts General Law Chapter 40A, § 11. The decision of the Planning Board shall require a majority vote of the board's members, and written notice of the decision filed with the Town Clerk within 120 days of receipt of the application by the Town Clerk. This time may be extended by mutual agreement between the Planning Board and the Applicant by written agreement filed with the Town Clerk. Failure of the Planning Board to take action within said 120 days or the extended time shall be deemed an approval of the Site Plan Review application.
- iii. Criteria for Plan Approval. Site Plan Review for as of right uses in the WGO may not be denied. The Planning Board shall approve the Site Plan Review application and plan upon all of the following findings:
 1. The Applicant has submitted the required fees and information as required by Section 8.7.
 2. The proposed development as described in the Site Plan meets all of the requirements and development standards as set forth in Section 8.7, or a waiver has been granted therefrom.
 3. Any extraordinary adverse potential impacts of the proposed development on nearby properties have been adequately mitigated.
- iv. Waivers. Upon request of the Applicant, the Planning Board may waive dimensional and other requirements, including Design Standards, with conditions, in the interests of design flexibility and overall Project quality, and upon a finding of consistency of such variation with the overall purpose and objectives of the WGO, and if it finds that such waiver will allow the Project to achieve the density, affordability, mix of uses and/or physical character allowed under this Section. Notwithstanding anything to the contrary, Affordability Requirements set forth in Section 8.7(K) shall not be waived. The Planning Board will take into consideration the following criteria when considering a request for a waiver:
 1. High performance energy efficient buildings and construction methods.
 2. Projects with publicly accessible open space.
 3. Projects that include retail and restaurants located on Street level.
 4. A demonstrated shared parking initiative that makes efficient use of land and existing parking supply.
 5. The preservation or rehabilitation of historic properties or other buildings considered significant to the Town.

(3) Decisions.

- i. The Planning Board shall issue to the Applicant a copy of its decision containing the name and address of the owner, identifying the land affected and the Plans that were the subject of the decision and certifying that a copy of the decision has been filed with the Town Clerk. If 20 days have elapsed after the decision has been filed with the Town Clerk without an appeal having been filed to a court of competent jurisdiction pursuant to General Laws Chapter 40A, Section 17, or if such appeal having been filed is dismissed or denied, or if a Plan is approved by reason of the failure of the Planning Board to timely act, the Town Clerk shall so certify on a copy of the decision. A copy of said decision shall be filed with the Registry of Deeds.
- ii. A Site Plan Approval shall remain valid and run with the land indefinitely, provided that substantial construction has commenced and continued within two years after the decision is issued, which time shall be extended by the time required to adjudicate an appeal and which time shall be extended if the Project proponent is actively pursuing other required permits or there is excusable neglect for failure to commence.

- iii. The Planning Board may require the posting of a performance bond to secure and/or screen a development site in the event that demolition is undertaken but subsequent work lapses, for any reason within or outside the Applicant's control, for a period longer than one year.

F. Table of Dimensional Standards. Notwithstanding anything to the contrary in this Zoning Bylaw, the dimensional requirements applicable in the WGO are as follows:

Dimensional Requirements	
Maximum Floor Area ratio (FAR) (Gross Floor Area/Lot Size)	4
Maximum Building Height	45 Feet
Minimum Lot Frontage	50 Feet
Maximum Building Frontage	300 Feet
Minimum Front Setback	0 Feet
Minimum Side/Rear Setback abutting a Residential Zone	15 Feet
Interior Setback (between Buildings on the same Lot)	15 Feet

G. Multi-Building Lots. In the WGO, Lots may have more than one principal building.

H. Exceptions.

- (1) **Height.** The limitation on height of buildings shall not apply to 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.
- (2) **Renewable Energy Installations.** The Site Plan Review Authority may waive the height and setback requirements in Section 8.7(F) 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 significant 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 within the development.

I. Off-Street Parking.

- (1) These parking requirements are applicable to all developments within the WGO. Retail Stores, Offices, and Consumer Service establishments located within one hundred (100) feet of a public off-street parking facility shall be exempt from off-street parking requirements. In all other cases, off-street parking shall be provided to meet the following minimum requirements:

Use	Minimum Number of Parking Spaces
Retail	1 per 300 sq. ft. of gross floor area
Restaurant	1 for each 3 seats
Office	3 per 1,000 square feet
Institutional	1 for each 3 seats
Residential	1.25 per unit
Other Non-Residential, more than 2,000 square feet	3 per 1,000 square feet

- (2) **Off-Street Loading & Delivery.** Off-street loading facilities shall be provided on-site in a specified area design for this purpose. The Planning Board shall determine the adequacy of loading facilities

based on the nature of use. Off-street loading facilities shall be screened from public use areas, and shall not block streets, access ways, driveways, parking, and/or pedestrian areas.

- (3) **Location of Parking.** Any surface parking lot shall be located at the side or rear of a Building, relative to any public right-of-way, public open space, or pedestrian way. In no case shall surface parking for new construction be permitted within any applicable restricted Front Setback area.
- (4) **Waiver of Parking and Loading Requirements.** The Planning Board may grant a waiver of the standards or prescribe safeguards and conditions in Section 8.7(I) as it shall warrant appropriate, provided that it finds that it is impractical to meet the standards and that such modifications are appropriate by reason of the proposed Use and will not result in or worsen parking or traffic problems in the WGO, and would not impair the development of housing within the District that is appropriate for diverse populations, including households with children, other households, individuals, households including individuals with disabilities, and the elderly.
- (5) **Shared Use of Required Parking.** Shared use may be made of required parking spaces by intermittent Use establishments (for example, churches, assembly halls, or theaters) whose peak parking demand is only at night or on specific days of the week may be shared with other Uses whose peak demand is only during the day, or in public parking lots, subject to the paragraph below. At the time of application, a formal agreement shall be made in recordable form and recorded at the Registry of Deeds by the owners of the Uses involved concerning the number of spaces involved, substantiation of the fact that such shared use is not overlapping or in conflict, and the duration of the agreement. The applicant shall demonstrate to the satisfaction of the Planning Board that shared spaces will meet parking demands by using accepted methodologies (e.g., the Urban Land Institute Shared Parking Report, ITE Shared Parking Guidelines, or other industry established studies on shared parking).
- (6) **Cooperative Establishment and Operation of Parking Areas.** Required spaces for any number of Uses may be provided in a combined Lot or Lots (public or private), provided that the number of spaces in the combined facility shall not be less than the sum of those required of the individual Uses, with allowances made, upon formal designation, for night use or for separate and distinct working shifts, and provided also that such Lot or Lots shall be within 150 feet of the Principal Buildings served.
- (7) **Parking Design.** Parking shall be designed and constructed to comply with all applicable state and federal disability access requirements including but not limited to the Massachusetts Building Code, the Americans with Disabilities Act (ADA), and 521 CMR.

J. General Development Standards. All uses permitted in the WGO must comply with the following:

- (1) Does not regularly emit noxious odors, noises, or dust particles, or smoke, or pose danger, such as manufacture of acids, gases, fertilizers and glue, petroleum refining, reduction of animal matter, and manufacture of cement, gypsum, or explosives.
- (2) Does not present a danger to persons within or outside the WGO by reason of emission of odor, fumes, gases, particulate matter, smoke, noise, vibration, glare, radiation, electrical interference, threat of fire or explosion, or any other reason.
- (3) Meets all applicable dimensional, density, design, drainage, safety, parking, signage, lighting, and other land use standards and regulations set forth in this bylaw for the underlying zone, except for those standards that are specifically modified by this Section 8.7, or specifically modified by the Planning Board in its review of the application for Site Plan Review.
- (4) Site Design. Unless waived in accordance with Section 8.7(E)(2)(iv), following specific site and construction standards shall be observed in the development of a WGO project:
 - i. **Roadways/pedestrian access.** Where intended for dedication and acceptance by the Town, the principal roadway(s) serving the site shall be designed to conform to the standards of the Subdivision Regulations and any other relevant standards of the Town unless otherwise required by the Planning Board. Private ways shall be adequate for intended vehicular traffic, including

public safety vehicle access and pedestrian traffic and shall be maintained by an association of unit owners or by the Applicant. It is intended that a sidewalk network will be provided throughout the WGO area that interconnects all dwelling units with other dwelling units, nonresidential uses, common open spaces, parking areas, transportation centers and major activity areas adjacent to the zone in which WGO is permitted. The Planning Board may require construction of on-site or off-site sidewalks, footpaths or bicycle paths. Access to off-site areas is required, particularly to permit safe and convenient pedestrian and/or bicycle access to nearby amenities.

- (5) **Buildings: Multiple Buildings on a Lot.**
 - i. For a mixed-use development, uses may be mixed within the buildings or in separate buildings.
 - ii. Parking and circulation on the site shall be organized so as 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.
 - iii. A paved pedestrian network shall connect parking to the entries to all buildings and the buildings to each other.
 - iv. 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.
 - v. The building(s) adjacent to the public street shall have a pedestrian entry facing the public street.
- (6) **Buildings: Mixed-Use Developments.**
 - i. In a mixed-use building, access to and egress from the residential component shall be clearly differentiated from access to other uses. Such differentiation may occur by using separate entrances or egresses from the building or within a lobby space shared among different uses.
 - ii. Paved pedestrian access from the residential component shall be provided to residential parking and amenities and to the public sidewalk, as applicable.
 - iii. Materials for non-residential uses shall be stored inside or under cover and shall not be accessible to residents of the development.
 - iv. Parking and circulation on the site shall be organized so as 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.
- (7) **Buildings: Shared Outdoor Spaces.** Multi-family housing and mixed-use development 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.

K. Affordability Requirements

- (1) **Purpose.**
 - i. Promote the public health, safety, and welfare by encouraging a diversity of housing opportunities for people of different income levels;
 - ii. Provide for a full range of housing choices for households of all incomes, ages, and sizes; and
 - iii. Increase the production of affordable housing units to meet existing and anticipated housing needs.
- (2) **Applicability.** This requirement is applicable to all residential and mixed-use developments with ten (10) or more residential dwelling units, whether new construction, substantial rehabilitation, expansion, or reconstruction. No project may be divided or phased to avoid the requirements of this section.
- (3) **Affordability Requirements.**
 - i. **Subsidized Housing Inventory.** All affordable units affordable to households earning 80% or less of AMI created in the WGO under this section must be eligible for listing on EOHLC's Subsidized Housing Inventory.

- ii. **Provision of Affordable Housing.** In Applicable Projects, not fewer than 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 80% of the AMI.

(4) **Development Standards.** Affordable Units shall be:

- i. Integrated with the rest of the development and shall be compatible in design, appearance, construction, and quality of exterior and interior materials with the other units and/or lots;
- ii. Dispersed throughout the development;
- iii. Located such that the units have equal access to shared amenities, including light and air, and utilities (including any bicycle storage and/or Electric Vehicle charging stations) within the development;
- iv. Located such that the units have equal avoidance of any potential nuisances as market-rate units within the development;
- v. Distributed proportionately among unit sizes;
- vi. Distributed proportionately across each phase of a phased development; and
- vii. Occupancy permits may be issued for market-rate units prior to the end of construction of the entire development provided that occupancy permits for Affordable Units are issued simultaneously on a pro rata basis.

L. Administration. The Building Commissioner/Zoning Enforcement Officer shall be responsible for administering and enforcing this section.

M. Amendments to Compliance Guidelines. Notwithstanding any future amendments to the Compliance Guidelines and/or Section 3A, the requirements of Section 8.7 shall not change unless explicitly amended by Town Meeting in accordance with the provisions of G.L. c. 40A, § 5.

N. Severability. If any provision of Section 8.7 is found to be invalid by a court of competent jurisdiction, the remainder of Section 8.7 shall not be affected but shall remain in full force. The invalidity of any provision of this Section 8.7 shall not affect the validity of the remainder of the Town of Middleborough Zoning Bylaws.

ARTICLE 20. To see if the Town will vote to amend the Middleborough Zoning Bylaw by adding a new Section 3.1(F.)(17.) Table of Uses – Accessory Dwelling Unit, add new Section 7.7 Accessory Dwelling Units, and add to Section 10.2 General Bylaw Definitions a definition for Accessory Dwelling Unit to reflect recent amendments made to MGL Ch. 40A, Section 3 which become effective on February 2, 2025.

Add new “Section 3.1(F.)(17)”

Section 3.1 TABLE OF USES

PRINCIPAL USE		RA	RB	RR	B	I	GU	GUX	GU	GUB	CD
F.	ACCESSORY USES										
17.	Accessory Dwelling Units	Y	Y	Y	N	N	Y	Y	Y	Y	N

Add new “Section 7.7 ACCESSORY DWELLING UNITS”

7.7.1 Site Plan Review Required: The Planning Board shall be the Site Plan Review Granting Authority (SPRGA). One Accessory Dwelling Unit per principal dwelling shall be permitted in single-family

residential zoning districts with approved Site Plan Review. The Planning Board shall adopt and periodically amend reasonable regulations to implement this bylaw. These regulations are effective when voted."

Add definition for **Accessory Dwelling Unit** to Section 10.2 General Bylaw Definitions

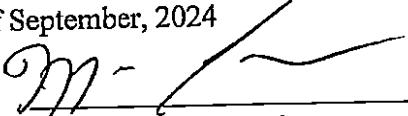
"Accessory dwelling unit: a self-contained housing unit, inclusive of sleeping, cooking and sanitary facilities on the same lot as a principal dwelling, subject to otherwise applicable dimensional and parking requirements, that: (i) maintains a separate entrance, either directly from the outside or through an entry hall or corridor shared with the principal dwelling sufficient to meet the requirements of the state building code for safe egress; (ii) is not larger in gross floor area than 1/2 the gross floor area of the principal dwelling or 900 square feet, whichever is smaller; and (iii) is subject to such additional restrictions as may be imposed by a municipality, including, but not limited to, additional size restrictions and restrictions or prohibitions on short-term rental, as defined in section 1 of chapter 64G; provided, however, that no municipality shall unreasonably restrict the creation or rental of an accessory dwelling unit that is not a short-term rental."

ARTICLE 21. To see if the Town will vote to accept Harvestwood Lane as a Town Way, as heretofore laid out by the Select Board and shown on a plan entitled "Roadway Acceptance Plan Harvestwood Lane off Old Center Street," prepared by Outback Engineering, Inc., dated March 3, 2023, said plans on file with the Town Clerk, and to authorize the Select Board to acquire, on such terms and conditions as the Select Board deems appropriate and by purchase, gift, and/or eminent domain, the fee in and to and/or easements in said roadway for all purposes for which public ways may be used and any related drainage, utility, access and/or other easements shown on said plan, or act on anything thereon.

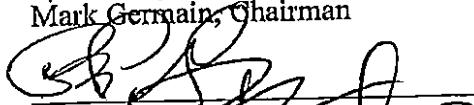
ARTICLE 22. To see if the Town will vote to reduce the number of members on the Tourism Committee from eleven (11) to seven (7), or act anything thereon.

ARTICLE 23. To see if the Town will vote to acquire by gift and/or purchase for conservation purposes, to be held in the care and custody of the Conservation Commission under G.L. Ch. 40 §8C, certain parcels of land including the structures and fixtures thereon erected, generally described as follows: 52.8 acre portion of the land with buildings thereon on Precinct Street in Middleborough, Plymouth County, Massachusetts, identified as a portion of the Assessors as Parcel 23-3732 and shown as a portion of Lot 2 recorded at the Plymouth County Registry of Deeds in Plan Book 64, Plan 938, and owned currently by Edward J. Medeiros; and further to authorize the Conservation Commission to accept an Eastern Box Turtle Mitigation Grant in the amount of \$405,000.00 from The Nature Conservancy for the purchase of said land and anything incidental or related thereto, or act anything thereon.

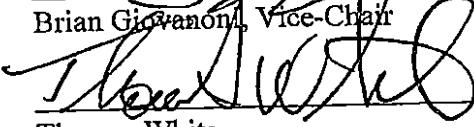
Given under our hands at Middleborough, this 23rd day of September, 2024



Mark Germain, Chairman



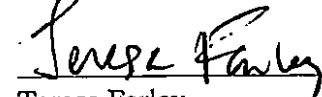
Brian Giovanonni, Vice-Chair



Thomas White



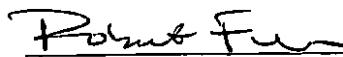
William Pike



Teresa Farley

SELECT BOARD

Pursuant to the instructions contained in the above warrant, I have notified and warned all inhabitants of said Town of Middleborough, qualified to vote as expressed in said warrant, to meet at the time and place for the purpose specified by causing an attested copy of the same to be published in the Nemasket Week on the 19th day of September 2024, that date being more than fourteen days before the time specified for said meeting.



Robert Ferreira

Deputy Chief

Exhibit R



Commonwealth of Massachusetts
**EXECUTIVE OFFICE OF HOUSING &
LIVABLE COMMUNITIES**

Maura T. Healey, Governor ♦ Kimberley Driscoll, Lieutenant Governor ♦ Edward M. Augustus Jr., Secretary

Via Email: jmcgrail@middleboroughma.gov

January 27, 2025

Town Manager James McGrail
10 Nickerson Avenue
Middleborough, MA 02346

Re: Middleborough – Confirmation of Status with G.L. c. 40A, Section 3A

Dear Town Manager McGrail:

This letter is intended to clarify Middleborough's current status and obligations related to compliance with the MBTA Communities Law. On January 8, 2025, the Supreme Judicial Court published its opinion in the case of *Attorney General v. Town of Milton*, confirming the law is constitutional and valid, and that the Attorney General has the power to enforce it. The Court also held that EOHLC must promulgate the law's implementing guidelines through the Administrative Procedures Act if they are to be enforceable. In response, EOHLC filed emergency regulations with the Secretary of the Commonwealth on January 14, 2025, and plans to adopt permanent regulations after a public comment period. The regulations are filed as: 760 CMR 72.00 Multifamily Zoning Requirement for MBTA Communities. They can be viewed at mass.gov/mbtacomunities.

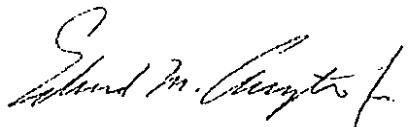
Middleborough has not submitted a district compliance application to EOHLC. **The emergency regulations provide Middleborough an opportunity to come into interim compliance by submitting a new Action Plan by February 13, 2025.** EOHLC is eager to work with municipalities to assist with developing and submitting an Action Plan that can be approved. The emergency regulations also provide Middleborough with additional time to adopt any necessary zoning amendments and submit a district compliance application to EOHLC. Middleborough's compliance deadline under the emergency regulations is July 14, 2025.

If Middleborough does not submit an Action Plan to achieve interim compliance, and/or does not meet its July 14, 2025, district compliance deadline, it will be ineligible for funds from the Housing Choice Initiative, the Local Capital Projects Fund, the MassWorks infrastructure program, and the HousingWorks infrastructure program. Additionally, Middleborough would remain ineligible for the MBTA Communities Catalyst Fund which was announced by Governor Healey in June 2024. Please note that all discretionary grant programs across the Healey-Driscoll Administration take compliance with the MBTA Communities Law into consideration when making funding decisions.

EOHLC will continue to provide updates related to compliance statuses under G.L. c. 40A, Section 3A as it promulgates and adopts permanent regulations. If you have questions or need further assistance

regarding this information, please contact MBTA Communities Compliance Coordinator Nathan Carlucci at nathan.carlucci@mass.gov. Thank you for your continued collaboration implementing this important housing law.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward M. Augustus, Jr." The signature is fluid and cursive, with a large, stylized 'E' at the beginning.

Edward M. Augustus, Jr.
Secretary

cc: Senator Kelly Dooner
Representative Kathleen LaNatra
Representative John Gaskey
Representative Norman Orrall
Leeann Bradley

Exhibit S



Commonwealth of Massachusetts
EXECUTIVE OFFICE OF HOUSING &
LIVABLE COMMUNITIES

Maure T. Healey, Governor ♦ Kimberley Driscoll, Lieutenant Governor ♦ Edward M. Augustus Jr., Secretary

Via Email: jmcgrail@middleboroughma.gov

February 19, 2025

Town Manager James McGrail
Town of Middleborough
10 Nickerson Avenue
Middleborough, MA 02346

**Re: Middleborough – Notification of noncompliance with Section 3A of the Zoning Act
(Section 3A)**

Dear Town Manager McGrail:

I am writing to officially notify you that, for the reasons explained below, the Town of Middleborough is noncompliant with M.G.L. c. 40A, § 3A (the MBTA Communities Law).

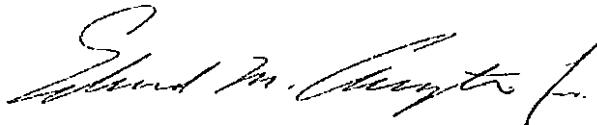
On January 8, 2025, the Supreme Judicial Court published its opinion in the case of *Attorney General v. Town of Milton*, confirming Section 3A is constitutional and valid, and that the Attorney General has the power to enforce it. The Court also held that the Executive Office of Housing and Livable Communities (EOHLC) must promulgate the law's implementing guidelines through the Administrative Procedures Act if they are to be enforceable. In response, EOHLC filed emergency regulations with the Secretary of the Commonwealth on January 14, 2025, and plans to adopt permanent regulations after a public comment period. The regulations are filed as: 760 CMR 72.00 Multifamily Zoning Requirement for MBTA Communities. They can be viewed at mass.gov/mbtacommunities.

The emergency regulations provided Middleborough an opportunity to come into interim compliance by submitting a new Action Plan by February 13, 2025. EOHLC has not received an action plan from your Town. **Middleborough is therefore noncompliant with Section 3A.**

The consequences of noncompliance are significant. As Attorney General Andrea Campbell advised communities on March 15, 2023, compliance with the MBTA Communities Law is mandatory. All discretionary grant programs across the Healey-Driscoll Administration take compliance with the MBTA Communities Law into consideration when making funding decisions.

While we are disappointed that Middleborough has not submitted an action plan, we are hopeful that we can continue to work with the Town to ensure that Middleborough can achieve compliance with the MBTA Communities law. If you have questions or need further assistance regarding this determination, please contact MBTA Communities Compliance Coordinator Nathan Carlucci at nathan.carlucci@mass.gov.

Sincerely,



Edward M. Augustus, Jr.
Secretary

cc: Attorney General Andrea Campbell
Senator Kelly Dooner, kelly.dooner@masenate.gov
Representative Kathleen LaNatra, kathleen.lanatra@mahouse.gov
Representative John Gaskey, John.Gaskey@mahouse.gov
Representative Norman Orrall, norman.orrall@mahouse.gov
Secretary Yvonne Hao, Executive Office of Economic Development
Naveet Bal, Executive Director MassDevelopment

Exhibit T

BOSTON'S MORNING NEWSLETTER

Gov. Healey warns cities and towns against disregarding MBTA Communities Act

December 08, 2023

By Nik DeCosta-Klipa



A 140-unit development under construction in 2019 in the Newtonville neighborhood of Newton. The city recently passed scaled-back zoning changes to comply with the state's MBTA Communities Act. (Pat Greenhouse/The Boston Globe via Getty Images)

This article is more than 1 year old.

Editor's Note: This is an excerpt from WBUR's daily morning newsletter, *WBUR Today*. If you like what you read and want it in your inbox, [sign up here](#).

TGIF! With just over three weeks left in the year, we want to know: What should Boston's New Year's resolution be? Whether you want fewer MBTA slow zones or more daring Bailey Zappe passes, **fill out this form** to share your resolution for the city in 2024.

Now, to the news:

Gov. Maura Healey has a 2024 resolution for the cities and towns around Boston: build more housing. During yesterday's appearance on *Radio Boston*, the governor issued a warning to the communities that don't comply with the MBTA Communities Act, as a dozen inner suburbs approach the law's first deadline on Dec. 31. "If you don't comply with the act, then you're going to see us withholding as a state money for any number of programs that you're used to receiving money for," Healey said. "That includes for schools, it includes for roads and bridges, it includes for a whole host of things that are important to communities."

- The law broadly requires communities in the MBTA's service area to allow multi-family housing (i.e. apartments, condos, etc.) to be built — without special permits — near public transit stops. Those with rapid transit stops must meet stricter requirements by Dec. 31, while others have more time. The state has a map and chart showing the specific requirements for each city and town.
- Heated battles have been playing out this fall in communities like Newton, as some pushed back against required zoning changes. Meanwhile, Milton and Braintree are edging up against the end-of-the-year deadline. Healey stressed to *Radio Boston* host Tiziana Dearing that her administration will take enforcement of the zoning law "very seriously." "We took the existing list of programs that communities weren't going to get money for if they didn't comply and we more than doubled that list," she said.

- Go deeper: Listen to this *Radio Boston* segment from last week for a closer look at the debate over the MBTA Communities Act.
- The big picture: Healey said “housing is the top priority” for her administration, as they try to increase the supply to bring down costs. WBUR’s Amanda Beland has more here on how Healey’s new economic development plan plays into that effort.

NoWa: After a year of delay, MassDOT is planning to open half of the new North Washington Street Bridge between Boston’s North End and Charlestown this weekend. Beginning tomorrow, both car and foot traffic will shift from the adjacent temporary bridge that was built during the project to the eastern half of the new bridge.

- About the project: The new NoWA bridge (yes, I’m calling it that) is replacing the demolished “Charlestown Bridge” that originally opened in 1900 and once carried the elevated Orange Line. The crossing is used by tens of thousands of vehicles a day, not to mention the many tourists who cross it on the Freedom Trail.
- What’s next: Officials plan to fully open both sides of the new bridge next winter. When complete, it will include two car lanes in both directions, an inbound bus-only lane, separated bike lanes and wide sidewalks on both sides. Here’s what it will look like.

Massachusetts is closing the overflow family shelter site it set up three weeks ago in the state transportation building in Boston today. WBUR’s Gabrielle Emanuel reports that 25 families who were on the waitlist for the shelter system were staying overnight in conference rooms in the building.

- What’s next: While the Healey administration says an additional overflow site will open soon, it’s unclear where the families will go in the short term. Officials plan to move the temporary shelter from the

transportation building to a site in Quincy, but state data shows the emergency beds there are already full.

More MBTA fare discounts for low-income riders could be around the corner. During a meeting yesterday, T officials said they could present the proposed changes as soon as next month. While they're still working on the details, the low-income fare program could benefit up to 60,000 riders with incomes below 200% of the federal poverty line who aren't eligible for the T's current reduced fare offerings.

Just in: Healey announced this morning that she is nominating State Solicitor Elizabeth "Bessie" N. Dewar to fill one of the two soon-to-open seats on the state's Supreme Judicial Court. Dewar — who Healey called a "consensus builder" and a "true student of the institution" — is nominated to take the seat of Justice Elspeth B. Cypher, who plans to retire on January 12, 2024.

P.S.— Who or what did President Biden say will put democracy at risk at his speech in Boston this week? Take our Boston News Quiz and test your knowledge of this week's stories.



Nik DeCosta-Klipa Senior Editor, Newsletters

Nik DeCosta-Klipa is a senior editor for newsletters at WBUR.

[More...](#)

Exhibit U



Kevin Avitabile <kavitabile@middleboro.k12.ma.us>

GEM\$ - Funding Application Comment Added: Middleborough (0182) Public School District - FY 2025 - FC 0311 FY2025 Supporting Students' SEL, Behavioral & Mental Health, and Wellness (State/COMP) - Rev 0 - History Log

1 message

noreply@egrantsmanagement.com <noreply@egrantsmanagement.com>

Thu, Nov 21, 2024 at 4:32

PM

To: kavitabile@middleboro.k12.ma.us

We are delighted to inform you that your district's grant application for the **FC0311 FY25 Supporting Students' SEL, Behavioral & Mental Health, and Wellness Grant** has been awarded.

Your grant has been awarded with a start date of 11/21/24 so any grant expenditures may be incurred as of this date. Once DESE's grants office reviews, a Grant Award Notice will be generated by GEM\$ and available in your grant record.

We are also currently waiting for the approval to release the funding. Once approved, an official award letter will be available through GEM\$. Once final approvals are received, funds will be available to draw down to reimburse those expenses.

Information about the grant kickoff meeting will be provided soon. In addition, grantees will participate in two networking opportunities - one virtually and one in-person with the Department and partners. There will also be opportunities for teams to participate in professional learning communities. More information to come.

Feel free to contact us if you have any questions.

[Grants for Education Management System Home](#)

Emily Caille
7813386303
Emily.Caille@mass.gov

2/25/25, 1:40 PM

Middleborough Public Schools Mail - FC0311 FY2025 Supporting Students' SEL, Behavioral & Mental Health, and Wellness

[Quoted text hidden]

Kevin Avitabile <kavitabile@middleboro.k12.ma.us>
To: "Pond, Christine A. (DESE)" <Christine.A.Pond@mass.gov>

Fri, Dec 6, 2024 at 2:11 PM

Thanks

[Quoted text hidden]

Pond, Christine A. (DESE) <Christine.A.Pond@mass.gov>
To: "Avitabile, Kevin (EXT)" <kavitabile@middleboro.k12.ma.us>

Fri, Dec 6, 2024 at 2:12 PM

You're welcome!

[Quoted text hidden]

Kevin Avitabile <kavitabile@middleboro.k12.ma.us>
To: "Pond, Christine A. (DESE)" <Christine.A.Pond@mass.gov>

Thu, Jan 9, 2025 at 1:09 PM

Hi Chris

Just following up on the budget approval for FC 311.
Due to timeline in grant approval, a few items were already past by time we received approval for grant, so I need to make amendments. Has there been any update on this?

Thanks

Kevin

[Quoted text hidden]

Pond, Christine A. (DESE) <Christine.A.Pond@mass.gov>
To: "Avitabile, Kevin (EXT)" <kavitabile@middleboro.k12.ma.us>

Thu, Jan 9, 2025 at 2:19 PM

Hi Kevin,

I hope all is well. First, here is what went out with regarding the award approval.

As noted in the notice of your grant award in DESE's GEM\$, Middleborough's grant application for the FC0311 FY25 Supporting Students' SEL, Behavioral & Mental Health, and Wellness Grant was awarded. It was awarded with a start date of 11/21/24 so any grant expenditures may be incurred as of that date. Once DESE's grants office reviews, a Grant Award Notice will be generated by GEM\$ and available in your grant record. We are still waiting for the approval to release the funding – this is why the Award Status states "Pending Funding Approval." Once approved, an official award letter will be available through GEM\$. Once final approvals are received, funds will be available to draw down to reimburse those expenses.

Please keep track of the activities you need to amend and when the funding is uploaded you will be able to make those adjustments.

[Quoted text hidden]

Kevin Avitabile <kavitabile@middleboro.k12.ma.us>
To: "Pond, Christine A. (DESE)" <Christine.A.Pond@mass.gov>

Thu, Jan 9, 2025 at 3:26 PM

Thanks Chris,
Yes I do remember seeing that and have incurred expenses since that date- I just had some things that I originally wrote in the grant in early October that occurred prior to the 11/21 date so I need to amend that expense to something else. I realize you have no control over when the budget is approved but I was just curious

Thanks

Kevin

[Quoted text hidden]

Pond, Christine A. (DESE) <Christine.A.Pond@mass.gov>
To: "Avitabile, Kevin (EXT)" <kavitabile@middleboro.k12.ma.us>

Thu, Jan 9, 2025 at 3:33 PM

Oh ok thank you for the clarification.

[Quoted text hidden]

Briana Bernard <bbbernard@middleboro.k12.ma.us>
To: "Pond, Christine A. (DESE)" <Christine.A.Pond@mass.gov>
Cc: "Avitabile, Kevin (EXT)" <kavitabile@middleboro.k12.ma.us>, "Caitie, Emily (DESE)" <Emily.Caitie@mass.gov>

Wed, Feb 5, 2025 at 9:56 AM

Hi Christine,

Just following up.

Briana Bernard
Middleborough Public Schools
Grant Specialist

p:(508)946-2000 ext. 2124



Powered
by Google

Kevin Avitabile <kavitabile@middleboro.k12.ma.us>

GEM\$ - Funding Application Comment Added: Middleborough (0182) Public School District - FY 2025 - FC 0311 FY2025 Supporting Students' SEL, Behavioral & Mental Health, and Wellness (State&Fed/COMP) - Rev 0 - History Log

2 messages

noreply@egrantsmanagement.com <noreply@egrantsmanagement.com>
To: kavitabile@middleboro.k12.ma.us

Thu, Feb 20, 2025 at 3:08 PM

To Fiscal Representative and Superintendent:

Grant programs generally require that grantees certify compliance with state laws. In addition, the Healey-Driscoll Administration believes in the MBTA Communities Act and has directed all agencies to take the goal of increasing housing into account in making discretionary funding determinations.

Office of Student and Family Support

[Grants for Education Management System Home](#)

Emily Callie
7813386303
Emily.Callie@mass.gov

Kevin Avitabile <kavitabile@middleboro.k12.ma.us>
To: Briana Bernard <bbernard@middleboro.k12.ma.us>

Thu, Feb 20, 2025 at 3:10 PM

What does this mean?

Kevin Avitabile
Middleboro Public Schools
Director of Student Services
508-930-2020

Begin forwarded message:

From: noreply@egrantsmanagement.com
Date: February 20, 2025 at 3:08:32 PM EST
To: kavitabile@middleboro.k12.ma.us
Subject: GEM\$ - Funding Application Comment Added: Middleborough (0182) Public School District - FY 2025 - FC 0311 FY2025 Supporting Students' SEL, Behavioral & Mental Health, and Wellness (State&Fed/COMP) - Rev 0 - History Log

To Fiscal Representative and Superintendent:

[Quoted text hidden]

[Quoted text hidden]



Kevin Avitabile <kavitabile@middleboro.k12.ma.us>

FC311

6 messages

Kevin Avitabile <kavitabile@middleboro.k12.ma.us>
To: "Pond, Christine A. (DESE)" <Christine.A.Pond@mass.gov>

Mon, Feb 24, 2025 at 1:30 PM

Hi Chris,
I just saw this release and noticed that Middleboro is not listed. Did something change as this was DESE Program
Reviewed - Awarded.
Thanks for any information you can provide
Kevin

<https://www.mass.gov/news/healey-driscoll-administration-awards-55-million-to-60-school-districts-to-expand-student-behavioral-and-mental-health-services#:~:text=Boston%20%E2%80%94%20The%20Healey%20Driscoll%20Administration,mental%20health%20services%20and%20support.>

--

**Kevin Avitabile**

Director of Student Services
Middleborough Public Schools
p: (508)946-2000 x3730
c: 774-384-3498
a: 6 School St, Middleborough, MA 02346
e: kavitabile@middleboro.k12.ma.us

Pond, Christine A. (DESE) <Christine.A.Pond@mass.gov>
To: "Avitabile, Kevin (EXT)" <kavitabile@middleboro.k12.ma.us>

Mon, Feb 24, 2025 at 1:38 PM

Good afternoon, Kevin,

I am sorry to share this, and your town was notified about this issue below. We sent an email through GEM\$ last week when we were informed. Given this information your district is not eligible to receive the grant since Middleborough is not in compliance with state law and this funding is coming from the state budget.

Best,

Chris

To Fiscal Representative and Superintendent:

Grant programs generally require that grantees certify compliance with state laws. In addition, the Healey-Driscoll Administration believes in the MBTA Communities Act and has directed all agencies to take the goal of increasing housing into account in making discretionary funding determinations.

From: Kevin Avitabile <kavitabile@middleboro.k12.ma.us>
Sent: Monday, February 24, 2025 1:31 PM
To: Pond, Christine A. (DESE) <Christine.A.Pond@mass.gov>
Subject: FC311

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

[Quoted text hidden]

All email correspondence is subject to the requirements of M.G.L. Chapter 66, §10. Under Massachusetts Law, any email created or received by an employee of Middleborough Public Schools is considered a public record. This email is intended for educational use only and must comply with Middleborough Public Schools Acceptable Use Policy. This email may contain confidential and privileged material for the sole use of the intended recipient. Any review or distribution by others is strictly prohibited. If you are not the intended recipient please contact the sender and delete all copies. The Middleborough Public School Systems does not discriminate in its educational activities or employment practices on the basis of age, color, creed, disability, ethnicity, gender identity, genetic information, homelessness, marital status, national origin, political affiliation, pregnancy, race, religion, sex, sexual orientation, veteran or military status, or any other basis protected by federal and/or state law.

Kevin Avitabile <kavitabile@middleboro.k12.ma.us>
To: "Pond, Christine A. (DESE)" <Christine.A.Pond@mass.gov>

Mon, Feb 24, 2025 at 1:44 PM

Hi Chris,
My Superintendent and I would love a more detailed explanation. Is there someone we should speak with?
I have been participating in this grant for the past several months and in fact attended the sessions last week and have a team scheduled to attend a meeting next week. I assume we no longer have to participate in those?

Kevin

[Quoted text hidden]

Pond, Christine A. (DESE) <Christine.A.Pond@mass.gov>
To: "Avitabile, Kevin (EXT)" <kavitabile@middleboro.k12.ma.us>
Cc: "Briana L. Bernard" <bbernard@middleboro.k12.ma.us>

Tue, Feb 25, 2025 at 8:09 AM

Good morning,

I sent your request to someone at DESE, and they are looking into who can speak with you about this decision.

Best,

Chris

[Quoted text hidden]

Briana Bernard <bbernard@middleboro.k12.ma.us>
To: "Pond, Christine A. (DESE)" <Christine.A.Pond@mass.gov>
Cc: Kevin Avitabile <kavitabile@middleboro.k12.ma.us>

Tue, Feb 25, 2025 at 8:32 AM

Hi Christine,

Just trying to understand as Emily said we were able to spend the funds, but we're in fact not awarded the grant because Middleborough is not participating in the Healey-Driscoll Administration MBTA Communities Act?

RE: FC0311 FY2025 Supporting Students' SEL, Behavioral & Mental Health, and Wellness [\(DESE\)](#) [\(Mass\)](#)

 **Caile, Emily (DESE)**
1 day earlier 2/25/25

I am recopying one of the original receivers on this thread from 12/6.

As noted in the notes of your grant award in DESE's GES, Middleboro's grant application for the FC0311 FY25 Supporting Students' SEL, Behavioral & Mental Health, and Wellness Grant was awarded. It was awarded with a start date of 1/1/2024 so any grant expenditures may be incurred as of that date. Once DESE's grants officer receives a Final Award Notice, it will be generated by GES and available in your grant record. We are still waiting for the approval to release the funding - this is why the Award Status states "Pending Funding Approval". Once approved, an official award letter will be available through GES. Once final approvals are received, funds will be available to draw down to reimburse those expenses.

Hope this helps! Emily

From: Briana Bernard <bbernard@middleboro.k12.ma.us>

To: Caile, Emily (DESE) <emily.caile@mass.gov>

Cc: Avitabile, Kevin (EXT) <kavitabile@middleboro.k12.ma.us>; Pond, Christine A. (DESE) <Christine.A.Pond@mass.gov>

Subject: Re: FC0311 FY2025 Supporting Students' SEL, Behavioral & Mental Health, and Wellness

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Hi Emily

Since no the status says that we've been awarded, does that mean we are able to start spending the funds?

Briana Bernard
Middleborough Public Schools
Grant Specialist

p:(508)946-2000 ext. 2124

f: (508)946-2004

a: 30 Forest Street, Middleborough, MA 02346

e: bbernard@middleboro.k12.ma.us

[Quoted text hidden]

Pond, Christine A. (DESE) <Christine.A.Pond@mass.gov>
To: Briana Bernard <bbernard@middleboro.k12.ma.us>
Cc: "Avitabile, Kevin (EXT)" <kavitabile@middleboro.k12.ma.us>

Tue, Feb 25, 2025 at 8:37 AM

Yes, the email we sent specified why Middleboro is not eligible to receive funding. I do not have any additional information. As soon as I know who you can speak with, I will share that information.

Best,

Chris

From: Briana Bernard <bbernard@middleboro.k12.ma.us>
Sent: Tuesday, February 25, 2025 8:32 AM
To: Pond, Christine A. (DESE) <Christine.A.Pond@mass.gov>
Cc: Avitabile, Kevin (EXT) <kavitabile@middleboro.k12.ma.us>
Subject: Re: FC311

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Hi Christine,

Exhibit V



Grants and Other Financial Assistance Programs

FY2025: Supporting Students' Social Emotional Learning, Behavioral & Mental Health, and Wellness — (SEL & Mental Health) Competitive Grant

Fund Code: 0311

Purpose:

Research has shown that students' well-being is critically important to their academic and overall success. Data from various state and national sources continue to highlight the need for resources and collaboration to address the social and emotional and behavioral and mental health needs of students, families, and schools. As we continue to navigate and understand the long-term impacts of the pandemic and our country's reckoning with racial injustice on mental well-being it is critical that we consider community and system work to address the individual and varying needs across sectors and settings.

The purpose of this state-funded competitive grant program is to adapt, expand, and strengthen multi-tiered systems of support (MTSS) to respond to the social-emotional and behavioral and mental health needs of students, families, and educators and to build strong partnerships with community-based mental health agencies and/or providers to create comprehensive mental health systems.

This grant aims to build capacity of school districts, charter schools, and educational collaboratives to do the following:

- develop comprehensive, integrated multi-tiered systems for student, family, and educator social-emotional and/or mental health supports; and
- build sustainable infrastructure to facilitate integrated coordination between school students, families, school staff, and community-based services and/or providers.

This grant supports the Department of Elementary and Secondary Education's (Department's or DESE's) Educational Vision, specifically efforts to "cultivate systems to support the whole student and foster joyful, healthy, and supportive learning environments so that all students feel valued, connected, nourished, and ready to learn."

Priorities:

Through this grant initiative, participating districts are asked to prioritize the following areas as they relate to social-emotional and behavioral health for students, staff, and families. Applicants are expected to propose activities that align with the priorities below.

- **Racial Equity and Cultural Responsiveness:** Ensure that the approach to teaching, modeling, and integrating social-emotional learning (SEL) is done from a culturally responsive lens. This includes providing professional development and coaching to staff on culturally responsive social-emotional and/or mental health practices; conducting culturally responsive, universal mental health screening and developing systems to respond to student needs in a racially equitable manner; strengthening systems to solicit student and family leadership and feedback that is fully representative of the school community including individuals who have been historically marginalized. In addition, schools and districts are expected to engage students and families to ensure that social-emotional learning efforts reflect the school and district community values and centers racial equity. This also includes approaching this work from a community lens and not just a school perspective. Lastly, schools and districts are urged to ensure that all voices are heard and consider who is being burdened by systems and policies that may mitigate harm.
- **Universal Mental Health and Social Emotional Screening Systems:** Ensure screenings are conducted to identify tier I, II, and/or III needs that are matched with strategic supports, evidence-based and create policies and protocols that are embedded in school culture and climate practices for sustainability and scalability efforts.
- **Evidence-Based Interventions and Supports:** Ensure schools utilize evidenced-based social-emotional and behavioral health interventions and supports, and that staff receive the necessary professional development and coaching to implement them with fidelity. This can include a range of efforts that include but are not limited to tier 1 (universal) supports implemented by classroom teachers and tier 2/3 (supplemental, small group, and more intensive) interventions implemented by student support staff/clinicians.
- **Develop strong data systems:** Ensure data is used to inform decision-making, monitor trends, and create resources to build sustainable and scalable efforts in schools and districts.
- **Sustainable Systems & Partnerships:** Establish and/or strengthen sustainable systems and multi-year partnerships (including students, family, community-based services and/or providers, and professional development providers, etc.).

Applicants will prioritize activities aligned, but not limited to those detailed for each of the following categories:

English

Coordinate Services through Multi-Tiered Systems of Support (required)

A Multi-Tiered Systems of Support (MTSS) is a framework for how school districts can build the necessary systems to ensure that each and every student receives a high-quality educational experience. It is designed to support schools with proactively identifying and addressing the strengths and needs of all students by optimizing data-driven decision-making, progress monitoring, and the use of evidence-based supports and strategies with increasing intensity to sustain student growth. Please refer to the DESE website for further resources on MTSS: [Multi-Tiered System of Support \(MTSS\)](#).

- utilize an [MTSS tool](#) developed by DESE and partners as a self-assessment to guide work;
- redesign student support staffing models to support a more proactive and deliberate multi-tiered approach to social-emotional learning and behavioral health and wellness;
- create a comprehensive approach to tier 1 social-emotional learning and behavioral health;
- provide robust, evidence-based tier 2 and tier 3 supports and interventions;
- ensure all social-emotional learning and behavioral health practices, policies, and supports across all three tiers are culturally-responsive and equitable;
- develop effective planning and feedback structures with students, families, and caregivers to ensure that social emotional learning efforts reflect the school community's values and priorities;
- ensure the necessary systems are put in place to monitor implementation and sustain/scale successful practices and policies;
- provide on-going professional development (including coaching) for staff members to enhance culturally-responsive tier 1 social-emotional learning for students, and recognize and respond to mental and behavioral health challenges that may arise;
- participate in free Department-sponsored professional development (PD) to support school staff in identifying and supporting students in need of social emotional, behavioral, and/or mental health services; and
- offer other activities aligned with the priorities of the grant.

Create and sustain partnerships with Community-Based agencies this can include other Local Education Agencies to increase Access to Services and resources (required)

- work with community-based providers to identify options for increased collaboration, provision of mental health/behavioral health services on site (at school) and/or in the community;
- build infrastructure for cross-system coordination to improve integration of behavioral and mental health supports for continuity of care for children, youth and families to ensure seamless transitions between schools and communities;
- design or implement improvements to data systems and software applications to facilitate mapping of school and community-based resources, making referrals, tracking students' use of services, monitoring the impact of services, and identify implications for future services (subject to compliance with all applicable state and federal laws regarding data security and privacy);
- implement strategies and partnerships to foster sustained behavioral and mental health supports for students and families; these strategies should be aligned with locally-created action plans that extend beyond the grant period (e.g., funding startup costs for the initial offering of services on-site to students eligible for the Children's Behavioral Health Initiative or MassHealth, commercial insurance providers, or other sources that extend beyond the grant period);
- develop comprehensive systems of care through written policies and practices that are sustainable and scalable; and
- create multi-year partnership agreements with community-based and other partner organizations to support systemic approaches to address social-emotional and behavioral health needs for staff, students, and families.

Piloting Universal Mental Health Screening Systems: (optional)

note: if you have previously received funding to participate in the Universal Mental Health Screening pilot you are not eligible to apply in FY2025.

DESE will allocate at least \$1,000,000 of the total available funds towards this option. Applicants may apply for up to \$50,000 to support the following activities:

Definition of a Universal Mental Health Screening tool:

Mental Health Screening tools- are essential in detecting mental health disorders—like anxiety, mood disorders, stressors, and trauma—early.

- pilot/implement evidence-based, universal mental health screenings for students in kindergarten to grade 12;
- design and implement necessary data systems to collect, analyze, and report on universal screening data;
- establish protocols for mental health support teams to: analyze and respond to universal mental health screening data, monitor the impact of supports/services and make adjustments as needed; gauge implications for future strategic planning; and ensure compliance with all applicable state and federal laws regarding data security and privacy;
- other activities to support the priorities of this grant, provided that they are part of a coordinated approach to implement universal mental health screening and subsequent supports, and are either one-time activities that have a longer-term impact (e.g., professional development needs associated with mental health screening), and/or activities that have a reasonable likelihood of being continued

and sustained beyond the grant period through other funding sources (e.g., funding startup costs for purchasing mental health screening, with the goal of sustaining these services through other sources after the end of grant funding). English

Applicants choosing to participate in piloting universal mental health screening will also be expected to compile and submit an end of grant report no later than **June 20, 2025**, which will include the following data*:

- number of students who received mental health screenings, delineated by demographic group and grade level;
- number of students requiring additional support or follow-up screenings;
- length of time between the initial screening and subsequent support services provided;
- number of students referred for additional support services outside of the school district;
- Types of screening tools used.

Additional information that will be captured in report:

- description of the participants in the pilot program;
- summary of the data collected from program participants; and
- recommendations to further expand the availability of mental health screenings for students

* *The Department with support from its vendors will provide a template for this report*

Coaching will also be offered to grantees who choose this category.

Competitive priority will be given to:

- Districts and schools in chronically underperforming status and the Strategic Transformation Region.
- Districts and schools in which a new emergency assistance family shelter (or hotel used as a shelter) is/was opened by the Commonwealth and propose activities that support the behavioral, mental and emotional health needs of the students placed there;
- Applicants with limited access to mental and behavioral health services and/or limited existing financial resources;
- Applicants that have conducted a self-assessment aligned with a multi-tiered social-emotional and behavioral health framework and created a plan to address their identified areas of need. Some example assessments include Safe & Supportive Schools Framework & Self-Reflection Tool, and the School Health Assessment and Performance Evaluation System (SHAPE), developed by the National Center for School Mental Health etc.;
- Applicants that are participating in one of the following networks and/or MTSS Academies; or Social, Emotional, and Behavioral or Systemic Student Support (S3) Academies;
- Competitive priority will be given to districts, or districts with one or more schools, where the proportion of high needs students enrolled in school year 2023-2024 was at least 56% (the 2024 statewide average). **Note:** "high needs" students are students who belong to one or more of the following student groups: students with disabilities, English learners (ELs) and former ELs, and students from low income families.

Eligibility:

Massachusetts public school districts, charter schools, and educational collaboratives are eligible to apply.

Funding Type:

State: 7061-0028

Federal (CFDA) 84.424

Federal grant funds must adhere to:

- UGG (2 CFR 200)
- EDGAR As Applicable
- EDGAR General Fiscal Administration 34 CFR Part 76

Grant awards are contingent upon the grantee being able to certify that it will comply with the Massachusetts General Laws, including G.L. c. 40A, § 3A, the MBTA Communities Act.

Funding:

Approximately \$5,600,000 is available.

This RFP is the governing document for these grant funds.

Funding is contingent upon availability. All dollar amounts listed are estimated/approximate and are subject to change. If more funding becomes available, it will be distributed under the same guidelines that appear in this RFP document.

Applicants may apply for up to a total of \$100,000 for implementation of activities proposed to support the required priority English
Applicants that choose to participate in a Universal Screening Pilot may apply for up to an additional \$50,000.

Applicants' requests for funding should be commensurate with the scope of activities proposed and consider that grant awards are anticipated to be made official in late-November or early-December.

All grant awardees will be expected to participate in a in-person grant kickoff meeting, two networking meetings and one in-person end of year event that will be facilitated by the Department (DESE) and/or its professional development partners during the course of the grant.

Note: Efforts proposed through this grant must be supplementary and complementary to (and not supplant) what is funded through other grants/contracts.

Fund Use:

These funds must be used in ways that are aligned to the grant purpose and priorities described above and that have reasonable likelihood of being sustained (and/or having impact) beyond the grant period.

Fund use may include, but is not limited to:

- Contracting with partners who provide one or more of the following services:
 - evidence-based universal mental health screening tools, data analysis, and support;
 - the design and implementation of integrated student support systems to assess the strengths and needs of all students and develop academic and social-emotional plans for students;
 - develop and support bridge programs for school re-entry after prolonged absences to promote healing, wellness, and academic success;
 - other services aligned with the priorities of this grant.
- Professional development and coaching for staff (educators, student support staff, administrators, etc.);
- Salaries for employees or contracted staff who will be directly supporting strategies outlined in the plan;
- Stipends to support planning, meetings, travel, or local professional development (including DESE-sponsored opportunities); **Note: out of state travel is not allowable for this grant. Travel for professional development should be directly related to grant requirements and priorities.**
- Relevant resources and/or materials;
- Contracted services with community-based partners; and
- Partnership coordination activities.

MTRS is **Not** an allowable expense on this state-funded grant.

Project Duration:

Upon approval ~ 6/30/2025

Pending appropriation and meeting grant requirements grantees may be eligible for a one-year continuation grant in FY2026.

Program Unit:

Student and Family Support

Contact:

Chris Pond 

Date Due:

Monday, October 21, 2024, 5:00p.m. Eastern*

Proposals must be received at the Department by 5:00p.m. Eastern on the date due.

*All responses must be received by the due date listed above. Failure to do so will result in disqualification. Responses not received on time will not be reviewed. Applicants applying after the due date may be notified their application was received late and will not be reviewed.

Applications must be submitted as directed in the Submissions Instructions below. Failure to do so may result in disqualification. If you need assistance with submitting your application, please reach out to the contact person listed on this funding opportunity.

Competitive grant applications are considered submitted when the Superintendent / Chief Executive approves the grant application in GEM\$. In order to be considered for competitive funding, applicants must submit a grant application through the LEA Superintendent Approved stage by the due date listed in the RFP.

Required Forms:

All forms are submitted through GEM\$.

Additional Information:

The Department will hold a Question and Answers Session via webinar. Use the [online registration](#) to register. During this session, the Department will answer applicants' questions. Questions may be submitted in advance of the session to achievement@mass.gov with the subject line "SEL and Mental Health grant question". Due to the competitive nature of this grant, questions and responses will be shared during this session so that all potential applicants have the opportunity to hear the information.

Submission Instructions:

The FY2025 0311 Supporting Students' Social Emotional Learning, Behavioral & Mental Health, and Wellness — (SEL & Mental Health) Competitive Grant Competitive Grant will be submitted in the Department's new GEM\$ system. GEM\$ is a cloud-based fiscal and program management grant system that will eventually phase out the use of EdGrants.

- [Grants for Education Management System \(GEM\\$\)](#)

Competitive grant applications are considered submitted when the Superintendent / Chief Executive approves the grant application in GEM\$. In order to be considered for competitive funding, applicants must submit a grant application by the due date listed in the RFP.

The Superintendent / Chief Executive Approved Step allows for the organization lead to review and approve the grant application. Removing the requirement for the Part I Standard Contract Form, this step signifies Superintendent /Chief Executive sign off. Any grant budget changes requiring signature, will re-execute this step when amended signifying the organization lead is approving these changes.

New Organizations: Grant Submission requires applicants to have their organization established in GEM\$. Entities that do not have an organization in GEM\$ **must** contact the DESE Program Unit issuing this grant **at a minimum 5 business days prior to the grant due date** for temporary organization access.

Failure to provide DESE with [GEMS Request Form](#) at least 5 business days prior to the due date may result in not meeting the submission due date listed above. DESE cannot accept or review applications after the due date.

Please Note: Grant Submission at the LEA level requires roles to be established for Grant writer for the specific fund code, LEA fiscal for financial review/ approval, and Superintendent/Chief Executive sign off. All these roles should be established prior to the grant due date and all appropriate forms should be either uploaded to GEM\$, maintained at the LEA level or sent in to the DESE RFP contact as described on the individual forms. The user guidance documents and forms are found on the GEM\$ homepage under DESE Resources. These form can be accessed without logging in to the system.

Last Updated: January 15, 2025

Exhibit W



Student and Family Support (SFS)

Safe and Supportive Schools Grants

1. Safe and Supportive Schools Grants
 - a. Fund Code (FC) 335 Safe and Supportive Schools Competitive Grant
 - b. Fund Code (FC) 337 Safe and Supportive Schools Continuation Grant
 - c. Safe and Supportive Schools Grant Program Evaluation
 - d. Previous Safe and Supportive Schools Competitive Grant Recipients
2. Webinars
3. Professional Development Opportunities — for Grantees and Others
4. Student and Family Voice
5. Additional Resources

The Safe and Supportive Schools Grant Programs (Fund Code 335 and 337) are state-funded programs, funded through state line item 7061-9612.

Most specifically, this work is intended to help districts ensure that each school creates a safe, positive, healthy, equitable and inclusive whole-school learning environment and makes effective use of a system for integrating services and aligning initiatives that promote students' behavioral health, including social and emotional learning, bullying prevention, trauma sensitivity, dropout prevention, truancy reduction, children's mental health, foster care and homeless youth education, inclusion of students with disabilities, positive behavioral approaches that reduce suspensions and expulsions, and other similar initiatives. Schools that receive funding (through their district) under this grant program will either convene a school team, respond to the questions in the Safe and Supportive Schools Self-Reflection Tool, determine areas to prioritize for improvements, and finalize an action plan; or implement and assess progress on a previously created action plan.

The Safe and Supportive Schools Self-Reflection Tool is available for any school to use. It can be accessed by requesting a username and password by emailing achievement@mass.gov. Once completed, schools can use the following documents to complete their action and implementation plans:

- ☒ Safe and Supportive Schools -- Action Plan Guidance and Template
- ☒ Safe and Supportive Schools — Implementation Status Update

1. Safe and Supportive Schools Grants

1a. Fund Code (FC) 0335 Safe and Supportive Schools Competitive Grant

The fiscal year 2024-2025 (FY2025) grant has been awarded. Please see the grant award page for more information.

Grant Program Purpose: The purpose of this state funded competitive grant program is to provide funding to school districts (and their selected schools) to organize, integrate, and sustain school and district-wide efforts to create safe and supportive school environments. Additionally, this grant is designed to coordinate and align student support initiatives based on their findings from completing the Safe and Supportive Schools (SaSS) Framework and Self-Reflection Tool.

The main priorities for this grant are to help ensure that each participating school creates an equitable, safe, positive, healthy, culturally-competent, and inclusive whole-school learning environment for all students, and makes effective use of a system for integrating services and aligning initiatives that promote students' behavioral health and wellness, through one of two grant applicant options:

- **Option One: Action Planning**
These grantees will convene a school team (likely virtually this year) composed of various stakeholders (e.g., including but not limited to teachers, nurses, counselors, family members, etc.) to review and respond to the questions in the SaSS Tool.

Based on the school team's reflections informed by using the SaSS Tool, the team will identify school and district areas to prioritize for improvements related to creating safer and more supportive learning environments, and will finalize a school plan that is aligned to school and district priorities, and a district plan that supports the schools' efforts.

The SaSS action plans shall address all six sections of the SaSS Tool:

- a. *Leadership and Culture*
- b. *Family and Community Engagement*
- c. *Professional Learning Opportunities*
- d. *Access to Resources and Services*
- e. *Teaching and Learning that Fosters Safe and Supportive Environments*
- f. *Polices and Procedures*

- **Option Two: Implementation and Support**

These grantees will begin or continue to implement school-focused action plans (and associated district-support plans) that were created in prior year(s), i.e., during or before school year 2023-2024. The creation of those action plans must have been informed by a local self-reflection process using the SaSS/BHPS Framework and Tool.

These grantees will also provide supports for Option One grantees, other new SaSS Tool users, schools and districts that are new to implementation, as well as the Department, Commission, and others as needed and appropriate.

1b. Fund Code (FC) 337 Safe and Supportive Schools Continuation Grant

Grant Program Purpose: The goals of this state funded safe and supportive schools continuation grant program are to:

- Help support implementation of school-wide action plans created by Fund Code 335 (FC 335) Option 1 (Action Planning) grantees in the prior year, and
- Continue, expand, or extend the implementation and support efforts by FC 335 Option 2 (Implementation and Support) grantees.

For current year continuation grantees, these districts (and their selected schools) have worked towards organizing, integrating, and sustaining school and district-wide efforts to create safe and supportive school environments. As part of this work, Option 1 grantees created action plans last year based on their insights gained from completing the Safe and Supportive Schools (SaSS) Self-Reflection Tool (Tool). Schools supported through these continuation grants are also expected to incorporate these action plans into their school improvement plans developed under MGL, c. 69, s. 1l. Option 2 grantees created action plans in last year or earlier and were awarded competitive funds in last year to implement or extend these action plans. Option 2 grantees also provided support to other Tool users, the Department, the Safe and Supportive Schools Commission, or others last year and will this year too.

2024-2025 Fiscal Year (FY2025) Grantees:

Recipients	Amounts
Arlington Public Schools	\$10,000
Assabet Valley Regional Technical Vocational School District (Marlborough)	\$10,000
Bristol County Agricultural High School (Dighton)	\$10,000
Christa McAuliffe Charter School (Framingham)	\$10,000
Clarksburg Public Schools	\$9,500
Freetown-Lakeville Regional School District (Lakeville)	\$10,000
Frontier Regional And Union 38 School District (South Deerfield)	\$10,000
Global Learning Charter School (New Bedford)	\$10,000
Granby Public Schools	\$7,568
Haverhill Public Schools	\$10,000
Hilltown Cooperative Charter School (Easthampton)	\$10,000
Hoosac Valley Regional School District (Adams)	\$10,000
Lowell Public Schools	\$10,000
Martha's Vineyard Public Schools	\$10,000

Recipients	Amounts	English
Milton Public Schools	\$10,000	
North Brookfield Public Schools	\$10,000	
Reading Public Schools	\$10,000	
Southbridge Public Schools	\$10,000	
Springfield Public Schools	\$10,000	
Sutton Public Schools	\$10,000	
Tantasqua Regional School District Union 61 (Fiskdale)	\$10,000	
	Total State Funds \$207,068	

1c. Safe and Supportive Schools Grant Program Evaluation

During school years 2017-2018 and 2018-2019, the Department (DESE) contracted with the Research and Evaluation Department of the Collaborative for Educational Services (CES) to evaluate the Safe and Supportive Schools Grant Program, through a competitive Request for Response (RFR) statewide procurement process. The [2018 grant program evaluation report](#) and [2019 evaluation report](#) outlines themes, positive findings, and common challenges for grantees.

During school years 2020-2021 and 2021-2022, CES reviewed the professional development (Pathways) that was provided during the 2020-2021 school year focused on anti-racist practices. CES also reviewed current supports for and conducted interviews with school and district leaders to determine areas of support that are needed. CES developed a Pathways Report and Leadership Supports Report (available upon request). [Summary themes](#) from prior years' reports were compiled for the Safe and Supportive Schools Commission in winter FY23. Further evaluation is continuing on the use of the revised Safe and Supportive Schools Framework and Self-Reflection Tool, and on alignment between Safe and Supportive Schools action plans and school improvement plans.

During the 2022-2023 school year, CES interviewed grantees and worked with the Safe and Supportive Schools Commission (Commission) to learn more about district and school improvement plans and how schools and districts are working to align and incorporate their SaSS action plans into other work in the school and district. The [Safe and Supportive Schools \(SASS\) Grant Program Fiscal Year 2023 Evaluation Executive Summary](#), and findings were presented to the Commission during their summer retreat and additional supports to grantees from DESE staff were reviewed and incorporated into plans for the 2023-2024 school year.

The 2023-2024 school year work included a review by CES of the submitted grantee Action Plans and Implementation Updates. A final report and two page summary is available upon request.

1d. Previous Safe and Supportive Schools Grant Recipients

[FY24](#) | [FY23](#) | [FY22](#) | [FY21](#) | [FY20](#) | [FY19](#) | [FY18](#) | [FY17](#) | [FY16](#) | [FY14](#) (and continuation grant recipients available upon request)

2. Webinars

[FC 335 FY2025 Competitive Grant — Informational Webinar \(June 2024\)](#)

3. Professional Development Opportunities — for Grantees and Others

- The Safe and Supportive Schools, Rethinking Discipline, and SEL and Mental Health Initiative: [2024-2025 Profession Development Calendar](#)

When possible, these and related events are shared in the [Commissioner's Weekly Update](#), or the [Holistic Supports & Enrichment: Strengthening Social Emotional Competencies, Health & Safety Newsletter](#),

4. Student and Family Voice

The Safe and Supportive Schools line-item states "... that grant awards shall be prioritized to applications that include a process for developmentally appropriate input from students who are reflective of the school population;...". Student and family voice are two critical aspects of a safe and supportive learning environment. Below please find a few examples of resources available related to incorporating student and family voice into the safe and supportive schools self-reflection process and in other aspects of the school and district decision making.

- [Family Engagement Initiatives and Resources](#) — This site is the main clearinghouse for family engagement initiatives, guidance, and resources from the Department. Please contact Family Engagement Specialist [Olga Lopez](#) with any questions.

- **Safe Schools for LGBTQ Students** — The Safe Schools Program for LGBTQ Students informs policy and provides training, assistance, and professional development to school administrators and staff on topics related to gender identity, sexual orientation, and school climate. The Safe Schools Program for LGBTQ Students works closely with students and youth throughout the state and can provide training and resources related to including student voice. Contact Director [Jason Wheeler](#) with questions or for more information.
- **Promoting Safe and Healthy Learning Environments: Elevating Student Voice and Well-Being Competitive Grant Program (Fund Code 0128)** — This grant is designed to help schools and districts engage with students, elevate their voices, and help build administrators' and educators' capacity to engage with students in ways that are developmentally appropriate, culturally responsive, and anti-racist. The grant will help districts implement one of six evidence-based practices: a 21st Century Community Learning Centers (CCLC) high school internship; a PreK-3 Playful Learning Institute; integrating service learning, social emotional learning, and academics; comprehensive health and physical education; youth and teen mental health first aid; and youth participatory action research (YPAR).
 - [FY2025 Grant application](#) — due at 5:00 p.m. on Friday, January 24, 2025
 - Bidder's Conference Slides — will be posted here after the Bidder's Conference.
 - The Question and Answer document — will be posted here and updated as additional questions are submitted. If you have a question, please send it to achievement@mass.gov.
- **Students Speak** — Harvard Law School's Education Law Clinic, part of TLPI, created this site to share what they have learned working with students. The goal is to share lessons from students' own experiences about how to create better schools in order for schools to become safe and supportive learning environments where all students can learn and succeed.

5. Additional Resources

- [From a Nation at Risk to a Nation at Hope](#) — Recommendations from the National Commission on Social, Emotional, and Academic Development
- [Trauma Sensitive Schools Books and Videos and other resources](#) — The Trauma and Learning Policy Initiative's (TLPI) mission is to ensure that children traumatized by exposure to family violence and other adverse childhood experiences succeed in school.
- [Guiding Principles for Creating Safe, Inclusive, Supportive, and Fair School Climates](#) — A resource from the U.S. Department of Education (March 2023)

Last Updated: January 17, 2025