

HOUSING

A new wrinkle in MBTA Communities rebellion, courtesy of DiZoglio

Auditor's office declares that the controversial housing law is an 'unfunded mandate'



by **GINTAUTAS DUMCIUS**

2 days ago



Auditor Diana DiZoglio addresses lawmakers on Tuesday, March 26, 2024 at a State House hearing. (Photo by Chris Lisinski/State House News Service)

AUDITOR DIANA DIZOGLIO determined the MBTA Communities Act is an “unfunded mandate” from the state, drawing a sharp rebuke from Attorney General Andrea Campbell, a top defender of the zoning law that eases regulations for multifamily housing in neighborhoods close to public transit.

DiZoglio's office made the pronouncement in a letter to local officials in Wrentham, a town close to the Rhode Island border. The "unfunded mandate" determination came from the auditor's Division of Local Mandates, which decides whether the Massachusetts state government has provided local governments with the funding required to implement a new law or regulation.

The move prompted Campbell to call the determination incorrect and declare that it carries no impact.

DiZoglio told *CommonWealth Beacon* she was "surprised and taken aback by the rather harsh response and believe it may be due to some misunderstandings as to what this determination means." Her office isn't challenging the MBTA Communities law but instead stating that it's a mandate and the state is required to cover the costs of implementation, she added, noting that she voted for the law as a state legislator.

Housing advocates say the law is needed to increase supply and decrease costs as housing demand soars in Massachusetts. Gov. Maura Healey's administration has said more than 220,000 housing units must be built in the coming decade to lower housing costs.

Officials in Milton challenged the MBTA Communities Act, arguing the attorney general could not force them to comply with the law. They lost in front of the Supreme Judicial Court, which ruled that the law is constitutional and the attorney general has the power to enforce it. That is, as long as regulations are rolled out correctly.

Municipalities and advocacy groups have spent the last few weeks hustling to submit comments on a new version of MBTA Communities regulations before the public comment period closed on February 21.

That same day, DiZoglio's office sent its letter to Wrentham calling it an "unfunded mandate" for cities and towns. Officials in Wrentham, which in a December town meeting rejected complying with the law, asked DiZoglio's office for the determination, as did local officials in Methuen and Middleborough.

DiZoglio's office offered a note of caution, saying "this determination does not guarantee that a municipality will be reimbursed for expenses incurred in complying with the Act. Municipalities can either continue to comply with no guarantee of reimbursement for expenses incurred or ... petition the Superior Court for an exemption from compliance until funding is provided."

DiZoglio's office said they needed more time to calculate a "thorough analysis" of the specific costs involved with the mandate. The office must review fiscal impact statements from the Executive Office of Housing and Livable Communities, among other data sources, the letter said. "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," the letter said.

Campbell hit back in a statement Monday.

"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," she said. "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.”

Through a public relations company, Wrentham officials said they’re reviewing DiZoglio’s letter with their legal counsel as they weigh next steps. The town’s select board is set to meet and discuss the letter at a meeting on Tuesday evening.

DiZoglio said that the law’s language should’ve included a provision for funding. She acknowledged the establishment of state grant programs to cover the cost of compliance set up in 2024, but based her office’s decision on the fact that did not happen at the same time as the establishment of the law, in January 2021, she said.

“I understand how important this issue is to our AG but think that this determination should have been discussed with our office, first, before threatening to battle municipalities in court so that we could’ve potentially alleviated some of the expressed concerns,” DiZoglio said.

Jennifer Smith contributed to this report.