

## NEWS

# Towns are suing state over MBTA zoning law. What they want



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The town of Marshfield is suing Massachusetts over a housing law that the state auditor's office has determined is an "unfunded mandate."

In the lawsuit filed in Plymouth Superior Court on Wednesday, Marshfield wants a judge to exempt the town from having to abide by the MBTA Communities Act until the state can provide money to comply with the law.

The town also wants a judge to declare that the housing law constitutes an unfunded mandate and to prevent the state from withholding grants from noncompliant communities.

Middleboro officials announced Friday that the town would sue the state seeking declaratory judgement and injunctive relief from the housing law.

"It is unfortunate that the Town and its Select Board was obligated to take these measures to protect the rights of its residents; however, this action was authorized in an effort to preserve the status quo, and preserve grant funding, pending the final determination of this matter," Town Administrator Michael Maresco said in a news release.

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Last year, Marshfield voters twice rejected proposed zoning rules that were presented in an effort to comply with the housing law.

## What is the MBTA Communities Act?

The MBTA Communities Act requires 177 towns and cities across Massachusetts to create at least one zoning district where multifamily housing is allowed by right. These communities are placed into one of four categories that determines the number of units to be zoned for. Additionally, the construction of these units is not required under this law.

Marshfield was required to zone for 1,185 units, or 10% of its housing stock in 2020. It had proposed an 84-acre zoning district along Route 139, on the northeast corner of Plain and School streets.

The state Supreme Judicial Court ruled in January that the MBTA Communities Act was constitutional and the state attorney general had the authority to enforce it, after the town of Milton challenged the validity of the law.

As a result of the ruling, the state's Executive Office of Housing and Livable Communities, which is also named in Marshfield's lawsuit, was required to resubmit regulations for the housing law and established a new timeline for the 30 noncompliant communities. A half-dozen of them, including Marshfield, did not meet the first deadline to submit an action plan.

## **What the state auditor said about the MBTA Communities Act**

Meanwhile, three communities sought an "unfunded mandate" determination from the Office of the State Auditor's Division of Local Mandates. On Feb. 21, the division issued such determinations to the communities of Methuen, Middleboro and Wrentham, noting that the MBTA Communities Act had not properly outlined specific funding for towns to comply with the law. Some towns and cities received "technical assistance" grants to help them draft zoning rules that would meet the law's requirements.

Communities are able to seek a similar determination from the division or petition the Superior Court for an exemption from compliance with the law.

## **Massachusetts to 'vigorously defend the law'**

State Attorney Andrea Campbell previously called the state auditor's determination "wrong" and said the state would "vigorously defend the law" should the unfunded mandate claim be made in court.

"I am grateful to the majority of communities that understand the importance of responsible zoning, and my office and I intend to successfully defend this law in court," Campbell said in a written statement. "It is regrettable that the Auditor's incorrect legal assessment has spurred challenges to a law meant to address our housing crisis."

The Marshfield Select Board voted 2-1 on Feb. 24 to move forward with this legal complaint, as well as seek an unfunded mandate determination from the state auditor and send a letter to state legislators for compliance funding and optional compliance for Marshfield.

In its complaint, Marshfield said it had “suffered monetary damages, costs and expenses” when told by the state that it would not be eligible for certain grants. This includes a \$261,000 grant to dredge the mouth of the North and South rivers, Maresco said.

The town also hopes to be awarded attorney fees.

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