

# First the state sued Milton to enforce its ambitious MBTA housing law. Now Milton is firing back.

Town response to lawsuit challenges many elements of the most ambitious housing law Massachusetts has enacted in decades.

By [Andrew Brinker](#) Globe Staff, Updated March 28, 2024, 29 minutes ago



In February, voters in Milton overturned a zoning plan that would have complied with MBTA Communities, a law that requires cities and towns served by the T to zone for more multifamily housing. DAVID L. RYAN/GLOBE STAFF

The Town of Milton this week fired back against the state and Attorney General Andrea Campbell over their attempt to push the town to comply with a state zoning law through the courts.

Town officials had already made clear they were not simply going to give in when Campbell [sued Milton last month](#) for being out of compliance with the state's MBTA Communities law

after voters there [overturned a zoning plan in February](#). And they dug their heels in even deeper on Wednesday, filing a response to Campbell's lawsuit that challenges the validity of the controversial housing law itself and the attorney general's ability to enforce it.

The state, attorneys for Milton wrote, dramatically overstepped with MBTA Communities, which requires cities and towns served by the T to zone for more multifamily housing.

If Milton's argument prevails, it could have huge implications for the most ambitious housing law Massachusetts has enacted in decades. Some 130 communities are due under the law to submit new zoning plans to the state by the end of the year, using [the state-mandated framework](#) that Milton has called into question.

The case is [set to be heard by the Supreme Judicial Court in the fall](#) after a justice ruled earlier this month that the suit was of significant public importance and some of the legal questions should be answered concretely by the state's highest court.

Milton's biggest claim is over guidelines that the state housing office created for the law in 2022, which shape how towns draw their new zoning districts. They dictate how large the districts have to be, how dense, what sort of zoning restrictions are still permissible, and what aren't. Those guidelines, the town claimed Wednesday, are "arbitrary and capricious, unconstitutional, and otherwise unlawful."

In their filing, Milton's attorneys questioned the amount of density the guidelines require in new zoning districts and said it is too much for towns like Milton.

But their broader claim is that the guidelines aren't legal. Attorneys for the town argue that because the guidelines are not in the actual statute passed by the Legislature, they are not legally enforceable. (The full MBTA Communities statute is three paragraphs long, and orders the state housing department to "promulgate" guidelines to shape compliance.) And, they said, there was no formal hearing in the Legislature when state officials were writing the regulations. Instead, the state had a long drafting process for the guidelines and solicited feedback from cities and towns.

The guidelines, they said, are wide-ranging and dictate more robust zoning than the Legislature intended.

“[The state housing office]... vastly inflated its own authority,” the town wrote.

Some legal experts have said that a court would likely give the state some deference on the guidelines because the law explicitly directs the state to create them.

The town’s attorneys also raised qualms about Milton’s designation as a “rapid transit” community. The law says cities and towns with access to one of the T’s light rail lines have to zone for more housing than other communities affected by the law that have less transit access, and the state considers the Mattapan Trolley, which has several stops in Milton, light rail — a classification [many in town dispute](#).

“The Mattapan Trolley... is not a ‘subway’ within the ordinary meaning of that word, because at no point do the trolleys running on that line operate underground,” the town’s attorneys wrote, arguing that Milton should have a lesser burden under the law.



The Mattapan Trolley has emerged as a key factor in Milton's bid to challenge the state's MBTA Communities law. LANE TURNER/GLOBE STAFF

Their other big claim is that Campbell lacks authority to enforce MBTA Communities. That sort of authority, they claim, can only be granted to her by the Legislature, and the law does

not explicitly say that the attorney general can compel compliance. (A judge earlier this month appeared skeptical of that argument during a procedural hearing.)

What the statute does provide for, they said, is the loss of three specific grant programs, nothing more.

The SJC's decision to hear the case was a win for Campbell, but the timeline presents logistical challenges, as a ruling is likely to come around the time most towns have their fall Town Meetings and would be voting on their zoning plans, or even later.

Still, Campbell is hoping a definitive ruling will provide clarity, and prevent other towns from [following Milton's lead and defying the law](#).

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Andrew Brinker can be reached at [andrew.brinker@globe.com](mailto:andrew.brinker@globe.com). Follow him [@andrewnbrinker](#).

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