

Biden Second-Term Preview in Milton, Mass.



President Joe Biden gestures after giving remarks on the day he announced a new plan for federal student loan relief during a visit to Madison Area Technical College Truax Campus in Madison, Wis., April 8, 2024. (Kevin Lamarque/Reuters)

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A 2021 state zoning law designed to densify Boston's suburbs and push suburbanites out of their cars has set off a rebellion in the town of Milton, Mass. That revolt now appears to be spreading across the Greater Boston area. In more ways than one, the zoning brushfire now sweeping through Boston's suburbs foreshadows a second Biden term.

Massachusetts anticipates Biden, first, because the Massachusetts Bay Transportation Authority (MBTA) Communities Act — the state law now riling Boston's environs by usurping local zoning authority — operates quite like the controversial federal Affirmatively Furthering Fair Housing, (AFFH) regulation that Biden is poised to revive if reelected. Second, Biden has decided to put housing at the center of his reelection campaign, including a promise to use billions in new federal funding to induce states to enact laws like the MBTA Communities Act.

If anything, then, the zoning battle now blazing across Massachusetts is a pale shadow of what we'd be in for under a second Biden term. The federal AFFH is significantly more intrusive than even the MBTA Communities Act, and the

resurrection of Obama's notorious AFFH rule is sure to blend with and supercharge the growing number of state-level zoning battles. If Biden is reelected, we are headed for a new political era in which formerly local decisions on zoning are transformed into first-rank federal and state conflicts. It's already happening in Massachusetts, where the local-versus-state zoning clash is big news on a regular basis, and the governor and attorney general are fully entangled in the mess.

Most conservatives oppose AFFH as unwarranted federal overreach. (In addition to my own longstanding attacks, see Howard Husock's excellent critique on NRO of Biden's planned revival of the rule.) When it comes to zoning at the local and —crucially — the state level, however, conservatives and even libertarians are split. Some stick with the traditional federalist delegation of zoning decisions to the local level. Others reject even locally controlled zoning as unwarranted interference with market mechanisms and individual property rights. Given the current housing shortage and consequent rising prices, this has brought many libertarian and business-oriented conservatives into partnership with the sort of leftist housing activists who are actively hostile to America's leafy, prosperous, single-family-zoned suburbs.

This left-right partnership has produced a number of state laws overriding local control and imposing multifamily zoning on formerly single-family-zoned suburbs — as well as proposals for more such laws in other states. That is the great difference between today's zoning battle and zoning conflicts under Obama and Trump. State governments are already breaking the taboos of our multilayered federalist system and seizing control of local zoning. Biden means to turbocharge that process by adding a massive dose of federal involvement to the mix. Filtering local zoning decisions through AFFH will also add a heavy emphasis on racial, ethnic, and income-level bean counting.

The Massachusetts zoning rebellion (which we'll examine in a moment) has all sorts of implications for the intra-conservative and intra-libertarian divides over state-level zoning initiatives. Statewide zoning-override laws are too new to fully assess their results. Housing development takes years to play out, after all. And state-level zoning changes can fly under the radar, taking years to attract attention. The MBTA Communities Act, for example, was three paragraphs buried in a much larger omnibus bill rushed through with little public notice at the very end of the 2021 legislative session.

Only now that state bureaucrats have interpreted and applied the law has a popular rebellion broken out in Massachusetts and a full-scale public debate begun. That debate raises serious questions about whether there is anything particularly conservative or libertarian about statewide zoning takeovers along the lines of the MBTA Communities Act. Yet the Massachusetts case also challenges conservatives who favor local control to come up with alternative solutions to the very real housing shortages in Massachusetts and beyond.

Before looking at Milton, Mass., let's peel aside the federal layer.

Biden has decided to make housing a major campaign issue. He and his advisers have concluded that rising housing costs are the main reason voters remain so down on the economy. Despite indications that inflation is easing around the edges, high rents and mortgage rates mean that inflation's burden continues to weigh heavily on family budgets. Biden gets peppered with questions about housing costs whenever he ventures onto the hustings. All this has convinced him that addressing housing is the way to persuade voters that he feels their pain.

Biden is also persuaded that promising to solve the housing problem will distract from issues such as immigration and crime, where he's at a disadvantage. Biden and his advisers see housing as an area in which Democrats have an edge — so long as they can keep the conversation on federal handouts and away from controversial topics like AFFH.

So far, it's worked. Press coverage of Biden's housing proposals has had virtually nothing to say about AFFH. This is odd because *the New York Times*, for example, has emphasized Biden's intention to aggressively intervene in local zoning decisions — and to pressure states to do the same. AFFH would be Biden's chief way of doing that. There is essentially no way for the president to intervene in local zoning decisions that would not invoke AFFH.

Yet Biden has cleverly kept AFFH in the background through his first term. He has issued an “interim” rule reinstating parts of AFFH but temporarily omitting the most burdensome and controversial demands on localities, punishments for municipalities that resist. The federal hammer will come down only when the full-blown AFFH rule is “finalized”— conveniently, just after the election. Did Biden really need four years to fully reboot AFFH after President Trump put an end to the rule in 2020? This certainly seems like a politically motivated delay.

Biden's “new” housing plan contains a big \$20 billion “first-of-its-kind fund” to encourage planners to increase the housing supply. Presumably, this massive fund could be used as a carrot to loosen up zoning laws at both the state and local levels. First, however, the expenditure would have to clear Congress, which may or may not be controlled by Democrats after the election. More important, any state or locality that accepts even a dollar of federal housing funding must sign an agreement promising to “affirmatively further fair housing.” So any state or locality taking funds from the “new” pot of money would effectively be putting itself under the control of AFFH.

In other words, any state or locality accepting federal housing funds of any kind will subject itself to a hyper-intrusive bureaucratic rule that demands demographic balance by race, ethnicity, country of origin, English language competency, and income level. AFFH also injects the feds into local decisions on roadbuilding, parking requirements, business-district development, placement of public transportation hubs, the development of parks, the drawing of school-district boundary lines, and more.

On top of that, promising to affirmatively further fair housing in order to obtain federal funds will subject municipalities to lawsuits from both the federal government and private groups under the strict terms of a fully revived AFFH. Notoriously, this is what happened to Westchester County, N.Y., under President Obama. Yet no one seems to have noticed that given his plans to finalize a full-blown AFFH rule after the election, Biden's promises to go after local zoning in a second term cannot help but reinvoke all the controversy surrounding that rule. The well-funded federal Community Development Block Grant program is already slated to be disbursed under the terms of a fully revived AFFH. If Congress approves a big new pot of federal money giving Biden additional leverage against local zoning decisions, those funds will also fall under the umbrella of AFFH. So Biden's second-term zoning plan is AFFH all the way down. Yet neither he nor the media want to acknowledge this.

Notwithstanding some important differences, Massachusetts's MBTA Communities Act is quite similar to AFFH. The MBTA Communities Act requires all municipalities served by Boston's transit system to create at least one “reasonably sized” zoning district near a transit station in which multifamily housing will be allowed by right (rather than by special permit). Localities are permitted to draw and define this zoning district. If, however, in the judgment of the state, local plans fall short of the required constraints, the suburb in question stands to lose many varieties of state funding. The state law sets up a kind of game in which localities see how little they can get away with while the state wavers between permissiveness and punishment — with either local defiance or political backlash at risk. AFFH has a similar structure.

The MBTA Communities Act is sometimes called a “TOD law,” because it's meant to encourage “Transit Oriented Development” (TOD). TOD grew popular as a planning strategy during the Obama years and was on tap to be encouraged by Obama's original AFFH rule. The idea is to build dense housing near transit stations, then gradually replace parking lots with even more housing. This will supposedly have the effect of forcing people to walk or use mass

transit instead of cars, thereby protecting the environment while creating small-scale livable neighborhoods and greater transportation “equity.”

Many Boston suburbs, however, don’t want dense housing or TOD. In 2023, the politically progressive suburb of Newton voted out several councilors who aimed to go above and beyond the zoning requirements of the MBTA Communities Act. Instead, the new council majority approved a watered-down zoning plan that only barely complied. One of the defeated councilors reportedly said, “We’re not going to have backyard swing sets anymore,” to which the opposition leader replied, “Are you kidding me? That’s why people move to Newton. We want the suburbs.”

The rebellion really took off last February when the suburb of Milton called a referendum on the zoning plan developed under state pressure, rejecting it by a 54 percent majority after a bitter campaign. Potentially more than 500 new homes had been slated to be placed (or stacked), not where Milton’s leafiest high-income single-family lots were located but in a denser middle-income section of town. This precinct — where drivers are already plagued by severe bottlenecks upon entering the nearby expressway — provided the margin of victory.

Milton’s open defiance of the new law quickly brought down the wrath of the state. Funds for shoring up the town’s seawall were revoked, and Governor Maura Healey has threatened funding for many other purposes, including Milton’s schools. Meanwhile, Attorney General Andrea Campbell has hauled Milton before the state’s Supreme Judicial Court to demand that the town either be fined for refusing to pass a state-approved zoning plan, or be saddled with a court-appointed “special master” to draft a compliant plan and force it on the town.

The spectacle of the state imposing a zoning plan on a town that has just soundly rejected that plan in a high-turnout democratic referendum does not sit well in a commonwealth whose tradition of local control antedates the American Revolution. Despite (or because) of that, supporters of the MBTA Communities Act are calling for Milton to face swift and severe punishment, lest other localities follow its example. Lydia Edwards, who chairs the State Senate’s Housing Committee, expressed “disgust” at the referendum, saying, “The state has to crush Milton.” Although she later apologized for the remark, the message was sent.

Yet Milton’s defiance does appear to be sparking a wider rebellion. Several localities are now hinting at noncompliance, proposing hyper-minimalist zoning plans, and collaborating with each other on strategies for opposing the law — both in court and out. The Healey administration is walking the fine line between letting recalcitrant suburbs slide, and pushing back hard enough to trigger broad defiance.

Proponents of the MBTA Communities Act rail against the spread of mere “paper compliance.” The most informed supporters of the new law understand that the MBTA Communities Act is actually only a small first step. Even at best, the law can barely begin to solve the state’s housing shortage. In light of growing popular resistance to even this first step, however, the entire strategy of state-forced density and TOD begins to look futile.

The utopian dreams of the law’s strongest supporters are hard to credit. Massachusetts State Representative Russell Holmes makes no bones about his hopes that the new law will push drivers off the road by placing the new, denser housing over existing parking spots. Holmes calls “one person, one car” travel selfish and claims that the transit system’s notorious inefficiencies will be fixed by the time new housing is built. (See video at 23:40–31:05.) The president of a local Chamber of Commerce foresees a future in which parking lots in business districts disappear and “‘one person, one car’ will be a thing of our past.” (See video at 36:00–38:47.)

To opponents of the new TOD law, these hopes fall somewhere between bad joke and nightmare. Critics of the law are perfectly aware that it intentionally makes it impossible to combine new housing projects with adequate parking for both

current and future residents. These suburbanites also understand that their lives won't work without cars. A town may have a grocery store but not a clothing or shoe store. School baseball leagues span several towns. Without a car, it's impossible either to shop or to root for your kid. (See [video](#) at 25:00–25:40; 37:30–41:15.)

There is nothing particularly conservative, or libertarian, about this determination to force people out of their cars. The MBTA Communities Act had bipartisan support and was signed by Governor Charlie Baker, a moderate Republican. The law does please developers, but it also cuts against personal freedom in important ways. Left-right coalitions hold snares.


Wendell Cox is a middle-income housing affordability advocate, who has spent years offering data-rich critiques of the reigning urban-planning orthodoxy. (Cox publishes the annual *Demographia International Housing Affordability report*.) Cox argues that automobile-based suburbanization (a.k.a. “sprawl”) is the engine of social mobility and shared prosperity not only in America but throughout the developed world. Cox thus challenges the premises upon which the MBTA Communities Act rests. For both practical and political reasons, says Cox, urban densification is unlikely to materially reduce housing costs.

When I asked Cox about Boston, he told me that transit couldn't substitute for the automobile, even there, with one of the nation's best transit systems. Cox cited University of Minnesota research that says autos can reach *14 times* (1,400 percent) as many jobs in the Boston metropolitan area in 30 minutes as travel by MBTA could in 2019, and that was before the huge transit pandemic losses attributable to working from home. Building new suburbs, he says, is likely the only way to democratize growth and bring housing costs down.

Cox pointed to large-lot zoning on the outskirts of Boston as the real driver of the state's housing shortage. You can't build middle-income housing at affordable prices on such large lots. Rezoning these more-rural parcels for classic middle-income suburban development would be by far the most effective way to solve the state's housing problem, says Cox, much as this will irritate the enemies of “sprawl.” Cox thinks some rural property holders might willingly cash out their land on the urban fringe to allow for such development (so long as planners don't block development and drive up prices by imposing “greenbelts” or “growth boundaries”). Quarter-acre lot maximums could accommodate and encourage the new development. A combination of market incentives and public persuasion could make the plan work. It's only a first stab, but maybe the wave of resistance now racing through Boston's suburbs will prompt Massachusetts to wake up and try something effective. It may take a new governor to get there.

Unfortunately, Biden has already embraced both federal compulsion and the dead end of TOD. His planned restoration of AFFH will pour the gasoline of social engineering by race, ethnicity, and income level on what is already a zoning bonfire. Biden's housing plan even holds out the MBTA Communities Act as a model for other states. If reelected, he will surely take his victory as proof that his housing strategy was a political winner. Sadly, a rolling Massachusetts disaster-times-50 is closer to what we're likely to get.

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