

Towns that defy new MBTA housing law could face state legal action, Campbell says

Her warning is the sharpest yet that towns must follow the law to add denser housing, or face consequences.

By [Andrew Brinker](#) Globe Correspondent, Updated March 15, 2023, 12:56 p.m.
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Attorney General Andrea Campbell speaks at a campaign event last fall. MARY SCHWALM/ASSOCIATED PRESS

In a warning shot to cities and towns that have considered flouting the state's new multifamily housing law, Attorney General Andrea Campbell said Wednesday morning that those zoning rules are mandatory, and that the state or outside advocacy groups may sue noncompliant towns.

The MBTA Communities law was designed to help address the state's dire housing shortage, Campbell [wrote in an official advisory](#), and not only would towns' failure to meet those requirements exacerbate the issue, it could also violate state and federal fair housing laws prohibiting discriminatory zoning. The law, which [mandates cities and towns served by the MBTA zone for multifamily housing](#), seeks to undo some of the restrictive zoning rules that have stood in the way of apartment complexes and other residential development for decades.

"Compliance with the MBTA Communities Zoning Law is not only mandatory, it is an essential tool for the Commonwealth to address its housing crisis along with our climate and transportation goals," said Campbell. "While the housing crisis disproportionately affects communities of color and poor, working families, it threatens all of us along with our economy and thus requires all of us do our part, including ensuring adequate development of affordable, transit-oriented housing for our residents and families."

Campbell's warning comes as a number of communities have openly balked at the new rules. The vast majority of communities [have thus far gone along](#) — only four of 177 cities and towns failed to comply with preliminary requirements — but the simmering dissent in some largely single-family suburbs has state officials worried about sharper resistance to come as the deadlines for more concrete zoning changes draws near.

One of those towns, Middleborough, has recently [dug in on its stance against the law](#), with town officials saying they won't be deterred by lawsuits. In response, housing advocates have been calling on the state to take a hard line and step up enforcement efforts against noncompliant towns. As the law is written, towns risk losing money from state grant programs and housing authority funding if they don't follow along.

But Campbell's advisory is the strongest stance on the law yet from anyone in state government.

Her move Wednesday is a "critical step forward in helping the state overcome its housing crisis," said Greg Vasil, CEO of the Greater Boston Real Estate

Board. “Enforcing this law will give the private sector the free-market ability to produce the housing units vital to help solve our housing dilemma.”

As the law is written, Campbell said, the phrase “shall have” indicates that MBTA Communities is binding, not optional, and that the law “does not provide any mechanism by which a town or city may opt out of this requirement.”



North Main Street and Center Street in Middleborough. Middleborough has recently dug in on its stance against the state’s new multifamily housing law, with town officials saying they won’t be deterred by lawsuits. JONATHAN WIGGS/GLOBE STAFF

If towns try to resist the requirements, she said, they would effectively be protecting antiquated zoning rules that benefit wealthy, white homeowners and disproportionately harm lower income residents and people of color. That’s where fair housing laws come into play.

“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.”

And it may already be changing town officials' calculus. In Holden, Town Manager Peter Lukes has [spoken out in recent weeks](#) against the law and said the town will not comply because it would require officials to zone for more units than the town can handle.

But he said Wednesday after reading Campbell's advisory that he was mulling his options again.

"The attorney general thinks it's mandatory, I see it a little differently," said Lukes. "We're going to have to take some time to reevaluate. It's really a question of if we have the money and the will to fight it."

There are no more deadlines until the end of this year, when communities served by the T's rapid transit system — the Red, Orange, Blue, and Green Lines — must submit their zoning changes. The following year, it'll be the turn of cities and towns served by the commuter rail, as well as their immediate neighbors.

With communities signaling resistance, some advocacy groups have already been considering lawsuits. Last month, the Boston-based group Lawyers for Civil Rights [sent letters](#) to communities that missed the law's first deadlines, demanding they comply.

"Greater Boston is mired in an affordable housing crisis that harms Commonwealth households of all incomes and backgrounds, but particularly low-income households of color," said Iván Espinoza-Madrigal, the group's executive director. "Municipal compliance with the MBTA Communities Law is critical to begin combatting that crisis."

Town officials in Middleborough dismissed the threat of a lawsuit from Lawyers for Civil Rights as baseless, but legal action from the state — a process that could prove time consuming and costly — could be more convincing.

"If the state really hits us on this, it's something we could think about," Mark Germain, chair of the town's Select Board said last month. "I don't want to get tangled up in something."

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