

Current pending legal matters include:

- **The 40B at 648-652 Canton Avenue - not resolved**
- **The Memory Care Project - an abutter has filed suit against the town**
- **Unquity and Winter Valley - filed with tax court for charity exemption**
- **Collective bargaining agreements end June 30 - the Town's legal bargaining services will become more earnest in the Spring**
- **Any HR or personnel matters that need legal assistance fall under this category**



The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

DIVISION OF LOCAL MANDATES

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February 21, 2025

By First-Class Mail & Email <c/o MCoyle@middleboroughma.gov>

Town of Middleborough Select Board
10 Nickerson Avenue
Middleborough, MA 02346

RE: Mandate Determination related to MBTA Communities Act (M.G.L. c. 40A, § 3A)

Dear Select Board Members:

The Office of the State Auditor's Division of Local Mandates (DLM) acknowledged receipt of your letter, postmarked October 1, 2024, sent on behalf of the Town of Middleborough, requesting a determination of the fiscal impact of the potential mandate under the provisions of M.G.L. c. 29, § 27C (the Local Mandate Law), with respect to M.G.L. c. 40A, § 3A (the MBTA Communities Act, the Act, or § 3A). In response to your request, this office sent correspondence dated November 27, 2024, requesting a waiver of the 60-day timeline under M.G.L. c. 29, § 27C, due to litigation in connection with the MBTA Communities Act that was before the Supreme Judicial Court of Massachusetts at that time. Approval of our waiver request was confirmed via email correspondence with James McGrail, Middleborough Town Manager, on December 2, 2024. The Court issued its decision in *Attorney General v. Town of Milton*, No. SJC-13580, on January 8, 2025.¹

DLM has conducted extensive legal and policy review regarding the requested matter, including review of the *Milton* decision and the emergency regulations filed thereafter by the

¹ *Attorney General v. Town of Milton & another; Executive Office of Housing and Livable Communities*, third-party defendant, Mass., No. SJC-13580, slip op. (January 8, 2025), available at <https://www.mass.gov/doc/attorney-general-v-town-of-milton-executive-office-of-housing-and-livable-communities-sjc-13580/download> (accessed February 18, 2025).

The State Auditor determined that:

1. **Towns are required to change their zoning laws**, which involves legal fees, planning consultants, and administrative costs.
2. **Infrastructure upgrades (roads, sewer, water, schools, emergency services) may be necessary**, but the state did not allocate direct funding for these expenses.
3. **The law was not voluntary**—it was imposed on towns without their approval, making it a true mandate under the Local Mandate Law.
4. **The state did not provide funding when the law was passed**, meaning towns are expected to comply out-of-pocket or risk losing state grants.

The MBTA Communities Law is an unfunded mandate.