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AG's Suit Against Town of Milton Shines a Spotlight on Massachusetts' Housing Crisis: Burns & Levinson

Last April, we [reported](#) that the Attorney General was set to enforce municipal compliance with denser, transit-friendly zoning requirements. Now that has come to pass. The recently commenced battle between the Town of Milton and the Attorney General's office over the [MBTA Communities Act](#) illustrates the high degree of difficulty posed by the Massachusetts housing crisis. On February 27, Attorney General Andrea Campbell filed suit against the Town of Milton for its voters' failure to adopt zoning that would allow multi-family housing near the Town's MBTA station, as required by the MBTA Communities Act. The Act, passed during the Baker Administration in 2020, is designed to ease the housing crunch in Massachusetts by requiring municipalities served by the MBTA to adopt zoning changes that allow multi-family housing in the vicinity of MBTA stations. Milton's Planning Board resisted the change, and the Town's voters turned it down in a referendum vote on Valentine's Day. As a result, the Attorney General filed her suit seeking an injunction to force the Town to comply with the law.

Aside from presenting Home Rule and enforcement questions, the AG's suit has highlighted a problem with the Act that many municipalities had identified in the lead-up to the deadline for compliance. According to in-depth [WGBH reporting](#), many municipalities simply do not have the water and sewer infrastructure to serve the number of new housing units allowed by the required zoning change. To make matters even more challenging, the reporting reveals that many of those municipalities do not have the budget or any idea how they would raise the funds to build the new infrastructure.

According to a [MassLive media report](#), at least one Wrentham Select Board Member has objected to the requirements of the Act as an "unfunded mandate." A term that is not often thrown around, an unfunded mandate is a new requirement imposed on municipalities that require the expenditure of municipal funds without supporting funding from the state. Under the [local mandates provision](#) of Proposition 2 ½, municipalities are exempt from complying with unfunded mandates. However, there are multiple exceptions to the exemption, such as state mandates that only impose indirect costs and mandates that the legislature imposes as a condition of receiving state aid. It remains to be seen whether the Town will defend the AG's suit on this basis or if it will succeed.

The suit highlights the many potential barriers to any single solution to the housing crisis. As AG Campbell's Complaint and Brief eloquently spell out, past legislative attempts to stimulate housing have fizzled, resulting in the passage of the MBTA Communities Act, a blunt instrument. Hopefully, the renewed attention to the housing crisis will result in an accommodation that suits all parties and provides much-needed housing.

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