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Affordable Housing Alert

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Massachusetts AG Campbell reveals real teeth behind MBTA Communities requirements

By Karla L. Chaffee

Failure to comply with the MBTA Communities law may result in liability under federal and state fair housing laws.



What's the Impact?

- / Every community subject to Section 3A must adopt or have a plan to adopt at least one zoning district of reasonable size in which multifamily housing is permitted.
- / Noncompliant communities will be ineligible to access funding from certain sources provided by the Commonwealth.

"Does it really matter if we don't comply?" "Do we even get this type of grant money anyway?"
"Why should we change?"

For the past two years, these were the common questions faced by planners and other municipal officials informing their constituents about requirements in MGL c. 40A § 3A, a.k.a. the MBTA Communities law. A clear answer is finally available: "Communities that fail to comply with the Law may be subject to civil enforcement action." Noncompliance, according to the Massachusetts Attorney General, may result in liability under federal and state fair housing laws, including the Massachusetts Antidiscrimination Law and federal Fair Housing Act.

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The Advisory Concerning Enforcement of the MBTA Communities Zoning Law

In an [Advisory released on March 15, 2023](#), Attorney General Andrea Campbell made clear that every community subject to Section 3A must adopt or have a plan to adopt at least one zoning district of reasonable size in which multifamily housing is permitted as of right. We previously provided a [summary of Section 3A and Guidelines](#) under development by the Department of Housing and Community Development (DHCD). The Guidelines were recently finalized and are available through [DHCD's website](#).

Prior to the AG's Advisory, the state's [message to MBTA communities](#) has been that noncompliant communities "are ineligible for funding from certain funding sources provided by the Commonwealth."

What's next?

According to [the Boston Globe](#), only four of the 177 MBTA Communities subject to the law have failed to comply or take the necessary interim compliance steps to meet the Section 3A zoning standards.

Many communities are just starting the process of revising their zoning to accommodate a minimum gross density of 15 units per acre as required by Section 3A. As we approach town meeting season, the Advisory provides strong motivation for communities to adopt the necessary changes and eliminates the "no real consequences" for noncompliance counter argument.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

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