



One Beacon Street, 5th Floor, Boston MA, 02108
(617) 742-0820 | chapa.org

September 18, 2025

Rachel Heller
Chief Executive Officer
Citizens' Housing and Planning Association
One Beacon Street, 5th Fl.
Boston, MA 02108

Re: Available Relief in MBTA Communities Enforcement Actions

Dear Rachel:

The Massachusetts Attorney General's Office ("AGO") recently issued a legal advisory¹ clarifying its plan to enforce the MBTA Communities Act. The advisory states that the AGO will defer litigation against non-compliant municipalities through the end of 2025, provided those municipalities make "good faith" efforts to adopt required zoning districts. With that year-end deadline looming, and town meetings on the horizon, planners and residents have begun to seek clarity on the legal consequences their communities might face if compliance efforts fail.

To ensure that CHAPA staff are fully informed, this memo outlines the authority of Massachusetts courts to correct municipal violations of state law. The upshot is that judges have broad discretion in this realm.² Not only can they order cities and towns to obey state mandates, but they possess "every power necessary to ... enforce their decrees and make them completely effective."³ Such powers run the gamut from dictating the actions of local officials to appointing "special masters" to plan and oversee compliance. These remedies and more would be available to courts in AGO litigation to enforce the Act.

I. Background

Massachusetts codified the MBTA Communities Act (the "Act") in January 2021. The Act dictates that: (1) covered municipalities ("MBTA Communities") "shall have" zoning districts of "reasonable size" where multi-family housing can be

¹ See generally Massachusetts Attorney General's Office, Second Advisory Concerning Enforcement of the MBTA Communities Zoning Law (July 14, 2025), <https://www.mass.gov/doc/second-advisory-on-3a-enforcement-final/download>.

² See *Johnson v. Martignetti*, 374 Mass. 784, 794 (1978).

³ *Commonwealth v. Hudson*, 315 Mass. 335, 346 (1943).



Citizens' Housing and Planning Association

One Beacon Street, 5th Floor, Boston MA, 02108
(617) 742-0820 | chapa.org

built “as of right;” (2) non-compliant communities “shall” lose access to certain funding grants; and (3) the Executive Office of Housing and Livable Communities (“HLC”) “shall promulgate” compliance guidelines.⁴ HLC followed the latter command and issued guidelines in August 2022.⁵

Since the Act’s passage, the Commonwealth has repeatedly instructed MBTA Communities that compliance with the Act’s zoning provisions is mandatory. HLC’s guidelines stated that the Act “requir[es] MBTA communities to adopt [compliant] zoning districts” and set final compliance deadlines for each community ranging from the end of 2023 to the end of 2025.⁶ Likewise, in March 2023, the AGO notified MBTA Communities that the Act “does not provide any mechanism by which” to “opt out of [the zoning] requirement.”⁷

On January 8, 2025, in *Attorney General v. Milton*, the Supreme Judicial Court (“SJC”) confirmed the Act’s obligatory nature, ruling that it is constitutional and creates “an affirmative duty” for MBTA Communities to adopt compliant districts.⁸ After explaining that the Act was designed “to address the ongoing housing crisis,” the Court elaborated that “the public has an interest in the [Act’s] enforcement” and declared that the AGO is “empowered to enforce [the Act].”⁹

Although the SJC invalidated HLC’s guidelines on a procedural technicality,¹⁰ HLC quickly re-issued them almost verbatim as emergency regulations.¹¹ Those

⁴ G.L. c. 40A, § 3A.

⁵ Based on community feedback, HLC subsequently issued revised versions of the guidelines in October 2022 and August 2023. See Executive Office of Housing and Livable Communities, Compliance Guidelines for Multi-Family Zoning Districts Under Section 3A of the Zoning Act 1 (Aug. 17, 2023), <https://www.mass.gov/doc/compliance-guidelines-for-multi-family-zoning-districts-under-section-3a-of-the-zoning-act/download>.

⁶ *Id.* at 1, 15-16. The quoted statement and deadlines were consistent in all three versions of the guidelines that HLC promulgated in 2022 and 2023.

⁷ Massachusetts Attorney General’s Office, Advisory Concerning Enforcement of the MBTA Communities Law (March 15, 2023), <https://www.mass.gov/doc/advisory-concerning-enforcement-of-the-mbta-communities-zoning-law/download>.

⁸ *Attorney General v. Milton*, 495 Mass. 183, 185, 196 (2025).

⁹ *Id.* at 185, 192.

¹⁰ See *id.* at 195-196.

¹¹ See Press Release, Executive Office of Housing and Livable Communities, *Implementation of MBTA Communities Law Continues with Filing of Emergency*



Citizens' Housing and Planning Association

One Beacon Street, 5th Floor, Boston MA, 02108
(617) 742-0820 | chapa.org

regulations, now formally in place as 760 CMR 72.00, set a new final compliance deadline of July 14, 2025, for any community that HLC had previously required to adopt a compliant district before the end of 2024.¹²

Following the SJC's January decision, several municipalities filed suit to challenge the Act on the new ground that it is an "unfunded mandate." However, a Superior Court judge dismissed those cases and roundly rejected the unfunded mandate argument.¹³ This second major decision upholding the Act reaffirms that all MBTA Communities are duty-bound to adopt compliant zoning.

II. Legal Framework

Should any community fail to uphold that duty, as the SJC has held, the AGO can sue "for ... injunctive relief to enforce [the Act]."¹⁴ Injunctive relief, also called "equitable" relief or an "injunction", is a court order directing a party to do something, or stop doing something, to comply with the law. This Section surveys the breadth of equitable powers available to Massachusetts judges¹⁵ and the next traces how judges could utilize those powers to secure adherence to the Act.

Before continuing, it is important to note—for CHAPA staff and anyone they share this memo with—that this memo is intended for informational purposes only. It does not constitute legal advice and should not be relied upon as such.

A. Injunctive Relief in Massachusetts Generally

The SJC has repeatedly explained that "in fashioning appropriate relief, the issuance and scope of equitable relief rests within the sound discretion of the

Regulations (Jan. 14, 2025), <https://www.mass.gov/news/implementation-of-mbta-communities-law-continues-with-filing-of-emergency-regulations>.

¹² See 760 CMR 72.09(3), available at <https://www.mass.gov/doc/section-3a-regulations/download>.

¹³ See generally *Duxbury v. Commonwealth*, No. 2583CV00303, Dkt. No. 10, available at: <https://drive.google.com/file/d/1DJEL7iayai2vShuCVhjfoVoaucO3s6wf/view>.

¹⁴ *Milton*, 495 Mass. at 196.

¹⁵ In the *Milton* case, the AGO sued under G.L. c. 214, § 1, which confers, via "general equity jurisdiction," the broadest set of equitable powers available to state judges. Thus, as used herein, "courts" and "judges" refer to those with access to this full set of powers.



Citizens' Housing and Planning Association

One Beacon Street, 5th Floor, Boston MA, 02108
(617) 742-0820 | chapa.org

judge.”¹⁶ It has also emphasized that judges “possess[] a *particularly broad* latitude of discretion where the public interest is involved.”¹⁷

Fundamentally, Massachusetts courts enjoy “broad powers” both to “determine the appropriate relief to remedy the wrong complained of and to make the judgment effective.”¹⁸ Court orders would mean little if judges lacked the ability to enforce them. So, once a judge decides on the appropriate relief in a case and begins issuing orders, they may “adopt all necessary, reasonable, and lawful means to ... accomplish the objects intended.”¹⁹

Injunctive powers extend to, among other things: stopping or preventing specific actions,²⁰ directing parties to “take affirmative remedial steps,”²¹ and securing compliance from those who disobey the court by holding them in “contempt” and requiring them to pay fines or, in egregious circumstances, even serve jail time.²² Courts may also respond to disobedience by doing things like “stat[ing] more explicitly the steps to be taken” or “order[ing] the filing of compliance reports.”²³

But a party’s defiance of a prior order is not a prerequisite to the issuance of a detailed or tightly controlling injunction. Judges may issue such injunctions in the first instance, for example, where the party in question has “a history of [a] hardened position of resistance to the objectives of the ... injunction.”²⁴

Further, the “[t]he power to compel affirmative action” enables courts to “call to [their] assistance any agents or ... parajudicial officers whose services appear to be reasonably necessary to attain a legitimate objective.”²⁵ Such officers, typically called “special masters,” are appointed to “assist the court not only in delineating remedies, but often in conducting or overseeing ... implementation of

¹⁶ *Commonwealth v. Guilfoyle*, 402 Mass. 130, 135 (1988) (cleaned up).

¹⁷ *Johnson*, 374 Mass. at 794 (emphasis added).

¹⁸ *Demoulas v. Demoulas*, 428 Mass. 555, 591 (1998) (cleaned up).

¹⁹ *Nigro v. Conti*, 319 Mass. 480, 484 (1946).

²⁰ *Dep’t of Pub. Utils. v. Trs. of Props. of N.Y., N.H. & H.R. Co.*, 304 Mass. 664, 671 (1939).

²¹ *Perez v. Bos. Hous. Auth.*, 379 Mass. 703, 729 (1980).

²² *See Hudson*, 315 Mass. at 346-348.

²³ *Blaney v. Comm’r of Corr.*, 374 Mass. 337, 342 (1978).

²⁴ *Borne v. Haverhill Golf & Country Club, Inc.*, 71 N.E.2d 903, 917 (Mass. App. Ct. 2003).

²⁵ *Perez*, 379 Mass. at 732.



Citizens' Housing and Planning Association

One Beacon Street, 5th Floor, Boston MA, 02108
(617) 742-0820 | chapa.org

the remedies.”²⁶ Courts frequently turn to these officers where “[i]njunctive remedies are called for, but the judge lacks expertness in the particular field.”²⁷

B. Injunctive Relief Against Massachusetts Municipalities

Although the Home Rule Amendment gives municipalities “the right ... to self-government in local matters” it does not supersede the “Commonwealth’s right to legislate with respect to State, regional, and general matters.”²⁸ Thus, where the Legislature has enacted a “general law” that applies to two or more municipalities,²⁹ any local ordinances or bylaws that “conflict” with that general law “must give way.”³⁰ In this sense, cities and towns cannot “defy the Commonwealth, or ... attempt to nullify legislative mandates.”³¹

Municipalities are also “fully subject to the judicial power.”³² As a result, judges have authority both to restrain illegal municipal conduct³³ and to “order[] towns as well as cities to perform affirmative acts” as needed to bring them in line with legislative mandates.³⁴ The SJC has stated that local officials “may be required to do all acts within their power to cause the municipality to obey a decree against it” and indicated that voters share a “duty to use their powers so as to cause [a] town to obey” state mandates and court orders.³⁵

These principles apply with full force in the zoning context. The Legislature maintains “supreme power in zoning matters” and, therefore, municipalities cannot zone “in a manner which frustrates the purpose or implementation” of a

²⁶ *Id.* at 734.

²⁷ *Id.* at 735 n. 29.

²⁸ *Clean Harbors of Braintree, Inc. v. Bd. of Health of Braintree*, 415 Mass. 876, 881 (1993) (cleaned up).

²⁹ Mass. Const., Art. LXXXIX, § 8.

³⁰ *Arlington v. Bd. of Conciliation & Arbitration*, 370 Mass. 769, 774 (1976).

³¹ *Bd. of Health of N. Adams v. Mayor of N. Adams*, 368 Mass. 554, 564-565 (1975) (cleaned up).

³² *Hudson*, 315 Mass. at 345.

³³ *See Lane v. Commonwealth*, 401 Mass. 549, 552-553 (1988) (citing cases).

³⁴ *Hudson*, 315 Mass. at 343, 345.

³⁵ *Id.* at 348, 349.



Citizens' Housing and Planning Association

One Beacon Street, 5th Floor, Boston MA, 02108
(617) 742-0820 | chapa.org

state zoning law.³⁶ Indeed, courts can, and often do, invalidate local zoning provisions that conflict with the Commonwealth's Zoning Act, G.L. c. 40A.³⁷

As one example, in *Bible Speaks v. Board of Appeals of Lenox*, the Massachusetts Appeals Court invalidated local zoning provisions that required, among other things, site plan review and a special permit application for "all new religious and educational uses" in residential districts.³⁸ The Court determined that these provisions "create a scheme of land use regulation for [educational] institutions which is antithetical to the limitations on municipal zoning power ... prescribed by G.L. c. 40A, s 3," more commonly known as the Dover Amendment.³⁹

Ultimately, "[m]unicipalities that have not performed their statutory and constitutional duties should not expect a sympathetic judicial reception."⁴⁰ In some cases, "drastic relief" can be warranted to ensure they uphold those duties, "resulting in some loss of local control by the city or town and its officials."⁴¹

III. Potential Relief in MBTA Communities Act Enforcement Litigation

Courts will theoretically have the whole spectrum of injunctive powers at their disposal in litigation to enforce the Act. The SJC has already declared that the Act is a "legislative mandate" for municipalities, which the AGO can seek to enforce through injunctive relief.⁴² Moreover, because the Court has found such

³⁶ *Bd. of Appeals of Hanover v. Hous. Appeals Cmte. In Dep't of Cmty. Affairs*, 363 Mass. 339, 409 (1973).

³⁷ See, e.g., *Attorney General v. Inhabitants of Dover*, 327 Mass. 601, 608 (1951) (instructing Superior Court to enter order invalidating part of a local zoning bylaw "so far as it prohibits or limits the use of buildings or premises for sectarian educational purposes" in violation of the Dover Amendment). Although the statute the AGO sued under in *Dover* is no longer in effect, Section 7 of the Zoning Act currently empowers the superior and land courts to "enforce the provisions of this chapter" which now include the Act, and "restrain by injunction violations thereof." G.L. c. 40A, § 7.

³⁸ 8 Mass. App. Ct. 19, 19, 33-34 (Mass. App. Ct. 1979).

³⁹ *Id.* at 33. There are many other examples like this. See, e.g., *SCIT, Inc. v. Plan. Bd. of Braintree*, 19 Mass. App. Ct. 101, 107, 111 (Mass. App. Ct. 1984) (voiding zoning rule that imposed discretionary special permit requirement on all uses in business district as it "conflict[ed] with the uniformity and special permit provisions of the Zoning Act").

⁴⁰ *Commonwealth v. Andover*, 378 Mass. 370, 379 (Mass. 1979).

⁴¹ *Id.* at 380.

⁴² *Milton*, 495 Mass at 193, 196.



Citizens' Housing and Planning Association

One Beacon Street, 5th Floor, Boston MA, 02108
(617) 742-0820 | chapa.org

enforcement to be in the public interest,⁴³ judges will have “particularly broad” discretion over the methods they employ to compel compliance.⁴⁴

Those methods could be hands-on and controlling. As noted above, if a judge finds that the relevant facts establish a “hardened position of resistance” to the goal of the AGO’s requested relief—which, in this context, would be compliance with the Act—they have the option to start with strict measures they deem necessary to generate compliant zoning and protect the public interest.⁴⁵

It is impossible to compile an exhaustive list of remedies courts could devise to generate compliant zoning. Any order will hinge on the circumstances presented in the case, including factors like the structure of the zoning ordinance at issue and the level of defiance displayed by the defendant municipality.

However, remedies endorsed in guiding Massachusetts cases demonstrate that it is possible for courts in this context to:

- Declare invalid, or otherwise render unenforceable, any local zoning rule deemed to be inconsistent with/antithetical to the Act’s requirements;⁴⁶
- Command a city or town to adopt compliant zoning on a short timeline;⁴⁷
- Compel local officials to take specific compliance steps, like holding a special town meeting and listing a valid zoning proposal on the warrant;⁴⁸

⁴³ *Id.* at 192.

⁴⁴ *Johnson*, 374 Mass. at 794.

⁴⁵ *Borne*, 71 N.E.2d at 917 (affirming initial injunction that was “detailed” and “contained prohibitions, as well as affirmative duties” given that there was “history of [a] hardened position of resistance to the objectives of the ... injunction”); *see id.* (noting also that “[c]ourts often employ detailed orders to correct violations of public rights”).

⁴⁶ *See, e.g., Dover*, 327 Mass. at 608; *SCIT, Inc.*, 19 Mass. App. Ct. at 107, 111; *Bible Speaks*, 8 Mass. App. Ct. at 33-34. This kind of relief could theoretically take the form of an injunction or a declaratory judgment. *See Milton*, 495 Mass at 196 (stating that AGO can pursue both forms of relief in litigation to enforce the Act).

⁴⁷ *See, e.g., Borne*, 71 N.E.2d at 917, 920-925 (affirming order requiring defendants to take a series of specific actions within 60 days).

⁴⁸ *See, e.g., Hudson*, 315 Mass. at 349-350 (ordering board of selectmen to call and hold a town meeting and “cause to be inserted in the warrant” and “submitted to the voters” articles that “when adopted” would make town compliant with state mandate).



Citizens' Housing and Planning Association

One Beacon Street, 5th Floor, Boston MA, 02108
(617) 742-0820 | chapa.org

- Appoint a zoning expert in a “special master” type role to prepare compliant zoning plans for the municipality;⁴⁹
- Direct a municipality to adhere to a court- or special master-drawn zoning plan that effectuates the goals of the Act unless/until the municipality adopts its own compliant zoning plan;⁵⁰ and
- Punish municipalities and local officials that disobey the court through fines or other escalating penalties.⁵¹

IV. Conclusion

It bears repeating that no one can be sure of the exact remedial approach any court will take in AGO enforcement litigation. That said, two key takeaways for CHAPA staff are that: (1) judges will have broad latitude in crafting relief to secure compliance with the Act; and (2) case law supports that the kinds of orders listed above are all within the range of potential outcomes.

One thing we know for certain is that if MBTA Communities fail to adopt compliant multi-family districts by the end of this year, the AGO is prepared to file suit to compel them to do so. Enforcement litigation could be costly for municipalities and put them at risk of losing some degree of local control over how the Act gets implemented. Fortunately, they have the power to avoid those issues entirely by enacting compliant zoning in 2025.

Sincerely,

/s/ Jacob M. Love, Esq.
General Counsel for Policy
Citizens' Housing and Planning Association

⁴⁹ See *Perez*, 379 Mass. at 732 (holding that equity powers allow courts to appoint “parajudicial officers whose services appear to be reasonably necessary”).

⁵⁰ See, e.g., *Blaney*, 374 Mass. at 339-343 (affirming single justice’s order imposing remedial obligations on state officials, which the single justice adopted based on recommendations of a special master).

⁵¹ See *Hudson*, 315 Mass. at 346-350.