

**COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY**

CENTRAL MASSACHUSETTS HOUSING
ALLIANCE, INC.; LYDIANA MORALES; and
JENNIFER LISH,

Plaintiffs,

v.

TOWN OF HOLDEN; BOARD OF SELECTMEN
Of THE TOWN OF HOLDEN; and PETER
LUKES, in his official capacity as HOLDEN
TOWN MANAGER,

Defendants.

No. SJ-_____

COMPLAINT FOR DECLARATORY RELIEF UNDER M.G.L. c. 231A

Introduction

1. This case concerns the interpretation of a Massachusetts state law that is applicable to 177 communities in the Commonwealth.

2. As the Massachusetts Legislature has stated, “the Commonwealth is in the midst of a housing crisis . . . in which residents find it increasingly difficult to access affordable housing”¹

3. Rents and home prices in Massachusetts have increased dramatically in recent years, raising the cost of living and inflicting a financial toll on families.

4. Local zoning policy is a major driver of this crisis. Across the Commonwealth, cities and towns maintain zoning schemes that inhibit significant housing production. Whereas municipalities liberally allow the construction of single-family homes without prior approval—or

¹ An Act to Create the Executive Office of Housing and Livable Communities and to Rename the Executive Office of Economic Development 2023 Mass. Legis. Serv. Ch. 7 (H.B. 43) (West).

“as of right”—they often subject multi-family housing development to onerous permitting processes or preclude such development altogether. These “anti-density” zoning policies suppress the Commonwealth’s overall housing supply, which has become woefully inadequate to meet demand and has resulted in cost inflation.

5. Not only do inflated housing costs disproportionately harm Massachusetts residents of color, but anti-density zoning policies perpetuate racial segregation in the Commonwealth.

6. In 2021, the Legislature enacted a landmark zoning law—M.G.L. c. 40A § 3A (“MBTA Communities Zoning Law” or “the Law”)—to remove local barriers to multi-family housing, boost housing production, and lower prices.

7. The MBTA Communities Zoning Law mandates that 177 municipalities with or near MBTA service (“MBTA Communities”) “shall have” one “as of right” multi-family zoning district of “reasonable size.” It also provides that: non-compliant municipalities “shall not be eligible” for certain state funding grants, and the Executive Office of Housing and Livable Communities (“HLC”)² “shall promulgate” compliance guidelines.

8. The Law replaces the every-town-for-itself approach to multi-family zoning by creating a minimum “as of right” threshold that MBTA Communities must meet. It is written in explicitly imperative terms and state legislators have maintained that municipalities must comply with the Law’s zoning provisions.

9. Despite all this, the Town of Holden (“Holden” or “the Town”) publicly maintains that compliance with the Law’s zoning provisions is optional for MBTA Communities like itself.

² The Law originally tasked the Department of Housing and Community Development (“DHCD”) with promulgating guidelines. However, in 2023, the Commonwealth created HLC to replace DHCD. For simplicity, as DHCD no longer exists, this Complaint refers to the agency responsible for promulgating guidelines under the Law as “HLC.”

The Town defied HLC’s first compliance deadline in January 2023—leading HLC to deem the Town “non-compliant”—and the Town’s officials have repeatedly said that the Town is exercising its option to not comply. In the view of those officials, MBTA Communities can simply forego the relevant state funding grants and exempt themselves from the Law’s zoning provisions.

10. Those officials are wrong. The Law’s plain language, and Chapter 40A’s overall scheme, establish that the Law’s zoning provisions are mandatory and enforceable.

11. This dispute goes to the heart of the Law. If Holden’s interpretation is allowed to persist, MBTA Communities will be free to preserve the anti-density status quo that has driven the housing crisis, undermining the Law’s effectiveness and subjecting residents of the Commonwealth to a perpetually overpriced and segregated housing landscape.

12. A group of plaintiffs harmed by Holden’s non-compliance seek a declaration from this Court that: compliance with subsection (a)(1) of the Law is mandatory for all MBTA Communities and merely incurring the loss of funding grants pursuant to subsection (b) of the Law does not absolve any MBTA Community of its obligation to comply with subsection (a)(1).

Jurisdiction

13. This Court has subject matter jurisdiction over this action pursuant to: M.G.L. c. 214 § 1, which grants it original and concurrent jurisdiction over “all cases and matters of equity cognizable under the general principles of equity jurisprudence”; and M.G.L. c. 231A § 1, et seq., which grants it the authority to issue declaratory judgments.

14. This action satisfies the requirements to maintain a declaratory judgment suit because, as detailed more fully below, there is an “actual controversy” between the parties as to whether the Law’s zoning mandates are compulsory for MBTA Communities.

15. This action is properly before the Court because it pertains to a pure legal question of statewide importance that should be decided expeditiously.

Parties

16. Plaintiff Central Massachusetts Housing Alliance, Inc. (“CMHA”) is a non-profit corporation duly organized under the laws of Massachusetts. CMHA seeks to eliminate homelessness in Worcester County by providing services to families that are homeless or at risk of homelessness, leading efforts to increase and preserve the supply of affordable housing, and educating the public about homelessness and its causes. Among its wide array of services, CMHA provides an emergency family shelter program. That program operates shelters in Worcester County that house families at risk of homelessness and provides those families with assistance designed to foster long-term housing stability, including help with housing search and placement. CHMA’s principal place of business is 6 Institute Road, Worcester, Massachusetts 01609. Affidavit of Leah Bradley (“Bradley Aff.”), filed contemporaneously herewith, at ¶¶ 4-7.

17. Plaintiff Lydiana Morales is an adult resident of Westborough, Worcester County, Massachusetts. She is a multi-racial Hispanic³ woman. Plaintiff Morales is also disabled, unable to work, and low-income. In October 2022, Plaintiff Morales and her minor child had to leave their apartment in the City of Worcester because Plaintiff Morales was no longer able to afford the rent. They were subsequently unable to find affordable rental housing and remained without stable shelter until February 2023. That month, Plaintiff Morales and her child moved to a Westborough emergency assistance family shelter. They still reside there but can only stay until December 2023. Plaintiff Morales has been searching for in-state rental housing for months. She is willing to move

³ This Complaint uses the terms Hispanic, Latino, and Latinx based on how a particular person identifies and/or how an external source uses the terminology.

anywhere in the Commonwealth, including Holden, but cannot find anything in her budget. Affidavit of Lydiana Morales (“Morales Aff.”), contemporaneously filed herewith, at ¶¶ 4-6, 8, 10.

18. Plaintiff Jennifer Lish is an adult resident of Holden, Worcester County, Massachusetts. She owns a home in Holden and has resided in that home since she purchased it in 1999. As a resident of Holden, Plaintiff Lish has an interest in the Town’s officials complying with state law. She is concerned that, due to Holden’s interpretation of the Law as optional, Holden and its residents like her will lose the benefits of compliance, including state funding grant eligibility, increased housing infrastructure, a larger and more diverse population, and a greater tax base. Affidavit of Jennifer Lish (“Lish Aff.”), filed contemporaneously herewith, at ¶¶ 2, 8-10.

19. Defendant Town of Holden is a municipal corporation duly organized under the laws of the Commonwealth of Massachusetts. Holden is in Worcester County, Massachusetts, and has offices located at 1204 Main Street, Holden, Massachusetts 01520.

20. Defendant Board of Selectmen of the Town of Holden (the “Board of Selectmen” or “Board”) is the duly-elected policymaking body of the Town of Holden, Massachusetts. It is composed of five members who are elected to three-year terms by the Town’s voters during an annual open Town Meeting. The Board’s powers include, among other things, issuing licenses and permits, setting Town policy through regulations, and appointing and supervising a Town Manager. The Board has offices located at 1204 Main Street, Holden, Massachusetts 01520.

21. Defendant Peter Lukes is the Town Manager of the Town of Holden, having been appointed to that position by the Board of Selectmen. The Holden Town Manager serves for a term of up to three years and may be removed from office by a majority vote of the Board of Selectmen. The Town Manager runs the daily operations of the Town, including appointing and supervising

land use planning officials like the Director of Planning and Development. The Holden Town Charter requires the Town Manager to attend regular meetings of the Board of Selectmen, advise the Board of the Town’s needs, recommend policy as necessary, and “administer . . . all provisions of general and specific laws applicable to [Holden], all by-laws and all regulations by the selectmen.” On information and belief, Defendant Lukes’ principal place of business is 1204 Main Street, Holden, Massachusetts 01520. He is sued in his official capacity.

Statement of Facts

The Housing Crisis, Racial Segregation, and Local Zoning

22. Massachusetts has become one of the most expensive housing markets in the United States, and it remains highly residentially segregated by race.

23. In 2023, the average fair market rent for a two-bedroom unit in Massachusetts is nearly 50% higher than the national average.⁴ That rises to more than 80% higher in Greater Boston.⁵

24. The federal Department of Housing and Urban Development (“HUD”) considers any family that pays more than 30% of its income on housing to be “cost burdened.”

25. Households that need to spend outsized shares of their income on rent may be forced to sacrifice other basic needs, such as food, health care, and transportation.

⁴ NATIONAL LOW INCOME HOUSING COALITION, OUT OF REACH: THE HIGH COST OF HOUSING 4, MA-130 (2023).

⁵ *Id.* at 4, MA-135.

26. According to recent reports, nearly half of renters in Greater Boston,⁶ and more than 30% of renters in the Commonwealth overall,⁷ are cost-burdened. As of January 2023, the latter figure represented the highest overall percentage of cost-burdened renters in any state.⁸

27. Housing-related financial strain has a host of harmful effects on families, including worse self-reported health conditions, a higher likelihood of postponing medical services for financial reasons, and lower K-12 educational outcomes.

28. These effects disproportionately harm households of color—especially Black and Latinx households—which are much more likely than White households to be cost-burdened.

29. Plaintiff Morales has experienced these types of harms directly. She was severely cost-burdened prior to leaving her home in October 2022. As a result, to save money for rent, she has often had to skip meals and delay seeking medical treatment. *See Morales Aff.* at ¶¶ 5, 10.

30. Plaintiff Morales ultimately could not keep pace with her rent burden and became homeless. *Id.* at ¶¶ 5, 6. The same fate is increasingly befalling many families across Massachusetts.

31. With the affordable housing crisis dragging on, the Commonwealth expanded its family shelter program this year to meet surging demand. Worcester alone saw a 22% increase in family homelessness in the first five months of 2023 compared to 2022.⁹

⁶ *See* THE GREATER BOSTON HOUSING REPORT CARD 2022 at 44 (Soni Gupta & Sandy Kendall eds., 2022).

⁷ Lu Chen & Mary Le, *Key Takeaways from the 4th Quarter Housing Affordability Update*, MOODY'S ANALYTICS, <https://cre.moodyanalytics.com/insights/market-insights/q4-2022-housing-affordability-update/> (last visited August 2, 2023).

⁸ *Id.*

⁹ Kiernan Dunlop, *As Worcester homelessness rate climbs, providers look for solutions*, MASS LIVE (June 29, 2023).

32. The high cost of living is forcing residents out of their homes, and out of the Commonwealth altogether. Workers are leaving high-cost states like Massachusetts for lower cost states in the South. As a result, Massachusetts has lost a large share of its labor force over the last few years, causing a labor shortage.

33. Compounding the racial cost-burden inequity mentioned above, Black and Latinx households are also segregated from White households across Massachusetts.

34. Not only is racial segregation pervasive within metropolitan areas like Boston, but Black and Latinx households are also disproportionately excluded from affluent suburbs. This has enormous consequences for families of color, like Plaintiff Morales', as they are concentrated in poorer neighborhoods with fewer public resources relative to similarly situated White families.

35. Many affluent suburbs like Holden are disproportionately White relative to the statewide population. According to the 2020 census, Massachusetts has a median household income of \$89,026 and a population that is 79.4% White, 9.5% Black, and 13.1% Hispanic or Latino. Holden, on the other hand, has a median household income of \$124,638 and a population that is 89.3% White, 3% Black, and 4.6% Hispanic or Latino.

36. Local zoning policy is a key driver of both high costs and racial segregation in housing.

37. Cities and towns are responsible for implementing their own zoning bylaws, which must comply with requirements set forth by the Legislature in the general laws.

38. Zoning schemes across the Commonwealth have inhibited housing production in a myriad of ways, including prohibiting multi-family structures in favor of single-family homes; setting onerous dimensional requirements, such as large minimum lot sizes; limiting the number of units allowed per acre of land; and requiring extra permitting for multi-family housing

development. Such measures, which have long been widespread, constrain development by restricting housing density and inflating costs for developers.

39. In the aggregate, these measures prevent Massachusetts from developing sufficient new housing to meet demand. And the supply-and-demand imbalance, in turn, drives up housing costs.

40. Massachusetts housing development has lagged so much that, according to one study, the Commonwealth must build over 100,000 more units per year to keep up with demand.¹⁰

41. Anti-density zoning measures also perpetuate racial segregation in Massachusetts. A recent analysis of Commonwealth census data found robust evidence that restrictive land use regulations “negatively impact minority population shares” and that as-of-right multi-family housing development increases Black and Hispanic populations in the cities and suburbs.¹¹

42. Especially in suburban towns, restricting multi-family housing development suppresses the quantity of affordable housing and limits the opportunity for people with modest incomes to move there from segregated areas.

Constitutional and Statutory Framework

43. In October 2020, the Brookings Institution issued a report detailing how anti-density zoning in Greater Boston inflates housing prices and outlining how “[a]llowing smaller, higher density housing offers the greatest affordability improvements. . . .”¹²

¹⁰ UP FOR GROWTH, HOUSING UNDERPRODUCTION IN THE U.S. 5 (Mike Kingsella & Leah MacArthur, eds., 2022).

¹¹ Matthew Resseger, *The Impact of Land Use Regulation on Racial Segregation: Evidence from Massachusetts Zoning Borders* 4 (Oct. 2022) (Mercatus Working Paper, Mercatus Ctr. at George Mason Univ.), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4244120.

¹² ZONED OUT: WHY MASSACHUSETTS NEEDS TO LEGALIZE APARTMENTS NEAR TRANSIT (Sandy Kendall ed., 2020).

44. This report listed several different ways that policymakers could generate more multi-family housing and lower prices, including adopting a “consistent set of requirements that establish a minimum baseline for what type of housing is allowed near stations.”¹³

45. In January 2021, the Massachusetts Legislature sent the MBTA Communities Zoning Law to the Governor’s desk as part of a larger economic development package. Governor Charlie Baker formally enacted the Law on January 14, 2021.

46. State legislators who championed the MBTA Communities Zoning Law have recognized that local restraints on housing development have driven the Commonwealth’s housing crisis. Those legislators have also emphasized that the Law “is a zoning mandate” that “ensures each public transit municipality is a part of the housing solution.”¹⁴

47. Under Article 89 of the Amendments to the Massachusetts Constitution (the “Home Rule Amendment” or “HRA”), cities and towns have the power to pass local laws exercising the general police power of the state, including the power to zone. However, the Home Rule Amendment only authorizes municipalities to pass laws to the extent they are “not inconsistent with the constitution or laws enacted by the general court.” Mass. Const. Amend. Art. 89, § 6.

48. Section 8 of the HRA grants the Massachusetts Legislature, also known as the General Court, “the power to act in relation to cities and towns ... by general laws which apply alike to all cities, or all towns ... or to a class of not fewer than two.” Mass. Const. Amend. Art. 89, § 8.

¹³ *Id.*

¹⁴ Andy Vargas, Kevin Honan, & Rachel Heller, *It costs a fortune to live in Greater Boston. A new zoning law could help*, WBUR.ORG (June 23, 2022), <https://www.wbur.org/cognoscenti/2022/06/23/mbta-zoning-law-affordable-housing-massachusetts-andy-x-vargas-kevin-honan-rachel-heller>.

49. As this Court has explained, the Massachusetts Legislature retains “supreme power in zoning matters as long as [it] acts in accordance with [Section 8].” *Bd. of Appeals of Hanover v. Hous. Appeals Comm. in Dep’t of Cmty. Affairs*, 363 Mass. 339, 360 (Mass. 1973).

50. The Massachusetts Legislature has exercised its constitutional authority and enacted a statutory scheme regulating local zoning, known as the Zoning Act. *See* Mass. Gen. Law ch. 40A §§ 1-17.

51. The Zoning Act imposes both substantive and procedural rules that municipalities must adhere to in the exercise of their zoning power.

52. The substantive rules include restrictions on the local regulation of certain types of land uses like agriculture, religion, non-profit education, childcare facilities, and solar energy systems. *See* Mass. Gen. Law ch. 40A § 3.

53. Some of the procedural requirements pertain to the process for municipalities to adopt or amend a zoning ordinance or bylaw. *See* Mass. Gen. Law ch. 40A § 5.

54. The MBTA Communities Zoning Law is now part of this general statutory framework and is codified as Section 3A of the Zoning Act:

(a)(1) An MBTA community shall have a zoning ordinance or by-law that provides for at least 1 district of reasonable size in which multi-family housing is permitted as of right; provided, however, that such multi-family housing shall be without age restrictions and shall be suitable for families with children. For the purposes of this section, a district of reasonable size shall: (i) have a minimum gross density of 15 units per acre, subject to any further limitations imposed by section 40 of chapter 131 and title 5 of the state environmental code established pursuant to section 13 of chapter 21A; and (ii) be located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable.

(b) An MBTA community that fails to comply with this section shall not be eligible for funds from: (i) the Housing Choice Initiative as described by the governor in a message to the general court dated December 11, 2017; (ii) the Local Capital Projects Fund established in section 2EEEE of chapter 29; (iii) the MassWorks infrastructure program established in section 63 of chapter 23A, or (iv) the Housing Works infrastructure program established in section 27 of chapter 23B.

(c) The executive office of housing and livable communities, in consultation with the executive office of economic development, the Massachusetts Bay Transportation Authority and the Massachusetts Department of Transportation, shall promulgate guidelines to determine if an MBTA community is in compliance with this section.

Mass. Gen. Law ch. 40A § 3A (emphasis added).

55. Section 1A of the Zoning Act defines the term “MBTA Community.” That definition includes “other served communities as defined in section 1 of ... chapter 161A.” Mass. Gen. Law ch. 40A § 1A. Holden is listed as an “other served community” in Mass. Gen. Law ch. 161A § 1 and, therefore, Holden is an MBTA Community for purposes of the MBTA Communities Zoning Law.

HLC’s Compliance Guidelines

56. After issuing draft guidelines and undertaking an extensive public comment process, HLC ultimately promulgated its final guidelines on August 10, 2022. It then issued a revised version of those guidelines on October 21, 2022, a true and correct copy of which is attached hereto as **Exhibit A**.

57. Consistent with the Law’s text, HLC’s guidelines state that “[t]he purpose of Section 3A is to encourage the production of multi-family housing by *requiring* MBTA communities to adopt zoning districts where multi-family housing is allowed as of right.” Ex. A (emphasis added).

58. The guidelines outline a series of deadlines that MBTA Communities must meet to achieve “interim” and then “district” compliance with the Law.

59. The interim compliance process consists of a series of “affirmative steps toward the creation of a compliant multi-family zoning district.” *Id.* The guidelines provide that, in order to achieve interim compliance, an MBTA Community must complete the first of those steps by “no

later than” January 31, 2023. *Id.* That first step is the submission of an “action plan” to HLC detailing how the community plans to create the necessary zoning district.

60. HLC’s action plan form is just six pages long.

61. Final or “district compliance” is reached when HLC “determines that an MBTA community has a multi-family zoning district that complies with Section 3A.” *Id.*

Holden’s Decision Not to Comply

62. Holden has failed to comply with the Law. The Town has refused to file an action plan and, as a result, HLC has officially designated Holden as “non-compliant.”¹⁵

63. The Board of Selectmen and Town Manager have chosen to flout the guidelines.

64. In April 2022, Town Manager Lukes emailed an employee in the Holden Planning and Development Office about MBTA Communities Zoning Law compliance. He wrote that he sensed “a general rejection of this entire concept from the [Board of Selectmen]” and that the Board was “willing to forgo the grant opportunities” as a result of non-compliance. A true and correct copy of this email thread is attached hereto as **Exhibit B**.

65. Such willingness translated into a final decision by October 2022. That month, Defendant Lukes emailed the Assistant Town Manager, Stephanie King, that “we don’t intend to take the next step in the MBTA Communities program.” A true and correct copy of this email thread is attached hereto as **Exhibit C**.

66. On January 17, 2023, Ms. King reiterated that decision by emailing a staff member of the Central Massachusetts Regional Planning Commission and confirming that Holden would

¹⁵ Executive Office of Housing and Livable Communities, *Action Plan Submission Statuses*, Subheading Under *Multi-Family Zoning Requirement for MBTA Communities*, MASS.GOV <https://www.mass.gov/info-details/multi-family-zoning-requirement-for-mbta-communities#section-3a-guidelines>- (last visited August 2, 2023).

not be meeting the Law’s compliance requirements. A true and correct copy of this email thread is attached hereto as **Exhibit D**.

67. Holden subsequently declined to file an action plan by the January 31, 2023 deadline. Since that date, Town officials have repeatedly stated that compliance with the Law’s zoning provisions is optional, and that Holden is exercising its option to not comply.

68. In February 2023, Town Manager Lukes stated publicly that “[a]rbitrary borders drawn by Boston politicians to change our zoning is something we’re not going to go along with.” He also said that the Law “was originally proposed as not mandatory” and “[f]ollowing that presumption, the town chose not to participate.”¹⁶

69. On March 15, 2023, the Massachusetts Attorney General issued a legal advisory “to assist cities, towns, and residents in understanding the requirements imposed” by the Law. A true and correct copy of this legal advisory is attached hereto as **Exhibit E**.

70. The advisory rejects the idea that the Law’s zoning provisions are optional. It states that ineligibility for the funding grants in subsection (b) of the Law is an “administrative consequence” of non-compliance. It then elaborates that “MBTA Communities cannot avoid their obligations under the Law by foregoing this funding” and the Law “does not provide any mechanism by which a town or city may opt out” of the zoning requirements. Ex. E.

71. Holden has not changed its position in response to the advisory. Four months later, the Town still has not filed an action plan and Town officials maintain that compliance is optional.

¹⁶ Cyrus Moulton, *Holden still holding out on mandate for housing*, TELEGRAM & GAZETTE (WORCESTER) (March 9, 2023)

72. On March 15, 2023, in response to the advisory, Defendant Lukes told the Boston Globe that “[t]he attorney general thinks it’s mandatory, I see it a little differently.” A true and correct copy of this Boston Globe article is attached hereto as **Exhibit F**.

73. The Board then discussed the advisory and the Law at a meeting on March 20, 2023. Selectmen Anthony Renzoni stated that “we’re accepting part b of this legislation where we will give up those grants.” He also set out the Board’s position by saying “the plan, and the current position of the Board of Selectmen, has been that we’re going to accept the loss of those three grant programs ... I know we’re being threatened to be sued, but I don’t see anywhere in here where we’re not complying with the Law as written.”¹⁷

74. Renzoni re-stated the Board’s position at subsequent meeting on April 24, 2023. That day, he asserted that “the Law says you’ll become an MBTA Community or you’ll lose access to these grants. We chose the ‘or’ as a community so far.”¹⁸

Declaratory Relief is Both Warranted and Necessary

75. Only full compliance with the Law can generate the kind of increase in housing development that the Commonwealth needs to meet demand.

76. MBTA Communities showed prior to the Law’s enactment that, left on their own, they will not sanction sufficient multi-family housing development to meaningfully increase the Commonwealth’s overall housing supply and bring down costs for families.

77. Holden’s interpretation that compliance with the Law’s zoning provisions is optional would leave discretion in the hands of communities whose discretion necessitated the

¹⁷Holden Community Television, *Board of Selectmen March 20, 2023*, <https://holdentv.com/3993-2/>.

¹⁸ Holden Community Television, *Board of Selectmen April 24, 2023*, <https://holdentv.com/4044-2/>.

Law in the first place. Given the widespread preference for anti-density zoning among MBTA Communities, and continued municipal misgivings regarding multi-family zoning, that interpretation threatens to completely undermine the Law’s effectiveness.

78. Holden is one of two MBTA Communities that are currently non-compliant with the Law.¹⁹ While MBTA Communities have largely followed HLC’s guidelines so far, support for the necessary zoning changes is tenuous in many of them.

79. Some public officials in interim-compliant communities have, among other things, objected to HLC’s guidelines, decried the Law’s application to them, publicly mulled ways they can avoid complying, and declined to file action plans by the deadline. Recently, Millbury even enacted an eighteen-month moratorium on the development of housing with more than two units.

80. This wariness toward the Law, and multi-family housing in general, highlights the broad implications of Holden’s actions. Holden is not just quietly refusing to comply—it has publicly taken the position that the Law is optional for all MBTA Communities.

81. This interpretation contravenes the plain language of the Law, which states that MBTA Communities “shall have” a compliant multi-family zoning district. In doing so, Holden’s interpretation creates uncertainty about the Law’s meaning at a crucial time in the Law’s implementation.

82. With so many MBTA Communities already reluctant to embrace multi-family zoning, Holden’s interpretation cannot be viewed in a vacuum.

¹⁹ HLC has also deemed Berkley non-compliant with the Law for failing to submit an action plan. See Executive Office of Housing and Livable Communities, *Action Plan Submission Statuses*, Subheading Under *Multi-Family Zoning Requirement for MBTA Communities*, MASS.GOV <https://www.mass.gov/info-details/multi-family-zoning-requirement-for-mbta-communities#section-3a-guidelines>- (last visited August 2, 2023).

83. If the controversy goes unresolved, it will only embolden other MBTA Communities to reconsider their options and delay compliance due to a lack of clarity. The longer Holden is allowed to maintain its position that compliance is optional, the more likely a domino effect of non-compliance becomes.

84. Continued uncertainty about the need to comply will draw out the process contemplated by the Law, which requires further administrative action once “interim compliance” is reached. Without resolution now, timely compliance with all those steps stands in jeopardy, particularly where Holden has failed to complete the bare minimum requirement of filing an action plan, which the Law required to be filed more than six months ago.

85. Holden’s refusal to comply also itself undermines the Law. By declining to engage in the required re-zoning process on the basis that its compliance is optional, Holden suppresses its housing supply, keeps rent and home prices high, and perpetuates racially segregated housing patterns through the exclusion of renters of color.

86. Both CMHA and Plaintiff Morales, who have been frequently searching for affordable housing placements, have encountered a dearth of affordable rental housing in Holden. *See Bradley Aff. at ¶¶ 7, 12; Morales Aff. at ¶¶ 8-9.*

87. The Town’s actions also harm Plaintiffs. Plaintiffs CMHA and Morales have a vested interest in broad compliance with the Law to boost housing supply and lower prices.

88. The affordable housing crisis strains CMHA’s resources and impairs its mission. The crisis has increased homelessness in the City of Worcester, placed more Worcester County residents at risk of homelessness, heightened demand for CMHA’s services, and made it more difficult for CMHA to find housing for its shelter residents. *See Bradley Aff. at ¶¶ 11, 13-14.*

89. All of this has required CMHA to expend more resources on shelter and housing placement than it otherwise would, and to siphon resources away from other activities like educational and skill enhancement programming for shelter families. *Id.* at ¶¶ 13-15.

90. Likewise, the statewide lack of affordable housing perpetuates Plaintiff Morales' housing instability. Since leaving her home in October 2022 because she could no longer afford the rent, Plaintiff Morales has been under constant stress trying to secure affordable rental housing and meet her child's basic needs. *See Morales Aff.* at ¶ 10.

91. The ordeal has caused Plaintiff Morales to experience food insecurity and delayed medical treatment, as she has often had to skip meals and postpone medical appointments to save money for rent payments. She has also suffered from a lack of sleep, heightened anxiety, and more frequent flare ups of her mental health symptoms. *Id.* at ¶ 10.

92. Plaintiff Morales' struggles are emblematic of the many thousands of low-income renters in the Commonwealth who are currently dealing with chronic housing instability.

93. Plaintiff Lish has a clear interest in her Town and its officials complying with state law. Holden's refusal to comply with the Law's zoning provisions, on the basis that compliance is optional, harms Plaintiff Lish and other Holden residents in several ways. *See Lish Aff.* at ¶¶ 8-10.

94. Among other things, it deprives them of the various benefits that come with compliance, including access to state funding grants that could be used to improve the Town, increased housing infrastructure, a more diverse population, and a bigger Town tax base.

95. These plaintiffs constitute only a small cross-section of the individuals and organizations whom the MBTA Communities Zoning Law was designed to benefit, and who are harmed by Holden's actions.

Actual Controversy Over the Law's Meaning

96. In July 2023, the CEO of CMHA contacted Town Manager Lukes via email and requested a meeting to discuss increasing affordable housing in Holden through compliance with the Law. However, Defendant Lukes refused that meeting request, preventing a resolution of the parties' disagreement over the Law's meaning.

97. This matter boils down to a straightforward dispute over the legal requirements imposed by the Massachusetts Legislature in the MBTA Communities Zoning Law.

98. Plaintiffs assert that compliance with the zoning provisions set forth in subsection (a)(1) of the Law is mandatory for each MBTA Community regardless of whether any such Community incurs the loss of funding grant eligibility pursuant to subsection (b) of the Law.

99. Defendants' position, on the other hand, is that the multi-family zoning provisions set forth in subsection (a)(1) of the Law are not mandatory for each covered community, and that any covered community can avoid those requirements simply by choosing to incur the loss of funding grant eligibility pursuant to subsection (b) of the Law.

100. Defendants' interpretation runs counter to the Law's plain language, the Legislature's intent, and the overall statutory scheme created by the Zoning Act.

101. This Court has articulated that "[i]t is axiomatic in statutory construction that the word 'shall' is an imperative." *Perez v. Dep't of State Police*, 491 Mass. 474, 486 (Mass. 2023).

102. Each of the Law's three separate subsections is phrased in imperative terms, indicating that there is no room for discretion as to any one of the three.

103. All three subsections impose a distinct mandate: MBTA Communities "shall have" an as-of-right multi-family district of reasonable size; those that do not comply "shall not be eligible" for certain state funding; and HLC "shall promulgate" compliance guidelines. Mass. Gen.

Law ch. 40A § 3A. Nothing in the Law’s plain language suggests that these are anything but commands.

104. Contrary to the Town’s position, as exemplified by Selectman Renzoni’s April 24 statement, there is no “or” between subsections (a)(1) and (b) indicating that MBTA Communities have a choice between adopting the required zoning district and foregoing funding.

105. In the absence of that “or,” subsection (b) merely creates one consequence for municipalities that neglect their obligations outlined within subsection (a)(1).

106. The Attorney General’s legal advisory put it simply: “[t]he Law ... does not provide any mechanism by which a town or city may opt out of” the requirements of subsection (a)(1). Ex. E.

107. The Law’s plain language and the context in which the Legislature enacted it demonstrate that the Legislature intended to eliminate discretion for MBTA Communities in this area, not preserve it.

108. Responding to widespread municipal suppression of multi-family housing development in the absence of regulation, the Law explicitly creates a minimum threshold of “as of right” multi-family zoning that MBTA Communities “shall” provide.

109. Holden’s insistence that the Law leaves room for discretion, where the Law does not explicitly say so and where discretion created the problem in the first place, defies all logic. A reading of the Law that would allow only those towns that are affluent enough to forego state grants, like Holden, to avoid the Law’s requirements would further exacerbate segregation in the Commonwealth and undermine the intent behind the Law.

110. The overall statutory scheme reinforces this straightforward reading of Mass. Gen. Law ch. 40A § 3A in several important ways.

111. First, this Court has interpreted Zoning Act provisions similar to Section 3A as mandatory for municipalities. Those include the substantive “limitations expressly stated” in Section 3, *Sturges v. Town of Chilmark*, 380 Mass. 246, 253 (Mass. 1980), and the procedural “requirements” for adopting or amending a local zoning law now codified in Section 5, *Rayco Inv. Corp. v. Bd. of Selectmen of Raynham*, 368 Mass. 385, 394 (Mass. 1975).

112. Second, the Legislature designed Section 3A, and inserted it into the wider Zoning Act, to thoroughly regulate multi-family zoning and address the Commonwealth’s housing shortage. As this Court has explained, “[w]here legislation deals with a subject comprehensively, it may reasonably be inferred as intended to preclude the exercise of any local power or function on the same subject because otherwise the legislative purpose of that statute would be frustrated.” *Town of Dartmouth v. Greater New Bedford Reg’l Vocational Tech. High Sch.*, 461 Mass. 366, 375-376 (Mass. 2012) (internal citations and quotations omitted).

113. Third, subsection (b) of the MBTA Communities Zoning Law is not the exclusive remedy against MBTA Communities that fail to comply with subsection (a)(1), further dispelling the idea that the funding penalty is an opt-out provision. Section 7 of the Zoning Act, for example, imbues courts with jurisdiction to enforce the Zoning Act through injunctive relief.²⁰

114. To interpret subsection (b) as the exclusive remedy would render superfluous at least that portion of Section 7. And it is well-established that “the canon against surplusage is

²⁰ That Section provides that “[t]he superior court and the land court shall have the jurisdiction to enforce the provisions of this chapter, and any ordinances or by-laws adopted thereunder, and may restrain by injunction violations thereof.” Mass. Gen. Law ch. 40A § 7. For clarity, the Complaint cites to this provision for sake of statutory interpretation. The Plaintiffs here do not seek injunctive relief. Instead, they seek declaratory relief directly from the Supreme Judicial Court.

strongest when an interpretation would render superfluous another part of the same statutory scheme.” *Young v. Contributory Ret. Appeal Bd.*, 486 Mass. 1, 12 (Mass. 2020).

115. Thus, interpreting subsection (a)(1) as mandatory is consistent with the plain language of Section 3A, legislative intent, and the overall statutory scheme.

Count I
(Declaratory Relief Pursuant to M.G.L. c. 231A, et seq.)

116. Plaintiffs incorporate by reference the allegations set forth in all of the preceding paragraphs as if restated and realleged herein.

117. There is an actual controversy between Plaintiffs and Defendants as to whether MBTA Communities may opt-out of the zoning requirements in subsection (a)(1) of the Law by incurring the loss of funding grant eligibility pursuant to subsection (b) of the Law.

118. Plaintiffs assert that the requirements of subsection (a)(1) are mandatory and that the Town cannot opt out of those requirements merely by incurring the loss of funding eligibility pursuant to subsection (b). Defendants have taken the opposite position.

119. Holden’s refusal to comply with the Law on the basis that it is optional not only harms Plaintiffs, but the dispute over the Law’s meaning creates “uncertainty and insecurity” among the parties as to the “rights and duties” implicated by Section 3A of the Zoning Act. Mass. Gen. Law ch. 231A § 2.

120. It is settled precedent that a “dispute over an official interpretation of a statute constitutes a justiciable controversy for purposes of declaratory relief.” *Santana v. Registrars of Voters of Worcester*, 348 Mass. 487, 493 (Mass. 1981).

121. A declaratory judgment from this Court would resolve the “uncertainty and insecurity” regarding the statute’s interpretation and terminate the dispute between the parties.

WHEREFORE, Plaintiffs request the relief set forth below:

Prayer for Relief

Plaintiffs respectfully request that this Court:

- A. Allow the relief requested below or reserve and report this matter to the full court;
- B. Declare that compliance with subsection (a)(1) of the Law is mandatory for all MBTA Communities and merely incurring the loss of funding grants pursuant to subsection (b) of the Law does not absolve any MBTA Community of its obligation to comply with subsection (a)(1);
- C. Grant Plaintiffs such other and further relief as the Court deems just and proper.

Dated: August 3, 2023

Respectfully submitted,

By their attorneys,

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