

MIDDLETON SELECT BOARD
MEETING AGENDA
FULLER MEADOW ELEMENTARY SCHOOL
143 SOUTH MAIN STREET, MIDDLETON, MA 01949
TUESDAY, JANUARY 21ST, 2025
6:00 PM

This meeting is being recorded

- | | |
|---------|---|
| 6:00 pm | 1. Business <ul style="list-style-type: none">• Warrant: 2515 and FP 52 and 53• Minutes: Open Session, January 7, 2025 and January 14, 2025; Executive Session, December 3, 2024 and January 14, 2025• Town Administrator Updates and Reports |
| 6:05 pm | 2. Public Comment |
| 6:10 pm | 3. Middleton Municipal Campus from OPM PCA360 Brian LaRoche <ul style="list-style-type: none">• Review Change Order #3• Context Amendment 15 |
| 6:30 pm | 4. Department Head Update – Anna Bury Carmer |
| 6:45 pm | 5. MBTA Zoning Update <ul style="list-style-type: none">a. Update on <i>Atty General vs. Town of Milton</i> 1/8/2025 SJC-13580b. Review new Emergency 3A Regulations from 1/14/2025c. Update on MassWorks Grant Funding |
| 7:00 pm | 6. Annual Town Meeting May 2025 FY 2026 Budget Calendar |
| 7:05 pm | 7. Review and vote on updated Public Health Excellence IMA |
| 7:10 pm | 8. Transfer Station Fees FY 2026 |
| 7:15 pm | 9. Licensing Items: <ul style="list-style-type: none">• Review and vote on annual licenses for liquor, common victualler, etc....• Review new common victualler license for Walgreens #10949 (Manager Destinee Baldi)• Liquor License Manager Change – SD Management Group, DBA Ferncroft Country Club (Manager Phil Leiss) |
| 7:30 pm | 10. Updates & Announcements |
| 7:35 pm | 11. Executive Session pursuant to G.L. c. 30A, s. 21(a)(2) to discuss strategy with respect to non-union personnel: Contract extension discussion for Fire Chief |
| 7:50 pm | 12. Executive Session pursuant to G.L. c. 30A, s. 21(a)(2) to discuss strategy with respect to non-union personnel: Contract extension discussion for Town Administrator |

The Board reserves the right to consider items on the agenda out of order. Not all items listed may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law.

Return to open session

- 8:00 pm 13. Review and vote on Fire Chief Contract FY 26-28
- 8:05 pm 14. Review and vote on Town Administrator Contract FY 26-28
- 8:10 pm 15. Executive Session pursuant to G.L. c. 30A, s. 21(a)(2) to discuss strategy with respect to non-union personnel: Compensation and Class discussion regarding all non-union personnel.
- 8:15 pm 16. Executive Session pursuant to G.L. c. 30A, s. 21(a)(6) To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body: South Main Street, Parcel 0029-0000-0071.

Upcoming Meetings:

February 1
February 4 and 18
March 1

Operating Budget Sat. Meeting
Regular Select Board Meeting
Capital Budget Sat. Meeting



MEETING MINUTES
MIDDLETON SELECT BOARD MEETING
FULLER MEADOW SCHOOL, NATHAN MEDIA CENTER
143 SOUTH MAIN STREET, MIDDLETON, MA 01949
January 7, 2025 at 6pm

With a quorum present the Chair called the meeting to order at 6pm and announced the meeting was being recorded. Select Board present: Rick Kassiotis, Chair; Debbie Carbone, Clerk; Kosta Prentakis; Not present: Brian Cresta; Jeff Garber. Also attending: Justin Sultzbach, Town Administrator; Jackie Bresnahan, Assistant Town Administrator; others as noted.

The Board reserves the right to consider items on the agenda out of order. Not all items listed may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law.

Business

- **Warrant 2513** / December 26, 2024; Payroll: \$ 883,759; Bills Payable \$ 1.4 MM: **FP 50** \$ 3 MM
- **Warrant 2514** /January 9, 2025; Payroll: \$ 847,600; Bills Payable \$ 584,876: **FP 51** \$ 115,260

The Town Accountant/Finance Director Sarah Wood has reviewed the warrant and requested the Board's approval. Town Administrator Sultzbach provided a brief overview of the warrant as presented.

*On a motion by Prentakis, seconded by Carbone, the Board voted unanimously to **approve** Warrant 2513 & 2514 and FP50 & 51.*

Minutes: Open Session - December 3, 2024; December 17, 2024

*On a motion by Prentakis, seconded by Carbone, the Board voted unanimously to **accept** the meeting minutes of December 3, 2024 and December 17, 2024 as presented.*

Town Administrator Updates & Reports

- J. Sultzbach will meet with Building Commissioner Fitzpatrick to discuss the Candle Light property next week. This is one piece of a large upcoming Northern 114 Corridor Study discussion.
- The Locust St property was put on pause at the end of the year as our team worked to respond to more urgent STM matters. We are picking up the file again and looking to move forward on developing an RFP to shape the sale of that property
- Brian Laroche, our OPM from PCA 360, will be joining us at your next meeting to give a "midway" financial update for the Municipal Campus project.
- We are in the process of meeting with every Department Head to review budgets for FY26. A huge thanks to Finance Director Wood for all of her work gathering this data.
- The Treasurer's Office online payments portal has switched from Unipay to City Hall Systems. Please be mindful of this change when making your online payments.
- "Budget Saturday" will be held on Saturday, February 1st. While this is typically run as more of an informal workshop format, we are making the change to record the proceedings this year with the hope that the videos will help with public outreach for the proposed override. The meeting will start promptly at 8:30am.
- J. Sultzbach made contact with Ralph Romano, District Operations Engineer for the MassDOT District 4 office. He expressed that the design will be finalized around late February, with installation to occur in the Spring/Early summer depending on weather.
- J. Sultzbach will join the Library Board of Trustees for their upcoming Monday, January 13th meeting.
- The Planning Board, ZBA, Affordable Housing Trust and Master Plan Committee will be meeting tomorrow evening to participate in a presentation from Town Planner Anna B. Carmer to lay out initiatives for the next few years.
- Executive Session items for the agenda this evening have been moved to a future date (**Monday January 13, 2025**) to ensure a full Board is present to participate in the conversation. *

Public Comment – *There was none.*

3. Donation Acceptances

- Presentation of Turkey Trot Donations – Courtney Lee & Michelle Debonis were present to present donations to various charities from the 7th Annual Turkey Trot. It was noted this year had the most registrations at 8,117 and additional business sponsors. Recipients of the donation included the Council on Aging, Middleton Food Pantry, Friends of the Flint Public Library, Veteran’s Services, PTO, and 10 youth sports in Middleton and at Masco. In total, \$26,000 will be donated back to the community. Cost savings were noted from various local businesses that participated. The organizers were recognized for their volunteer time and work. Frank Leary, Director of the Middleton Food Pantry invited everyone to his 90th birthday party at the American Legion on January 26 and asked they bring a card and a donation for the food pantry.

On a motion by Prentakis, seconded by Carbone, the Board voted unanimously to accept with much thanks the donations of the Turkey Trot organizers to our Veteran’s Agent, PTO, Food Pantry, COA, Friends of the Flint Library and Youth Sports.

- Middleton Food Pantry

- \$1,000 Bethesda Lodge No. 30 IOOF

On a motion by Prentakis, seconded by Carbone, the Board voted unanimously to accept the \$ 1000 donation for the Middleton Food Pantry from Bethesda Lodge with much thanks.

- \$1,000 Jeff & Carol Curvey Foundation

On a motion by Prentakis, seconded by Carbone, the Board voted unanimously to accept the \$ 1000 donation for the Middleton Food Pantry from Jeff & Carol Curvey Foundation with much thanks.

4. Presentation of Life Saving Awards & Proclamation of Thanks - Fire Chief LeColst was present to publicly acknowledge those individuals for their life saving efforts. Chief reviewed some statistics related to Cardiac Arrest. In summary, roughly 9% of those that have a cardiac arrest event survive, and of those only 7% have good functional status after, noting after the heart stops, brain death occurs in 4-6 minutes, making immediate response by others vitally important.

In September 2024 Fire/Police responded to two cardiac arrest events. The first was to a local gym for unresponsive person, police immediately started CPR until Fire arrived and administered life saving measures.

The next even was later in September 2024 when a person playing golf felt unwell and became unresponsive, CPR was also performed until the Police/Fire Departments arrived and administered life saving measures. Both individuals survived and were present at the meeting. The Chief awarded the following individuals the Life Saving Award & Proclamation Bystanders Christine Dicato and Matt Prior

Topsfield Police Officers David Ricci & Sean Wlasuk, Middleton Police officers Kosta Agganis, Henry Bouchard, Samantha Cila, & Sergeant Michael LeColst, and Middleton Firefighters Lieutenant David T. Leary, Jr.; Joseph Oesterle ; Robert O’Leary , Michael Schroeder; Alexander Walsh

Both survivors recognized, thanked, and acknowledged those who saved their lives.

5. MSBA (Massachusetts School Board Authority) Initial Compliance Certification: Fuller Meadow Roof

J. Sultzbach reviewed the Town Administrator office has been coordinating with the schools on the roof replacement which qualified for supplemental funding and accepted to the program. As part of the process the town/school must certify they are complying with MGL.

On a motion by Prentakis, seconded by Carbone, the Board voted unanimously to authorize the Town Administrator to sign the Initial Compliance Certification on the Town’s behalf.

6. Masco Capital Update with Middleton Representatives: DCI members present- Matthew Alexander, Chair; Trevor Currier; Kendara Petrone; Lisa Macinnis. A slide deck was referenced during the presentation summarizing the proposed capital plan for the school district. It was noted although this presentation was well received by the School Committee it has not been voted or approved by the Committee. This included three categories:

1. Roof/HVAC/Building Management System
2. Turf Fields/stadium – Originally for two fields; the DCI recommendation is for one field and the stadium.
3. All other capital projects

The proposed plan includes a request for \$650K in May 2025; Categories 1 & 2 and subset of 3 in May 2026; since field/stadium as currently designed. Charts were included in the presentation showing the timeline, specifics of each

category, available options, with cost estimates including inflation considerations for 2026/2027; the OPM was not included in these estimates.

The DCI prioritized (50) projects according to safety, corrective measures to meet the law (non-compliance), critical maintenance, and functional programming. A timing chart was associated with the projects.

The committee fielded questions from the Board including about the athletic fields, press box, and field house.

D. Carbone sited much of the list is deferred maintenance and going forward what is the preventative maintenance plan following these projects.

The board had no opinion at this time on the “big ask approach” (all funding to be approved in one override).

The finance Chair was present and supported the one time override to have a clear decision and path going forward. DCI members were thanked for their work.

The agenda was taken out of order with consensus Review & vote on Annual Licenses*

7. Flint Public Library Conditions Assessment Review – J. Sultzbach reviewed the assessment prepared by Building Conservation Association (BCA). This assessment will be reviewed in depth with the Library Trustees next week. The Assessment was done in two sections being the original building and the 2006 addition, and additionally broken down to exterior and interior. In Summary, the interior is mostly in excellent condition. The exterior components of the building are starting to age and in need of repair. A timeline of repairs was included. The next step is to work with BCA on a scope of work and cost estimates. Some more pressing items will be included in the capital plan for funding this year. The Board noted there is no one in charge of town buildings and how quickly projects are deferred, backlogged, and cause additional repairs/expenses.

8. Review & vote on Annual Licenses for Liquor, Common Victualler, etc. - J. Bresnahan noted the deadline has passed for applications to be submitted. Prior to the deadline the following applications had been submitted and are ready for approval: Class II License for Auto Export; Livery License for Dennis R LLC (one vehicle); Freddys Place for Common Victualler, non-alcoholic, pending final inspection- (not present/ no action taken); Soul Bean Café delayed due to internal error. Those that missed the deadline were present and spoke on their tardiness. The annual deadline of November 30 to submit applications was stressed to both applicants.

*On a motion by Prentakis, seconded by Carbone, the Board voted unanimously to **approve** a Common Victualler, none alcohol for Soul Bean Café, Class II License for Auto Export, a Livery License for Dennis R, LLC-one vehicle.*

9. Updates & Announcements- *There were none.*

*** Executive Sessions were deferred to the next full board meeting.**

10. Executive Session –Executive Session pursuant to G.L. c. 30A § 21 (a) (3) Health Insurance Split.

11. Executive Session –pursuant to G.L. c. 30A § 21 (a) (2) Fire Chief; Contract extension discussion for Town Administrator.

Upcoming Select Board Meetings: January 21; February 1- Saturday Operating Budget Meeting

Adjournment: *The Board voted unanimously by roll call to adjourn at 7:50 pm.*

Documents either distributed to the Select Board before the meeting, in a packet, or at the meeting:

- Warrant 2513 & 2514 & Facility Project 50 & 51
- J. Smith – Middleton Food Bank donations
- MSBA Initial Compliance Certification – Fuller Meadow School MSBA Project No. 2024018400003
- Masco Capital Planning Update – 11.13.24
- Flint Public Library Conditions Assessment - Building Conservation Associates, Inc. Newton Centre, December 2024

Respectfully submitted by

Catherine E. Tinsley

Catherine Tinsley, Recording Secretary

Debbie Carbone, Clerk

CONSTRUCTION CONTRACT FOR CONSTRUCTION MANAGER AT RISK SERVICES – CHANGE ORDER 03 AMENDMENT

WHEREAS, the Town of Middleton (“Owner”) represented by Owner’s Project Manager, PCA360, entered into a contract (“Contract”) with W.T. Rich Company, Inc. (“the CM at Risk”) (collectively the “Parties”) for construction manager services in association with the Middleton Municipal Complex Project (“the Project”) on June 1, 2023, which was amended on April 23, 2024 , on May 23, 2024, July 29, 2024, September 26, 2024, and on January 16, 2024.

WHEREAS, pursuant to Section 6.4 of the Contract, the Owner is requesting the amendments as summarized herein in accordance with the provisions of that section;

WHEREAS, when contracting for the work, the Town intended to secure a builder’s risk policy directly through its insurance provider; however, in order to reduce the cost of said policy, the Town is electing to procure the policy through the Construction Manager, the cost of which is included herein;

WHEREAS, the detailed proposal and justification is summarized in Exhibit A, attached hereto and incorporated herein; and

WHEREAS, effective as of January 16, 2024, the Parties wish to amend the Contract as summarized in this Change Order 03.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained in this Amendment, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. To increase the Contract by **Three Hundred Sixty Seven Thousand Seven Hundred Eighty Eight** (\$367,788.00) as further described and justified in Construction Change Order – 003 dated January 13, 2025, attached hereto and incorporated herein.

Fee for Basic Services	Original Contract	Previous Amendments	Amount of this Amendment	After this Amendment
Pre-construction services	\$124,910.00	\$0.00	\$0.00	\$124,910.00
Interim GMP Contract Amendment	\$0.00	\$39,088,652.00	\$0.00	\$39,088,652.00
GMP Contract Amendment	\$0.00	\$18,911,235.00	\$0.00	\$18,911,235.00
Change Order 01 - Amendment	\$0.00	\$342,878.00	\$0.00	\$342,878.00
Change Order 02 - Amendment	\$0.00	(-\$582,655.00)	\$0.00	(-\$582,655.00)
Change Order 03 - Amendment	\$0.00	\$0.00	\$367,788.00	\$367,788.00
Total Contract	\$124,910.00	\$57,760,110.00	\$367,788.00	\$58,252,808.00

2. The Project Schedule shall be from Start to Substantial Completion: Unchanged by this amendment, May 8, 2024 to January 30, 2026 (21.5 Months)
3. The Construction Budget shall be as follows:
Original Budget: \$58,124,797.00 (including pre-construction fee)
Post-Amendment Budget: \$58,252,808.00
4. This Amendment and incorporated attachments contains all additional terms and conditions agreed upon by the Parties as amendments to the original Contract. No other understandings or representations, oral or otherwise, regarding this amendment shall be deemed to exist or bind the Parties, and all other terms and conditions of the Contract remain in full force and effect. This amendment is for the Construction Change Order 03, as outlined in Exhibit A, for a total cost of:

Three Hundred Sixty Seven Thousand Seven Hundred Eighty Eight (\$367,788.00)

IN WITNESS WHEREOF, the Parties have caused this amendment to be executed by their respective authorized officers.

CONSTRUCTION MANAGER

Owner:	W.T. Rich Company, Inc.
Name (Signature):	Jonathan Rich 
Title:	CEO
Date:	1/16/2025

TOWN OF MIDDLETON

By executing this Agreement, the undersigned authorized signatory of Owner, who incurs no personal liability by reason of the execution hereof or anything herein contained, hereby certifies under penalties of perjury that this Contract is executed in accordance with a prior approval of the TOWN OF MIDDLETON.

Owner:	TOWN OF MIDDLETON
Name (Signature):	Richard Kassiotis
Title:	Selectboard Chair
Date:	

Town of Middleton – Finance Director – Sufficient funds available for this contract

Name (Signature):	Sarah Wood
Title:	Finance Director
Date:	

Town of Middleton – Town Counsel (legal) - Approved as to Form & Character

Name (Signature):	
-------------------	--

	Elizabeth Lydon
Title:	Town Counsel - Mead, Talerman & Costa, LLC
Date:	



W.T. RICH COMPANY

CHANGE ORDER

CHANGE ORDER DATE: January 13, 2025
CHANGE ORDER NUMBER: 003
CONTRACT INFORMATION: Construction Management

PROJECT:
 Middleton Municipal Complex
 105 S. Main Street
 Middleton, MA 01949

OWNER:
 Town of Middleton
 48 S. Main Street
 Middleton, MA 01949

ARCHITECT:
 Context Architecture
 65 Franklin Street
 Boston, MA 02110

CONTRACTOR:
 WT. Rich Company, Inc
 1075 Worcester Street, Suite 310
 Natick, MA 01760

THE CONTRACT IS CHANGED AS FOLLOWS:

- PCO 009, CE 009 Ledge Removal PSB & Exploratory \$1,470 (Allowance 7117) – Change Order Value \$0.00
- PCO 012, CE 012 Design Build Irrigation \$203,865 (Owner Change Order) – Change Order Value **\$203,865.00**
- PCO 019, CE 021 Ledge Removal @ Bio Ret. #2 \$4,745 (Allowance 7117) - Change Order Value \$0.00
- PCO 020, CE 018 Add'l Tree Removal Request by Owner \$4,996 (Allowance 7119) Change Order Value \$0.00
- PCO 024, CE 026 PR-004 TH EWH Changes \$213 (Owner Change Order) - Change Order Value **\$213.00**
- PCO 026, CE028 Gabion Wall Sub to Redi Rock 6k Load Req. \$35,814 (CM Contingency) – Change Order Value \$0.00
- PCO 027, CE029 Boulder Removal over 1 CY R1 \$21,996 (Allowance 7117) – Change Order Value \$0.00
- PCO 034, CE046 Credit Temp. Elec. Consumption \$(91,546.00) (Owner Change Order) – Change Order Value **\$(91,546.00)**
- PCO 038, CE 032 Fixture P10A Adds \$1,014 (Allowance 7124) – Change Order Value \$0.00
- PCO 039, CE 054 PR-007 Site Lighting Revs. \$251,885.00 (Owner Change Order) – Change Order Value **\$251,885.00**
- PCO 047, CE 064 Upgrade Elevator Interior to SS \$3,371 (Owner Change Order) – Change Order Value **\$3,371.00**

The Original Contract Sum* was:	\$58,124,797.00
The net change by previously authorized Change Orders:	(\$239,777.00)
The Contract Sum prior to Change Order was:	\$57,885,020.00
The Contract Sum will be increased/decreased by this Change Order in the amount of:	\$367,788.00
The new Contract Sum including this Change Order will be:	\$58,252,808.00
The Contract Time will be increased by:	Zero (0) days
The new date of Substantial Completion will be:	1/30/2026

*Includes all previously executed contract amendments

NOTE: This Change Order does not include adjustments to the Contract Sum or Guarantee Maximum Price, or the Contract Time, that have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.
NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

Context Architecture
ARCHITECT

W.T. Rich Company, Inc.
CONTRACTOR

Town of Middleton
OWNER

C. Christopher Logan

Signature

Jonathan Rich

Signature

Signature

C. Christopher Logan, Director of Projects

Printed Name & Title

Jonathan Rich, CEO

Printed Name & Title

Richard Kassiotis, Select Board Chair

Printed Name & Title

16 January 2025

Date

1/13/2025

Date

Date



01/03/2024

PCA360
75 Second Ave, Suite 305
Needham, MA 02494

Attention: Brian LaRoche

Reference: Middleton Municipal Complex Project
105 South Main Street
Middleton, MA 01949

Subject: **PCO No. 009, CE 009 Ledge Removal PSB and Exploratory**

Dear Brian,

W.T. Rich hereby presents **Potential Change Order No. 009** in the add amount of **\$1,470.00**. Work included within this proposal includes all labor, equipment, and materials for the work associated with removal of additional ledge in exploratory of water main. These costs will be allocated to allowance 7117 "Unsuitable Soils" After acceptance of PCO 009 there will be \$35,228.00 remaining in Allowance 7117.

W.T. Rich certifies that the attached proposal has been reviewed for validity; contains accurate and complete supporting backup in conjunction with the design change documents; and is being made in good faith to the best of our knowledge, presenting only those costs for which we believe the Owner is liable for.

Per the General Conditions of the Contract, work associated with an allowance draw will not commence until a written approval authorizing the draw is received by W.T. Rich. We request your assistance in bringing this matter to a swift conclusion to avoid delays to the progress of work. Allowance draws will be from funds that are already incorporated into the GMP and this approval does not represent an increase in the GMP Value.

An extension of contract time is not required as part of the executed Change Order. The PCO is valid for thirty days. In the event you should have any questions or require any additional information, please do not hesitate to contact me.

W. T. RICH COMPANY, INC.

Matthew Gustin

Matt Gustin, Project Manager

W.T. Rich Company, Inc.

Date: 01/03/2025

Middleton Building Committee Designee:

Signature: *William J. Renault*

Print Name: William Renault

Middleton Building Committee

Date: 1/7/25

Town Administrator:

Signature: *[Signature]*

Print Name: J. Sultzbach

Town of Middleton

Date: 1.7.24

Architect:

Signature: *C. Christopher Logan*

Printed Name: C. Christopher Logan

Context Architecture

Date: 3 January 2025



11/19/24

PCA360
75 Second Ave, Suite 305
Needham, MA 02494

Attention: Brian LaRoche

Reference: Middleton Municipal Complex Project
105 South Main Street
Middleton, MA 01949

Subject: PCO No. 012, CE 012 – Design-Build Irrigation

Dear Brian,

W.T. Rich hereby presents Potential Change Order No. 047 in the add amount of **\$203,865.00** This cost is per owner request to install a design-build irrigation scope. The costs are per the plan included within. There are allowances sitework provision to allow for irrigation as well as plumbing and electrical scopes TBD and to be answered per RFI 228. Included in the PCO are provision for drip irrigation at each of the SL4A fixtures per PR-007. This PCO includes irrigation cost to get to these fixtures and allowances to get irrigation into the base of the site fixtures.

Per the General Conditions of the Contract, work associated with an allowance draw will not commence until a written approval authorizing the draw is received by W.T. Rich. We request your assistance in bringing this matter to a swift conclusion to avoid delays to the progress of work. Allowance draws will be from funds that are already incorporated into the GMP and this approval does not represent an increase in the GMP Value.

An extension of contract time is not required as part of the executed Change Order. The PCO is valid for thirty days. In the event you should have any questions or require any additional information, please do not hesitate to contact me.

W. T. RICH COMPANY, INC.

Matthew Gustin

Matthew Gustin, Project Manager

W.T. Rich Company, Inc.

Date: 11/19/24

Middleton Building Committee Designee:
Signature: *[Signature]*

Print Name: WILLIAM RENAULT

Middleton Building Committee

Date: 12/4/24

Town Administrator:

Signature: *[Signature]*

Print Name: J. Sultzbach

Town of Middleton

Date: 12.3.24

Architect:

Signature: *[Signature]*

Printed Name: C. CHRISTOPHER LOGAN

Context Architecture

Date: 5 December 2024



7/10/2024

PCA360
75 Second Ave, Suite 305
Needham, MA 02494

Attention: Brian LaRoche

Reference: Middleton Municipal Complex Project
105 South Main Street
Middleton, MA 01949

Subject: PCO No. 019, CE 021 – 7117 – Ledge Removal @ Bio Retention #2

Dear Brian,

W.T. Rich hereby presents **Potential Change Order No. 019** in the add amount of **\$4,745.00**. Work included within this proposal includes providing labor, equipment, and materials for the work associated with removal of additional ledge within the Bio Retention area #2. These costs will be allocated to allowance 7117 "Unsuitable Soils" After acceptance of PCO 019 there will be \$57,225.00 remaining in Allowance 7117.

W.T. Rich certifies that the attached proposal has been reviewed for validity; contains accurate and complete supporting backup in conjunction with the design change documents; and is being made in good faith to the best of our knowledge, presenting only those costs for which we believe the Owner is liable for.

Per the General Conditions of the Contract, work associated with an allowance draw will not commence until a written approval authorizing the draw is received by W.T. Rich. We request your assistance in bringing this matter to a swift conclusion to avoid delays to the progress of work. Allowance draws will be from funds that are already incorporated into the GMP and this approval does not represent an increase in the GMP Value.

An extension of contract time is not required as part of the executed Change Order. The PCO is valid for thirty days. In the event you should have any questions or require any additional information, please do not hesitate to contact me.

W. T. RICH COMPANY, INC.

Matthew Gustin

Matt Gustin, Project Manager

W.T. Rich Company, Inc.

Date: 9/20/24

Middleton Building Committee Designee:

Signature: *William J. Renault*

Print Name: William Renault

Middleton Building Committee

Date: 10/1/24

Town Administrator:

Signature: *Justin Sultzbach*

Print Name: Justin Sultzbach

Town of Middleton

Date: 10.1.24

Architect:

Signature: *C. Christopher Logan*

Printed Name: C. Christopher Logan

Context Architecture

Date: 30 September 2024



W.T. RICH COMPANY

09/25/24

PCA360
75 Second Ave, Suite 305
Needham, MA 02494

Attention: Brian LaRoche

Reference: Middleton Municipal Complex Project
105 South Main Street
Middleton, MA 01949

Subject: PCO 020, CE 018 - Additional Tree removal requested by Owner

Dear Brian,

W.T. Rich hereby presents Potential Change Order No. 020 in the add amount of **\$4,996.00** for the additional mobilization of the tree cutter and the additional 3 trees that the conservation deemed to be removed. *The cost for this added scope is currently allocated to Allowance 7119 (Environmental Coordination).*

W.T. Rich certifies that the attached proposal has been reviewed for validity; contains accurate and complete supporting backup in conjunction with the design change documents; and is being made in good faith to the best of our knowledge, presenting only those costs for which we believe the Owner is liable for.

Per the General Conditions of the Contract, work associated with an allowance draw will not commence until a written approval authorizing the draw is received by W.T. Rich. We request your assistance in bringing this matter to a swift conclusion to avoid delays to the progress of work. Allowance draws will be from funds that are already incorporated into the GMP and this approval does not represent an increase in the GMP Value.

An extension of contract time is not required as part of the executed Change Order. The PCO is valid for thirty days. In the event you should have any questions or require any additional information, please do not hesitate to contact me.

W. T. RICH COMPANY, INC.

Thomas J. Hood

Thomas J. Hood, Senior Project Manager

W.T. Rich Company, Inc.

Date: 9/25/24

Middleton Building Committee Designee:

Signature: *William J. Renault*

Print Name: William Renault

Middleton Building Committee

Date: 10/31/24

Town Administrator:

Signature: *J. Sultzbach*

Print Name: Justin Sultzbach

Town of Middleton

Date: 10.31.24

Architect:

Signature: *C. Christopher Logan*

Printed Name: C. Christopher Logan

Context Architecture

Date: 30 October 2024



11/18/24

PCA360
75 Second Ave, Suite 305
Needham, MA 02494

Attention: Brian LaRoche

Reference: Middleton Municipal Complex Project
105 South Main Street
Middleton, MA 01949

Subject: PCO No. 024, CE 026 – PR-004 TH EWH Changes

Dear Brian,

W.T. Rich hereby presents Potential Change Order No. ~~038~~⁰²⁴ in the add amount of **\$213.00** This cost is for changes per PR-004 related to electric water heaters review of the electric water heater submittal 230000-3-1. The scope of the changes includes changes to the electrical requirements for EWH-1, EWH-11, and EWH-20.

W.T. Rich certifies that the attached proposal has been reviewed for validity; contains accurate and complete supporting backup in conjunction with the design change documents; and is being made in good faith to the best of our knowledge, presenting only those costs for which we believe the Owner is liable for.

Per the General Conditions of the Contract, work associated with an allowance draw will not commence until a written approval authorizing the draw is received by W.T. Rich. We request your assistance in bringing this matter to a swift conclusion to avoid delays to the progress of work. Allowance draws will be from funds that are already incorporated into the GMP and this approval does not represent an increase in the GMP Value.

An extension of contract time is not required as part of the executed Change Order. The PCO is valid for thirty days. In the event you should have any questions or require any additional information, please do not hesitate to contact me.

W. T. RICH COMPANY, INC.

Matthew Gustin

Matthew Gustin, Project Manager

W.T. Rich Company, Inc.

Date: 11/18/24

Middleton Building Committee Designee:
Signature: 

Print Name: WILLIAM RENAUD

Middleton Building Committee

Date: 12/4/24

Town Administrator:

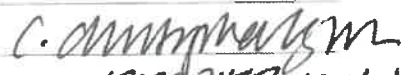
Signature: 

Print Name: J. J. J. J. J.

Town of Middleton

Date: 12.3.24

Architect:

Signature: 

Printed Name: C. CHRISTOPHER LOGAN

Context Architecture

Date: 5 December 2024



09/17/24

PCA360
75 Second Ave, Suite 305
Needham, MA 02494

Attention: Brian LaRoche

Reference: Middleton Municipal Complex Project
105 South Main Street
Middleton, MA 01949

Subject: PCO No. 026- CE 028 –Gabion Wall substitution to RediRock with 6,000 lbs. impact requirement

Dear Brian,

W.T. Rich hereby presents Potential Change Order No. 026 in the add amount of **\$35,814.00** which includes the Alternate Bid for the Gabion Wall per the original bid sheet which was not accepted at the time of the award as well as the additional engineering, geogrid and added labor to meet the 6,000 lbs. impact load that was added during to the design review of submittal 322800-2 of the original design of Gabion walls. Gabion Walls cannot meet the impact load requirements without a significant change to the design of the wall. The RediRock wall will meet the design intend for the impact load and appearance. **The cost for this added scope is currently allocated to Owner Contingency.**

W.T. Rich certifies that the attached proposal has been reviewed for validity; contains accurate and complete supporting backup in conjunction with the design change documents; and is being made in good faith to the best of our knowledge, presenting only those costs for which we believe the Owner is liable for.

Per the General Conditions of the Contract, work associated with an allowance draw will not commence until a written approval authorizing the draw is received by W.T. Rich. We request your assistance in bringing this matter to a swift conclusion to avoid delays to the progress of work. Allowance draws will be from funds that are already incorporated into the GMP and this approval does not represent an increase in the GMP Value.

An extension of contract time is not required as part of the executed Change Order. The PCO is valid for thirty days. In the event you should have any questions or require any additional information, please do not hesitate to contact me.

W. T. RICH COMPANY, INC.

Thomas J. Hood

Thomas J. Hood, Senior Project Manager

W.T. Rich Company, Inc.

Date: 9/17/24

Middleton Building Committee Designee:

Signature: *William J. Renault*

Print Name: William J. Renault

Middleton Building Committee

Date: 10/21/24

Town Administrator:

Signature: *Justin Seltzback*

Print Name: Justin Seltzback

Town of Middleton

Date: 10.18.24

Architect:

Signature: C. Christopher Logan

Printed Name: C. Christopher Logan

Context Architecture

Date: 15 October 2024



W.T. RICH COMPANY

10/15/2024

PCA360
75 Second Ave, Suite 305
Needham, MA 02494

Attention: Brian LaRoche

Reference: Middleton Municipal Complex Project
105 South Main Street
Middleton, MA 01949

Subject: PCO No. 027, CE 029 – 7117 – Boulder Removal over 1 CY r1

Dear Brian,

W.T. Rich hereby presents **Potential Change Order No. 027** in the add amount of **\$21,996.00**. Includes the removal of boulders from the site that are over 1 CY. Quantities were reviewed on site with JDC, WTR, and PCA 360. The contract unit price of \$250/CY was used for total cubic yards of boulders which were over 1 CY. These costs will be allocated to allowance 7117 "Unsuitable Soils" After acceptance of PCO 027 there will be \$33,964.00 remaining in Allowance 7117.

W.T. Rich certifies that the attached proposal has been reviewed for validity; contains accurate and complete supporting backup in conjunction with the design change documents; and is being made in good faith to the best of our knowledge, presenting only those costs for which we believe the Owner is liable for.

Per the General Conditions of the Contract, work associated with an allowance draw will not commence until a written approval authorizing the draw is received by W.T. Rich. We request your assistance in bringing this matter to a swift conclusion to avoid delays to the progress of work. Allowance draws will be from funds that are already incorporated into the GMP and this approval does not represent an increase in the GMP Value.

An extension of contract time is not required as part of the executed Change Order. The PCO is valid for thirty days. In the event you should have any questions or require any additional information, please do not hesitate to contact me.

W. T. RICH COMPANY, INC.

Matthew Gustin

Matt Gustin, Project Manager

W.T. Rich Company, Inc.

Date: 10/15/24

Middleton Building Committee Designee:

Signature: *William J. Renault*

Print Name: William J. Renault

Middleton Building Committee

Date: 10/21/24

Town Administrator:

Signature: *[Signature]*

Print Name: Justin Sultzbach

Town of Middleton

Date: 10.18.24

Architect:

Signature: C. Christopher Logan

Printed Name: C. Christopher Logan

Context Architecture

Date: 15 October 2024



10/15/24

PCA360
75 Second Ave, Suite 305
Needham, MA 02494

Attention: Brian LaRoche

Reference: Middleton Municipal Complex Project
105 South Main Street
Middleton, MA 01949

Subject: PCO No. 034, CE ~~047~~ – Credit Temp Electric Consumption
046

Dear Brian,

W.T. Rich hereby presents Potential Change Order No. 027 in the deduct amount of \$(91,546.00) Includes credit for value carried for temporary electric consumption during construction. The electrical invoices for the project will be paid directly by The Town of Middleton.

W.T. Rich certifies that the attached proposal has been reviewed for validity; contains accurate and complete supporting backup in conjunction with the design change documents; and is being made in good faith to the best of our knowledge, presenting only those costs for which we believe the Owner is liable for.

Per the General Conditions of the Contract, work associated with an allowance draw will not commence until a written approval authorizing the draw is received by W.T. Rich. We request your assistance in bringing this matter to a swift conclusion to avoid delays to the progress of work. Allowance draws will be from funds that are already incorporated into the GMP and this approval does not represent an increase in the GMP Value.

An extension of contract time is not required as part of the executed Change Order. The PCO is valid for thirty days. In the event you should have any questions or require any additional information, please do not hesitate to contact me.

W. T. RICH COMPANY, INC.

Matthew Gustin

Matthew Gustin, Project Manager

W.T. Rich Company, Inc.

Date: 10/15/24

Middleton Building Committee Designee:

Signature: William J. Renault

Print Name: William Renault

Middleton Building Committee

Date: 11/6/24

Town Administrator:

Signature: Justin Sultzbach

Print Name: Justin Sultzbach

Town of Middleton

Date: 10-29-24

Architect:

Signature: C. Christopher Logan

Printed Name: C. Christopher Logan

Context Architecture

Date: 18 October 2024



12/20/24

PCA360
75 Second Ave, Suite 305
Needham, MA 02494

Attention: Brian LaRoche

Reference: Middleton Municipal Complex Project
105 South Main Street
Middleton, MA 01949

Subject: PCO No. 038, CE 032 – Fixture P10A Adds

Dear Brian,

W.T. Rich hereby presents Potential Change Order No. 038 in the add amount of **\$1,014.00** This is for changes to grab bar and toilet paper holder per fixture P10A required for ADA cell. Changes are per submittal "220000-9 Revision 0: Lavatory Toilet Combination Units, Provide integral grab bar at accessible unit."
These costs will be allocated to allowance 7124 Div. 10 Shelving Allowance. After acceptance of PCO #038, there will be \$104,486.00 remaining in Allowance (7124).

W.T. Rich certifies that the attached proposal has been reviewed for validity; contains accurate and complete supporting backup in conjunction with the design change documents; and is being made in good faith to the best of our knowledge, presenting only those costs for which we believe the Owner is liable for.

Per the General Conditions of the Contract, work associated with an allowance draw will not commence until a written approval authorizing the draw is received by W.T. Rich. We request your assistance in bringing this matter to a swift conclusion to avoid delays to the progress of work. Allowance draws will be from funds that are already incorporated into the GMP and this approval does not represent an increase in the GMP Value.

The PCO is valid for thirty days. In the event you should have any questions or require any additional information, please do not hesitate to contact me.

W. T. RICH COMPANY, INC.

Matthew Gustin

Matthew Gustin, Project Manager

W.T. Rich Company, Inc.

Date: 12/20/24

Middleton Building Committee Designee:

Signature: *William J Renault*

Print Name: William Renault

Middleton Building Committee

Date: 1/13/25

Town Administrator:

Signature: *Justin Suttkauch*

Print Name: Justin Suttkauch

Town of Middleton

Date: 1.13.25

Architect:

Signature: *C. Christopher Logan*

Printed Name: C. Christopher Logan

Context Architecture

Date: 6 January 2025



11/19/24

PCA360
75 Second Ave, Suite 305
Needham, MA 02494

Attention: Brian LaRoche

Reference: Middleton Municipal Complex Project
105 South Main Street
Middleton, MA 01949

Subject: PCO No. 039, CE 054 – PR-007 Site Lighting Revs.

Dear Brian,

W.T. Rich hereby presents Potential Change Order No. 039 in the add amount of **\$251,885.00**. This cost is for changes per PR-007 related to site lighting revisions including but not limited to upgraded fixture options for SL4A fixtures to include outlets on separate circuit, banner poles and irrigation. SL4 fixtures were added along the town green walkway. W.T. Rich certifies that the attached proposal has been reviewed for validity; contains accurate and complete supporting backup in conjunction with the design change documents; and is being made in good faith to the best of our knowledge, presenting only those costs for which we believe the Owner is liable for.

Per the General Conditions of the Contract, work associated with an allowance draw will not commence until a written approval authorizing the draw is received by W.T. Rich. We request your assistance in bringing this matter to a swift conclusion to avoid delays to the progress of work. Allowance draws will be from funds that are already incorporated into the GMP and this approval does not represent an increase in the GMP Value.

An extension of contract time is not required as part of the executed Change Order. The PCO is valid for thirty days. In the event you should have any questions or require any additional information, please do not hesitate to contact me.

W. T. RICH COMPANY, INC.

Matthew Gustin

Matthew Gustin, Project Manager

W.T. Rich Company, Inc.

Date: 11/19/24

Middleton Building Committee Designee:

Signature:

Print Name:

Middleton Building Committee

Date:

12/4/24

Town Administrator:

Signature:

Print Name:

Town of Middleton

Date:

Architect:

Signature:

Printed Name:

Context Architecture

Date:

5 December 2024



W.T. RICH COMPANY

11/19/24

PCA360
75 Second Ave, Suite 305
Needham, MA 02494

Attention: Brian LaRoche

Reference: Middleton Municipal Complex Project
105 South Main Street
Middleton, MA 01949

Subject: PCO No. 047, CE 064 – Upgrade Elevator Interior to Stainless Steel

Dear Brian,

W.T. Rich hereby presents Potential Change Order No. 047 in the add amount of **\$3,371.00** This cost is per owner request to upgrade the interior panels of each elevator (2), to stainless steel in lieu of specified laminate.

Per the General Conditions of the Contract, work associated with an allowance draw will not commence until a written approval authorizing the draw is received by W.T. Rich. We request your assistance in bringing this matter to a swift conclusion to avoid delays to the progress of work. Allowance draws will be from funds that are already incorporated into the GMP and this approval does not represent an increase in the GMP Value.

An extension of contract time is not required as part of the executed Change Order. The PCO is valid for thirty days. In the event you should have any questions or require any additional information, please do not hesitate to contact me.

W. T. RICH COMPANY, INC.

Matthew Gustin

Matthew Gustin, Project Manager

W.T. Rich Company, Inc.

Date: 11/19/24

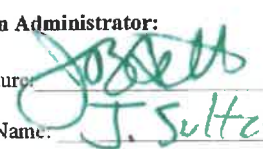
Middleton Building Committee Designee:
Signature: 

Print Name: WILLIAM RENAULT

Middleton Building Committee

Date: 12/4/24

Town Administrator:

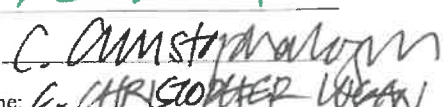
Signature: 

Print Name: J. Sultzbach

Town of Middleton

Date: 12-3-24

Architect:

Signature: 

Printed Name: C. CHRISTOPHER LOGAN

Context Architecture

Date: 5 December 2024



Middleton Municipal Complex Project

105 South Main Street, Middleton, MA



Monthly Project Update Report

December 2024

FS/SD	DD	CD	Bidding	Construction	Closeout
-------	----	----	---------	--------------	----------

EXECUTIVE SUMMARY

Throughout December, the Town of Middleton's Municipal Complex project saw significant advancements, particularly in the construction of both the Public Safety Building and the Town Hall/Community Center. Wood frame trusses have been installed at the Town Hall Building as well as the exterior wall framing and sheathing. The Public Safety Building insulated roof panel installation is nearing completion as well as the exterior weather barrier. Soon the finish roofing material will be installed at the PSB and the exterior of the building will be weather tight for the interior rough-in work to begin. In early January the Town Hall building will have the roof insulated panels installation started and the weather barrier will begin to envelop the building.



Sitework has begun to slow down due to the weather, the crew size has been reduced from 16 workers to



8. The retaining wall at the large detention basin at the Northeast corner of the lot will begin to be installed in January. The site contractor will continue to work as weather permits on shaping the remaining detention basins and installation of curbing along the binder coated roadways.

The design team continues to maintain a strong focus on reviewing and processing shop drawings, coordinating with the construction team, and ensuring timely

submission of materials. This collaborative approach has been crucial in addressing potential conflicts early, streamlining approvals, and keeping the project on track. The design team is continuing to work with the Town Administrators office on the interior color selections and will be making a presentation to the building committee at the January 22nd meeting. Soon afterward the design team will transition to the furniture selections in preparation of going out to bid for the furnishings of the two buildings.

While progress remains steady, some scheduling pressure from late equipment ordering is lingering. The team received good news on delivery dates for essential electrical equipment, with lead times aligning with the project schedule, not creating a delay as was anticipated. The window order was delayed due to a discovery of a coordination item, currently the Construction Manager is waiting on a new delivery date from the factory, it is expected that the windows will arrive just in time to meet schedule requirements.



Community engagement remains high, with 9,830 visitors recorded on the project website to date, including over 500 views in December alone. Social media outreach continues to resonate with the public, with bi-weekly updates featuring current construction photos and a time-lapse video of the project's progression, and blog posts which have been well-received across platforms such as Facebook and Instagram.

TASKS COMPLETED THROUGH THIS MONTH

- Communication Tower foundation

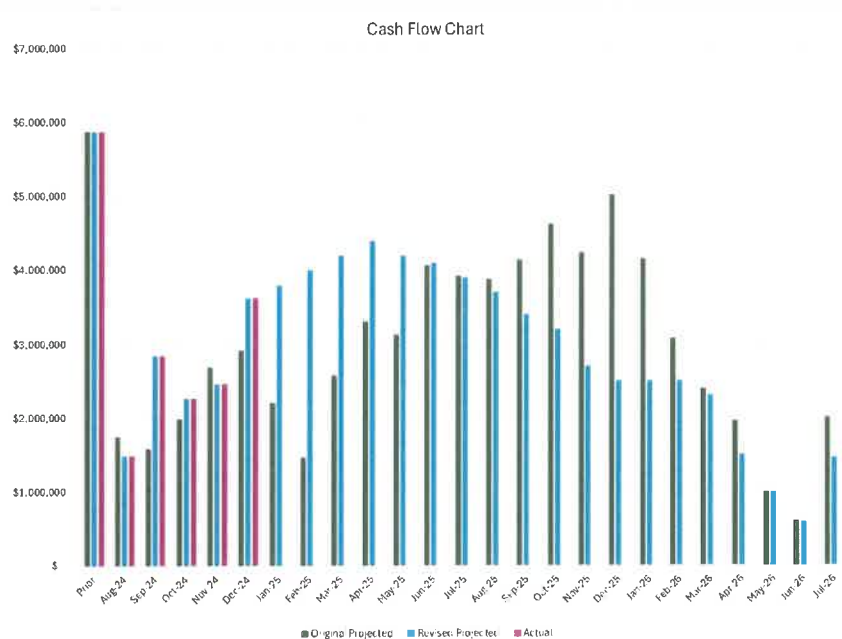
TASKS ANTICIPATED NEXT MONTH

- Slab on grade poured for PSB Building.
- Roof Trusses for Town Hall Building started
- MassDOT – Curb Cut permit to be issued
- Slab on Deck poured for Town Hall / Community Center Building.
- Procure the police department interview room equipment.
- Furniture selection meetings to start
- Interior finish colors to be selected.

PROJECT BUDGET

Project Cash flow is depicted below:

	Original Projected	Revised Projected	Actual
Prior	\$ 5,875,166	\$ 5,875,166	\$ 5,875,166
Aug-24	\$ 1,748,142	\$ 1,488,779	\$ 1,488,779
Sep-24	\$ 1,583,346	\$ 2,846,231	\$ 2,846,231
Oct-24	\$ 1,989,349	\$ 2,264,575	\$ 2,264,575
Nov-24	\$ 2,688,762	\$ 2,464,687	\$ 2,464,687
Dec-24	\$ 2,919,161	\$ 3,624,308	\$ 3,624,308
Jan-25	\$ 2,209,063	\$ 3,800,000	
Feb-25	\$ 1,468,722	\$ 4,000,000	
Mar-25	\$ 2,582,420	\$ 4,200,000	
Apr-25	\$ 3,300,112	\$ 4,400,000	
May-25	\$ 3,125,752	\$ 4,200,000	
Jun-25	\$ 4,065,709	\$ 4,100,000	
Jul-25	\$ 3,924,212	\$ 3,900,000	
Aug-25	\$ 3,879,345	\$ 3,700,000	
Sep-25	\$ 4,140,940	\$ 3,400,000	
Oct-25	\$ 4,617,667	\$ 3,200,000	
Nov-25	\$ 4,228,013	\$ 2,700,000	
Dec-25	\$ 5,013,593	\$ 2,500,000	
Jan-26	\$ 4,147,305	\$ 2,500,000	
Feb-26	\$ 3,073,430	\$ 2,500,000	
Mar-26	\$ 2,389,435	\$ 2,303,944	
Apr-26	\$ 1,955,412	\$ 1,500,000	
May-26	\$ 1,000,000	\$ 1,000,000	
Jun-26	\$ 591,006	\$ 591,006	
Jul-26	\$ 2,000,000	\$ 1,457,366	
	\$ 74,516,061	\$ 74,516,061	\$ 18,563,745



The total project budget is \$74,516,061, unchanged from last month. A total of \$18,563,745 has been spent to date, which represents 20.3% of the total revised project budget. Budget update is provided on the following page:

MIDDLETON MUNICIPAL COMPLEX PROJECT

December 2024

Description	Total Project Budget	Authorized Changes	Revised Total Budget	Total Committed (Encumbered)	% Cmt'd to Date	Actual Spent to Date	% Spent to Date
ADMINISTRATION							
Legal Fees	\$ 45,000		\$ 45,000	\$ -	0.0%		0.0%
Owner's Project Manager	\$ 1,579,441	\$ 292,600	\$ 1,872,041	\$ 1,405,068	75.1%	\$ 1,188,018	63.5%
Designer Procurement	\$ 39,231	\$ -	\$ 39,231	\$ 39,231	100.0%	\$ 39,231	100.0%
Program & Concept	\$ 146,300	\$ 175,560	\$ 321,860	\$ 321,860	100.0%	\$ 321,860	100.0%
Schematic Design	\$ 76,622	\$ 29,260	\$ 105,882	\$ 105,882	100.0%	\$ 105,882	100.0%
Design Development	\$ 76,622	\$ -	\$ 76,622	\$ 76,622	100.0%	\$ 76,622	100.0%
Construction Contract Documents	\$ 95,777	\$ 87,780	\$ 183,557	\$ 183,557	100.0%	\$ 183,547	100.0%
Bidding	\$ 57,466	\$ -	\$ 57,466	\$ 57,466	100.0%	\$ 57,466	100.0%
Construction Contract Administration	\$ 1,037,347	\$ -	\$ 1,037,347	\$ 1,037,347	100.0%	\$ 403,410	38.9%
Closeout	\$ 50,076	\$ -	\$ 50,076	\$ 50,076	100.0%	\$ -	0.0%
Extra / Reimbursable Services	\$ -	\$ -	\$ -	\$ -	0.0%	\$ -	0.0%
Owner's Insurance	\$ 165,000	\$ -	\$ 165,000	\$ -	0.0%	\$ -	0.0%
Other Administrative Costs							
SUB-TOTAL	\$ 1,789,441	\$ 292,600	\$ 2,082,041	\$ 1,405,068	67.5%	\$ 1,188,018	57.1%
ARCHITECTURE & ENGINEERING							
A/E Services	\$ 4,915,000	\$ (506)	\$ 4,914,494	\$ 4,913,987	100.0%	\$ 3,679,485	74.9%
Feasibility Study Analysis	\$ 163,000	\$ -	\$ 163,000	\$ 163,000	100.0%	\$ 163,000	100.0%
Concept Design	\$ 230,000	\$ -	\$ 230,000	\$ 230,000	100.0%	\$ 230,000	100.0%
Schematic Design	\$ 460,000	\$ -	\$ 460,000	\$ 460,000	100.0%	\$ 460,000	100.0%
CM Selection & FSB Prequalification	\$ 40,000		\$ 40,000	\$ 40,000	100.0%	\$ 25,000	62.5%
Design Development	\$ 650,000	\$ 156,000	\$ 806,000	\$ 806,000	100.0%	\$ 806,000	100.0%
Construction Contract Documents	\$ 1,100,000	\$ 50,000	\$ 1,150,000	\$ 1,150,000	100.0%	\$ 1,150,000	100.0%
Bidding	\$ 90,000	\$ -	\$ 90,000	\$ 90,000	100.0%	\$ 90,000	100.0%
Construction Contract Administration	\$ 1,530,000	\$ 90,000	\$ 1,620,000	\$ 1,620,000	100.0%	\$ 535,000	33.0%
Closeout	\$ 75,000	\$ -	\$ 75,000	\$ 75,000	100.0%	\$ -	0.0%
Regulatory Review / Approvals	\$ 80,000	\$ (10,000)	\$ 70,000	\$ 70,000	100.0%	\$ 70,000	100.0%
Furnishings, Fixtures and Equipment	\$ 50,000	\$ -	\$ 50,000	\$ 50,000	100.0%	\$ 7,000	14.0%
Technology Design	\$ 15,000	\$ -	\$ 15,000	\$ 15,000	100.0%	\$ 1,500	10.0%
Hazardous Material	\$ 128,000	\$ (120,000)	\$ 8,000	\$ 8,000	100.0%	\$ 8,000	100.0%
Geotechnical	\$ 75,000	\$ -	\$ 75,000	\$ 75,000	100.0%	\$ 74,000	98.7%
Traffic Engineer	\$ 179,000	\$ (131,506)	\$ 47,494	\$ 47,494	100.0%	\$ 44,985	94.7%
Early Enabling / Site Utilities Package	\$ 50,000	\$ (35,000)	\$ 15,000	\$ 15,000	100.0%	\$ 15,000	100.0%
Extra and Reimbursable Services	\$ 110,000	\$ 44,921	\$ 154,921	\$ 154,921	100.0%	\$ 142,557	92.0%
Printing	\$ 25,000	\$ (25,000)	\$ -	\$ -	0.0%	\$ -	0.0%
Soils and hazmat testing / monitoring	\$ 35,000	\$ (18,500)	\$ 16,500	\$ 16,500	0.0%	\$ 4,136	0.0%
Additional Services Requests	\$ 50,000	\$ 88,421	\$ 138,421	\$ 110,009	79.5%	\$ 138,421	100.0%
SUB-TOTAL	\$ 5,025,000	\$ 44,415	\$ 5,069,415	\$ 5,068,908	100.0%	\$ 3,822,043	75.4%
OTHER PROJECT COSTS							
Exploratory Testing (test pits / demo)	\$ 25,000	\$ (25,000)	\$ -	\$ -	0.0%	\$ -	0.0%
Borings to Profile Site	\$ 50,000	\$ (41,894)	\$ 8,106	\$ -	0.0%	\$ -	0.0%
Regulatory Permitting	\$ 95,000	\$ (91,835)	\$ 3,165	\$ -	0.0%	\$ 3,165	0.0%
Bid Advertising / Hosting	\$ 15,000	\$ (15,000)	\$ -	\$ -	0.0%	\$ -	0.0%
Construction Materials Testing	\$ 95,000	\$ -	\$ 95,000	\$ 75,000	78.9%	\$ 48,888	51.5%
Communication Tower Design & Const.	\$ -	\$ 400,000	\$ 400,000	\$ 229,736	57.4%	\$ -	0.0%
Station Alerting System							
Furniture, Fixtures and Equipment	\$ 1,650,000	\$ -	\$ 1,650,000	\$ -	0.0%	\$ -	0.0%
Technology / Computers	\$ 950,000	\$ -	\$ 950,000	\$ -	0.0%	\$ -	0.0%
Security, CCTV & Access Control	\$ 375,000	\$ 317,677	\$ 692,677	\$ -	0.0%	\$ -	0.0%
Audio Visual	\$ -	\$ 271,738	\$ 271,738	\$ 271,738	100.0%	\$ -	0.0%
Commissioning Agent	\$ 195,000	\$ (60,976)	\$ 134,024	\$ 134,024	100.0%	\$ 48,925	36.5%
Structural / Envelope Peer Review	\$ 35,000	\$ (30,932)	\$ 4,068	\$ 4,068	0.0%	\$ 4,068	
Utility Costs	\$ 67,160	\$ 33,251	\$ 100,411	\$ -	0.0%	\$ 100,411	100.0%
SUB-TOTAL	\$ 3,552,160	\$ 757,029	\$ 4,309,189	\$ 714,566	16.6%	\$ 205,456	4.77%
TOTAL SOFT COSTS	\$ 10,366,601	\$ 1,094,044	\$ 11,460,645	\$ 7,188,542	62.7%	\$ 5,215,517	45.5%
CONSTRUCTION COSTS							
Pre-Construction		\$ 124,910	\$ 124,910	\$ 124,910	100.0%	\$ 124,910	100.0%
Construction Costs	\$ 47,975,139	\$ 10,367,726	\$ 58,342,765	\$ 58,342,765	100.0%	\$ 16,350,876	28.0%
Retainage to Contractor						\$ (679,664)	
Change Orders	\$ -	\$ 342,878	\$ 342,878	\$ 342,878	100.0%	\$ 50,878	14.8%
CONSTRUCTION SUBTOTAL	\$ 47,975,139	\$ 10,492,636	\$ 58,467,675	\$ 58,467,675	100.0%	\$ 16,475,786	28.2%
OWNER CONTINGENCIES							
Hard Cost Contingency	\$ 2,398,757	\$ 1,985,740	\$ 4,384,497	\$ -	0.0%	\$ -	0.0%
Soft Cost Contingency	\$ 959,503	\$ (756,259)	\$ 203,244	\$ -	0.0%	\$ -	0.0%
Total Contingency	\$ 3,358,260	\$ 1,229,481	\$ 4,587,741	\$ -	0.0%	\$ -	0.0%
TOTAL PROJECT BUDGET	\$ 61,700,000	\$ 12,816,161	\$ 74,516,061	\$ 65,656,217	88%	\$ 21,691,303	29.1%

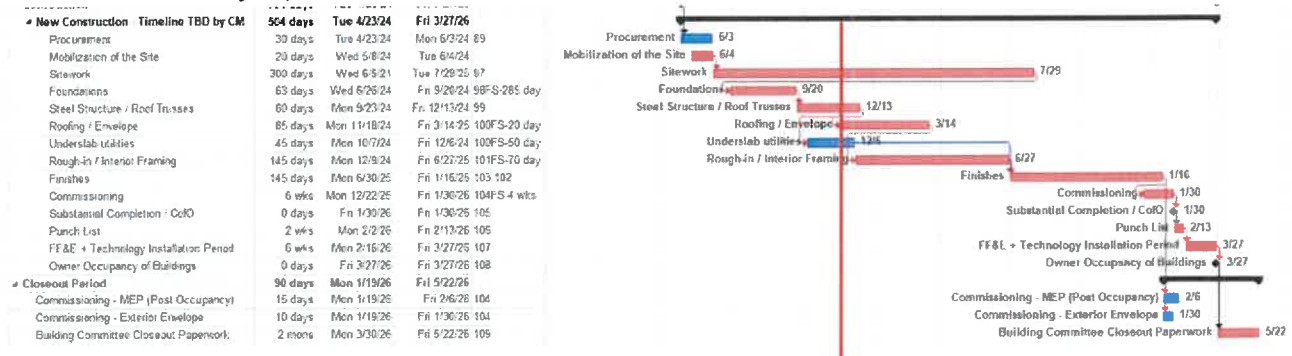
Construction Manager GMP Potential Change Order Log (PCO's)

Description	Fully Executed / Approved	Pending	Owner Change	Allowance Allocation	GMP Contingency
Oil Tanks Removal	✓			\$ 5,037	
Fencing Scrim	✓				\$ 4,961
Elevator Lowering & Hall Fixtures	✓			\$ 16,600	
Ledge Removal at PSB	✓			\$ 3,331	
VOID					
PSB - Added Stepped Footings	PENDING				
Ledge Removal #2	✓			\$ 9,700	
Temp Generator for Demo	✓			\$ 1,521	
Ledge Removal #3	✓			\$ 1,470	
Site Lighting Precast Bases - Reassignment	✓				\$ 42,382
Builders Risk Policy	✓		\$ 342,878		
Design Build Irrigation System	✓		\$ 203,865		
Septic Redesign Per PR-1	✓			\$ 97,933	
Building Electrical Redesign Per PR-003	✓		\$ (290,655)		
MELD Generator Sitework Scope Changes	REVIEW	\$ 240,130			
Testing of Existing Well	✓			\$ 1,732	
VOID					
TH/CC - Added Step Footing at D line at Col 16	PENDING				
Ledge Removal at Bio-detention Basin #2	✓			\$ 4,745	
Additional Tree Removal per owner	✓			\$ 4,996	
RFI-076 Inbed galv plate to HSS Tube Steel	PENDING				
Corrective Action at PSB CMU wall	PENDING				
Ledge at PSB Drainage to Basin	PENDING				
PR-004 - EWH Changes	✓		\$ 213		
Credit for Alternate 2A & 2B	✓		\$ (292,000)		
Gabion Wall to Redirock	✓		\$ 35,814		
Boulder Removal over 1 CY	✓		\$ 21,996		
RFI #066 TH Handicap Activator Switches	REVIEW	\$ 9,582			
RFI #155 Reinforcing at PSB Slab Openings	PENDING		TBD		
Winter Concrete - PSB SOD	PENDING		TBD		
Mock-up Costs	PENDING		TBD		
Vault Door Wall Placement - Remobilization	PENDING		T&M		
ASI 12R Louver Changes	PENDING		TBD		
Credit Temp Elec Consumption	✓		\$ (91,546)		
Ledge at Water main	PENDING		TBD		
Coordination Foundation & Fire Pole	PENDING		TBD		
PR-010 Stormwater Revisions	PENDING		TBD		
Fixture P-10A Added Grab Bar & TP Holder	✓			\$ 1,014	
PR-007 - Site Lighting Changes	✓		\$ 251,885		
RFI-173 Storm Switch	PENDING				
Misc Structural Steel at PSB	PENDING				
RFI-116 - Vault Fire Dampers	PENDING				
Detention Door Glazing	PENDING				
RFI-136 PSB Stair 3 Support	REVIEW	\$ 5,660			
Place Holder					
Place Holder					
Upgrade Elevator Interior to Stainless Steel	✓		\$ 3,371		
PR-021 RFI-221 Exterior Sheathing Gap at Defl.	PENDING	\$ 48,779			
PR-011 - Pantry Water Heater Closet	PENDING				
RFI-193 PSB Roof Drains	REVIEW	\$ 4,829			
		\$ 308,980	\$ 185,821	\$ 148,079	\$ 47,343

PROJECT MILESTONE SCHEDULE

Description	Original Scheduled Dates	Revised Scheduled Dates
OPM Selection	Oct. to December 2021	
Designer Selection	January to March 2022	
CM Selection	Sept. to November 2022	January to March 2023
Concept Design Phase	April to July 2022	April to October 2022
Schematic Design Phase	Aug. to November 2022	November to March 2023
Design Development Phase	Dec. 22' to March 2023	April to July 30, 2023
Construction Documents Phase	April to August 2023	August 23' to February 24'
Bidding Phase	Sept. to October 2023	March – April 2024
Construction Start	Late Fall 2023	May 2024
Owner Furnishings		January-Feb 2026
Occupancy		Spring 2026

Excerpt from the full project schedule is depicted below, a copy of the full schedule is included at the back of this monthly report:



CONTRACTS / AMENDMENTS / BUDGET TRANSFERS

No budget transfers were made this month.

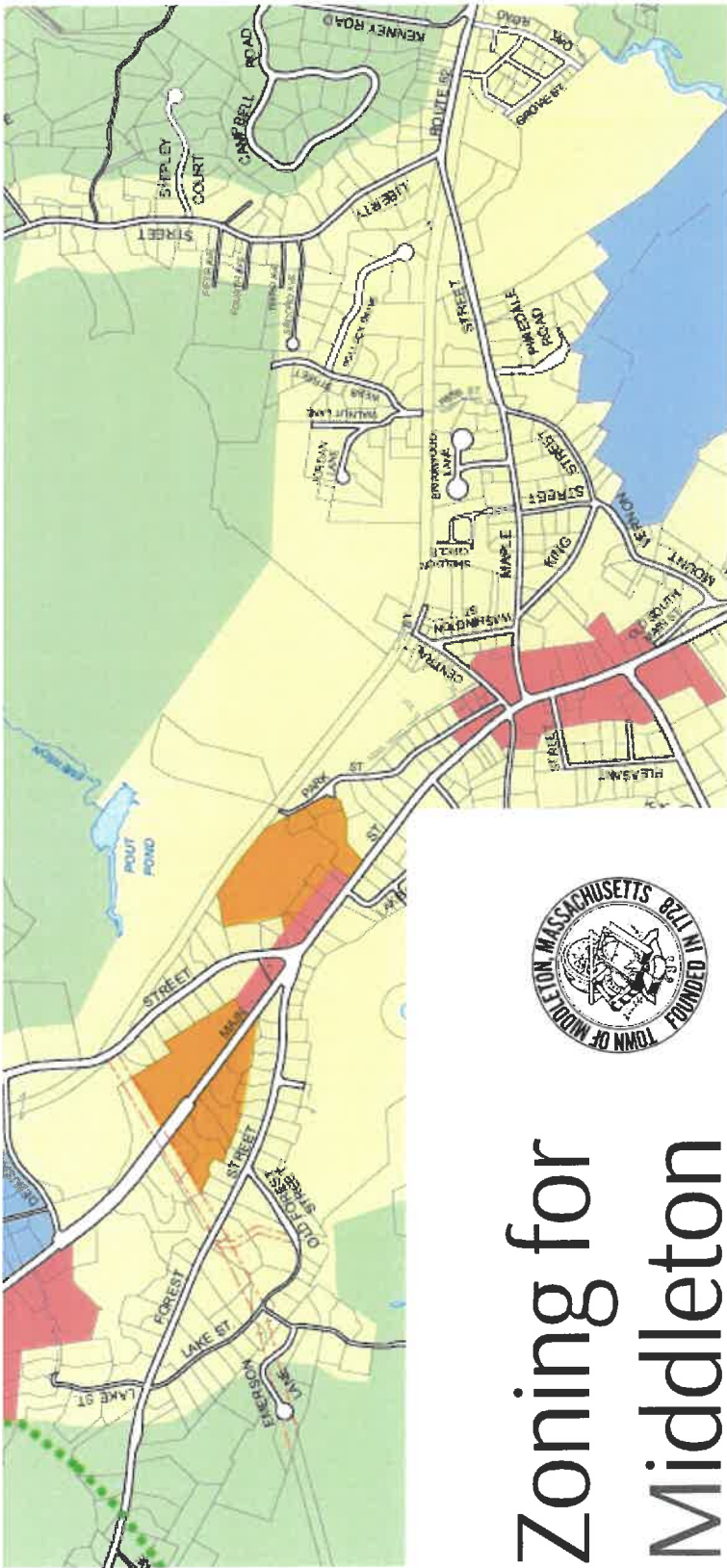
COMMUNITY OUTREACH

Project website is up to date, to date there have been 9,830 visits to the website, 500 in the past 30 days. PCA360 continues to update the projects Instagram and Facebook accounts, the blog is linked to both to help draw inquiries to the project website. www.middleton-mmcc.com

Residents received a paper notice once this month letting them know that due to slab on deck pours at the Town Hall, that work could potentially extend beyond the customary 3:30pm end of work day.

ATTACHMENTS

None



Zoning for Middletown

Planning for 2025-2026

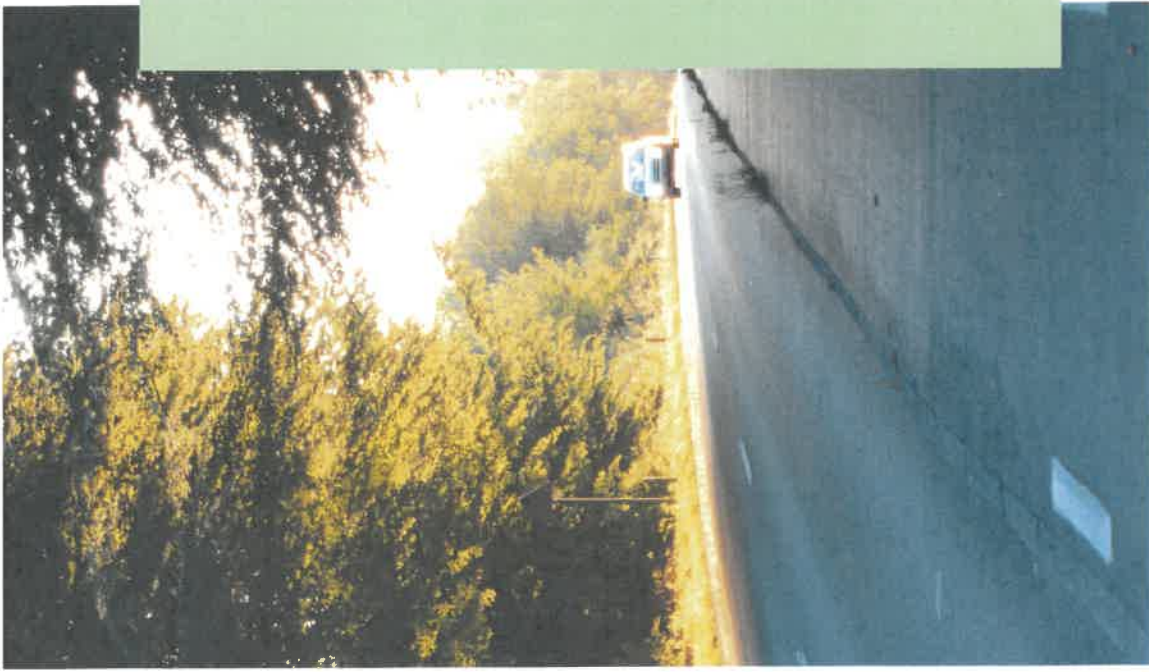


Prepared by Anna Bury Carmer, Planning Director
January 8, 2025



Objectives for today

- general overview of upcoming initiatives
- review types of zoning amendments
- review process for updating zoning bylaws
- timeline and process in Middleton
- review amendments on deck for 2025 and 2026



Upcoming initiatives

- Route 114 Northern Corridor Economic Development Study
- Middleton Town Center Study
- Comprehensive Zoning Bylaw Review
- Housing Production Plan 2025 - 2029
- Preparation for Comprehensive Plan Update - kickoff in 2026



Why update zoning bylaws?

1. General upkeep for clarity, relevance, readability
2. Revise to align with State and Federal guidance
3. Introduce tools to support Town's priorities and goals

Technical Changes

No affect on application of bylaws

Update

example: fix outdated, inconsistent, missing, or confusing content

Reorganize

example: rearrange topics and sections to follow logical order

Consolidate

example: move all definitions to one section

Policy Changes

Changes to process, procedures, rules, or map that will affect how bylaws are applied

Procedural

example: clarify or streamline procedures to better serve residents

Prescriptive

example: adopt new zoning tools to support goals and future plans

Restrictive

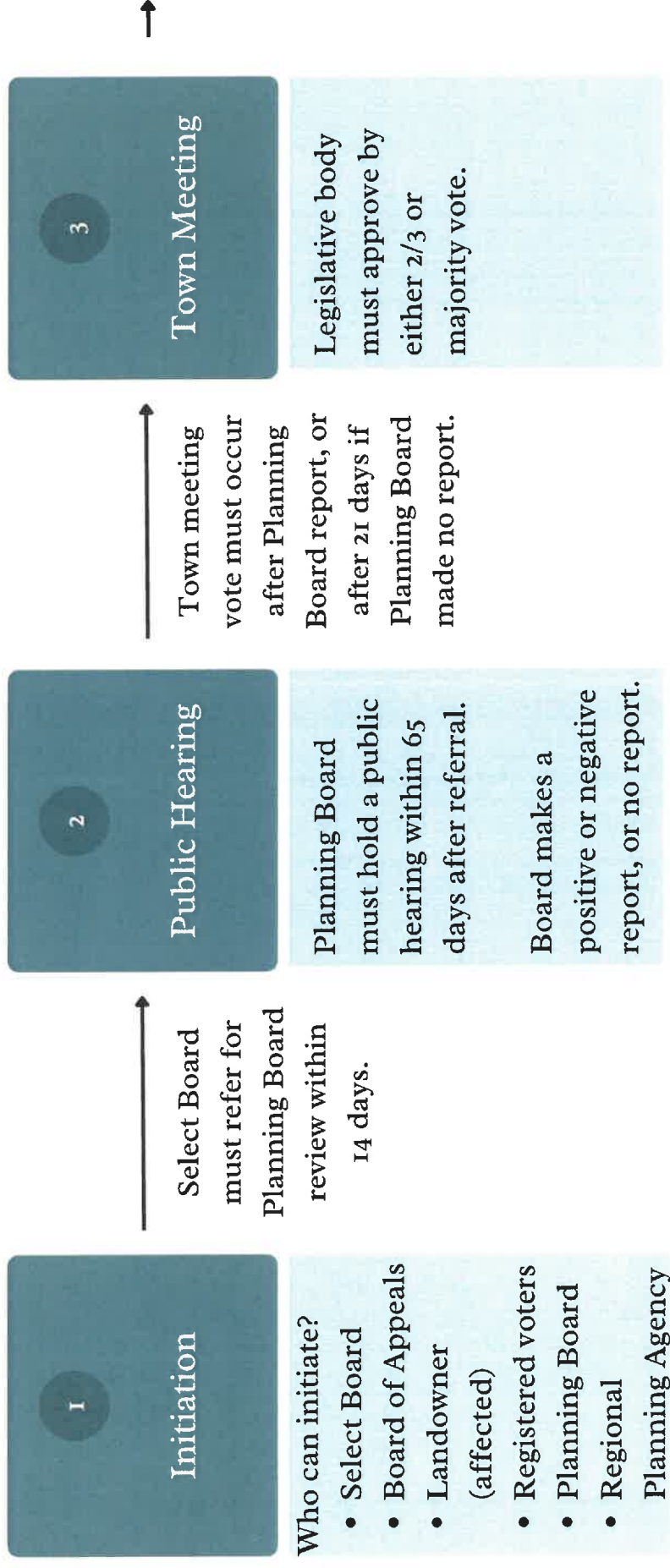
example: adopt or change zoning to regulate or restrict uses

Keep in mind:

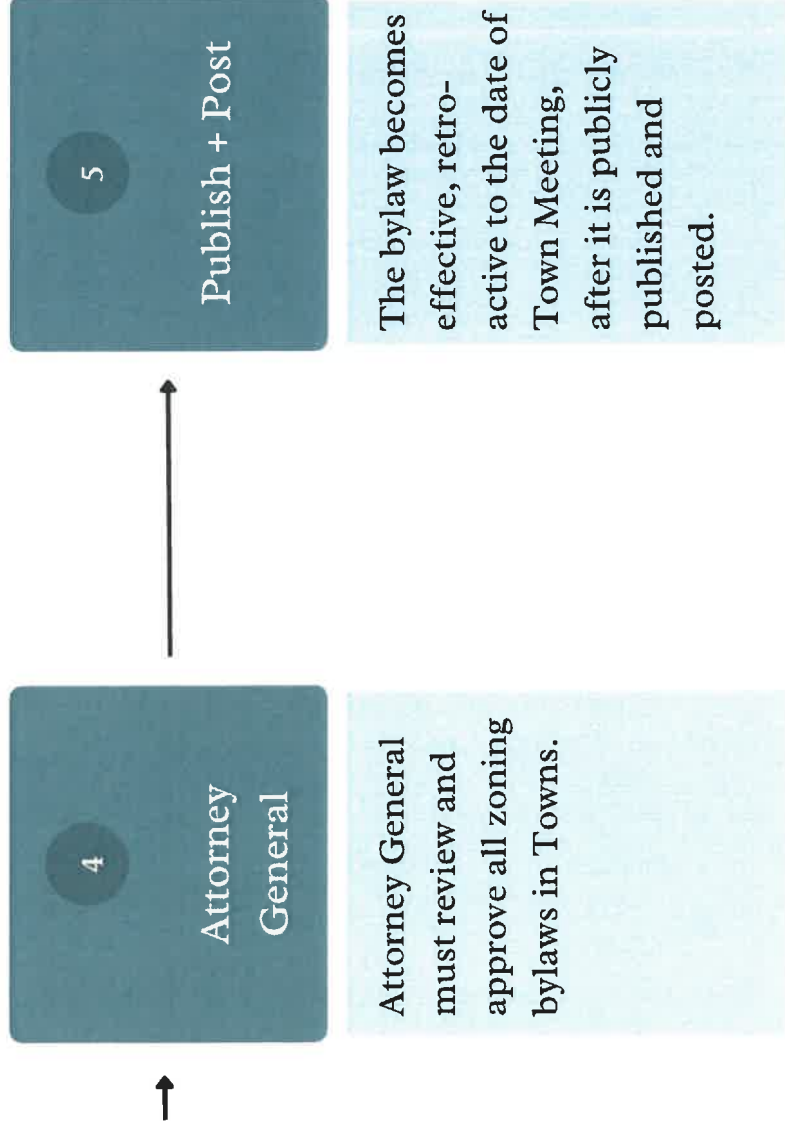
- zoning is biased toward uses present when it was adopted
- zoning historically was designed to restrict uses, recent interest in more prescriptive approaches

- # Keep in mind:
- zoning is biased toward uses present when it was adopted
 - zoning historically was designed to restrict uses, recent interest in more prescriptive approaches

Process for updating zoning bylaws



Process for updating zoning bylaws (cont.)



Timeline

March - May 2025

First draft of
proposed changes

October 2025

Final draft of
proposed amendments

May 2026

Town Meeting vote
on amendments

Jan - March 2025

Collect input on
changes needed,
policy priorities

May - Sep 2025

Discuss and revise
drafts, gather
feedback

Feb - March 2026

Planning Board
hearing(s) on final
drafts



Zoning changes to date

- Current zoning code adopted in 2005 and amended in entirety in 2008
- Minimal updates since then
- Town Meeting requested the formation of a Zoning Bylaw Review Committee in 2018; this Committee completed a zoning audit in 2022
- Town staff secured grant funding for a comprehensive review in 2023
- All previous audits and reviews will be incorporated into this process

On deck for 2025

Technical

Policy Changes

Sec 8.1

Revise text to reflect new Essex
County Flood Insurance Rate Map

Concepts to consider for 2026

Technical Changes to Consider

- Remove outdated information as recommended in audit
- Clarify language as recommended in audit

Policy Changes to Consider

- Design guidelines for commercial districts
- Commercial parking regulations
- Strategies to increase affordable housing, including to achieve safe harbor from 40B target
- Inclusionary zoning
- Strategies to conserve open space and agricultural resources

Questions to consider:

- Any specific sections that are difficult to implement, causing confusion, or leading to unintended outcomes? Trends to consider planning for?
- Affordable housing priorities or strategies to consider?
- Any recommendations from 2018 Master Plan to carry forward?
- From your perspective as a board member, what are current policy priorities for Middleton?
- From your perspective as a board member, what are current development concerns that zoning may be able to help address?

NOTICE: All slip opinions and orders are subject to formal revision and are superseded by the advance sheets and bound volumes of the Official Reports. If you find a typographical error or other formal error, please notify the Reporter of Decisions, Supreme Judicial Court, John Adams Courthouse, 1 Pemberton Square, Suite 2500, Boston, MA, 02108-1750; (617) 557-1030; SJCRReporter@sjc.state.ma.us

SJC-13580

ATTORNEY GENERAL vs. TOWN OF MILTON & another;¹
EXECUTIVE OFFICE OF HOUSING AND LIVABLE
COMMUNITIES, third-party defendant.

Suffolk. October 7, 2024. – January 8, 2025.

Present: Budd, C.J., Gaziano, Kafker, Wendlandt, Georges,
& Wolohojian, JJ.

Massachusetts Bay Transportation Authority. Housing and Livable
Communities. Housing. Attorney General. Constitutional
Law, Separation of powers. State Administrative Procedure
Act. Administrative Law, Administrative Procedure Act,
Rulemaking, Regulations. Zoning, Multiple dwelling.
Regulation. Declaratory Relief. Practice, Civil,
Declaratory proceeding.

Civil action commenced in the Supreme Judicial Court for
the county of Suffolk on February 27, 2024.

The case was reported by Georges, J.

Eric A. Haskell, Assistant Attorney General (Erin E. Fowler
& Jonathan Burke, Assistant Attorneys General, also present) for
the plaintiff & another.

Kevin P. Martin (Jaime A. Santos also present) for the
defendants.

The following submitted briefs for amici curiae:

¹ Building commissioner of Milton.

Thomas J. Dougherty for William J. Driscoll, Jr.,
& another.

Amy E. Kwesell & Jonathan G. Murray for towns of Hamilton
& Middleborough.

Paul J. Hogan for Eastern Massachusetts Small Business
Coalition.

Nicole Horberg Decter, Ryan McGovern Quinn, & Nico Marulli
for Massachusetts AFL-CIO.

John Pagliaro & Daniel B. Winslow for New England Legal
Foundation.

Andrew L. Barrett for Denny Swenson & others.

Douglas S. Brooks for Brian O'Halloran & others.

Kathleen M. Heyer, Jesse D. Schomer, & Robert K. Hopkins
for Real Estate Bar Association for Massachusetts, Inc.

Gary M. Ronan for Francis X. Bellotti & others.

Frank J. Bailey & John C. La Liberte for Pioneer Public
Interest Law Center & another.

Matthew J. Connolly & Valerie A. Moore for Massachusetts
Housing and Shelter Alliance, Inc., & others.

Jacob M. Love, Oren M. Sellstrom, Elizabeth Ritvo, & Meghan
E. McCafferty for Central Massachusetts Housing Alliance, Inc.,
& others.

Katie E. Hyma for Metropolitan Area Planning Council
& others.

Michael Walsh for John Kolackovsky.

Gregory S. Sampson & Erika Dennery for NAIOP Massachusetts,
Inc.

Sammy Nabulsi & Justin Saif for Abundant Housing MA, Inc.,
& others.

Benjamin Chapin & Andrew K. Waks, of the District of
Columbia, & Felicia H. Ellsworth for Massachusetts Housing
Partnership Fund Board.

Karla L. Chaffee, Jack Tierney, & Jeffery W. Sacks for
Citizens' Housing and Planning Association & others.

Stephen M. Acerra, Jr., pro se.

Diana C. Viens for Winthrop Says No to 3A Committee.

Patricia Whiting, Andrea Moon Park, & Mark Martinez for
Homes for All Massachusetts & another.

Ellen Wright & Michael Walsh for Ellen Wright.

BUDD, C.J. Nearly four years ago, the Legislature passed
G. L. c. 40A, § 3A, the Massachusetts Bay Transportation
Authority (MBTA) Communities Act (§ 3A or act), which was

designed to address the ongoing housing crisis in the Commonwealth by requiring cities and towns that benefit from having local access to MBTA services to adopt zoning laws that provide for at least one district of multifamily housing "as of right" near their local MBTA facilities. In February of 2024, residents of the town of Milton (town), which has four MBTA stations along the Mattapan High Speed line, voted down a proposed zoning scheme to satisfy the requirements of the act. The Attorney General then brought suit against the town to enforce the act.

Here we are asked to determine whether the act and its corresponding guidelines are constitutional and valid, and whether the Attorney General has the authority to sue in equity to enforce § 3A. We conclude that the act is constitutional and that the Attorney General has the power to enforce it. However, because the Executive Office of Housing and Livable Communities (HLC) did not comply with the Administrative Procedure Act (APA), G. L. c. 30A, when promulgating the guidelines, they are ineffective. For this reason, we grant declaratory relief in part and dismiss the remaining claims.²

² We acknowledge the amicus briefs submitted by William J. Driscoll, Jr., and Thomas J. Dougherty; town of Hamilton; town of Middleborough; Eastern Massachusetts Small Business Coalition; Massachusetts AFL-CIO; New England Legal Foundation; Real Estate Bar Association for Massachusetts, Inc.; Denny

Swenson and concerned town citizens; Brian O'Halloran and concerned citizens; former Massachusetts Attorneys General; Pioneer Public Interest Law Center and Associated Industries of Massachusetts; Massachusetts Housing and Shelter Alliance, Inc., Father Bill's & MainSpring, Inc., Planning Office for Urban Affairs, Inc., and United Way of Massachusetts Bay, Inc.; Central Massachusetts Housing Alliance, Greater Boston Latino Network, Inquilinos Boricuas en Acción, Haitian-Americans United, Inc., and Immigrant Family Services Institute; John Kolackovsky; the Metropolitan Area Planning Council, the Massachusetts Association of Regional Planning Agencies, and the American Planning Association Massachusetts Chapter; NAIOP Massachusetts, Inc.; Abundant Housing MA, Inc., A Better Cambridge, Inc., Brookline for Everyone, Inc., Chris Herbert, Jenny Schuetz, and John Infranca; Massachusetts Housing Partnership Fund Board; Stephen M. Acerra, Jr.; Homes for All Massachusetts and Transportation for Massachusetts; Ellen Wright; and Citizens' Housing and Planning Association, Engine 6 Newton Housing Advocates, Disability Policy Consortium, Inc., Metropolitan Boston Housing Partnership, Inc., Housing Medford, Building a Better Wellesley, Greater Boston Real Estate Board, Preservation of Affordable Housing, Inc., Affordable Inclusive Milton, Home Builders and Remodelers Association of Massachusetts, Inc., Metro West Collaborative Development, Inc., Greater Boston Interfaith Organization, Inc., Massachusetts Association of Realtors, The Community Builders, Inc., Charles River Regional Chamber, Inc., Massachusetts Association of Community Development Corporations, WinnDevelopment Company Limited Partnership, Planning Office for Urban Affairs, Inc., Massachusetts Housing Finance Agency, Eastern Bank, 2Life Communities, Inc., Revere Housing Coalition, Acton Housing for All, United Way of Massachusetts Bay, Inc., Massachusetts Business Roundtable, Inc., B'nai B'rith Housing New England, Inc., Beacon Communities, LLC, Black Economic Counsel of Massachusetts, Inc., Capstone Communities LLC, Belmont Town of (More!) Homes, Redgate Capital Partners, Community Economic Development Assistance Corporation, Harborlight Community Partners, Inc., Jewish Alliance for Law and Social Action, Inc., and Housing Navigator Massachusetts, Inc. We also acknowledge the amicus letter submitted by the Winthrop Says No to 3A Committee.

Background. 1. Statutory overview. The act requires MTBA communities³ to zone for "at least [one] district of reasonable size" where multifamily housing is permitted "as of right."⁴ G. L. c. 40A, § 3A (a) (1). The act further defines "a district of reasonable size" and specifies that any such district must be situated within one-half mile of an MTBA facility.⁵ Id. Noncompliant MBTA communities are ineligible for funds from

³ Chapter 40A defines an "MBTA community" to include "the [fourteen] cities and towns as defined in [G. L. c. 161A, § 1]." G. L. c. 40A, § 1A. Milton falls within this definition. G. L. c. 161A, § 1.

⁴ Chapter 40A defines "[multifamily] housing" as "a building with [three] or more residential dwelling units or [two] or more buildings on the same lot with more than [one] residential dwelling unit in each building." G. L. c. 40A, § 1A. Zoning "as of right" is defined as "development that may proceed under a zoning ordinance or by-law without the need for a special permit, variance, zoning amendment, waiver or other discretionary zoning approval." Id.

⁵ General Laws c. 40A, § 3A (a) (1), states:

"An MBTA community shall have a zoning ordinance or [bylaw] that provides for at least [one] district of reasonable size in which [multifamily] housing is permitted as of right; provided, however, that such [multifamily] 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 [fifteen] units per acre, subject to any further limitations imposed by [G. L. c. 131, § 40,] and title 5 of the state environmental code established pursuant to [G. L. c. 21A, § 13]; and (ii) be located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable."

certain State funding sources. G. L. c. 40A, § 3A (b).⁶ The last paragraph of § 3A directs HLC,⁷ in consultation with three other State agencies, to "promulgate guidelines" to determine if an MBTA community has complied with the act. G. L. c. 40A, § 3A (c).⁸

2. Implementation of the act. Shortly after the act was passed, HLC issued a preliminary announcement describing the act and giving notice of its intention to produce detailed guidelines. Over the next two years, HLC issued draft guidelines, conducted community presentations, and solicited feedback directly from affected communities.⁹ HLC also consulted

⁶ Pursuant to § 3A (b), noncompliant communities are ineligible to receive funds from the Housing Choice Initiative, the Local Capital Projects Fund, the MassWorks infrastructure program, and the HousingWorks infrastructure program. G. L. c. 40A, § 3A (b).

⁷ An earlier version of the act delegated this duty to HLC's predecessor agency, the Department of Housing and Community Development. See St. 2021, c. 29, § 10. For the sake of clarity, this opinion will refer to the agency in charge of implementing the act as HLC.

⁸ General Laws c. 40A, § 3A (c), states:

"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."

⁹ The town itself submitted comments, which HLC appears to have incorporated into its final guidelines.

with other agencies, including the Massachusetts Department of Transportation (MassDOT) and the MBTA in preparing the final guidelines. It did not, however, file with the Secretary of the Commonwealth a notice of public hearing, a notice of proposed adoption or amendment of a regulation, or a small business impact statement within the meaning of the APA.¹⁰ See G. L. c. 30A, §§ 2, 3. HLC issued its final guidelines on August 17, 2023.

3. Facts and procedural posture. The town initially took steps to comply with the act. Between August of 2022 and December of 2023, the town's planning and select boards engaged in discussions relating to G. L. c. 40A, § 3A. The town also applied for and received grant money, which it used to hire a planning and design consultant to create a zoning plan. In January of 2023, Milton submitted to HLC its "action plan" indicating that it sought to be considered in "interim compliance" with the act.

Although the town raised some concerns regarding its classification under HLC's guidelines,¹¹ on December 11, 2023, at

¹⁰ Concomitant with its failure to file a small business impact statement, it also appears from the record provided to this court that HLC did not file an estimate of the guidelines' "fiscal effect," pursuant to G. L. c. 30A, § 5.

¹¹ Approximately nine months after submitting its action plan, Milton sent HLC a letter raising doubts that it had

a special town meeting, its representative town meeting approved, by a vote of 158 to 76, a proposed zoning bylaw (Article 1) that would have complied with HLC's guidelines.¹² However, pursuant to the town charter, a sufficient number of the town's voters petitioned to have Article 1 submitted to a town-wide referendum vote; so, less than three weeks after the initial vote approving the bylaw, the select board voted to schedule a referendum on the article for February of 2024.¹³ Before the vote was held, both HLC and the Attorney General sent letters to town officials, giving notice that they would enforce the funding penalties listed in § 3A and take legal action should the town fail to comply with the act. The town held the referendum on February 14, 2024, and the voters rejected the

properly been categorized as a rapid transit community -- the community classification necessitating the largest district of multifamily housing under HLC's guidelines. HLC responded that, based on the guidelines, Milton properly had been classified as a rapid transit community.

¹² The town has a representative town meeting form of government that convenes for an annual meeting each spring and for any special meetings called by the town's select board or by petition.

¹³ According to section 7 of the town's charter, petitioners must gather the signatures of at least five percent of the town's registered voters in order to a call for a referendum on an article approved by the representative town meeting.

proposed zoning bylaw by a margin of approximately eight percentage points.¹⁴

Shortly after the referendum, the Attorney General filed before a single justice of this court a complaint against the town and its building commissioner seeking declaratory and injunctive relief to enforce compliance with G. L. c. 40A, § 3A, as set forth in HLC's guidelines. See G. L. c. 231A, § 1; G. L. c. 214, § 1. Milton filed an answer denying that it was in violation of § 3A and filed a counterclaim against the Attorney General and HLC seeking declaratory relief. The single justice reserved and reported the case to the full court.

Discussion. Among other things, the town asserts that § 3A provides for an unconstitutional delegation of legislative authority, that the Attorney General lacks the power to enforce the act, and that HLC's guidelines were not promulgated in accordance with the APA. We address these claims in turn.

1. Constitutionality of § 3A. Milton argues that § 3A violates the separation of powers doctrine because the act vests HLC with the power to make fundamental policy decisions by requiring what the town calls "transformative zoning changes" in MBTA communities. We are not persuaded.

¹⁴ Approximately fifty-four percent of the voters (5,115) rejected Article 1, and forty-six percent (4,346) voted to approve it.

Article 30 of the Massachusetts Declaration of Rights stands for the "general principle that the Legislature cannot delegate the power to make laws." Robinhood Fin. LLC v. Secretary of the Commonwealth, 492 Mass. 696, 714 (2023), quoting Construction Indus. of Mass. v. Commissioner of Labor & Indus., 406 Mass. 162, 171 (1989). Importantly, however, a categorically unyielding division of governmental powers "is neither possible nor always desirable." Opinion of the Justices, 365 Mass. 639, 641 (1974). To determine whether a legislative delegation of authority violates the separation of powers doctrine, we consider three factors:

"(1) Did the Legislature delegate the making of fundamental policy decisions, rather than just the implementation of legislatively determined policy; (2) does the act provide adequate direction for implementation, either in the form of statutory standards or . . . sufficient guidance to enable it to do so; and (3) does the act provide safeguards such that abuses of discretion can be controlled?"

Robinhood Fin. LLC, supra, quoting Chelmsford Trailer Park, Inc. v. Chelmsford, 393 Mass. 186, 190 (1984). With regard to the first prong, the language of the act itself makes plain the Legislature's policy goal: "[a]n MBTA community shall have a zoning ordinance or [bylaw] that provides for at least [one] district of reasonable size in which [multifamily] housing is

permitted as of right."¹⁵ G. L. c. 40A, § 3A (a) (1). The act further defines a "district of reasonable size," specifying that it "shall . . . have a minimum gross density of [fifteen] units per acre, subject to [certain specified limitations]; and . . . be located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station." Id. Thus, by delegating to HLC the power to determine whether a city or town is in compliance with § 3A, the Legislature has not abandoned its policy-making role. See G. L. c. 40A, § 3A (c). Indeed, the Legislature routinely assigns to others the implementation of a policy adopted through the enactment of a statute. See Commonwealth v. Clemmey, 447 Mass. 121, 136-137 (2006); Opinion of the Justices, 393 Mass. 1209, 1219 (1984) ("Legislature may delegate to an officer of the executive branch the working out of the details of a policy established by the General Court"). We long have recognized that "[t]o deny this [power] would be to stop the wheels of government." Commonwealth v. Diaz, 326 Mass. 525, 527 (1950), quoting Field v. Clark, 143 U.S. 649, 694 (1892). Tasking HLC, in consultation with other relevant

¹⁵ We note that the plain language of § 3A (a) (1) states that municipalities "shall" have a zoning ordinance that allows for multifamily housing as of right. G. L. c. 40A, § 3A (a) (1). "The word 'shall' is ordinarily interpreted as having a mandatory or imperative obligation." Hashimi v. Kalil, 388 Mass. 607, 609 (1983). Thus, it is clear that the Legislature intended to require MBTA communities to comply with the act.

agencies, to determine whether a city or town has complied with the requirement that it have a zoning ordinance or bylaw providing for a "district of reasonable size" where multifamily housing is permitted "as of right," G. L. c. 40A, § 3A (a) (1), allows subject-matter experts to tailor the guidelines to fit the "real-world" conditions of each MBTA community affected by the act by, for example, taking into account a community's land area, population, existing housing stock, or other relevant factors, Clemmey, supra at 137.

As to the second prong, the act provides an "intelligible principle" to guide HLC in this exercise of authority. Robinhood Fin. LLC, 492 Mass. at 715. As discussed supra, under § 3A (a) (1), a district of "reasonable size" must have a "minimum gross density of [fifteen] units per acre" and be located within one-half mile of an MBTA facility. The parameters provided by the act, in addition to the requirement that the size of the district be "reasonable," are enough to guide the agency in issuing rules to determine whether an MBTA community complies with the act's requirements. See Robinhood Fin. LLC, supra (guidance sufficient where regulations must be "necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of [the statute]" [citation omitted]); Tri-Nel Mgt., Inc. v. Board of Health of

Barnstable, 433 Mass. 217, 226 (2001) (guidance sufficient where statute required "reasonable" regulations to "address the 'health' of the community").

As for guarding against potential abuses of discretion by the agency, the act "sufficiently demarcate[s] the boundaries of regulatory discretion." Tri-Nel Mgt., Inc., 433 Mass. at 226. As explained supra, HLC's regulatory powers must be reasonable as well as guided by other requirements of the act. In addition to the limitations on "content and reasonableness," id., the act requires HLC to promulgate guidelines in consultation with three other State agencies. See Clemmey, 447 Mass. at 138 (consultation with advisory committee safeguards against abuse of discretion). Moreover, as with any agency regulation, an aggrieved party may seek judicial review. See G. L. c. 30A, § 7; G. L. c. 231A. See also Tri-Nel Mgt., Inc., supra (ability to seek judicial review of agency's regulation through action for declaratory relief provides important safeguard against abuse of discretion by agency).

2. Power of the Attorney General. Milton also asserts that the Attorney General is unauthorized to bring the instant action because, although § 3A provides for certain consequences

for noncompliance, a suit in equity to enforce the provision is not one of them. Here again we are unconvinced.¹⁶

This court long has recognized that the Attorney General has broad powers to enforce the laws of the Commonwealth. See Commonwealth v. Mass. CRINC, 392 Mass. 79, 88 (1984). The Attorney General has a general statutory duty to

"take cognizance of all violations of law or of orders of courts, tribunals or commissions affecting the general welfare of the people . . . and shall institute . . . such criminal or civil proceedings . . . as [s]he may deem to be for the public interest, and shall investigate all matters in which [s]he has reason to believe that there have been such violations."

G. L. c. 12, § 10.¹⁷ The Attorney General "also has a common law duty to represent the public interest and enforce public

¹⁶ As discussed infra, because we conclude that HLC's guidelines are ineffective, the need for declaratory relief regarding Milton's challenge to the Attorney General's enforcement powers is less immediate. Nevertheless, we decide this question of law because both parties explicitly seek an answer to the question, "the case has been fully briefed on the merits, . . . there is a public interest in obtaining a prompt answer to the question, and . . . the answer . . . is reasonably clear" (citation omitted). ENGIE Gas & LNG LLC v. Department of Pub. Utils., 475 Mass. 191, 196 (2016). See Libertarian Ass'n of Mass. v. Secretary of the Commonwealth, 462 Mass. 538, 547 (2012) ("declaratory judgment act must be 'liberally construed,' so as to effectuate its remedial goals of 'remov[ing], and . . . afford[ing] relief from, uncertainty and insecurity with regard to rights [and] duties'" [citation omitted]).

¹⁷ Although § 10 may have been crafted primarily in response to anticompetitive conduct regarding trade, we long ago rejected the argument that it limits the Attorney General's power to only that single domain. Commonwealth v. Kozlowsky, 238 Mass. 379, 388-389 (1921). To the contrary, we have consistently

rights." Mass. CRINC, supra, citing Lowell Gas Co. v. Attorney Gen., 377 Mass. 37, 48 (1979). We traditionally have construed the term "public interest" broadly, including where the law concerns rights to land and property use. See, e.g., Attorney Gen. v. Dime Sav. Bank of N.Y., FSB, 413 Mass. 284, 287-288 (1992) (Attorney General properly sought to enjoin trespass actions initiated by foreclosing mortgagee against holdover mortgagors and tenants in possession of foreclosed premises); Attorney Gen. v. Williams, 174 Mass. 476, 483 (1899) (Attorney General properly sought to enforce statute limiting height of buildings in Copley Square to protect public interest).

The town contends that the Attorney General is not authorized to enforce § 3A because the act does not so provide. But the Attorney General's enforcement power is not dependent upon whether a particular statute happens to reference it. See, e.g., Dime Sav. Bank of N. Y., FSB, 413 Mass. at 287 (pursuant to G. L. c. 12, § 10, Attorney General authorized to enjoin use of trespass actions to eject holdover mortgagors and tenants even though no explicit statutory authorization). Given the Attorney General's broad authority to act in the public

recognized that § 10 contains an "exceedingly broad" grant of power. Id. at 388. See, e.g., Mass. CRINC, 392 Mass. at 88; Lowell Gas Co. v. Attorney Gen., 377 Mass. 37, 48 n.20 (1979) (noting § 10 was originally titled, "An Act to enlarge the powers and duties of the attorney-general").

interest, and the fact that the public has an interest in the enforcement of § 3A, the Attorney General is empowered to enforce § 3A, notwithstanding the lack of any reference to such power in that statute. See G. L. c. 12, § 10.

The town additionally asserts that the Attorney General may not bring an enforcement action because § 3A already includes consequences for noncompliance, i.e., ineligibility for certain funding sources.¹⁸ In doing so, the town relies on the statutory maxim "expressio unius est exclusio alterius," i.e., the expression of one thing implies the exclusion of others. To be sure, we employ this canon of construction from time to time. See, e.g., Phillips v. Equity Residential Mgt., L.L.C., 478 Mass. 251, 259 & n.19 (2017). The town's reliance on it in this case, however, is inapt. See Haleblian v. Berv, 457 Mass. 620, 628 (2010), quoting 2A N.J. Singer & J.D. Shambie Singer, Sutherland Statutory Construction § 47.25, at 429 (7th ed. 2007)

¹⁸ Although the town describes this consequence as a "remedy," neither the statutory language nor the record before us demonstrates that the penalty is designed (or able) to accomplish the desired compulsory aspect of the law. See note 15, supra. Cf. Shriver v. Woodbine Sav. Bank, 285 U.S. 467, 478-479 (1932) ("The very fact that the [statutory] remedy is on its face inadequate to compel full performance of the obligation declared is persuasive that it was not intended to be exclusive of applicable common-law remedies, by which complete performance might be secured"); Williams, 174 Mass. at 485 ("The kind of remedy provided by the statute in regard to the building laws gives no security to the public for the protection of their rights").

("the maxim of negative implication -- that the express inclusion of one thing implies the exclusion of another -- 'requires great caution in its application').").

If we were to adopt the town's interpretation, the only consequence to an MBTA community for failing to comply with the act would be the loss of certain funding opportunities. Thus, those communities, like the town in this case, which choose to forgo the identified funding programs, would be free to ignore the legislative decision to require towns benefiting from MBTA services to permit their fair share of multifamily housing near their local MBTA stations and terminals. As the purpose of § 3A is to increase housing stock, the town's proposed reading of the act would thwart the Legislature's purpose by converting a legislative mandate into a matter of fiscal choice. See Bank of Am., N.A. v. Rosa, 466 Mass. 613, 619-620 (2013), and cases cited (statutory maxim "should not be applied where to do so would frustrate the general beneficial purposes of the legislation").

Moreover, the town's interpretation effectively nullifies the power afforded to the Attorney General under G. L. c. 12, § 10. In light of the Attorney General's unique and well-established role as a protector of public rights, we conclude that the penalties provided for in the act do not preclude the equitable relief that the Attorney General is authorized to

pursue under her broad statutory power. See Ryan v. Mary Ann Morse Healthcare Corp., 483 Mass. 612, 620 (2019), quoting School Comm. of Newton v. Newton Sch. Custodians Ass'n, Local 454, SEIU, 438 Mass. 739, 751 (2003) ("In the absence of explicit legislative commands to the contrary, we construe statutes to harmonize and not to undercut each other").

3. The HLC guidelines. Finally, Milton argues that the guidelines as promulgated are ineffective because HLC failed to comply with the APA. See G. L. c. 30A. We agree.

The purpose of the APA is to "'establish a set of minimum standards of fair procedure below which no agency should be allowed to fall' and to create uniformity in agency proceedings" (citation omitted). Carey v. Commissioner of Correction, 479 Mass. 367, 371 (2018). To that end, the APA requires State agencies (like HLC) to take certain steps when promulgating regulations in order to "give notice and afford interested persons an opportunity to present data, views, or arguments." Id., quoting G. L. c. 30A, § 3. "Under the APA, a regulation 'includes the whole or any part of every rule, regulation, standard or other requirement of general application and future effect . . . adopted by an agency to implement or interpret the law enforced or administered by it.'" Carey, supra, quoting G. L. c. 30A, § 1 (5).

Here the Attorney General contends that HLC is not required to adhere to the c. 30A procedure because the act directs the agency to promulgate "guidelines" rather than "regulations." See G. L. c. 40A, § 3A (c). The Attorney General further asserts that even if the APA does apply, HLC substantially complied with the statute, and thus any omissions should be considered harmless error. These arguments are unpersuasive.

General Laws c. 40A, § 3A (c), specifically directs HLC to "promulgate guidelines to determine if an MBTA community is in compliance." And HLC's guidelines do just that, both interpreting and implementing the act. Cf. G. L. c. 30A, § 1 (5). For instance, the guidelines categorize MBTA communities into four groups based on the MBTA facilities within or adjacent to their borders¹⁹ and detail what each community must do to achieve a "reasonabl[y] size[d]" zoning district in

¹⁹ The guidelines classify each MBTA community as (i) a rapid transit community, (ii) a commuter rail community, (iii) an adjacent community, or (iv) an adjacent small town based on a set of definitions. To illustrate, according to the guidelines, a rapid transit community is "an MBTA community that has within its borders at least 100 acres of developable station area associated with one or more subway stations, or MBTA Silver Line bus rapid transit stations." Whereas a commuter rail community is "an MBTA community that (i) does not meet the criteria for a rapid transit community, and (ii) has within its borders at least 100 acres of developable station area associated with one or more commuter rail stations."

order to be considered compliant with the act.²⁰ See G. L. c. 40A, § 3A (a) (1). The guidelines also explain how HLC determines whether a multifamily housing district has reached the statutorily mandated minimum density requirement of fifteen units per acre and specify whether the entirety of a community's multifamily housing district must be within one-half mile of the relevant MBTA facility. See id.

Moreover, the guidelines explain what it means to allow multifamily housing "as of right," and establish deadlines by which MBTA communities must submit "district compliance applications" to HLC. Given the breadth, detail, substance, and mandatory requirements of the HLC guidelines in implementing the act, we reject the agency's position that the "guidelines"

²⁰ For example, multifamily housing districts in rapid transit communities, commuter rail communities, and adjacent communities must have a minimum land area of fifty acres or 1.5 percent of the community's developable land, whichever is less, while in adjacent small towns, there is no minimum land area requirement. Further, to ensure that multifamily housing districts accommodate enough housing units, the HLC guidelines require MBTA communities to have a "minimum [multifamily] unit capacity," calculated based on a certain percentage of a community's existing total housing units. Under this metric, the minimum multifamily unit capacity of a rapid transit community must accommodate twenty-five percent of the community's total housing units, a commuter rail community requires fifteen percent, an adjacent community requires ten percent, and an adjacent small town requires five percent.

referenced in § 3A are meant to be exempt from the APA's broad definition of "regulation."²¹

Having determined that the guidelines contemplated by the act fall within the ambit of regulations as defined by the APA, they must be promulgated pursuant to that statute. See G. L. c. 30A, § 3. Under G. L. c. 30A, § 3, agencies engaged in the rulemaking process must, among other things, file notice of a proposed regulation with the Secretary of the Commonwealth, along with a small business impact statement. Here, HLC has admitted that it failed to take either of these necessary steps. The Attorney General suggests that this court should apply a harmless error standard because, she argues, HLC substantially complied with the statute. However, the APA leaves no room for substantial compliance. Strict compliance for agencies

²¹ We also note that the terms "guideline" and "regulation" are not mutually exclusive. A "guideline" is "an indication or outline of policy or conduct." Fairhaven Hous. Auth. v. Commonwealth, 493 Mass. 27, 32 (2023), quoting Merriam-Webster's Collegiate Dictionary 555 (11th ed. 2020). This definition of "guideline," however, "does not preclude such rules from being mandatory." Fairhaven Hous. Auth., supra.

Moreover, if use of the word "regulation" were the dispositive factor in determining whether the APA applies, the Legislature's broad definition in G. L. c. 30A, § 1 (5), including a host of other terms, would amount to surplusage -- so too would its specific enumeration of exceptions. Cf. Matter of a Civ. Investigative Demand Addressed to Yankee Milk, Inc., 372 Mass. 353, 358 (1977) ("established principle of statutory construction that every word in a statute should be given meaning").

promulgating rules is compelled by the plain terms of the statute. See G. L. c. 30A, § 5 (referencing § 3, "no rule or regulation . . . shall become effective until an agency has filed with the state secretary a statement considering the impact of said regulation on small business"). And strict compliance also furthers the purpose of the APA: to set minimum standards of fair procedure and ensure uniformity in agency proceedings. Carey, 479 Mass. at 371.

Because HLC failed to comply with the APA, HLC's guidelines are legally ineffective and must be repromulgated in accordance with G. L. c. 30A, § 3, before they may be enforced.²² See Massachusetts Gen. Hosp. v. Cambridge, 347 Mass. 519, 523 (1964) (failure to comply with APA requirements and "properly file[]" regulations with Secretary of Commonwealth under G. L. c. 30A, §§ 3, 5, rendered regulations ineffective); Kneeland Liquor, Inc. v. Alcoholic Beverages Control Comm'n, 345 Mass. 228, 235 (1962) ("Inasmuch as there was no compliance with either [G. L.

²² As noted in note 10, supra, it appears from the record that HLC also failed to file with the Secretary of the Commonwealth a statement estimating the fiscal impact of the proposed regulations on the private and public sectors as required by G. L. c. 30A, § 5. This, too, renders the guidelines ineffective. See G. L. c. 30A, § 5 ("No rule or regulation so filed with the state secretary shall become effective until an estimate of its fiscal effect including that on the public and private sector, for its first and second year, and a projection over the first five-year period, or a statement of no fiscal effect has been filed with said state secretary").

c. 30A,] § 2 [3] or § 3 [3], the regulations were invalidly enacted . . .").²³

Conclusion. For the foregoing reasons, we declare that the act creates an affirmative duty for each MBTA community to have a zoning bylaw that allows for at least one district of reasonable size where multifamily housing is permitted as of right, as dictated by G. L. c. 40A, § 3A, and that the act's delegation of authority to HLC to promulgate guidelines does not violate art. 30 of the Massachusetts Declaration of Rights. We further declare that the Attorney General has the power to bring suit for declaratory and injunctive relief to enforce § 3A and its corresponding guidelines. However, because HLC's current guidelines were not promulgated in accordance with the APA, we declare them ineffective and, as such, presently unenforceable.

The case is remanded to the county court, where the single justice is directed to enter a declaratory judgment consistent with this opinion. The remainder of the claims are dismissed.

So ordered.

²³ As HLC will need to promulgate guidelines consistent with the APA's procedural requirements, and as those new guidelines may differ from the ones presently in place, we need not reach whether the existing guidelines are consistent with the act.



Mead, Talerman & Costa, LLC
Attorneys at Law

227 Union Street
Suite 606
New Bedford, MA 02740
www.mtcclawyers.com

⑤ A2

CLIENT ADVISORY

To: Town Managers, Administrators, Mayors, and Planners
From: Mead, Talerman & Costa, LLC
Date: January 8, 2025
Re: Summary of Milton Decision

Today, the Supreme Judicial Court (SJC) issued judgment in *Attorney General v. Town of Milton*, ruling upon both the Attorney General's lawsuit against Milton for failure to comply with the MBTA Communities Law (G.L. c. 40A, §3A), and with Milton's counterclaims against the Commonwealth. In short, the SJC did not resolve all of the issues in the case but did validate the constitutionality of the MBTA Communities Law while at the same time voiding the accompanying regulations promulgated by the Executive Office of Housing and Livable Communities (HLC).

By way of background, the Legislature passed G. L. c. 40A, § 3A, the Massachusetts Bay Transportation Authority (MBTA) Communities Act (§ 3A or the Act) nearly four years ago, which was designed to address the ongoing housing crisis in the Commonwealth by requiring municipalities that benefit from having local access to MBTA services to adopt zoning laws that provide for at least one district of multifamily housing "as of right" near their local MBTA facilities. The HLC subsequently issued comprehensive Guidelines which explained and expanded upon the requirements of the statute and created deadlines for compliance. In February of 2024, upon a referendum vote, residents of the town of Milton voted down a proposed zoning scheme to satisfy the requirements of the Act. The Attorney General then sued the town to enforce the Act. Milton counterclaimed with various claims which were ultimately distilled to a challenge to the legality of HLC's Guidelines.

In today's ruling, the SJC declared that M.G.L. c. 40A, s. 3A is constitutional and MBTA communities are mandated to create a compliant district. However, the MBTA Community Guidelines created by HLC were ruled to be void as HLC did not follow the Administrative Procedures Act (APA), i.e. the Guidelines were not properly promulgated as regulations and thus are not enforceable, including the deadlines set forth therein. Therefore, HLC will still need to follow the procedures under the APA to create valid regulations. We are informed however, that HLC may be adopting temporary emergency regulations to govern the Act while it is preparing for adoption of permanent regulations under the requirements of the APA.

The Court also declared that the loss of certain state funding alone, as set forth in the Act, is neither an exclusive nor sufficient remedy to achieve the mandatory goals of the statute and, therefore, the SJC ruled that the Attorney General has the authority to enforce the statute and bring claims for injunctive relief. The decision was not explicit regarding the remedies available to the Attorney General's Office through an injunction and the SJC did not issue any rulings with respect to the specific injunctive relief that the Attorney General sought in its underlying suit. The injunctive relief sought by the Attorney General included an injunction to compel a building commissioner to issue building permits for any multi-family project within ½ mile of a transit station and the appointment of a special master to draft zoning for a municipality that does not comply. However, the SJC offered no firm indication as to whether such relief or any particular injunctive relief would be granted. Ultimately, such matters would likely be litigated in the Superior Court.

Newburyport Office
30 Green Street
Newburyport, MA 01950

Millis Office
730 Main Street, Suite 1F
Millis, MA 02054
Phone/Fax 508.376.8400

While we can predict that the Attorney General may obtain significant injunctive relief against Towns that remain noncompliant with the Act, we'd expect that those issues would still have to be adjudicated on a case-by-case basis. While there are good arguments against injunctions to compel the passage of zoning by a Town Meeting, it is clear that the SJC is sympathetic to efforts by the Attorney General to fashion a remedy for Towns that do not comply with the Act.

Because the guidelines that HLC was seeking to enforce were found to be void, the SJC did not need to address, and therefore dismissed, all other claims. The SJC expressly stated in a footnote to the decision that it would not be reaching a determination on whether any portion of the regulations was outside of the scope of the statute since the regulations may change as a result of the APA process.

We have been asked whether the SJC's decision impacts towns that have already passed zoning in compliance with the Act. While such bylaws were drafted to comply with the HLC's Guidelines, we do not see any legal issues with continuing to apply and enforce those bylaws if, in fact, they have been approved by the Attorney General's Municipal Law Unit. However, it is possible that, if further litigation invalidates the legality of any particular component of HLC's Guidelines, a section of a bylaw that adhered to such Guidelines may need to be amended or deleted. It is premature at this time however to predict whether any particular component of the Guidelines or the future regulations may be found to be illegal.

In summary, all MBTA Communities are required to comply with the requirements of the Act, or face possible enforcement by the Attorney General's Office and loss of funding. As the deadlines for compliance are in flux however, there is still time for municipalities to comply. We are in contact with the Attorney General's office and will advise you of any updates as we receive them. We urge any community who has not enacted a compliant bylaw but is required to do so, to reach out to us for assistance.



Justin Sultzbach

From: Carlucci, Nathan (EOHLC) <Nathan.Carlucci@mass.gov>
Sent: Tuesday, January 14, 2025 3:22 PM
To: Kluchman, Chris (EOHLC)
Subject: [EXTERNAL] - MBTA Communities - Emergency Regulations
Attachments: Emergency 3A Regs_1-14-25.pdf

[CAUTION:] This message was sent from outside of the Town of Middleton. Please do not click links or open attachments unless you recognize the source of this email and know the content is safe.

Dear MBTA Community Officials:

The following information is embargoed until January 14, 2025, at 4:00 p.m. Please do not share this information publicly before that time.

On January 8, 2025, the Massachusetts Supreme Judicial Court published an opinion confirming that the MBTA Communities Law is constitutional and valid, and that the Attorney General has the power to enforce it. The Court also opined that EOHLC must promulgate the law's implementing guidelines through the Administrative Procedures Act if they are to be enforceable. Earlier today, EOHLC filed emergency regulations with the Secretary of the Commonwealth. EOHLC plans to adopt the emergency regulations as permanent regulations following a public comment period. The regulations **do not**:

- Change substantive zoning requirements
- Affect any determinations of compliance that have been issued by EOHLC
- Require any additional actions from municipalities that submitted district compliance applications that are currently under review.

MBTA communities that did not meet prior deadlines will receive additional time to comply with the law but must submit a new "Action Plan" within 30 days from the filing date of the emergency regulations, by 11:59 p.m. on February 13, 2025. EOHLC plans to provide letters to all MBTA communities clarifying obligations under the regulations based on each municipality's community category and compliance status.

The [MBTA Communities website](#) will be updated today with additional information regarding the regulations and will continue to be updated over the coming weeks. EOHLC will also coordinate information sessions to answer additional questions. Thank you for your continued collaboration implementing this important housing law.

Sincerely,

Nathan Carlucci
MBTA Communities Compliance Coordinator
Executive Office of Housing and Livable Communities
Livable Communities Division
nathan.carlucci@mass.gov

760 CMR 72.00 MULTI-FAMILY ZONING REQUIREMENT FOR MBTA COMMUNITIES

- 72.01: Background and Purpose
- 72.02: Definitions
- 72.03: General Principles of Compliance
- 72.04: Allowing Multi-Family As of Right
- 72.05: Determining Reasonable Size
- 72.06: Minimum Gross Density
- 72.07: Determining Suitability for Families with Children
- 72.08: Location of Districts
- 72.09: Determinations of Compliance
- 72.10: Ongoing Obligations; Rescission of a Determination of Compliance
- 72.11: Changes to MBTA Service

72.01: Background and Purpose

G.L. c 40A, §3A provides: 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.

The purpose of G.L. c. 40A, § 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, and that meet other requirements set forth in the statute. 760 CMR 72.00 establishes rules, standards, and procedures to set forth how MBTA communities may achieve compliance with G.L. c. 40A, §3A. Pursuant to G.L. c. 40A, § 3A(c), the Executive Office of Housing and Livable Communities (EOHLC) is the regulatory agency for the program and is expressly authorized to issue guidelines, in consultation with the Executive Office of Economic Development, the Massachusetts Bay Transportation Authority and the Massachusetts Department of Transportation, to determine if an MBTA community is in compliance with G.L. c. 40A, § 3A. EOHLC is adopting these regulations pursuant to its authority under G.L. c. 6A, §16G ½ and pursuant to the Decision issued by the Supreme Judicial Court in Attorney General v. Town of Milton, et al. SJC-13580, slip op. (Jan. 8, 2025), holding that the guidelines issued by EOHLC on August 17, 2023 are unenforceable and must be promulgated in accordance with G.L. c. 30A, § 3.

72.02: Definitions

“Adjacent community” means an MBTA community that (i) has within its boundaries less than 100 acres of Developable station area, and (ii) is not an Adjacent small town.

“Adjacent small town” means an MBTA community that (i) has within its boundaries less than 100 acres of Developable station area, and (ii) either has a population density of less than 500 persons per square mile, or a population of not more than 7,000 year-round residents as determined in the most recently published United States Decennial Census of Population and Housing.

“Affordable unit” means a Multi-family housing unit that is subject to a restriction in its chain of title limiting the sale price or rent, or limiting occupancy to an individual or household of a specified income, or both. Affordable units may be, but are not required to be, eligible for inclusion on EOHLC’s Subsidized Housing Inventory. Nothing in 760 CMR 72.00 changes the Subsidized Housing Inventory eligibility criteria, and no affordable unit shall be counted on the Subsidized Housing Inventory unless it satisfies the requirements for inclusion under 760 CMR 56.03(2) or any other regulation or guidance issued by EOHLC.

“Age-restricted housing” means any housing unit encumbered by a title restriction requiring a minimum age for some or all occupants.

“As of right” means development that may proceed under a zoning ordinance or by-law without the need for a special permit, variance, zoning amendment, waiver, or other discretionary zoning approval.

“Bus station” means a location with a passenger platform and other fixed infrastructure serving as a point of embarkation for the Massachusetts Bay Transportation Authority Silver Line. Upon the request of an MBTA community, EOHLC, in consultation with the Massachusetts Bay Transportation Authority, may determine that other locations qualify as a bus station if (i) such location has a sheltered platform or other fixed infrastructure serving a point of embarkation for a high-capacity Massachusetts Bay Transportation Authority bus line, and (ii) the area around such fixed infrastructure is highly suitable for Multi-family housing.

“Commuter rail community” means an MBTA community that (i) does not meet the criteria for a Rapid transit community, and (ii) has within its borders at least 100 acres of Developable station area associated with one or more Commuter rail stations.

“Commuter rail station” means any Massachusetts Bay Transportation Authority Commuter rail station with year-round, rather than intermittent, seasonal, or event-based, service, including stations and any extensions to such lines under construction and scheduled to begin service before the end of 2025.

“Compliance model” means the model created by EOHLC to determine compliance with G.L. c. 40A, § 3A’s reasonable size, gross density, and location requirements. The compliance model is described in further detail in the Compliance Methodology Model, which is a model prescribed by EOHLC.

“Determination of compliance” means a determination made by EOHLC as to whether an MBTA community has a Multi-family zoning district that complies with the requirements of G.L. c. 40A, § 3A. A Determination of compliance may be a determination of interim compliance or a determination of district compliance, as described in 760 CMR 72.09.

“Developable land” means land on which Multi-family housing can be permitted and constructed. For purposes of 760 CMR 72.00, Developable land consists of: (i) all privately-owned land except Lots or portions of Lots that meet the definition of Excluded land, and (ii) Developable public land.

“Developable public land” means any Publicly-owned land that (i) is used by a local housing authority; (ii) has been identified as a site for housing development in a housing production plan approved by EOHLC; or (iii) has been designated by the public owner for disposition and redevelopment. Other Publicly-owned land may qualify as Developable public land if EOHLC determines, at the request of an MBTA community and after consultation with the public owner, that such land is the location of obsolete structures or uses, or otherwise is suitable for conversion to Multi-family housing, and will be converted to or made available for Multi-family housing within a reasonable period of time.

“Developable station area” means Developable land that is within 0.5 miles of a Transit station.

“EOED” means the Executive Office of Economic Development.

“EOHLC” means the Executive Office of Housing and Livable Communities.

“Excluded land” means land areas on which it is not possible or practical to construct Multi-family housing. For purposes of 760 CMR 72.00, Excluded land is defined by reference to the ownership, use codes, use restrictions, and hydrological characteristics in MassGIS and consists of the following:

- (1) All Publicly-owned land, except for Lots or portions of Lots determined to be Developable public land.
- (2) All rivers, streams, lakes, ponds and other surface waterbodies.
- (3) All wetland resource areas, together with a buffer zone around wetlands and waterbodies equivalent to the minimum setback required by title 5 of the state environmental code.
- (4) Protected open space and recreational land that is legally protected in perpetuity (for example, land owned by a local land trust or subject to a conservation restriction), or that is likely to remain undeveloped due to functional or traditional use (for example, cemeteries).
- (5) All Public rights-of-way and Private rights-of-way.
- (6) Privately-owned land on which development is prohibited to protect private or public water supplies, including, but not limited to, Zone I wellhead protection areas and Zone A surface water supply protection areas.
- (7) Privately-owned land used for educational or institutional uses such as a hospital, prison, electric, water, wastewater or other utility, museum, or private school, college or university.

“Ferry terminal” means the location where passengers embark and disembark from regular, year-round Massachusetts Bay Transportation Authority ferry service.

“Gross density” means a units-per-acre density measurement that includes land occupied by Public rights-of-way and any recreational, civic, commercial, and other nonresidential uses.

“Housing suitable for families” means housing comprised of residential dwelling units that are not age-restricted housing, and for which there are no zoning restriction on the number of bedrooms, the size of bedrooms, or the number of occupants.

“Listed funding sources” means (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 G.L. c. 29, § 2EEEE; and (iii) the MassWorks infrastructure program established in G.L. c. 23A, § 63.

“Lot” means an area of land with definite boundaries that is used or available for use as the site of a building or buildings.

“MassGIS data” means the comprehensive, statewide database of geospatial information and mapping functions maintained by the Commonwealth's Bureau of Geographic Information, within the Executive Office of Technology Services and Security, including the lot boundaries and use codes provided by municipalities.

“MBTA Community Categories and Requirements” means the table of MBTA communities adopted and updated by EOHLIC, identifying the community category assignment, minimum land area, minimum Multi-family unit capacity, Developable station area, and percentage of the Multi-family zoning district to be located in the Developable station area, applicable to MBTA communities.

“MBTA community” means a city or town that is: (i) one of the 51 cities and towns as defined in G.L. c. 161A, § 1; (ii) one of the 14 cities and towns as defined in G.L. c. 161A, § 1; (iii) other served communities as defined in G.L. c. 161A, § 1; or (iv) a municipality that has been added to the Massachusetts Bay Transportation Authority under G.L. c. 161A, § 6 or in accordance with any special law relative to the area constituting the authority.

“Mixed-use development” means development containing a mix of residential uses and non-residential uses, including, without limitation, commercial, institutional, industrial or other uses.

“Mixed-use development zoning district” means a zoning district where multiple residential units are allowed as of right if, but only if, combined with non-residential uses, including, without limitation, commercial, institutional, industrial or other uses.

“Multi-family housing” means a building with three or more Residential dwelling units or two or more buildings on the same Lot with more than one Residential dwelling unit in each building.

“Multi-family unit capacity” means an estimate of the total number of Multi-family housing units that can be developed As of right within a Multi-family zoning district, made in accordance with the requirements of 760 CMR 72.05(1)(b).

“Multi-family zoning district” means a zoning district, including a base district or an overlay district, in which Multi-family housing is allowed As of right; provided that the district shall be in a fixed location or locations, and shown on a map that is part of the zoning ordinance or by-law.

“One Stop Application” means the single application portal for the Community One Stop for Growth through which (i) EOED considers requests for funding from the MassWorks infrastructure program; (ii) EOHLC considers requests for funding from the Housing Choice Initiative, (iii) EOED, EOHLC and other state agencies consider requests for funding from other discretionary grant programs.

“Private rights-of-way” means land area within which private streets, roads and other ways have been laid out and maintained, to the extent such land areas can be reasonably identified by examination of available tax parcel data.

“Publicly-owned land” means (i) any land owned by the United States or a federal agency or authority; (ii) any land owned by the Commonwealth of Massachusetts or a state agency or authority; and (iii) any land owned by a municipality or municipal board or authority.

“Public rights-of-way” means land area within which public streets, roads and other ways have been laid out and maintained, to the extent such land areas can be reasonably identified by examination of available tax parcel data.

“Rapid transit community” means an MBTA community that has within its borders at least 100 acres of Developable station area associated with one or more Subway stations, or Massachusetts Bay Transportation Authority Silver Line bus rapid transit stations.

“Residential dwelling unit” means a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

“Sensitive land” means Developable land that, due to its soils, slope, hydrology, or other physical characteristics, has significant conservation values that could be impaired, or vulnerabilities that could be exacerbated, by the development of Multi-family housing. It also includes locations where Multi-family housing would be at increased risk of damage caused by flooding. Sensitive land includes, but is not limited to, wetland buffer zones extending beyond the title 5 setback area; land subject to flooding that is not a wetland resource area; priority habitat for rare or threatened species; Department of Environmental Protection-approved wellhead protection areas in which development may be restricted, but is not prohibited (Zone II and interim wellhead protection areas); and land areas with prime agricultural soils that are in active agricultural use.

“Site plan review” means a process established by local ordinance or by-law by which a local board reviews, and potentially imposes conditions on, the appearance and layout of a specific project prior to the issuance of a building permit.

“Subway station” means any of the stops along the Massachusetts Bay Transportation Authority Red Line, Green Line, Orange Line, or Blue Line, including but not limited to the Mattapan High Speed Line and any extensions to such lines.

“Transit station” means a Massachusetts Bay Transportation Authority Subway station, Commuter rail station, Ferry terminal or Bus station.

“Transit station area” means the land area within 0.5 miles of a Transit station.

72.03: General Principles of Compliance

(1) 760 CMR 72.00 describes how an MBTA community can comply with the requirements of G.L. c. 40A, § 3A. 760 CMR 72.00 specifically addresses:

- (a) What it means to allow Multi-family housing “As of right.”
- (b) The metrics that determine if a Multi-family zoning district is “of reasonable size.”
- (c) How to determine if a Multi-family zoning district has a minimum gross density of 15 units per acre, subject to any further limitations imposed by G.L. c. 131, § 40 of and title 5 of the state environmental code.
- (d) The meaning of G.L. c. 40A, § 3A’s mandate that “such multi-family housing shall be without age restrictions and shall be suitable for families with children.”
- (e) The extent to which MBTA communities have flexibility to choose the location of a Multi-family zoning district.

(2) The following general principles have informed the more specific compliance criteria that follow:

- (a) MBTA communities with Subway stations, Commuter rail stations and other Transit stations benefit from having these assets located within their boundaries and should provide opportunity for Multi-family housing development around these assets. MBTA communities with no Transit stations within their boundaries benefit from proximity to Transit stations in nearby communities.
- (b) The Multi-family zoning districts required by G.L. c. 40A, § 3A should encourage the development of Multi-family housing projects of a scale, density and aesthetic that are compatible with existing surrounding uses, and minimize impacts to Sensitive land.
- (c) “Reasonable size” is a relative rather than an absolute determination. Because of the diversity of MBTA communities, a Multi-family zoning district that is “reasonable” in one city or town may not be reasonable in another city or town.
- (d) When possible, Multi-family zoning districts should be in areas that have safe, accessible, and convenient access to Transit stations for pedestrians and bicyclists.

72.04: Allowing Multi-Family Housing “As of Right”

(1) To comply with G.L. c. 40A, § 3A, a Multi-family zoning district must allow Multi-family housing As of right, meaning that the construction and occupancy of multi-family housing is allowed in that district without the need for a special permit, variance, zoning amendment, waiver, or other discretionary approval. EOHLC will determine whether zoning provisions allow for Multi-family housing as of right consistent with the following requirements.

(a) Site plan review. G.L. c. 40A does not establish nor recognize site plan review as an independent method of regulating land use. However, the Massachusetts courts have recognized Site plan review as a permissible regulatory tool, including for uses that are permitted as of right. The court decisions establish that when Site plan review is required for a use permitted As of right, site plan review involves the regulation of a use and not its outright prohibition. The scope of review is therefore limited to imposing reasonable terms and conditions on the proposed use, consistent with applicable case law. 760 CMR 72.00 similarly recognizes that Site plan review may be required for Multi-family housing projects that are allowed As of right, within the parameters established by the applicable case law. Site plan approval may regulate matters such as vehicular access and circulation on a site, architectural design of a building, and screening of adjacent properties. Site plan review should not unreasonably delay a project nor impose conditions that make it infeasible or impractical to proceed with a project that is allowed As of right and complies with applicable dimensional regulations.

(b) Affordability requirements. G.L. c. 40A, § 3A does not include any express requirement or authorization for an MBTA community to require Affordable units in a Multi-family housing project that is allowed As of right. It is a common practice in many cities and towns to require Affordable units in a Multi-family project that requires a special permit, or as a condition for building at greater densities than the zoning otherwise would allow. These inclusionary zoning requirements serve the policy goal of increasing affordable housing production. If affordability requirements are excessive, however, they can make it economically infeasible to construct new Multi-family housing.

1. For purposes of making compliance determinations with G.L. c. 40A, § 3A, EOHLC will consider an affordability requirement to be consistent with As of right zoning as long as the zoning requires not more than ten percent of the units in a project to be Affordable units, and the cap on the income of families or individuals who are eligible to occupy the Affordable units is not less than eighty percent of area median income. Notwithstanding the foregoing, EOHLC may, in its discretion, approve a greater percentage of affordable units, or deeper affordability for some or all of the affordable units, in either of the following circumstances:

- a. The affordability requirements applicable in the Multi-family zoning district are reviewed and approved by EOHLC as part of a smart growth district under G.L. c. 40R, or under another zoning incentive program administered by EOHLC; or
- b. The affordability requirements applicable in the Multi-family zoning district are supported by an economic feasibility analysis, prepared for the municipality by a

qualified and independent third party acceptable to EOHLC, and using a methodology and format acceptable to EOHLC. The analysis must demonstrate that a reasonable variety of Multi-family housing types can be feasibly developed at the proposed affordability levels, taking into account the densities allowed As of right in the district, the dimensional requirements applicable within the district, and the minimum number of parking spaces required.

2. In no case will EOHLC approve alternative affordability requirements that require more than 20 percent of the units in a project to be Affordable units, except in a smart growth zoning district under G.L. c. 40R with a 25 percent affordability requirement approved and adopted prior to August 10, 2022 (the date of issuance by EOHLC of Compliance Guidelines for Multi-family Zoning Districts Under Section 3A of the Zoning Act which have been superseded by 760 CMR 72.00), including any such existing district that is expanded or amended to comply with G.L. c. 40A, § 3A and 760 CMR 72.00.

(c) Other requirements that do not apply uniformly in the Multi-family zoning district. Zoning will not be deemed compliant with G.L. c. 40A, § 3A's requirement that Multi-family housing be allowed As of right if the zoning imposes requirements on Multi-family housing that are not generally applicable to other uses. The following are examples of requirements that would be deemed to be inconsistent with As of right use: (i) a requirement that Multi-family housing meet higher energy efficiency standards than other uses; (ii) a requirement that a Multi-family use achieve a third party certification that is not required for other uses in the district; and (iii) a requirement that Multi-family use must be combined with commercial or other uses on the same Lot or as part of a single project. Mixed use projects may be allowed As of right in a Multi-family zoning district, as long as Multi-family housing is separately allowed As of right.

72.05: Determining "Reasonable Size"

(1) In making determinations of "reasonable size," EOHLC will take into consideration both the land area of the Multi-family zoning district, and the Multi-family zoning district's Multi-family unit capacity.

(a) Minimum land area. A zoning district is a specifically delineated land area with uniform regulations and requirements governing the use of land and the placement, spacing, and size of buildings. For purposes of compliance with G.L. c. 40A, § 3A, a Multi-family zoning district should be a neighborhood-scale district, not a single development site on which the municipality is willing to permit a particular Multi-family project. EOHLC will certify compliance with G.L. c. 40A, § 3A only if an MBTA community's Multi-family zoning district meets the minimum land area applicable to that MBTA community, if any, as set forth in the MBTA Community Categories and Requirements. The minimum land area for each MBTA community has been determined as follows:

1. In Rapid transit communities, Commuter rail communities, and Adjacent communities, the minimum land area of the Multi-family zoning district is 50 acres, or 1.5% of the

Developable land in an MBTA community, whichever is less. In certain cases, as set forth in the MBTA Community Categories and Requirements a smaller minimum land area applies.

2. In Adjacent small towns, there is no minimum land area. In these communities, the Multi-family zoning district may comprise as many or as few acres as the community determines is appropriate, as long as the district meets the applicable minimum Multi-family unit capacity and the minimum Gross density requirements.

3. In all cases, at least half of the Multi-family zoning district land areas must comprise contiguous Lots of land. No portion of the district that is less than 5 contiguous acres land will count toward the minimum size requirement. If the Multi-family unit capacity and Gross density requirements can be achieved in a district of fewer than 5 acres, then the district must consist entirely of contiguous Lots.

(b) Minimum Multi-family unit capacity. A reasonably sized Multi-family zoning district must also be able to accommodate a reasonable number of Multi-family housing units As of right. For purposes of determinations of compliance with G.L. c. 40A, § 3A, EOHLC will consider a reasonable Multi-family unit capacity for each MBTA community to be a specified percentage of the total number of housing units within the community, with the applicable percentage based on the type of Transit service in the community, as shown on Table 1:

Table 1.

<u>Category</u>	<u>Percentage of total housing units</u>
Rapid transit community	25%
Commuter rail community	15%
Adjacent community	10%
Adjacent small town	5%

1. To be deemed in compliance with G.L. c. 40A, § 3A, each MBTA community must have a Multi-family zoning district with a Multi-family unit capacity equal to or greater than the minimum unit capacity as determined by EOHLC in accordance with the MBTA Community Categories and Requirements. The minimum Multi-family unit capacity for each MBTA community has been determined as follows:

a. First, by multiplying the number of housing units in that community by 0.25, 0.15, 0.10, or .05 depending on the MBTA community category. For example, a Rapid transit community with 7,500 housing units is required to have a Multi-family zoning district with a Multi-family unit capacity of $7,500 \times 0.25 = 1,875$ Multi-family units. For purposes of 760 CMR 72.00, the number of total housing units in each MBTA community has been established by reference to the most recently published United States Decennial Census of Population and Housing.

b. Second, when there is a minimum land area applicable to an MBTA community, by multiplying that minimum land area (up to 50 acres) by G.L. c. 40A, § 3A's minimum gross density requirement of 15 units per acre. The product of that multiplication creates a floor on Multi-family unit capacity. For example, an MBTA community with a minimum land area of 40 acres must have a district with a Multi-family unit capacity of at least 600 (40 x 15) units.

c. The minimum unit capacity applicable to each MBTA community is the greater of the numbers resulting from steps (i) and (ii) above, but subject to the following limitation: In no case does the minimum Multi-family unit capacity exceed 25% of the total housing units in that MBTA community.

Example: The minimum multi-family unit capacity for an Adjacent community with 1,000 housing units and a minimum land area of 50 acres is determined as follows:(i) first, by multiplying $1,000 \times .1 = 100$ units; (ii) second, by multiplying $50 \times 15 = 750$ units;(iii) by taking the larger number, but adjusting that number down, if necessary, so that unit capacity is no more than 25% of 1,000 = 250 units. In this case, the adjustment in step (iii) results in a minimum unit capacity of 250 units.

(c) Unit Capacity in Mixed-Use Development Districts

1. In making determinations of whether an MBTA community has a Multi-family zoning district of "reasonable size" under this section, EOHLC shall also take into consideration the existence and impact of Mixed-use development zoning districts, subject to the requirements below.

2. EOHLC shall take these Mixed-use development districts into consideration as reducing the unit capacity needed for a Multi-family zoning district to be "reasonable" (in accordance with the MBTA Community Categories and Requirements) where:

- a. the Mixed-use development zoning district is in an eligible location where existing village-style or downtown development is essential to preserve pedestrian access to amenities;
- b. there are no age restrictions or limits on unit size, number of bedrooms, bedroom size or number of occupants and the residential units permitted are suitable for families with children;
- c. Mixed-used development in the district is allowed As of right as that phrase has been interpreted by EOHLC (for example, in 760 CMR 72.04(1)(b) with respect to affordability requirements);
- d. the requirement for non-residential uses is limited to the ground floor of buildings, and in no case represents a requirement that more than thirty-three percent of the floor area of a building, Lot, or project must be for non-residential uses;
- e. the requirement for non-residential uses does not preclude a minimum of three residential dwelling units per Lot;
- f. the requirement for non-residential uses allows a broad mix of non-residential uses As-of-right in keeping with the nature of the area; and

g. there are no minimum parking requirements associated with the non-residential uses allowed As of right.

2. An MBTA community asking to reduce the unit capacity requirement for its Multi-family zoning district(s) based on the unit capacity for one or more Mixed-use development districts shall submit to EOHLC, on a form to be provided by EOHLC, a request for a determination that the Mixed-use development district is in an eligible location meeting the requirements of 760 CMR 72.05(1)(c)2.a. This request must be submitted at least 90 days prior to the vote of the MBTA community's legislative body. An MBTA community also may submit a broader inquiry as to G.L. c. 40A, § 3A compliance in accordance with 760 CMR 72.09(5). EOHLC shall respond prior to the vote of the MBTA community's legislative body if the request is timely submitted.

3. In any community with both a Multi-family zoning district and a Mixed-use development district that meets these considerations, the unit capacity requirement for the Multi-family zoning district, as stated in the MBTA Community Categories and Requirements, shall be reduced by the lesser of:

- a. the unit capacity of Residential dwelling units in the Mixed-use development district or subdistrict (as calculated by EOHLC using a methodology similar to that in 760 CMR 72.05(1)(d) which takes into account the impact of non-residential uses), or
- b. twenty five percent of the unit capacity requirement as stated in the MBTA Community Categories and Requirements. This consideration shall not affect the minimum land area acreage or contiguity requirements for a Multi-family zoning district otherwise required by 760 CMR 72.00.

(d) Methodology for determining a Multi-family zoning district's multi-family unit capacity.

1. MBTA communities seeking a determination of compliance must use the EOHLC Compliance model to provide an estimate of the number of Multi-family housing units that can be developed As of right within the Multi-family zoning district. The Multi-family unit capacity of an existing or proposed district shall be calculated using the unit capacity worksheet described in the Compliance Methodology Model. This worksheet produces an estimate of a district's Multi-family unit capacity using inputs such as the amount of Developable land in the district, the dimensional requirements applicable to Lots and buildings (including, for example, height limitations, lot coverage limitations, and maximum floor area ratio), and the parking space requirements applicable to Multi-family uses.

2. Minimum unit capacity is a measure of whether a Multi-family zoning district is of a reasonable size, not a requirement to produce housing units. Nothing in G.L. c. 40A, § 3A or 760 CMR 72.00 should be interpreted as a mandate to construct a specified number of housing units, nor as a housing production target. Demonstrating compliance with the minimum multi-family unit capacity requires only that an MBTA community show that the zoning allows multi-family housing as of right and that a sufficient number of multi-

family housing units could be added to or replace existing uses and structures over time—even though such additions or replacements may be unlikely to occur soon.

3. If an MBTA community has two or more zoning districts in which Multi-family housing is allowed As of right, then two or more districts may be considered cumulatively to meet the minimum land area and minimum Multi-family unit capacity requirements, as long as each district independently complies with G.L. c. 40A, § 3A's other requirements and 760 CMR 72.00.

(e) Water and wastewater infrastructure within the multi-family zoning district

1. MBTA communities are encouraged to consider the availability of water and wastewater infrastructure when selecting the location of a new Multi-family zoning district. Compliance with G.L. c. 40A, § 3A does not require a municipality to install new water or wastewater infrastructure, or add to the capacity of existing infrastructure, to accommodate future Multi-family housing production within the Multi-family zoning district. In most cases, Multi-family housing can be created using private septic and wastewater treatment systems that meet state environmental standards. Where public systems currently exist, but capacity is limited, private developers may be able to support the cost of necessary water and sewer extensions. While the zoning must allow for gross average density of at least 15 units per acre, there may be other legal or practical limitations, including lack of infrastructure or infrastructure capacity, that result in actual housing production at lower density than the zoning allows.

2. The Multi-family unit capacity analysis does not need to take into consideration limitations on development resulting from existing water or wastewater infrastructure within the Multi-family zoning district, or, in areas not served by public sewer, any applicable limitations under title 5 of the state environmental code. For purposes of the unit capacity analysis, it is assumed that housing developers will design projects that work within existing water and wastewater constraints, and that developers, the municipality, or the Commonwealth will provide funding for infrastructure upgrades as needed for individual projects.

72.06: Minimum Gross Density

(1) G.L. c. 40A, § 3A expressly requires that a Multi-family zoning district—not just the individual lots of land within the district—must have a minimum Gross density of 15 units per acre, subject to any further limitations imposed by G.L. c. 131 and title 5 of the state environmental code established pursuant to G.L. c. 21A. G.L. c. 40A, § 1A defines “Gross density” as “a units-per-acre density measurement that includes land occupied by public rights-of-way and any recreational, civic, commercial and other nonresidential uses.”

(2) District-wide Gross density.

(a) To meet the district-wide Gross density requirement, the dimensional restrictions and parking requirements for the Multi-family zoning district must allow for a Gross density of

15 units per acre of land within the district. By way of example, to meet that requirement for a 40-acre Multi-family zoning district, the zoning must allow for at least 15 multi-family units per acre, or a total of at least 600 Multi-family housing units.

(b) For purposes of determining compliance with G.L. c. 40A, § 3A's Gross density requirement, the EOHLC Compliance model will not count in the denominator any excluded land located within the Multi-family zoning district, except public rights-of-way, private rights-of-way, and publicly-owned land used for recreational, civic, commercial, and other nonresidential uses. This method of calculating minimum Gross density respects G.L. c. 40A, § 1A's definition of Gross density—"a units-per-acre density measurement that includes land occupied by public rights-of-way and any recreational, civic, commercial and other nonresidential uses"—while making it unnecessary to draw patchwork Multi-family zoning districts that carve out wetlands and other types of excluded land that are not developed or developable.

(3) Achieving district-wide gross density by sub-districts. Zoning ordinances and by-laws typically limit the unit density on individual lots. To comply with G.L. c. 40A, § 3A's Gross density requirement, an MBTA community may establish reasonable sub-districts within a Multi-family zoning district, with different density limits for each sub-district, provided that the Gross density for the district as a whole meets the statutory requirement of not less than 15 Multi-family units per acre. EOHLC will review sub-districts to ensure that the density allowed As of right in each sub-district is reasonable and not intended to frustrate the purpose of G.L. c. 40A, § 3A by allowing projects of a such high density that they are not likely to be constructed.

(4) Wetland and septic considerations relating to density. G.L. c. 40A, § 3A provides that a district of reasonable size shall 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 G.L. c. 21A, § 13." This directive means that even though the zoning district must permit 15 units per acre As of right, Multi-family housing produced within the district is subject to, and must comply with, the state wetlands protection act and title 5 of the state environmental code—even if such compliance means a proposed project will be less dense than 15 units per acre.

72.07: Determining Suitability for Families with Children

G.L. c. 40A, § 3A states that a compliant Multi-family zoning district must allow Multi-family housing As of right, and that such multi-family housing shall be without age restrictions and shall be suitable for families with children. EOHLC will deem a Multi-family zoning district to comply with these requirements as long as the zoning does not require Multi-family uses to include units with age restrictions, and does not limit or restrict the size of the units, cap the number of bedrooms, the size of bedrooms, or the number of occupants, or impose a minimum age of occupants. Limits, if any, on the size of units or number of bedrooms established by state law or regulation are not relevant to G.L. c. 40A, §3A or to determinations of compliance made pursuant to 760 CMR 72.00.

72.08: Location of Districts

(1) General rule for determining the applicability of G.L. c. 40A, § 3A's location requirement.

(a) A Multi-family zoning district shall "be located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable." When an MBTA community has only a small amount of Transit station area within its boundaries, it may not be possible or practical to locate all of the Multi-family zoning district within 0.5 miles of a Transit station. Transit station area may not be a practical location for a Multi-family zoning district if it does not include Developable land where Multi-family housing can actually be constructed. Therefore, for purposes of determining compliance with G.L. c. 40A, § 3A and 760 CMR 72.00, EOHLC will consider the statute's location requirement to be "applicable" to a particular MBTA community only if that community has within its borders at least 100 acres of Developable station area. A Multi-family zoning district shall be located within transit station areas depending on how much total developable station area is in that community, in accordance with Table 2:

Table 2.

<u>Total Developable station area within the MBTA community (acres)</u>	<u>Portion of the Multi-family zoning district that must be within a transit station area</u>
0-100	0%
101-250	20%
251-400	40%
401-600	50%
601-800	75%
801+	90%

(b) The percentages specified in this table apply to both the minimum land area and the minimum Multi-family unit capacity. For example, in an MBTA community that has a total of 500 acres of Transit station area within its boundaries, a Multi-family zoning district will comply with G.L. c. 40A, § 3A's location requirement if at least 50 percent of the district's minimum land area is located within the Transit station area, and at least 50 percent of the district's minimum Multi-family unit capacity is located within the Transit station area.

(c) A community with Transit station areas associated with more than one Transit station may locate the Multi-family zoning district in any of the Transit station areas. For example, a Rapid transit community with Transit station area around a Subway station in one part of town, and Transit station area around a Commuter rail station in another part of town, may locate its Multi-family zoning district in either or both Transit station areas.

(d) MBTA communities with limited or no Transit station area. When an MBTA community has less than 100 acres of Developable station area within its boundaries, the MBTA community may locate the Multi-family zoning district anywhere within its boundaries. To encourage transit-oriented Multi-family housing consistent with the general intent of G.L. c. 40A, § 3A, MBTA communities are encouraged to consider locating the Multi-family zoning

district in an area with reasonable access to a Transit station based on existing street patterns, pedestrian connections, and bicycle lanes, or in an area that qualifies as an “eligible location” as defined in G.L. c. 40A—for example, near an existing downtown or village center, near a regional transit authority bus stop or line, or in a location with existing underutilized facilities that can be redeveloped into new Multi-family housing.

(2) General guidance on district location applicable to all MBTA communities. When choosing the location of a new Multi-family zoning district, every MBTA community should consider how much of a proposed district is Sensitive land on which permitting requirements and other considerations could make it challenging or inadvisable to construct Multi-family housing. For example, an MBTA community should avoid including in a Multi-family zoning district areas that are subject to flooding, or are known habitat for rare or threatened species, or have prime agricultural soils in active agricultural use.

72.09: Determinations of Compliance

(1) G.L. c. 40A, §3A provides that any MBTA community that fails to comply with G.L. c. 40A, § 3A’s requirements will be ineligible for funding from any of the Listed funding sources. EOHLC will make determinations of compliance with G.L. c. 40A, § 3A in accordance with 760 CMR 72.00 to inform state agency decisions on which MBTA communities are eligible to receive funding from the Listed funding sources. The following discretionary grant programs will take compliance with G.L. c. 40A, § 3A into consideration when making grant award recommendations:

- (a) Community Planning Grants, EOHLC,
- (b) Massachusetts Downtown Initiative, EOED,
- (c) Urban Agenda, EOED,
- (d) Rural and Small Town Development Fund, EOED,
- (e) Brownfields Redevelopment Fund, MassDevelopment,
- (f) Site Readiness Program, MassDevelopment,
- (g) Underutilized Properties Program, MassDevelopment,
- (h) Collaborative Workspace Program, MassDevelopment,
- (i) Real Estate Services Technical Assistance, MassDevelopment,
- (j) Commonwealth Places Programs, MassDevelopment,
- (k) Land Use Planning Grants, EOEEA,
- (l) Local Acquisitions for Natural Diversity (LAND) Grants, EOEEA, and
- (m) Municipal Vulnerability Preparedness (MVP) Planning and Project Grants, EOEEA

(2) Determinations of compliance also may inform other funding decisions by EOED, EOHLC, the MBTA and other state agencies which consider local housing policies when evaluating applications for discretionary grant programs or making other discretionary funding decisions.

(3) EOHLC will recognize both interim compliance, which means an MBTA community is taking active steps to enact a Multi-family zoning district that complies with G.L. c. 40A, § 3A, and District compliance is achieved when EOHLC determines that an MBTA community has a Multi-family zoning district that complies with G.L. c. 40A, § 3A and the requirements set forth

below. Table 3 includes deadlines, shown with an asterisk, established under prior guidelines that many municipalities have met, and prospective deadlines for certain categories of municipalities as shown without an asterisk.

Table 3.

Transit Category	Deadline to Submit Action Plan	Deadline to Submit District Compliance Application
Rapid transit community	January 31, 2023*	December 31, 2023*
Commuter rail community	January 31, 2023*	December 31, 2024*
Adjacent community	January 31, 2023*	December 31, 2024*
Adjacent small town	January 31, 2023*	December 31, 2025
Rapid transit community that has not submitted a district compliance application to EOHLC as of December 31, 2023	February 13, 2025	July 14, 2025
Commuter rail community that has not submitted a district compliance application to EOHLC as of December 31, 2024	February 13, 2025	July 14, 2025
Adjacent community that has not submitted a district compliance application to EOHLC as of December 31, 2024	February 13, 2025	July 14, 2025

(4) Process to achieve interim compliance. Prior to achieving district compliance (but no later than the deadlines set forth in Table 3), these MBTA communities can achieve interim compliance by taking the following affirmative steps towards the creation of a compliant Multi-family zoning district.

(a) Creation and submission of an action plan. An MBTA community seeking to achieve interim compliance must first submit an action plan on a form to be provided by EOHLC. An MBTA community action plan must provide information about current zoning, past planning for Multi-family housing, if any, and potential locations for a Multi-family zoning district. The action plan also will require the MBTA community to establish a timeline for various actions needed to create a compliant Multi-family zoning district.

(b) EOHLC approval of an action plan. EOHLC will review each submitted action plan for consistency with 760 CMR 72.00, including but not limited to the timelines in Table 3. If EOHLC determines that the MBTA community's action plan is reasonable and will lead to district compliance in a timely manner, EOHLC will issue a determination of interim

compliance. EOHLC may require modifications to a proposed action plan prior to approval.

(c) Implementation of the action plan. After EOHLC approves an action plan and issues a determination of interim compliance, an MBTA community must diligently implement the action plan. EOHLC may revoke a determination of interim compliance if an MBTA community has not made sufficient progress in implementing an approved action plan. EOHLC and EOED will review an MBTA community's progress in implementing its action plan prior to making an award of funds under the Housing Choice Initiative and Massworks infrastructure program.

(d) Deadlines for submitting action plans. An MBTA community that does not submit an action plan by the applicable deadline set forth in Table 3 may not receive a EOHLC determination of interim compliance in time to receive an award of funds from the listed funding sources. An MBTA community that does not achieve interim compliance in time for the Community One Stop for Growth Application deadline may submit an action plan to become eligible for a subsequent round of the One Stop Application, provided that an action plan must be submitted by no later than the applicable deadline of the year in which the MBTA community seeks to establish grant eligibility; and provided further that no action plan may be submitted or approved after the applicable district compliance application deadline set forth in Table 3.

(5) Assistance for communities implementing an action plan. MBTA communities are encouraged to communicate as needed with EOHLC staff throughout the process of implementing an action plan, and may inquire about whether a proposed Multi-family zoning district complies with G.L. c. 40A, § 3A prior to a vote by the municipal legislative body to create or modify such a district. Such requests shall be made on a form to be provided by EOHLC. If a request is submitted at least 90 days prior to the vote of the legislative body, EOHLC shall respond prior to the vote.

(6) Requests for determination of district compliance. An MBTA community must request a determination of district compliance from EOHLC by submitting an application form required by EOHLC and shall include, at a minimum, the following information:

- (a) A certified copy of the municipal zoning ordinance or by-law and zoning map, including all provisions that relate to uses and structures in the multi-family zoning district.
- (b) An estimate of multi-family unit capacity using the compliance model.
- (c) GIS shapefile for the multi-family zoning district.
- (d) In the case of a by-law enacted by a town, evidence that the clerk has submitted a copy of the adopted multi-family zoning district to the office of the Attorney General for approval as required by state law, or evidence of the Attorney General's approval.

(7) After receipt of a request for determination of district compliance, EOHLC will notify the requesting MBTA community within 30 days if additional information is required to process the request. Upon reviewing a complete application, EOHLC will provide the MBTA community a written determination stating one of the following:

- (a) that the existing Multi-family zoning district complies with G.L. c. 40A, § 3A and 760 CMR 72.00;
- (b) that the Multi-family zoning district has been determined to be conditionally compliant with G.L. c. 40A, §3A and 760 CMR 72.00, provided that the MBTA community meets the conditions expressed by EOHLC in its determination; or
- (c) that the Multi-family zoning district fails to comply with G.L. c. 40A, § 3A and 760 CMR 72.00 and the steps that must be taken to achieve compliance.

(8) An MBTA community that has achieved interim compliance prior to requesting a determination of district compliance shall remain in interim compliance for the period during which a request for determination of district compliance, with all required information, is pending at EOHLC.

72.10: Ongoing Obligations; Rescission of a Determination of Compliance

(1) After receiving a determination of compliance, an MBTA community must notify EOHLC in writing of any zoning amendment or proposed zoning amendment that affects the compliant Multi-family zoning district, or any other by-law, ordinance, rule or regulation that limits the development of Multi-family housing in the Multi-family zoning district.

(2) EOHLC may rescind a determination of district compliance, or require changes to a Multi-family zoning district to remain in compliance, if EOHLC determines that:

- (a) The MBTA community submitted inaccurate information in its application for a determination of compliance;
- (b) The MBTA community failed to notify EOHLC of a zoning amendment that affects the Multi-family zoning district;
- (c) The MBTA community enacts or amends any by-law or ordinance, or other rule or regulation, that materially alters the minimum land area and/or the Multi-family unit capacity in the Multi-family zoning district;
- (d) A board, authority or official in the MBTA community does not issue permits, or otherwise acts or fails to act, to allow construction of a Multi-family housing project that is allowed As of right in the Multi-family zoning district (or any Mixed-use zoning development district taken into account in determining the required Multi-family unit capacity in the Multi-family zoning district);
- (e) The MBTA community takes other action that causes the Multi-family zoning district to no longer comply with G.L. c. 40A, § 3A; or
- (f) An MBTA community with an approved Multi-family zoning district has changed transit category as a result of a newly opened or decommissioned Transit station, or the establishment of permanent, regular service at a Transit station where there was formerly intermittent or event-based service.

72.11: Changes to MBTA Service

(1) G.L. c. 40A, § 3A applies to the MBTA communities identified in G.L. c. 40A, § 1A and G.L. c. 161A, § 1. When MBTA service changes, the list of MBTA communities and/or the

transit category assignments of those MBTA communities in the MBTA Community Categories and Requirements may change as well.

(2) The community category assignments identified in the MBTA Community Categories and Requirements reflect certain MBTA service changes that are expected to result from the South Coast Rail and Green Line Extension projects. Affected MBTA communities are noted in the MBTA Community Categories and Requirements.

(3) Municipalities that are not now identified as MBTA communities and may be identified as such in the future are not addressed in 760 CMR 72.00 or included in the MBTA Community Categories and Requirements. New MBTA communities will be addressed with revisions to the MBTA Community Categories and Requirements, and separate compliance timelines.

(4) Future changes to Silver Line routes or stations may change district location requirements when expanded high-capacity service combined with new facilities creates a bus station where there was not one before. Changes to other bus routes, including the addition or elimination of bus stops or reductions or expansions of bus service levels, do not affect the transit categories assigned to MBTA communities and will not affect location requirements for Multi-family zoning districts. Any future changes to MBTA transit service, transit routes and transit service levels are determined by the MBTA Board of Directors consistent with the MBTA's Service Delivery Policy.

REGULATORY AUTHORITY

760 CMR 72.00: M.G.L. c. 23B, M.G.L. c. 40A, § 3A

Justin Sultzbach

From: Jay Talerman <jay@mtclawyers.com>
Sent: Tuesday, January 14, 2025 9:42 PM
To: Justin Sultzbach; Deborah Arruda; Lisa Green
Cc: Kate Feodoroff; Elizabeth Lydon
Subject: [EXTERNAL] - MBTA Zoning

[CAUTION:] This message was sent from outside of the Town of Middleton. Please do not click links or open attachments unless you recognize the source of this email and know the content is safe.

Folks: Last week, we provided you with an Advisory on this topic, following the Supreme Judicial Court's decision. Today, we (and you) were informed by EOHLC, emergency regulations have been adopted to address the Supreme Judicial Court's invalidation of EOHLC's guidance. We are in the process of reviewing the regs to see if they are consistent with the regs but, in the interim, we wanted to alert you to new extended deadlines imposed by EOHLC:

*As noted by EOHLC, commuter rail and adjacent towns that did not meet prior deadlines must submit a new action plan to the state, **outlining their plan to achieve compliance, by 11:59 p.m. on Feb. 13, 2025.** The requirement to submit an action plan, which, as you may recall, was a preliminary step in the process, must be done even if your town previously submitted an action plan. It is likely that a similar plan can be resubmitted.*

*Noncompliant communities then will have **until July 14, 2025**, to submit a district compliance application to the state. I.e., noncompliant commuter rail and adjacent towns must pass a complying zoning bylaw and have it approved by EOHLC by July 14th.*

Municipalities that are designated as adjacent small towns still have a Dec. 31, 2025, deadline to adopt zoning. I.e., there is no change in their required compliance timeline.

We will continue to keep abreast of this matter and are pleased to work with in whatever capacity we can.

Best,

Jay



Jason R. Talerman
 Mead, Talerman & Costa, LLC
 730 Main Street · Suite 1F · Millis, Massachusetts · 02054
 Phone: (978) 463-7700 ext. 201
 Direct Dial: (978) 572-2190
jay@mtclawyers.com · www.mtclawyers.com

5c

Justin Sultzbach

From: Horne, Marc (EOED) <Marc.Horne@mass.gov>
Sent: Tuesday, October 22, 2024 3:51 PM
To: MassWorks (EOED)
Cc: McPherson, Jacqueline (EOED); Bulens, Nicholas (EOED); Tommee, Jong Wai (EOED); Vivaldi, Michael (EOED)
Subject: MassWorks Award Next Steps: Pre-Contracting Phase

[CAUTION:] This message was sent from outside of the Town of Middleton. Please do not click links or open attachments unless you recognize the source of this email and know the content is safe.

Hello,

Congratulations on your MassWorks award and thank you for your participation in the Community One Stop for Growth.

I understand many of you may be anxious to proceed to the contracting phase, our team is too!

However, before we can get your project under contract, we need to collect pertinent contract information (such as timelines and scope of work), including any updates from the time of your application (such as contact information or budgets) .

The Executive Office of Economic Development uses a grant management platform to organize the contracting process for MassWorks. Our team utilizes a Pre-contract process, through a system called Submittable.

If you already have a Submittable account, you can access the Pre-contract form here:

<https://eoedinfrastructure.submittable.com/submit>

The form will be titled "MassWorks FY25 Pre-Contract Form"

If you do not have an account, please sign up here:

<https://accounts.submittable.com/u/signup>

Contracts are prioritized in the order completed Pre-contract forms are received. If your project is under tight deadlines to get under contract, please consider submitting your pre-contract as early as possible.

All Pre-contract forms are due no later than January 31, 2025. Failure to submit the Pre-contract form by the due date, may cause delays in the timely execution of your FY25 award. In order to maintain your award all contracts must be in place by June 30, 2025.

Once your Pre-contact form is submitted, a Contract Manager from our team will verify the form for accuracy and contact you to begin the process of contract execution.

Congratulations on your successful application and thank you for your support of the MassWorks program.

Our team is looking forward to working with you to complete this important work!

Sincerely,

Marc P. Horne, *Senior Director for Communities and Programs*
Mass. Executive Office of Economic Development
One Ashburton Place, Room 2101 | Boston, MA 02108
T: (857) 303-3505 | Email: marc.horne@mass.gov

ESSEX TRI-TOWN SHARED SERVICES COLLABORATIVE
Inter-Municipal Agreement (IMA)
for the Public Health Excellence for Shared Services Grant

This Intermunicipal Agreement (hereinafter “Agreement”), is entered into by and between the towns of Middleton, Boxford and Topsfield hereinafter referred to collectively as the “Municipalities,” and individually as a “Municipality,” and the Town of Middleton, in its capacity as Host Agent of the Essex Tri-Town Shared Services Collaborative, (hereinafter referred to as “ETT”) this ____ day ____ 2024, as follows:

WHEREAS, the Town of Middleton was awarded a Public Health Excellence for Shared Services grant by the Commonwealth of Massachusetts (the “Grant Program”) to create a cross-jurisdictional public health services sharing program consistent with the recommendations of the Special Commission on Local and Regional Public Health’s (SCLRPH) June 2019 Report; and

WHEREAS, the purpose of the Grant Program is to implement the recommendations made in the SCLRPH’s June 2019 Report by increasing local public health capacity through cross-jurisdictional shared services programs and agreements; and

WHEREAS, each of the Municipalities offers public health services and resources, and desires to increase its capacity to provide said services and resources and improve regional public health and meet performance standards set by the Commonwealth by entering this Agreement; and

WHEREAS, the Town of Middleton, entering into an agreement with the Commonwealth of Massachusetts governing its participation in the Grant Program, is willing and able to manage the administrative obligations of the Grant Program through its Director of Public Health, who shall hereinafter be referred to as the “Program Manager”; and

WHEREAS each Municipality has authorized this Agreement pursuant to M.G.L. c. 40, §4A by votes of their respective Select Boards;

NOW THEREFORE, the municipalities, in mutual consideration of the covenants contained herein, intending to be legally bound thereby, agree under seal as follows:

1. **The Public Health Services Collaborative.** There is hereby established a collaborative of the Municipalities to be known as the Essex Tri-Town Shared Services Collaborative, which shall hereinafter be referred to as the “Collaborative.” The Collaborative, acting by and through an Advisory board (“Advisory Board”) as established in Section 5 of this Agreement, and the Shared Services Coordinator, as established in Section 4 of this Agreement, will coordinate, manage, and direct the activities of the parties with respect to the subject matter of the Grant Program, this Agreement, and the annual procurement agreement between the Town of Middleton, and the Commonwealth of Massachusetts, attached hereto as Exhibit A, the terms of

which are expressly incorporated herein and shall bind all parties hereto, and any other programs and services related thereto so long as the Grant Program is in existence. The purpose of the Collaborative is to design and implement a program by which the public health staff and resources of the Municipalities are consolidated and shared such that cross-jurisdictional services, investigations, enforcement and data reporting may be carried out and the public health and safety of the Municipalities may be better protected (the “Shared Services Program”).

2. Term. The term of this Agreement shall commence on the date set forth above and shall expire when the funds for the Grant Program are no longer available, or when terminated in accordance with this Agreement, but in no event shall the Term of this Agreement exceed twenty-five (25) years unless permitted by statute. Nothing herein shall be interpreted to prevent the Municipalities from extending the term of this Agreement beyond the exhaustion of the Grant Funds with the written consent of all parties hereto.
3. Lead Municipality. During the term of this Agreement, the Town of Middleton, acting as the “Lead Municipality,” shall oversee the Grant Program and the shared services program provided for herein (the “Shared Services Program”).

As the Lead Municipality, the Town of Middleton shall act for the Collaborative with respect to all grant applications to be submitted and gifts and grants received collectively by the Municipalities. The Town of Middleton shall act as the Municipalities’ purchasing agent pursuant to G.L. c. 7, §22B, for all contracts duly authorized by the Advisory Board, established pursuant to Section 5 of this Agreement, to be entered into collectively by the Municipalities. Final approval of any such contract is subject to approval of the Advisory Board and appropriation by each Municipality, to the extent required.

4. Shared Services Coordinator. The Town of Middleton, as Lead Municipality, shall hire and employ a Shared Services Coordinator and, through the Shared Services Coordinator and the Lead Municipality’s Health Department, shall perform all necessary fiscal and administrative functions necessary to provide the services contemplated under this Agreement, and shall be the holder of all grant funds related to the Grant Program, and may retain up to 15% of the funds received through the Grant Program for wages and resources related to the performance of such duties, in accordance with the Grant Program Scope of Services, attached hereto as Exhibit B and incorporated herein. The Shared Services Coordinator shall report to the Advisory Board and shall keep records of all funding and expenditures for review by the Board and provide periodic financial status updates. For the purposes of employment status and health, retirement and other benefits, and immunities and indemnification as provided by law, the Shared Services Coordinator and any participating Collaborative staff working on behalf of the Collaborative, or the Advisory Board shall be considered employees of Town of Middleton and shall be

accorded all benefits enjoyed by other Town of Middleton employees within the same classification as they are or shall be established unless otherwise provided for in this Agreement.

5. Advisory Board

There shall be an Advisory Board which shall be convened not less than quarterly by the Advisory Board Chair/Co-Chairs.

- a. Composition: one member and one alternate, both appointed by the Board of Health from each municipality. One representative from each municipality shall be a full voting member whose term shall be as determined by each municipality's local Board of Health. The voting member shall be a Board of Health member or designee of that municipality's Board of Health. Each participating municipality shall also have a second representative who shall be an associate member and who may vote when the full member is not in attendance. Each municipality shall maintain its individual local Board of Health, which shall retain its own legal authority and autonomy as provided by law.
- b. Voting: Each participating municipality shall be entitled to one vote on the Advisory Board. Every voting member shall have an equal voice in determining shared priorities, and services to be provided. Any action by the Advisory Board must be a unanimous vote.
- c. Quorum: A quorum of the Advisory Board shall consist of all three voting members or their alternates for the purposes of transacting business. The Advisory Board may act by a unanimous vote of members present and voting unless otherwise provided herein.
- d. Roles and Responsibilities of the Advisory Board:
 - 1) Select at least a Chair/Co-Chair of the Advisory Board.
 - 2) Meet on a regular basis and at least quarterly.
 - 3) Develop annual and long-term goals for the Collaborative.
 - 4) Advise on Collaborative staff priorities.
 - 5) Collaborate in developing a sustainability plan for ETT.
 - 6) Adopt any Collaborative-wide policies and recommended regulations.
 - 7) Review and provide recommendations on operating budgets.
 - 8) Assure compliance with all mandatory reporting requirements as proscribed by the Department of Public Health ("DPH") and Office of Local and Regional Health ("OLRH").
 - 9) Assure attendance at monthly or other grant holder meetings convened by DPH and OLRH
 - 10) Review financial status and financial statements provided by the Shared Services Coordinator.
 - 11) Review and provide recommendations on reports from staff.
 - 12) Evaluate Shared Serves Program staff or consultants, and;

13) Request, authorize and recommend the Lead Municipality hire shared services employees or contractors. Request and/or recommend that the Lead Municipality terminate shared services employees or contractors.

- e. Meetings. The Advisory Board shall meet no less than quarterly and may schedule additional meetings, as necessary. Meetings may be held in any one of the Municipalities as decided by the Chair/Co-Chair. All meetings shall be conducted in compliance with the Massachusetts Open Meeting Law M.G.L. c. 30A, §§ 18-25 as may be amended from time to time.

6. Shared Services Program Participation. Each Municipality as part of this Agreement shall participate in the Shared Services Program as follows:

- a. Each Municipality will consent to the Collaborative's duly-authorized agents and representatives exercising the powers provided for herein and by the Advisory Board within the boundaries of said Municipality and will direct its agents and employees to work in good faith with the Collaborative's health agents, nurses, and any other employees the Collaborative may employ from time to time.
- b. Each Municipality will be a member of the Advisory Board as established pursuant to this Agreement, and appoint and maintain two Advisory Board representatives at all times.
- c. Each Municipality will use best efforts to ensure that a representative of the Municipality will attend all Advisory Board meetings (either in-person or via remote access) throughout the life of this Agreement.
- d. Each Municipality will use best efforts to ensure that a representative of the Municipality will attend all training sessions which are offered in conjunction with the Grant Program geared towards stakeholders under the Program, as required by the DPH or its representative.
- e. Each Municipality will assist in collecting the necessary data as agreed to by the Committee and pursuant to the data reporting policy established pursuant to Section 5 of this Agreement to help meet the goals of the Shared Services Program and the Grant Program. The data collection provided for herein will include, but not be limited to, reporting to the Advisory Board, through the Shared Services Coordinator, public health outcomes and services related to the Shared Services Program and the Collaborative's agents and nurses.
- f. Each Municipality will request from the appropriate legislative body appropriation for any services, costs and expenses associated with the Collaborative and not covered by the Grant Program. Notwithstanding this provision or any other terms of this Agreement, no party shall be obligated to

incur any financial cost above the amount made available herein through grants and gifts or other sources, unless the financial obligation is supported by an appropriation made in accordance with law.

- g. Each Municipality will help promote and market the Shared Services Program and its services within their community.
- h. The Municipalities acknowledge that if any inspection as any part of the Shared Services Program identifies the need for or forms the basis for enforcement or other legal proceedings, such proceedings shall be the responsibility of the Municipality in which the inspection was performed to commence and fund.

i.

- 7. Payment and Funding. Pursuant to G.L. c. 40, §4A, any funds received by the Shared Services Program, Advisory Board, or the Town of Middleton pursuant to this Agreement, shall be deposited with the treasurer of the Town of Middleton and held as a separate grant account and may be expended, with the approval of the Advisory Board, under the provisions of G.L. c. 34, §23 and G.L. c. 44, §53A, for contribution toward the cost of the Shared Services Program and in compliance with established grant guidelines from grantors.

The Advisory Board may authorize a disbursement of funds for any shared contractor, salary, or wages consistent with the terms of this Agreement, and/or for any program, service or benefit that is consistent with the terms of this Agreement.

Except for the 15% of Grant Program funding for administrative costs that the Town of Middleton may retain pursuant to Section 4 of this Agreement, a Municipality may draw on grant funds individually, with prior approval by the Advisory Board, and provided such funds are available, by submitting invoices to the Shared Services Coordinator for reimbursement from the funds, for expenditure consistent with the purposes of the Shared Services Program and applicable grant funding guidelines.

The Town of Middleton, as the holder of Grant Program funds, will pay the invoice within 30 days, subject to the availability of funds; provided, however, that the Town of Middleton shall not be obligated to supply any funding or incur any cost in excess of the amounts made available to the Advisory Board and the Shared Services Program through the Grant Program and/or any other and gifts, grants, or other sources appropriated for the purposes of this Agreement. Individual municipal costs incurred outside the scope of this Agreement and specific to the needs of that Municipality will be borne solely by that Municipality. Any funds contributed by the Grant Program shall only be used for shared public health services consistent with the purposes of this Agreement.

Annually, the Advisory Board will develop and approve a public health services budget for contractual shared services. Initially, these services are funded by a 3-year Public Health Excellence Grant from the Department of Public Health administered by the Town of Middleton. It is the intention of the Town of Middleton to seek additional grant funds to sustain these services but if that is unsuccessful, participating Municipalities will revisit this Agreement and determine whether they will allocate municipal funds to continue participation. The Shared Services Coordinator will provide each Municipality with sufficient notice to allow that Municipality's funding authority to authorize any such expenditure. Until grant funds are expended, there will be no cost to participating municipalities. Execution of this Agreement does not obligate any other participating Municipality to fund the Grant Program and a mutually acceptable written contract amendment would be required to do so.

Pursuant to G.L. c. 40, §4A, any party may, but shall not be required to, raise money by any lawful means to further the purposes of the Shared Services Program and any such funds shall be held by the Town of Middleton and expended pursuant to the terms of this Agreement.

8. Other Municipal Services. The Municipalities of the Collaborative may request the Advisory Board to add or remove associated services to be delivered as part of the Shared Services Program, and such shall take effect only after this Agreement is so amended in writing and approved by each Municipality. The Municipalities are not limited exclusively to the Grant Program and are not required to use all services of the Grant Program. Municipalities may apply for other grants outside the Collaborative.

The Collaborative through a vote of the Advisory Board may apply for other grants, opportunities, funds, and awards for shared services on behalf of the Municipalities. The Advisory Board must approve any and all grants or grant applications submitted as a Collaborative. The Advisory Board may appoint other Municipalities to act as host agencies for these other grant opportunities and the Municipalities agree that this Agreement shall be amended to account for any associated grant terms and conditions.

9. Employees. Employees and personnel of each Municipality providing services pursuant to this Agreement shall be deemed employees of their respective Municipalities, and not employees of any other Municipality. An employee who performs services, pursuant to this Agreement on behalf of another member Municipality, shall be deemed to be acting within the scope of his current Municipal job duties at all times and remain an employee of the employee's Municipality for insurance coverage purposes. Said Municipal employee shall retain all accrued benefits and shall be subject to standard hiring and personnel practices of such

municipality. Pursuant to a vote of the Advisory Board, grant funds may be designated and expended to pay for any and all wages and costs incurred by a Municipality for employing an employee providing services pursuant to this Agreement.

10. Indemnification & Insurance. Pursuant to MGL c. 40, s. 4A, each party shall be liable only for the acts and omissions of its own employees and not for the employees of any other municipality or agency in the performance of this Agreement to the extent provided by the Massachusetts Tort Claims Act, M.G.L. c. 258. By entering into this Agreement, the Municipalities have not waived any governmental immunity or limitation of damages which may be extended to them by operation of law. Should the Collaborative or a Municipality incur any liabilities on behalf of the Grant Program such as unemployment insurance or other unforeseen expenses not covered by the Grant, each of the member municipalities will proportionally share in the liability for such expenses.
11. Entrance. Any municipality may petition the Collaborative to join this Agreement to the extent permitted by the grants. In order to approve the addition of a new entity to the Agreement for the Grant Program requires the approval of the Massachusetts Department of Public Health and no less than a two-thirds super majority vote of the Advisory Board and amendment of this Agreement in accordance with Section 17, herein.
12. Withdrawal. Any Municipality other than the Lead Municipality, by votes of its respective authorizing Select Board or Chief Executive Officer and Board of Health, may withdraw from this Agreement with the provision of at least three (3) months prior written notice to the Lead Municipality and the Advisory Board. Withdrawal requires the vote of both the Select Board and the Board of Health. Upon such withdrawal, the Shared Services Coordinator shall prepare full statements of outstanding unpaid financial obligations under this Agreement and present the same to the terminating Municipality for payment within thirty (30) days thereafter. To the extent permitted by the Grant Program and its agreement with the Commonwealth of Massachusetts pursuant thereto, the Lead Municipality, by a vote of its Select Board and Board of Health, may withdraw from this Agreement upon the provision of at least three (3) months prior written notice to the participating Municipalities and the Advisory Board, and a new Lead Municipality shall thereafter be designated by the Advisory Board, by a vote of the representatives of the remaining parties. Prior to the effective date of its withdrawal, the Lead Municipality shall transfer all funds held pursuant to this Agreement to the new Lead Municipality as designated by the Advisory Board any pay any outstanding unpaid financial obligations under this Agreement within thirty (30) days thereafter. Any Municipality may withdraw at the

end of any fiscal year in which the Municipality's legislative body has not appropriated funds sufficient to support that Municipality's continued participation in the subsequent fiscal year if such funds are required. In such an event, the Municipality shall give as much notice to the other Municipalities to this Agreement as the circumstances allow. The Advisory Board, by vote of the remaining members, has the authority to reallocate grant resources or other outside funding that would have been allocated to the withdrawing Municipality. Any data collected from the terminating Municipality through a Shared Services Program project, service, or program will remain with the Advisory Board for analysis by the Shared Services Coordinator and the Advisory Board.

13. Termination. This Agreement may be terminated by a vote of a majority of the Municipalities' representatives of the Advisory Board, at a meeting of the Advisory Board called for that purpose; provided that the representative's vote has been authorized by the Municipality's Select Board. Any termination vote shall not be effective until the passage of at least sixty (60) days and until the Municipalities have agreed to an equitable allocation of all remaining costs, expenses and assets.
14. Conflict Resolution. The Advisory Board may hold additional meetings to discuss and resolve any conflicts that may arise including, but not limited to, disagreements regarding the needs of each Municipality, administration of the shared services programs, the terms of this Agreement, data reporting and any other matters the parties deem necessary.
15. Financial Safeguards. The Lead Municipality shall maintain separate, accurate, and comprehensive records of all services performed for each of the Municipalities, and all contributions received from the Municipalities.
16. Assignment. None of the Municipalities shall assign or transfer any of its rights or interests in or to this Agreement, or delegate any of its obligations hereunder, without the prior written consent of all of the other Municipalities.
17. Amendment. This Agreement may be amended only in writing pursuant to an affirmative vote of all Municipalities' Select Boards
18. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, or if any such term is so held when applied to any particular circumstance, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, or affect the application of such provision to any other circumstances, and the remaining provisions hereof shall not be affected and shall remain in full force and effect.

19. Governing Law. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the Commonwealth of Massachusetts.
20. Headings. The paragraph headings herein are for convenience only, are no part of this Agreement, and shall not affect the interpretation of this Agreement.
21. Non-Discrimination. Neither the Lead Municipality nor the Municipalities shall discriminate against any person because of race, color, religious creed, national origin, gender, ancestry, sexual orientation, age, handicap, gender identity, genetic information, military service, or any other protected class under the law with respect to admission to, access to, or operation of its programs, services, or activities.
22. Notices. Any notice permitted or required hereunder to be given or served on any Municipality shall be in writing signed in the name of or on behalf of the Municipality giving or serving the same. Notice shall be deemed to have been received at the time of actual receipt of any hand delivery or three (3) business days after the date of any properly addressed notice sent by mail as set forth below:

Town of Middleton:

(contact name)
(email)
(phone)
(address)

Town of Boxford:

(contact name)
(email)
(phone)
(address)

Town of Topsfield:

(contact name)
(email)
(phone)
(address)

23. Complete Agreement. This Agreement constitutes the entire Agreement between the Municipalities concerning the subject matter hereof, superseding all prior agreements and understandings. There are no other agreements or understandings between the Municipalities concerning the subject matter hereof. Each Municipality acknowledges that it has not relied on any representations by any other Municipality or by anyone acting or purporting to act for another Municipality or for whose actions

any other Municipality is responsible, other than the express, written representations set forth herein.

24. Counterparts. This Agreement may be executed in counterparts by each Municipality and so executed shall constitute one complete Agreement.

WITNESS OUR HANDS AND SEALS as of the first date written above.

Town of _____ Select Board

Date

Town of _____ Board of Health

Date

Town of _____ Select Board

Date

Town of _____ Board of Health

Date

Town of _____ Select Board

Date

Town of _____ Board of Health

Date

EXHIBIT A

Current Grant agreement between the (NAME OF COLLABORATIVE) and the Commonwealth of Massachusetts – to be attached

DRAFT

EXHIBIT B

The Municipalities will share following services in coordination with the Lead Municipality:

- *A Regional Shared Services Coordinator* shall perform all necessary fiscal and administrative functions necessary to provide the services listed in the work plan and budget, but not limited to, for the public health excellence grant.
- *A Regional Public Health Inspector (Food/Environmental/Housing)* This position will be will be a hired position or contracted out through a third-party vendor and services will include but may not be limited to perform routine food, FOG, and other environmental inspections as assigned by the municipalities. This inspector would assist each municipality to meet required inspections per year as determined by the food code and create a consistent inspectional framework for mobile food services. Manage and inspect tenant complaints, hoarding situations, lead law compliance, and other housing related situations and connect residents to necessary support services. The Inspector will assist with any court-related action necessary as the municipality's representative, but each municipality will be responsible for the legal fees and costs for any court enforcement action proceeding for their own municipality separate and apart from any grant funding. Additional environmental health inspectional services may be requested. Inspection supplies needed for inspection services shall be purchased and provided through the collaborative.
- *Public Health Nursing services.* This position will be a hired position or contracted out through a third-party vendor. The Public Health Nurse will be employed pursuant to the terms of this Agreement and with use of the grant funding. The services provided by the Public Health Nurse will include, but may not be limited to infectious disease surveillance, preventative care, immunizations, education and outreach and emergency planning activities or however envisioned by the collaborative.
- *Regional Social Worker Services.* This position will be a hired position or contracted out through a third-party vendor. The Regional Social Worker will be employed pursuant to the terms of this Agreement and with use of the grant funding. The services provided by the Regional Social Worker will include, but may not be limited to providing social worker outreach across the Municipalities and emergency planning activities or however envisioned by the collaborative.
- *Regional Consultant Services.* Consultants and independent contractors, including for, but not limited to, grant administrative support, technical assistance, policy advisement, emergency inspection/clinical services, and training.

Provide those additional ancillary services and duties as needed to the member municipalities in order to provide the shared services described above.

ESSEX TRI-TOWN SHARED SERVICES COLLABORATIVE
Inter-Municipal Agreement (IMA)
for the Public Health Excellence for Shared Services Grant

INTERNAL MEMORANDUM OF UNDERSTANDING

WHEREAS, by Agreement authorized by the Select Board, the Town has entered into an Intermunicipal Agreement by and between the Towns of Middleton, Topsfield and Boxford to form the Essex Tri-Town Shared Services Collaborative (the "IMA") to administer funds received through the Commonwealth's Public Health Excellence for Shared Services Grant;

WHEREAS, the IMA assigns certain responsibilities to the Board of Health, including with respect to the appointment of members of the Advisory Board and for deciding whether to amend or withdraw from the IMA; and

WHEREAS, the Select Board and the Board of Health wish to clarify the procedure for making policy decisions for the Town with respect to the IMA.

NOW THEREFORE, the Select Board and the Board of Health agree that, notwithstanding anything in the IMA to the contrary, neither the Board of Health nor any of its agents or employees shall appoint any personnel or members to the Advisory Board, incur any financial obligations on behalf of the Town, or agree to amend, terminate or extend the term of the IMA without the express approval of the Select Board

SELECT BOARD

Date:

As approved by vote of the Board on _____

BOARD OF HEALTH:

By its Chair:

As approved by vote of the Board on _____

Transfer Station Costs and Sticker Price Calculation

	Detail	Bud/Act	% Tax Rate	% Sticker	Previous FY-2	Previous FY-1	Current FY	Budget FY	Budget FY Sticker	Budget FY Tax	Comments
Wages	FT/PT/OT Personnel	B	100%	0%	\$133,000	\$ 136,000	\$149,000	\$ 163,533	\$ -	\$163,533	Does not include Supt., Asst. Supt., Clerk
Services	Utilities: Electric, Septic, etc.	B	100%	0%	\$ 4,300	\$ 3,800	\$ 4,100	\$ 5,500	\$ -	\$ 5,500	
Eq. Repair	Repairs to all Xfer Sta Equipment	B	100%	0%	\$ 10,000	\$ 13,000	\$ 16,000	\$ 21,000	\$ -	\$ 21,000	
	Trash Disposal	A	0%	100%	\$186,960	\$ 168,266	\$191,743	\$ 232,867	\$ 232,867	\$ -	Tipping Fees
	Fuel/Oil for trucks	B	0%	100%	\$ 35,000	\$ 32,000	\$ 35,000	\$ 39,600	\$ 39,600	\$ -	Consumables for Trucks and equipment
	Recycling Disposal	A	0%	100%	\$ 35,313	\$ 19,524	\$ 36,761	\$ 52,000	\$ 52,000	\$ -	Recycling Disposal Fees
Average	Cost to have a Transfer Station				\$147,300	\$ 152,800	\$169,100	\$ 190,033		\$190,033	Taxes should cover this number
38%					36%	41%	39%	37%			
62%	Cost to dispose of Trash/Recycling				\$257,273	\$ 219,790	\$263,504	\$ 324,467	\$ 324,467		Stickers should cover this number
					64%	59%	61%	63%			
					\$404,573	\$ 372,590	\$432,604	\$ 514,500			

Prices

	Number Sold	% Stickers	Price Ratio	% Cost	Calculated Price	Rounded Price	Revenue
Stickers	1500	68%	100%	90%	\$ 193.71	\$ 195.00	\$ 292,500
2nd Stickers	500	23%	25%	7%	\$ 48.43	\$ 50.00	\$ 25,000
Recycle Stickers	200	9%	25%	3%	\$ 48.43	\$ 50.00	\$ 10,000
							All Stickers
							\$ 327,500

Cost

Tax Rate	\$187,000
----------	-----------

