

ER

Commonwealth of Massachusetts  
Superior Court

Suffolk,ss.

Taxpayers of Winthrop Massachusetts: Kurt Millar, Paul Caruccio, Diane Sands, Kenny Sands, Kathleen Riley Cappuccio, Vasili Mallios, Carole Mietzsch, Erik Mietzsch, Mark Sennott, Carl Eckstein, Diana C. Viens

v.

Executive Office of Housing & Livable Communities,  
Commonwealth of Massachusetts.

Docket No. \_\_\_\_\_

**PETITION FOR DECLARATORY RELIEF, INJUNCTIVE RELIEF, AND MANDAMUS**

**INTRODUCTION, PARTIES, AND JURISDICTION**

1. The Town of Winthrop (“Winthrop” or “the Town”), by and through its verified taxpayers (collectively “Plaintiffs”), pursuant to G.L. c. 29, § 27C(e), G.L. c. 231A, § 1, and G.L. c. 249, § 5, hereby petitions this Honorable Court for:
  - A declaration that Plaintiffs are exempt from the provisions of G.L. c. 40A, § 3A;
  - An injunction restraining and enjoining the Defendants from enforcing the provisions of G.L. c. 40A, § 3A;
  - A writ of mandamus requiring Defendants to provide financial impact analyses and determinations of deficiencies; and
  - An accounting of the amounts of such deficiencies.
2. Plaintiffs, eleven taxpayers in the Town of Winthrop, Massachusetts, who are also residents and voters:
  - Kurt Millar, 20 Enfield Road, Winthrop, MA 02152
  - Paul Caruccio, 74 Ingleside Avenue, Winthrop, MA 02152
  - Diane Sands, 20 Buckthorn, Terrace, Winthrop, MA 02152
  - Kenny Sands, 20 Buckthorn Terrace, Winthrop, MA 02152
  - Kathleen Riley Cappuccio, 49 Waldemar Ave, Winthrop, MA 02152
  - Vasili Mallios, 36 River Road, Winthrop, MA 02152
  - Carole Mietzsch, 248 Main Street, Winthrop, MA 02152
  - Erik Mietzsch, 248 Main Street, Winthrop, MA 02152
  - Mark Sennott, 17 Girdlestone Road, Winthrop, MA 02152
  - Carl Eckstein, 3 Seal Harbor, Winthrop, MA 02152
  - Diana Viens, 61 Read Street, Winthrop, MA 02152

Being numbered eleven, from the same town, they are entitled to petition as a class under the Unfunded Mandate Law, G. L. c. 29 §27C, for relief from the application of the MBTA Zoning Law, G. L. c. 40A, § 3A.

3. Defendant Commonwealth of Massachusetts (“Commonwealth”) is a body politic organized under the laws and the Constitution of the Commonwealth of Massachusetts.
4. Defendant, Executive Office of Housing and Livable Communities (“EOHLC”), is a cabinet-level office of the Commonwealth, established pursuant to G.L. c. 6A, § 16G2, with a usual place of business at 100 Cambridge Street, Boston, Massachusetts.
5. This Court has jurisdiction over the parties and the subject matter of this Petition pursuant to G.L. c. 29, § 27C, G.L. c. 231A, § 1, and G.L. c. 249, § 5.
6. Venue is appropriate in this Court as the subject matter of the Petition is concerned with, and is situated in, the Town of Winthrop, Suffolk County. However this action is likely to be consolidated with similar cases, under special order of the Chief Justice, in Plymouth.

#### FACTS

7. Plaintiffs incorporate and reassert the allegations set forth in paragraphs 1-6 above, as if set forth in full herein.
8. G.L. c. 29, § 27C(a) (“the Unfunded Mandate Law”) provides that no “law taking effect on or after January 1, 1981 imposing any direct service or cost obligation upon any city or town shall be effective in any city or town... unless the general court, at the same session in which such law is enacted, provides, by general law and by appropriation, for the assumption by the commonwealth of such cost.”
9. The law was adopted as part of a grassroots effort to control municipal tax liability and expenditures popularly known as Proposition 2½. The upside for taxpayers in the arrangement was the limitation upon growth of the municipal tax levy. To compensate for the limit upon tax revenue for municipalities, a commensurate limitation on unfunded state mandates was enacted. The Unfunded Mandate Law is an integral part of this major reform package relating to municipal finance.
10. In the same time period in which Proposition 2½ was enacted, 1980-1981, the voters enacted Article 115 of the Amendments to the State Constitution. Article 115 generally prohibits the Commonwealth from passing unfunded employment costs onto municipalities.
11. G.L. c. 40A, § 3A, (“MBTA Zoning Law”) as amended, imposes a mandate on MBTA communities, including the Town of Winthrop, to adopt zoning bylaws allowing for multi-family housing as of right in at least one district of “reasonable size.”
12. The MBTA Zoning Law was enacted in January 2021.

13. After several revisions, the Guidelines implementing the MBTA Zoning Law and the law itself were reviewed by the SJC in Attorney General v. Town of Milton, 495 Mass. 183 (2025). The SJC found that the implementing guidelines were improper for failure to comply with proper administrative procedures. The SJC also pointedly note that since the Guidelines were improperly promulgated it would not opine about their legality.
14. The Commonwealth and EOHLC have since reenacted the Guidelines as Emergency Regulations. One of the Plaintiffs is challenging the regulations in the Suffolk Superior Court.
15. The Town of Winthrop is defined as an “MBTA Community” under G.L. c. 161A, § 1 and G.L. c. 40A, § 1A.
16. Compliance with G.L. c. 40A, § 3A requires the Town to enact zoning bylaws permitting at least 882 multi-family housing units, which constitutes a significant increase in the Town’s housing stock.
17. The Division of Local Mandates, within the Office of the State Auditor, has determined that G.L. c. 40A, § 3A constitutes an unfunded mandate under G.L. c. 29, § 27C, as the Commonwealth has not provided funding to cover the direct costs imposed on municipalities for compliance.
18. Being the administering agency, the State Auditor’s determination is entitled to deference.
19. The Town has not received any appropriation or funding from the Commonwealth to offset the costs of compliance with G.L. c. 40A, § 3A.
20. The Town will incur substantial costs to comply with the mandate, including but not limited to infrastructure improvements, public safety services, and educational services.
21. In addition to substantial indirect costs, there are also a bevy of expensive costs and charges the Town will occur to implement the law. In addition to stress upon the Town’s zoning and land planning resources, the Town must revise its extensive public safety plans. The Town must now consider its public safety commitments for approximately 3700 people, potentially, on top of an existing population of little more than 18,000. The Town must reconsider its evacuation plans, considering it is a town which only has two access points. The Town must consider how much additional police and fire protection to provide, including both the personnel cost in hiring more police officers and firefighters and the necessary equipment, such as fire engines and police cars.
22. Nor is compliance with G. L. c. 40A, § 3A and its implementing regulation simple. The methodology is so complicated that the Commonwealth highly recommends the engagement of a consultant, and additional studies if the Town wishes to take advantage of additional affordable housing or mixed use in the zone.
23. The Plaintiffs and numerous allies have made a determined stand against the MBTA Zoning Law and its implementation in Winthrop, fearing catastrophic impact on their

town. They have engaged in signatures drives, public education seminars, litigation, stand outs, petitioning the state and the town, attending public meetings, writing letters to the press, supporting friendly political figures, and other steps.

24. The advocacy of the Plaintiffs has been successful. Under intense political pressure, the Winthrop Town Council voted **against** the proposed implementation of a §3A compliant zoning district. Despite the Town Administrator's ill-advised action in seeking interim compliance, the Plaintiffs continue to campaign against implementation.
25. The Plaintiffs' advocacy has been inexorable, to the extent that opposing political figures have resorted to invective and personal attacks. Some of the Plaintiffs are also running recall campaigns against those public officials supporting §3A implementation.

### **CLAIMS FOR RELIEF**

#### **Count I: Declaratory Relief against all Defendant**

26. Repeating and realleging as above, the Plaintiffs pray for declaratory relief.
27. Plaintiffs seek a declaration that G.L. c. 40A, § 3A constitutes an unfunded mandate and that the Town of Winthrop is exempt from compliance under G.L. c. 29, § 27C(e).
28. The determination of the State Auditor's Office, in relation to the MBTA Zoning Law, given to Methuen, Wrentham, and Middleborough, are incorporated herein by reference.
29. The Legislature did not provide funding, as required by the Unfunded Mandate law, and therefore the MBTA Zoning Law is ineffective as to the Town of Winthrop.
30. The Commonwealth has not assumed the costs of implementing the MBTA Zoning Law, in the original enacting legislation (St. 2020, c. 358) or any other law enacted during that legislative session. The Legislature has not since provided any compliant funding mechanism.
31. The Legislature did not, as required by the Unfunded Mandate Law, specifically exempt the MBTA Zoning Law from application of the Unfunded Mandate Law.
32. The MBTA Zoning law violates G. L. c. 40A, § 5 which provides that municipalities are the entities to approve zoning changes.
33. As a direct and proximate result of Town Council votes against implementation of a §3A compliant district, instigated by and lobbied for by the Plaintiffs, EOHLC and the Commonwealth have threatened to withhold funds from the Town of Winthrop.
34. The Commonwealth has also undertaken to consider compliance with the MBTA Zoning law in relation to most or all state grant programs.
35. The Town of Winthrop, to which the Plaintiffs pay taxes, has incurred costs, expenses, and monetary damages.

36. Resultingly, there is an actual controversy about the application of §3A to the Town of Winthrop. The Eleven Taxpayer Plaintiffs are entitled to a declaration consistent with the Unfunded Mandate law that §3A is not effective in Winthrop.
37. The Eleven Taxpayer Plaintiffs are entitled to a declaration about the rights of Winthrop's Town Council to refuse to implement, without consequence, §3A pending appropriate funding.

### **Count II: Injunctive Relief**

38. Repeating and realleging as above, the Plaintiffs pray for injunctive relief.
39. Plaintiffs seek an injunction restraining Defendants from enforcing G.L. c. 40A, § 3A against the Town until such time as the Commonwealth provides adequate funding.
40. The Plaintiffs further seek an order restraining the Commonwealth and EOHLC from withholding grant funding, or considering Winthrop's noncompliance with §3A, in making grant determinations. Since the Unfunded Mandate Law make §3A "ineffective" Winthrop is not in material noncompliance, until the Legislature provides funding for the implementation.
41. §3A and its emergency regulations violate federal and/or state law and/or constitute an unfunded mandate, the Commonwealth should be equitable restrained from withholding any funding from Winthrop.
42. Without relief, Winthrop and the Eleven Taxpayers will suffer a loss of rights that cannot be recovered absent an order preserving the status quo.

### **Count III: Mandamus**

43. Repeating and realleging as above, the Plaintiffs pray for mandamus relief.
44. Plaintiffs seek a writ of mandamus compelling Defendants to provide the required fiscal impact analysis and to determine the amount of funding necessary to comply with G.L. c. 40A, § 3A.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Honorable Court:

1. Declare that G.L. c. 40A, § 3A constitutes an unfunded mandate and that the Town of Winthrop is exempt from compliance;
2. Enjoin Defendants from enforcing G.L. c. 40A, § 3A against the Town;
3. Issue a writ of mandamus compelling Defendants to provide the required fiscal impact analysis and funding determinations;
4. Award Plaintiffs their costs and attorneys' fees; and
5. Grant such other relief as this Court deems just and proper.

**Respectfully submitted,**

**ELEVEN TAXPAYERS OF WINTHROP**

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**Dated: March 17, 2025**

## CERTIFICATE OF SERVICE

We, the Taxpayers of Winthrop Massachusetts, certify that a copy of this filing is provided on this 17<sup>th</sup> of March, 2025, by email, to the following:

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Respectfully Submitted,  
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