

Commonwealth of Massachusetts
Town of Winthrop

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2024 JUL 23 A 9 32

Suffolk, ss.

In Re:)
Initiative Petition Against)
MBTA Zoning Compliance)
_____)

TOWN CLERK
WINTHROP, MASS.

To the Honorable, the Town Council of the Town of Winthrop:

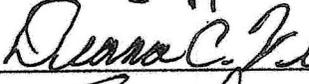
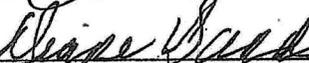
Petition

Now comes the undersigned petitioners, under the authority of the Charter of the Town of Winthrop and other applicable legal authority, who move that the following initiative petition be adopted, as Section 17.04.060 of the Ordinances of the Town of Winthrop:

1. Any plan to considered and/or voted upon in order to comply with G. L. c. 40A §3A and/or associated guidelines of the Executive Office of Housing and Livable Communities as currently in effect or as amended shall be voted upon by the registered voters in the Town of Winthrop by ballot question, and not by the Winthrop Town Council.
2. Any final approval of proposed change(s) to the current Winthrop zoning laws or districting in order to comply with G. L. c. 40A §3A shall be a ballot question voted upon by the registered voters of the Town of Winthrop.

Said petition being subscribed to by at least 50 voters. The following individuals, being at least 10 in number and identified by name and address, are voters and shall constitute the petitioning committee.

Petitioning Committee

Signature	Name	Address in Winthrop
1. 	Sherayl Hennessey	5 Emerson Rd
2. 	Kathleen D Cappuccio	49 Waldemar Avenue
3. 	DIANA C VIENS	61 Redd Street
4. 	Vasili Mallios	36 River Rd.
5. 	Diane Sands	20 Buckhorn Terrace

9. ~~Todd Sacco~~ Todd Sacco 91 Emerson Rd
 Carol ~~Erik Mietzsch~~ Carole Mietzsch 548 Main St
 8. Erik Mietzsch Erik Mietzsch 248 Main St
 9. Kurt Miller Kurt Miller 20 ENFIELD ROAD
 10. John Dowd John Dowd 270 Winthrop St

Said petitioning committee having responsibility for circulating the initiative petition hereby submit their petition and the signatures of at least 50 voters in support thereof. Wherefore the petitioning committee prays that their initiative be adopted as a measure.

Respectfully Submitted,

Diana C. Viens

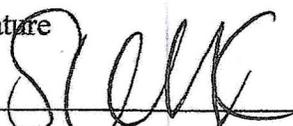
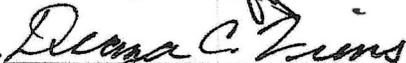
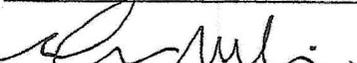
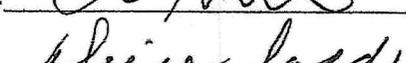
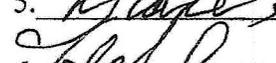
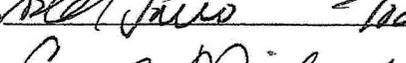
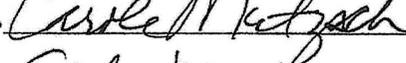
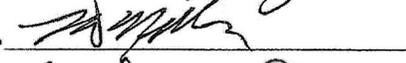
Diana C. Viens, Esq. Clerk of the Petitioning Committee

61 Read Street, Winthrop, MA 02152

July 15, 2024

Affidavit of the Petitioning Committee

We, the undersigned registered voters, constitute the petitioning committee. We do now swear under the pains and penalties of perjury that we constitute the committee petitioning against MBTA Zoning and hereby circulate said petition and submit it in proper form:

Signature	Name	Address in Winthrop
1. 	Sheryl Howard	5 Emerson Rd
2. 	Kathleen D. Cappuccio	49 Waldemar Ave.
3. 	Diana C. Viens	61 Read Street
4. 	Vasili Mallios	36 River Rd.
5. 	Diane Sands	20 Buckthorn Ter.
6. 	Todd Sacco	40 Emerson Rd
7. 	Carole Mietzsch	248 Main St
8. 	Erik Mietzsch	248 Main St.
9. 	Kurt Miller	20 Enfield Road
10. 	John Dowd	270 Winthrop St



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TOWN OF WINTHROP, MASSACHUSETTS
OFFICE OF THE TOWN ATTORNEY

REPORT AND ADVICE TO THE WINTHROP TOWN COUNCIL REGARDING
"INITIATIVE PETITION AGAINST MBTA ZONING COMPLIANCE"
[Filed on July 23, 2024]¹

BACKGROUND

On July 23, 2024, the Winthrop Town Clerk and the Clerk of the Winthrop Town Council received a document titled "Initiative Petition Against MBTA Zoning Compliance." The petition urges that amendment of the Winthrop Zoning Ordinance by inserting language in a new section, 17.04.060². The proposed amendment would insert the following language into the Winthrop Zoning Ordinance:

1. Any plan to considered (sic) and/or voted upon in order to comply with G. L. c. 40A, § 3A and/or associated guidelines of the Executive Office of Housing and Livable Communities as currently in effect or as amended shall be voted upon by the registered voters in the Town of Winthrop by ballot question, and not by the Winthrop Town Council.

¹ This petition, filed with the town on July 23, 2024, is the second filed by a citizen group advocating for noncompliance with the mandates of G.L. c. 40A § 3. The first was filed on July 15, 2024, and this office filed a Report and Advice memorandum with the Town Clerk and the Town Council on July 30, 2024.

² This section is the same section sought to be created by the July 15, 2024 petition. Currently, this section does not exist in the Zoning Ordinance and presumably would follow the existing § 17.04.050.

2. Any final approval of proposed changes(s) to the current Winthrop zoning laws or districting in order to comply with G. L. c. 40A, § 3A shall be by ballot question voted upon by the registered voters of the Town of Winthrop.

The petition contains signatures of ten (10) individuals purporting to be registered voters in the Town of Winthrop and who constitute the petitioning committee. Further, the petition contains signatures of more than fifty (50) additional individuals purporting to be subscribing voters in the Town of Winthrop.

The petition was submitted to the Office of the Town Attorney pursuant to Section 8-5(b) of the Charter of the Town of Winthrop to “advise the town council whether the measure as proposed may lawfully be proposed by the initiative process and whether, in its present form, may be legally adopted by the town council.”

DISCUSSION

Measures proposed by initiative petition to be considered for adoption by the Town Council, must meet two tests.

A. WHETHER SECTION 17 MAY BE AMENDED BY INITIATIVE PETITION

I have reviewed the petition, the Constitution of the Commonwealth of Massachusetts, the Home Rule Amendment, the relevant portions of the Massachusetts General Laws, the Charter of the Town of Winthrop, the Code of Ordinances of the Town of Winthrop as amended through August 7, 2024, and cases decided by the Massachusetts Supreme Judicial Court, Massachusetts Appeals Court, various Massachusetts Superior Courts, the United States District Court for the District of Massachusetts, and the First Circuit Court of Appeals.

As a result, I conclude that the provisions of G. L. c. 40A, § 5 and Section 8-5 of the Winthrop Town Charter authorize amendment of §17, which is the Winthrop Zoning Code, by the initiative petition process. Therefore the petition, as submitted, is legally proposed.

B. WHETHER THE MEASURE MAY BE LAWFULLY ADOPTED BY THE TOWN COUNCIL

G. L. c 40A, § 3A(a)(1) requires each MBTA Community to have, inter alia, at least one district of reasonable size in which multi-family housing is permitted as of right. Further, § 3(b) mandates that any MBTA Community that fails to comply with [section 3A] shall not be eligible to receive funds from four specified state community grants.

Article LXXXIX of the Constitution of the Commonwealth of Massachusetts is the Home Rule Amendment. Winthrop has adopted the provisions of this Article. Section 6 of the Home Rule Amendment allows cities and towns to adopt an ordinance or by-law “which is not inconsistent with the constitution or laws enacted by the general court.”

The petition, in its current form, does not request the Town Council to amend an ordinance that would require the Town to perform an unlawful act nor to refuse to perform a lawful one when mandated to do so. This petition, unlike the July 15, 2024 petition, does not seek to direct the Town, by virtue of its legislative powers, to willfully contravene a state law or a constitutional provision. It merely requests that the questions contained in it be put before the voters for adoption or direction.

Key in reaching this conclusion is not only the language of the proposed amendment, but the language drawn from Section 8-7 (d) of the Winthrop Charter which reads in pertinent part:

(d) Action on Petitions - Within thirty days following the date a petition has been returned to the clerk of the council, and after publication in accordance with the provisions of Section 2-9(c), **the town council shall act with respect to each initiative petition by passing it without change, by passing a measure which is stated to be in lieu of the initiative measure, or by rejecting it.** (Emphasis added.)

Clearly, this language initially provides the council with three alternatives in dealing with a petition that satisfies the elements set out in the Charter. However, reading this section in conjunction with Section 8-8 of the Charter appears to provide a fourth alternative, one that the council already possesses.

SECTION 8-8: SUBMISSION OF PROPOSED MEASURE TO VOTERS

The town council may, of its own motion ... submit to a vote of the voters for adoption or rejection at a general or special town election any proposed measure, or a proposition for the repeal or amendment of any measure, in the same manner and with the same force and effect as are hereby provided for submission on petition.

(Emphasis added.)

Based on the foregoing, I find that the petition, in its current form, does not propose a measure that is inconsistent with current law or the state constitution. Therefore, the second requirements of the second test have been met.

CONCLUSION

Consequently, the petition may be processed by the Town Clerk pursuant to the provisions of Section 8-5(c) of the Charter. The Town Council then must take such action as set out in Section 8-5 (d).

Respectfully submitted,

James J. Cipoletta
James J. Cipoletta
Town Attorney

Dated: August 7, 2024