



Massachusetts Municipal Lawyers Association

MMLA MUNICIPAL MINUTE

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Greetings, and welcome to this issue of the MMLA Municipal Minute, our e-newsletter to you, our Massachusetts Municipal Lawyers Association (MMLA) membership. Make sure to click the hyperlinks below for more information about a particular topic or matter.

Upcoming Programs and Events:

- **Upcoming Programs:**
 - **MCLE Municipal Law 2023 Annual Conference** – March 22, 2023 (9am-5pm, Virtual or Live at MCLE Conference Center, Ten Winter Place, Boston, MA). To register, visit the MCLE website, <http://www.mcle.org>. Topics/panelists:
 - Open Meetings: Carrie Benedon, Esq., Office of the Attorney General, Commonwealth of Massachusetts, Boston
 - Public Records: Angela M. Puccini, Esq., Office of the Secretary of the Commonwealth, Public Records Division, Boston
 - Ethics and Conflicts of Interest: Eve M. Slattery, Esq., State Ethics Commission, Commonwealth of Massachusetts, Boston
 - Environmental Law Update: Gregor I. McGregor, Esq., McGregor Legere & Stevens, PC, Boston; Luke H. Legere, Esq., McGregor Legere & Stevens, PC, Boston
 - Resiliency, Climate Change, and Impacts on Massachusetts Land Use: Aladdine D. Joroff, Esq., City of Boston, Boston
 - Cannabis Update: Jonathan M. Silverstein, Esq., Blatman, Bobrowski, Haverly & Silverstein LLC, Concord; Nicole Costanzo, Esq., KP Law, PC, Boston
 - Employment Law Update: John J. Cloherty, III, Esq., Pierce, Davis & Perritano LLP, Boston; John J. Davis, Esq., Pierce, Davis & Perritano LLP, Boston
 - Land Use and Zoning Update: Christopher L. Brown, Esq., Miyares and Harrington LLP, Wellesley; Christopher H. Heep, Esq., Miyares and Harrington LLP, Wellesley; Katherine D. Laughman, Esq., City of Waltham Law Department, Waltham

- First Amendment, Public Forum, and Public Comment Period: Robert S. Arcangeli, Esq., City of Boston Law Department, Boston; Deanna Barkett Fitzgerald, Esq., Ropes & Gray LLP, Boston
- **Labor Law Program Part 2 - Employee Discipline** – April 4, 2023, 3-6:30pm, Mast Restaurant, 45 Province Street, Boston, MA (Registration Details Forthcoming).
- **Executive Board Meetings:** MMLA members are welcome to attend monthly Executive Board meetings, typically held on the second **Thursday** of each month. The next scheduled meeting is for March 9, 2023. To attend an Executive Board meeting, please contact MMLA Executive Director/Secretary-Treasurer James Lampke with a copy of any materials (james.lampke@lampkelaw.com).

If you are speaking at any upcoming programs or events, please let us know (massmadmin@massmunilaw.org) so we can include it in an upcoming Municipal Minute.

Recent Decisions, Rulings, Cases, and Legislative Developments of Note:

- [*Gobbi v. Town of Dedham*](#) (Appeals Court Rule 23.0 Decision, March 2, 2023): “The plaintiff, Frank N. Gobbi, Jr., as trustee of the Gobbi Revocable Trust, appeals from a Superior Court judgment upholding the decision of the Conservation Commission of Dedham (commission) to deny his after-the-fact application for a stormwater management permit. On appeal, the plaintiff contends that the commission improperly applied revised regulations that were adopted while his application was pending and acted arbitrarily and capriciously in denying his permit application. The plaintiff also appeals from an order denying his postjudgment motion to expand the record to include meeting minutes that purportedly evince the commission's intent to exempt pending applications from the revised regulations. We affirm. . . . The plaintiff has offered no valid reason why he could not have searched for the minutes, and moved to expand the record to include them, earlier. . . . Therefore, after the first Superior Court judge determined that the plaintiff was not entitled to a permit under the 2018 regulations and bylaw, he could properly order injunctive relief for the commission on its counterclaim for enforcement.”
- [*Tetreault v. Board of Selectmen of Lynnfield*](#) (Appeals Court, February 24, 2023): “The plaintiff, Mark Tetreault, maintains that when he signed an employment contract as fire chief of the town of Lynnfield (town), he believed that he would be granted a lifetime appointment by G. L. c. 48, § 42, colloquially known as the “strong chief” statute. That employment contract provided that it was terminable at the end of its term by either party on proper notice. After the town gave him notice of its intent not to renew his contract at the end of his fifth year as fire chief, Tetreault sued the town seeking declaratory relief. Ruling on cross motions for summary judgment, a judge allowed Tetreault's motion and denied the town's motion. The judge ordered and declared that the town's board of selectmen (board) violated the strong chief statute, the town charter, and the personnel

bylaws of the town's municipal code by removing Tetreault as chief without a hearing and the establishment of cause. Because what happened was a nonrenewal of Tetreault's contract as permitted by its terms and not a removal from office within the meaning of the strong chief statute, we reverse.”

- [*Educational Divide Reform, Inc. v. City of Cambridge*](#) (Appeals Court Rule 23.0 Decision, February 23, 2023): “In 2016, the plaintiff, Educational Divide Reform, Inc. (EDR) entered into a lease with the Roman Catholic Archbishop of Boston (church) to rent property in Cambridge. Under the terms of the lease, EDR was responsible for paying any property tax that was assessed to the church. In June 2018, the church received a property tax bill that it forwarded to EDR for payment. EDR's president contacted the church contending that EDR was exempt from the property tax because both the church and EDR were non-profit organizations. In turn, the church contacted Robert Reardon, the director of assessing for the City of Cambridge (city). Reardon advised both the church and EDR's president that the exemption did not apply because the leased premises were not used for church business at that time. EDR claimed that it was ‘ill advised’ by Reardon, and that the information was ‘wrong’ and ‘false.’ EDR paid the property taxes for 2018, 2019, and 2020 (tax years). On October 20, 2020, it filed a property tax refund application with the city for the tax years, as well as a request for a denial letter so it could bring the matter to the Appellate Tax Board (board). The city denied the applications as untimely and refused to issue a denial determination letter. On November 18, 2020, EDR asked the city to reconsider its determination; the city refused EDR's request. Thereafter, EDR filed a three-count complaint in the Superior Court against the defendants for deceit, negligent misrepresentation, and liability for negligent or wrongful acts or omissions. The defendants filed a motion to dismiss, contending that the city and Reardon were immune from liability under the Massachusetts Torts Claim Act (MTCA); the court lacked jurisdiction, as EDR failed to exhaust its administrative remedies and timely appeal the tax assessments; and judicial relief was precluded because the statutory tax scheme was the exclusive remedy for EDR. A Superior Court judge agreed and dismissed the complaint. This appeal followed.”
- [*Building Inspector of Palmer v. Palmer Motorsports Park, LLC*](#) (Appeals Court Rule 23.0 Decision, February 17, 2023): “The defendant corporation, Palmer Motorsports Park, LLC (PMP), appeals from a judgment of civil contempt. After a trial, a Land Court judge found that PMP had failed to comply with an order included in a judgment dated January 14, 2020. On appeal, PMP asserts that the judge's order was ambiguous and, even if the order was clear and unequivocal, PMP's noncompliance should be excused under the doctrine of impossibility. We affirm.”

Legislative Committee Update

In January, the Executive Board voted to approve MMLA’s 2023-24 Legislative package as presented by the Legislative Committee. The recommendations developed by the Legislative Committee include the following topics of focus, and associated bill information:

1. Permanent option for remote public meetings (new file): An Act to modernize municipal meetings, town meetings, and local elections [SD1059](#) (Oliviera). See also [HD911](#) (Driscoll) and [SD1247](#) (Gobi) which are similar in scope. Lastly, [SD2251](#) (Brownsberger), which extends optional remote participation from March 31, 2023 to July 1, 2024.
2. Legal notices (new file): An Act relative to legal advertisements in on-line only newspapers [HD109/SD953](#) (Pignatelli/Velis)
3. Chapter 30B procurement parity (new file): An Act relative to Chapter 30B procurement [HD2918/SD1028](#) (Vitolo/Lewis)
4. Water/sewer infrastructure P3 (refile) - Alternative delivery of infrastructure projects [SD122](#) (Tarr)
5. Local option civil penalty (refile): An Act relative to the effective enforcement of municipal ordinances and by-laws [HD954/SD1229](#) (Eldridge/Donaghue)

In the coming weeks, the Legislative Committee will be tracking developments concerning the extension of the optional remote participation in public meeting, which is set to expire on March 31, 2023, as well as corresponding with legislators and providing commentary on those and the other pending bills. Related to this, the Legislative Committee is currently working on a draft letter to the Senate President and Ways and Means Committee regarding [H.58](#) (An Act making appropriations for the Fiscal Year 2023 to provide for supplementing certain existing appropriations and for certain other activities and projects). H.58 passed the House on March 1 and was referred to the Senate Ways & Means Committee yesterday. MMLA members are urged to contact their State Senators to support the language in H.58, which among other provisions:

- Permits remote and hybrid meeting options for public bodies through March 31, 2025.
- Permits remote voting options for representative town meetings through March 31, 2025.
- Permits reduced quorums for open town meetings through March 31, 2025.
- Extends an expedited process for temporary permits for outdoor dining service and to-go cocktails through April 1, 2024.

Career Opportunities:

- The following career opportunity was posted on the MMLA website:
 - [Assistant City Solicitor III – City of Worcester](#)

The Municipal Minute welcomes your submissions, such as client advisories/alerts, notable decisions, promotions, achievements, and other content. To submit, please send an email to massmadmin@massmunilaw.org.

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