



Massachusetts Municipal Lawyers Association

MMLA MUNICIPAL MINUTE

VOLUME I, ISSUE 7 – MAY 4, 2022

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:

- May Executive Board Meeting: Thursday, May 12, 2022 (12:30-2pm; Zoom). MMLA members are welcome to attend monthly Executive Board meetings, typically held on the second **Thursday** of each month. To attend, please contact MMLA Executive Director/Secretary-Treasurer Jim Lampke (jlampke@massmunilaw.org).
- Well-Being in the Law Week is this week (May 2-6) and sponsored by the Massachusetts Supreme Judicial Court Standing Committee on Lawyer Well-Being. For a schedule of events, visit [here](#).

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

- The Division of Local Services (DLS) of the Department of Revenue is currently aggregating legislative recommendations/proposals into a single document (like what was assembled for the 2016 Municipal Modernization Act). DLS recently reached out to the MMLA about legislative considerations to bring to DLS's attention, and MMLA's Legislative Committee will be working with DLS in that regard. If you or your municipality has any recommendations, please contact MMLA Legislative Committee Chair Jillian Jagling (jjagling@westlawgroup.com).
- *Shurtleff v. City of Boston* (US Supreme Court Docket No. 20-1800, May 2, 2022) – The US Supreme Court held that the City of Boston's flag-raising program did not constitute government speech. The City of Boston's refusal to allow the petitioners to fly their flag because of its religious viewpoint violated the Free Speech Clause of the First Amendment to the US Constitution.

- [*City of Lynn v. Murrell*](#) (Supreme Judicial Court Docket No. SJC-13193, May 2, 2022) – The SJC dismissed a challenge to the validity of two emergency executive orders issued by the Governor and the statewide face covering requirements associated with them as moot, because a subsequent emergency executive order rescinded them. The SJC declined to exercise its discretion to consider the appeal notwithstanding its mootness.
- [*Lay v. City of Lowell*](#) (Appeals Court Docket No. 21-P-436, April 28, 2022) – The Appeals Court affirmed a Superior Court decision determining that the local election commission incorrectly held that the plaintiff was ineligible to fill a vacancy on the school committee arising from a member’s mid-term resignation. The plaintiff was next in line to fill the vacancy as the candidate with the most votes among the defeated candidates in the preceding election. The Appeals Court determined that the local election commission applied an impermissibly narrow legal standard to evaluate the plaintiff’s domicile, which involved the results from a search of the plaintiff’s property and tax records. The Appeals Court rejected the defendants’ argument that tax records prevail over property ownership, voter registration, and driver’s licenses in determining domicile. It also recognized that the local election commission erred in treating a residential tax exemption for the plaintiff’s Boston property and Boston’s assessment of excise taxes on the plaintiff’s car as prima facie evidence creating a presumption of the plaintiff’s domicile in Boston. Instead, the Appeals Court credited evidence showing the plaintiff’s domicile in Lowell, including his voting records in Lowell, previous candidacies for office in Lowell, and other indicators that he resided in Lowell (such as bills, property ownership, correspondence, and insurance).
- [*Doyle v. Zoning Board of Appeals of Charlton*](#) (Appeals Court Docket No. 21-P-0438, Rule 23.0 Decision, April 28, 2022) – The Appeals Court held that the Superior Court erred in determining that the plaintiff, an abutter, lacked standing. Rather, the Appeals Court determined that the plaintiff’s complained of injury need not be unique to him and instead could be experienced by other abutters to the subject premises, as opposed to the entire community. The Appeals Court also recognized that the plaintiff could have standing even if he did not reside at his property, because the blasting activities at issue adversely affected his ability to freely use and enjoy his property. As a result, the plaintiff had standing based on the noise created by a construction company’s blasting activities on the subject premises. However, the Appeals Court affirmed the Superior Court’s decision to annul the local zoning board’s decision to affirm in part a cease-and-desist order issued by the zoning enforcement officer against a construction company. Specifically, the Appeals Court determined that the construction company’s current use of the property constituted a permissible extension of a protected nonconforming use.
- [*City of Austin, Texas v. Reagan National Advertising of Austin, LLC*](#) (US Supreme Court Docket No. 20-1029, April 21, 2022) – The US Supreme Court determined that a municipality’s distinction between on- and off-premises signs was facially content neutral under the First Amendment to the US Constitution.
- [*Armato v. Town of Stoneham*](#) (Appeals Court Docket No. 21-P-0095, Rule 23.0 Decision, April 20, 2022) – The Appeals Court affirmed summary judgment in favor of the

defendants, which dismissed the plaintiff's claim against the defendant town under the Massachusetts Whistleblower Act and the plaintiff's claims of civil conspiracy and intentional interference with advantageous employment relationship against various town officials. In particular, the Appeals Court held that, as a matter of law, the alleged acts of harassment did not establish such an intolerable and hostile work environment that a reasonable employee would have felt forced to resign (that is, to support a constructive discharge theory). Because the Appeals Court determined that the plaintiff failed to state a whistleblower claim as a matter of law, it similar rejected his intentional interference with advantageous employment relationship and civil conspiracy claims.

Do you have any decisions that you would like to share with the MMLA membership and/or have posted on the MMLA website, such as recent federal or state court or administrative decisions? Note that the MMLA is looking to create a database of notable Supervisor of Public Records decisions, which are presently unavailable through a publicly available online search platform – we welcome your submissions. Please send an email containing any recent decisions that you would like to spotlight, to massmadmin@massmunilaw.org.

Recent Additions to Members Library:

Do you have any recent decisions, templates, forms, or other sample documents you would like to include in the MMLA Members Library? If so, please forward any materials or recent decisions by email to massmadmin@massmunilaw.org.

Other News and Reminders:

- As indicated in the previous MMLA Municipal Minute, the Executive Board voted unanimously to approve comprehensive revisions to the MMLA Bylaws following a 2-year review-and-revision process undertaken by the Bylaws Committee. The next steps in the MMLA Bylaws revision process consist of the following:
 - The MMLA Bylaws will be read to the general membership at a meeting held by Zoom on **Wednesday, May 18 (12:30pm-2pm)**. At this meeting, the MMLA Bylaws Committee will discuss the key changes to the MMLA Bylaws and respond to any questions or concerns. In a separate email sent earlier today via the MMLA Listserv, MMLA members received: a summary of the proposed changes; clean version of the revised MMLA Bylaws; comparison of the current and revised MMLA Bylaws; and Zoom invitation for the May 18 meeting.
 - The MMLA Executive Board will schedule a separate vote on the revised MMLA Bylaws, to potentially be held in connection with the MMLA's Annual Business Meeting (no later than June 30).
- The MMLA Nominating Committee voted to nominate the following slate of officers and directors to serve for the 2022-23 term (July 1, 2022-June 30, 2023): Matthew Feher (President); Karis North (Vice-President); James Lampke (Secretary-Treasurer); Ivria Fried; Christopher Brown; Christine Griffin; David Shapiro; Susan Murphy; Shawn

Williams; Brian O'Donnell; Donna MacNicol; Ellen Callahan Doucette (Immediate Past President); and Brandon Moss (Immediate Past President). The MMLA thanks James Timmins, Maura O'Keefe, and Immediate Past President Peter Mello for their service and contributions on the MMLA Executive Board. A vote on the Nominating Committee's recommended slate will be held at the MMLA's Annual Business Meeting (to be scheduled no later than June 30).

- At its April meeting, the Executive Board voted to acquire a license to use Wild Apricot, a membership software used by various organizations (including bar associations). Among other features, Wild Apricot should streamline the membership renewal process, program registration, and member listings. The MMLA WebTech Committee is currently working on logistical and technical issues related to implementing Wild Apricot.
- The MMLA congratulates the following members:
 - Lawrence City Solicitor Raquel Ruano was recently confirmed by the Governor's Council for a District Court judgeship.
 - Maura O'Keefe was appointed to serve as Falmouth Town Counsel. Congrats also to retiring Falmouth Town Counsel Frank Duffy.
 - Joseph Callanan was appointed to serve as Brookline Town Counsel.
- The MMLA has new employment opportunities just posted on its website for:
 - [City of Gloucester, Assistant General Counsel](#)
 - [Town of Brookline, First Assistant Town Counsel](#) (closes May 9, 2022)

Do you have any news or other information that you would like to share with the MMLA membership? For example, do you have any recent achievements, MMLA members in the news, or promotions or career opportunities? If so, please send an email to massmadmin@massmunilaw.org.

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This newsletter is sent as a service to our membership. If you would like to update your contact information or city/town affiliation, please visit the [MMLA website](#).

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