



*Massachusetts Municipal Lawyers Association*

# **MMLA MUNICIPAL MINUTE**

## **VOLUME I, ISSUE 3 – MARCH 2, 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:**

- **20<sup>th</sup> Annual Municipal Law Conference 2022: Wednesday, March 16, 2022 (9am-5pm; Zoom)**. Register on the [MCLE website](#) for the annual Municipal Law Conference covering the latest developments in municipal law. MMLA and MMA co-sponsor this annual program, which provides essential updates on recent developments from the Legislature, government regulators, and the courts on many areas of public sector law. This year's program will address new and evolving developments regarding the public records law, open meeting law, land use and zoning, environmental laws, public employment law, cybersecurity and data breaches, and 2<sup>nd</sup> Amendment, home rule and gun regulation. It will also feature a presentation on administrative law.
- **March Executive Board Meeting: Thursday, March 10, 2022 (12:30-2pm; Zoom)**. MMLA members are welcome to attend monthly Executive Board meetings, held on the second **Thursday** of each month. To attend, please contact MMLA Executive Director/Secretary-Treasurer Jim Lampke ([jlampke@massmunilaw.org](mailto:jlampke@massmunilaw.org)).
- **Special Executive Board Meeting: Friday, March 11, 2022 (12:00 pm; Zoom)**  
The Executive Board will hold a special meeting on March 11 to discuss and vote on proposed changes to the MMLA Bylaws. The Bylaws Committee worked over the past 2 years to: modernize the Bylaws to be consistent with best governance practices; to incorporate inclusive language and to reflect the MMLA's existing practices; to clarify language that was confusing, cumbersome, or internally inconsistent; and to clean up the format to ensure conforming style in numbering, capitalization and punctuation. Key substantive changes include: the consolidation of the name and purpose sections and the creation of a Mission Statement; the establishment of term limits for Officers and Directors and a removal process for Officers or Directors who fail to execute their duties; a proposal to shorten the time frame after which the non-payment of dues results in termination of membership; and the identification of Standing Committees and the

creation of new Committees such as the Annual Conference Planning, Governance and Emeritus Committees.

### **Recent Decisions, Rulings, and Legislative Developments of Note:**

- *City Council of Springfield v. Mayor of Springfield* (Supreme Judicial Court, February 20, 2022) – In this case, the SJC affirmed a lower court grant of summary judgment in favor of the Springfield City Council (“Council”), that upheld the creation of a 5-person board of commissioners as a valid exercise of legislative power under Springfield’s Plan A Charter. The Charter is based, in part, upon G.L. c. 43, §§ 46-55, which were codified as Charter §§ 46-55. Springfield’s Plan A form of government, and the specific provisions of that Plan A Charter, were ultimately dispositive. Under Springfield’s Charter, the Mayor, as Chief Executive Officer (§ 48), appoints all department heads and municipal board members without Council approval (§ 52). Legislative powers are vested in the Council (§ 50). Chapter 43, § 5, adopted by the City and codified as Charter § 5, empowers the Council to change, reorganize or abolish departments. The Police Department in Springfield was overseen by a 5-member commission until approximately 2005. At that time, the 5-member commission was abolished and replaced with a single police commissioner. In 2018, the Council passed an ordinance replacing the single police commissioner and returning oversight of the Police Department to a 5-person board of commissioners. The Mayor vetoed that ordinance and the Council overrode the veto. The Mayor refused to implement the ordinance and entered into a contract with a new police commissioner. The Council moved to enforce the ordinance and enjoin the Mayor from entering into an agreement with the new police commissioner. The SJC’s decision was rooted in an examination of the separation of powers between the executive and legislative branches of city government, and the responsibility and accountability of those branches over policing in the City. The result of this examination was an affirmation of the Mayor’s appointing authority which extended over the 5-member commission which would make policy, and which would likely extend over the appointment of a Police Chief who would carry out the day to day implementation of that policy. However, given the explicit language of the Plan A Charter, which empowers the Council to change, reorganize or abolish departments, the Court found that it was within the Council’s authority to abolish the position of police commissioner and replace it with the 5-member commission.
- *Summit Farm Solar LLC, et al v. Planning Board of New Braintree* (Misc. Case No. 18-000367 February 23, 2022) – Notwithstanding that “[t]he extent of the regulation of solar energy systems permitted to municipalities under [c.40A, § 3] has not yet been the subject of any appellate decision,” Judge Howard Speicher found the denial of both site plan approval and a special permit for a proposed ground mounted solar array occupying an 8.23-acre area of a 43-acre farm, to be legally untenable. At issue was the zoning bylaw’s requirement that ground mounted solar arrays be screened in such a way that they cannot be seen from a public way or abutting properties. The Planning Board’s denials were based upon its finding that the proposed screening of the solar array was inadequate. Ruling that the bylaw was an unreasonable regulation amounting to the

prohibition of a use protected by §3, Judge Speicher ordered the Planning Board to approve the site plan and issue the special permit.

- [Attorney General’s Case #10315](#) – In a well-reasoned 11-page decision, the Attorney General (A.G.) disapproved Brookline’s attempt to regulate “On-Site Fossil Fuel Infrastructure” through the adoption of zoning by-laws regulating building materials used in construction. Based upon conflicts between the by-laws and the statutory language of G.L. c. 40A, § 3, the preemptive scope of the State Building Code, and the authority granted to the Department of Public Utilities to regulate the sale and distribution of gas pursuant to c.164, the A.G. determined that that the town “cannot regulate, through its zoning by-laws, building materials or construction methods, and cannot add an additional layer of regulation to the comprehensive scope of regulating in the Building Code and Chapter 164.”
- Recent Open Meeting Law Determination - OML 2022-29 (Georgetown School Committee): Finding that discussion of possible retention of a law firm to assist the Town with an investigation is not a proper subject of executive session, but is instead a discussion of a vendor or service contract that should have taken place in open session. Available from the Division of Open Government OML Determination Lookup [website](#).
- Recent Open Meeting Law Determination - OML 2022-27 (Lanesborough Town Administrator Search Committee): Finding no violation when a member of a public body placed a post on a Facebook discussion group about a topic that was within the public body’s jurisdiction because the post was clearly directed to members of the public, was part of a discussion with 1,000 community members, and no other members of the public body posted in response. Available from the Division of Open Government OML Determination Lookup [website](#).
- [Senate Bill 2594 \(S.2594\)](#) – An Act Relative to Local Opt-In for Permanent Outdoor Dining. Authorizes municipalities to approve requests for expansion of outdoor table service or extensions of earlier granted approvals, including an LLA’s approval of requests to change the description of licensed premises to permit outdoor service of alcohol. "Outdoor table service" is defined as restaurant service that includes food prepared on-site and under food permits issued by municipal authorities pursuant to 105 CMR 590.00 for service to seated diners outside the restaurant building envelop, whether on a sidewalk, patio, deck, lawn, parking area, or other outdoor space. Currently in the committee on Municipalities and Regional Government with a reporting date of March 16, 2022.

***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](mailto: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](mailto:massmadmin@massmunilaw.org).*

## **Other News and Reminders:**

- The Nominating Committee had its first meeting to discuss the slate of MMLA officers and directors for the July 1, 2022-June 30, 2023 membership year to be presented for a future vote at the MMLA Annual Business Meeting (TBA).
- The MMLA has a new employment opportunity just posted on its website for:
  - [City of Cambridge, Assistant City Solicitor](#)

*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](mailto: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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