

**MASSACHUSETTS MUNICIPAL ASSOCIATION
MUNICIPAL LAW UPDATE**

2013 SELECTED STATUTES AND CASES¹

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I. KEY LEGISLATIVE DEVELOPMENTS OF 2013

A. MEDICAL MARIJUANA

1. Initiative Petition for the Humanitarian Medical Use of Marijuana became effective on January 1, 2013

- a. no punishment under state law for qualifying patients, physicians, health care professionals, personal care givers, and medical marijuana treatment center agents for the medical use of marijuana in conformance with the law
 - i. 2009 Ogden Memo – no DOJ intent to prosecute for violations of federal law for individuals in compliance with state law regarding medical marijuana
- b. allows for establishment of non-profit medical marijuana treatment centers (Registered Marijuana Dispensaries or RMDs) which must be registered by DPH – up to 35 total (at least 1 but not more than 5 per county)
- c. allows DPH to issue cultivation registrations to qualifying patients who lack a treatment center within reasonable distance from the patient’s residence

2. DPH Regulations Issued in 2013 – 105 CMR 725.000 et seq. (effective May 24, 2013)

- a. RMD Application procedures (105 CMR 725.100)
- b. Limitations on signage (105 CMR 725.105(L) – no neon signs, no graphics related to marijuana or paraphernalia on exterior, etc.
- c. Security requirements (105 CMR 725.110) – lighting, surveillance, notification and reporting requirements to law enforcement and DPH
- d. Grounds for denial/revocation of RMD applications (105 CMR 725.400 and 725.405) - does not serve the needs of the Commonwealth with regard to location, access, quality and community safety, failure to become operational, lack of responsible operation, failure to cooperate or give information to law enforcement
- e. Limits on RMD operations (105 CMR 725.100) – no more than 2 locations in MA where marijuana is cultivated, MIPs (marijuana infused products) prepared, and marijuana dispensed
- f. Guidelines for RMD cultivation locations (105 CMR 725.105(B) and (C)) – may only cultivate marijuana/produce MIPs for that RMD and up to 2 additional RMDs under a common non-profit corporation
- g. Guidelines for hardship cultivation registrations (105 CMR 725.035) –

(1) registrations available for qualified patients who demonstrate access limited by (a) verified financial hardship, (b) physical incapacity to access reasonable transportation, lack of personal caregiver with transportation, or lack of RMD to deliver or (c) lack of RMD within a reasonable distance of patient's residence and lack of RMD to deliver

(2) applicants must have provisions for security for cultivation site

(3) may cultivate limited number of plants to maintain a 60 day supply

h. Lawful local oversight and regulation, including fee requirements, are permitted so long as they do not conflict with the operation of the regulations. 105 CMR 725.600(B).

3. Local Zoning Control Over Centers

a. Temporary moratoria

(1) A number of temporary moratoria have been approved by the AG's office, many prohibiting RMDs through June 30, 2014 (Canton sought a second year, through June 30, 2015, which was disapproved by the AG's office because the Town could not establish a legitimate planning basis for the need for the second year of moratorium)

b. Prohibition within municipality

Wakefield v. Attorney General, Suffolk Superior Court Civil Action No. SUCV2013-01684. The Attorney General disapproved a zoning bylaw amendment banning treatment centers in Wakefield. The rationale was there is a legislative intent that qualifying patients have reasonable access to RMDs and that RMDs be reasonably dispersed throughout the state. If one municipality could ban RMDs, then all could, frustrating the legislative purpose. Wakefield filed an appeal of the AG's disapproval in Suffolk Superior Court. An oral argument on Wakefield's motion for judgment on the pleadings is scheduled for March 12, 2014.

c. Zoning amendments/buffers (105 CMR 725.110(A)(14) – if there is no local requirement regarding siting, RMD shall not be sited within 500 foot radius of school, daycare center or any facility in which children commonly congregate. Zoning bylaw amendments must be submitted to AG's office for review and approval before they become effective pursuant to G.L. c. 40, § 32.

d. Agricultural exemption to zoning. It is not clear whether cultivation of medical marijuana would be entitled to the agricultural protection of G.L. c. 40A, § 3.

II. SIGNIFICANT COURT CASES OF 2013

A. CONSTITUTIONAL RIGHTS

Roman Catholic Bishop of Springfield v. City of Springfield, 724 F. 3d 78 (2013).

The 1st Circuit affirmed summary judgment in favor of the city, holding that a city ordinance requiring submission of application with historical commission before attempting to alter or demolish any exterior architectural features of a closed parish church did not violate the Religious Land Use and Institutionalized Persons Act (RLUIPA), and was not an unconstitutional burden on the free exercise of religion. The potential consequences of compliance with the ordinance were not ripe for adjudication because the church had not yet devised its plans for the church or submitted any application to the historical commission.

Thayer v. City of Worcester, ___ F. Supp. 2d ___, 2013 WL 5780445 (D. Mass., Oct. 24, 2013).

Individuals who frequently sought donations from pedestrians on traffic medians and individuals who frequently held political campaign signs on such medians, brought an action challenging Worcester's ordinances prohibiting aggressive panhandling and walking on traffic medians for other than "lawful" purposes. The plaintiffs moved for a preliminary injunction. In its decision denying the plaintiff's motion, the Court found that the ordinances at issue were content neutral, narrowly tailored to serve a substantial interest, left open alternative means of communication, were not unconstitutionally vague and did not discriminate against the poor.

B. TORTS CLAIMS ACT

Shapiro v. City of Worcester, 464 Mass. 261 (2013).

Property owners sued the city alleging that the city is liable to them for nuisance, continuing nuisance, and continuing trespass, arising from the discharge of effluent from the city's sewer system onto their properties. The city argued that the claims were barred by the presentment requirements under the Massachusetts Tort Claims Act (MTCA) and by the discretionary and public duty exemptions to the MTCA. The Court rejected both arguments, noting (1) the presentment requirement would not be enforced where the law did not require the presentment of nuisance claims at the time the suit was filed and (2) the exemptions cited by the city were not applicable under the circumstances.

Estate of Gavin v. Tewksbury State Hospital, 83 Mass. App. Ct. 139 (2013) (further appellate review granted).

An attorney filed a wrongful death claim arising out of the death of a state hospital patient against the state and state hospital on behalf of the patient's estate and minor children. The Appeals Court affirmed the trial court's allowance of the defendants' motion to dismiss, holding that the presentment by the attorney was deficient because it was not made by a "claimant" where there was no executor or administrator of the estate appointed at the time of the letter. The Appeals Court further affirmed the dismissal based on the deficiency of the wrongful death claim where it was not brought by the decedent's executor or administrator. The Supreme Judicial Court granted further

appellate review. Briefs have been filed and oral argument occurred on January 6, 2014.

Moore v. Town of Billerica, 83 Mass. App. Ct. 729 (2013).

The mother of a child injured after being hit by a baseball in a town park sued the town under the MTCA. The Appeals Court reversed the denial of the town's motion for summary judgment holding that the town had governmental immunity under MTCA and the recreational use statute. A failure to erect signs or barriers between the park and an adjacent baseball field was not "negligent maintenance," and was not wanton, willful or reckless conduct.

LaPierre v. City of Lawrence, 2013 WL 1829120 (D. Mass. 2013).

The female plaintiff was driven from a restaurant by an apparently off-duty city of Lawrence police officer to a Lawrence police station so that she could use the station's phone to call some friends from whom she had become separated earlier that evening. After he had driven her in his personal car back to the police station, the officer allegedly assaulted the plaintiff several times over the course of the rest of the evening while she remained in his car parked outside the station. The officer eventually was convicted of 3 counts of indecent assault and battery and 1 count of rape, and was sentenced to 10 years in prison. The plaintiff filed a civil rights lawsuit against the officer, the police chief and the city of Lawrence, and alleged in part that the city had been negligent in training and supervising the police officer in question. The city and the police chief moved to dismiss the claim for negligent training and supervision, arguing that G.L. c. 258, § 10(j), which serves to bar claims against a public employer for failing to prevent or diminish harm which is not originally caused by the public employer, served to bar the plaintiff's claim that the city had negligently trained and supervised the officer. The Court denied the motion to dismiss filed by the city and police chief. Acknowledging that it was deviating from District of Massachusetts precedent, the Court opined that a claim for negligently training and supervising a public employee is no different than a claim for the negligent hiring of that same public employee, and therefore ruled that § 10(j) did not bar the plaintiff's claim that the city had been negligent for allegedly having failed to properly train and supervise the officer in question.

C. EMPLOYMENT

Dixon v. City of Malden, 464 Mass. 446 (2013).

A terminated city employee brought a Wage Act claim, alleging the city failed to pay him for unused vacation time. Reversing the trial court's entry of summary judgment in favor of the city, the Court found the city had violated the Wage Act and held that an employer's failure to pay unpaid wages cannot be mitigated by gratuitous, after-the-fact payments, where the city failed to pay the employee's accrued, unused vacation time and did not classify the post-termination payments as vacation pay.

Flagg v. Alimed, Inc., 466 Mass. 23 (2013).

A former employee alleged his employer fired him in order to avoid paying for health plan costs incurred by the employee's wife. The Court held that employers can be liable under G.L. c. 151B for associational discrimination. The statute was intended to prevent

an employer's animus against disability from adversely affecting not just those employees with actual handicaps but essentially all members of its workforce, and employer's alleged conduct caused employee to suffer same type of discrimination as an employee whom the employer directly but incorrectly regarded as being handicapped.

Lipsitt v. Plaud, 466 Mass. 240 (2013).

A former employee brought an action against a failed museum and its founder, seeking to recover unpaid wages. In reversing the allowance of a motion to dismiss, the Court held that the Wage Act does not preclude common law claims for breach of contract or quantum meruit to recover unpaid wages. Even after a Wage Act claim is no longer viable due to the 3 year statute of limitations, there is an additional 3 year period for a claimant to recover on contract/quasi-contractual theories.

Fraelick v. Perkettp, Inc., 83 Mass. App. Ct. 698 (2013).

A terminated employee filed a complaint alleging their employer violated the Wage Act. The trial court granted the employer's motion to dismiss. The Appeals Court reversed the judgment, holding that the employer's abandonment of an expense reimbursement arrangement and replacement of said arrangement with a policy requiring the employee to advance expenses for the employer's benefit was sufficient to allege a reasonable belief of a violation of the Wage Act.

Chase v. U.S. Postal Service, 2013 WL 5948373 (D. Mass. 2013).

An employee sued USPS and his supervisor for violation of the Family Medical Leave Act (FMLA). The trial court granted the defendants' motion for summary judgment as to all claims except claims for FMLA retaliation. Noting a conflict amongst the federal circuits, the Court determined that public employees can be held individually liable under the FMLA.

D. LABOR

Sheriff of Suffolk County v. Jail Officers and Employees of Suffolk County, 465 Mass. 584 (2013).

In an appeal of trial court's confirmation of arbitration award, the employer disputed a back pay award and the employee's mitigation of damages after termination. The Court held that, in proving a failure to mitigate damages, the employer must show the availability of comparable employment, not just any employment. Given the employee's occupation as a correction officer, the Court found it was irrelevant to the issue of mitigation that he may have been able to further offset his lost earnings by working on a more permanent basis as a restaurant employee, carpenter, or bouncer.

City of Boston v. Boston Police Superior Officers Federation, 466 Mass. 210 (2013).

The SJC vacated a trial court order confirming an arbitration award in favor of a police officer. The Court found that a provision in the applicable collective bargaining agreement prohibiting the transfer of certain union representatives between stations or assignments impermissibly delegated the police commissioner's statutory power to assign and organize officers. The Court held that a nondelegable authority may not be delegated

to an arbitrator pursuant to a collective bargaining agreement, even with the parties' consent.

O'Brien v. New England Police Benevolent Association, Local 911, 83 Mass. App. Ct. 376 (2013).

The Appeals Court affirmed the trial court's confirmation of an arbitration award ordering the reinstatement of a police officer who was terminated for alleged gross misconduct. The Appeals Court noted that the arbitrator had made no factual findings of misconduct, therefore the award of reinstatement did not violate public policy.

In the Matter of Town of Weymouth and AFSCME Council 93, Department of Labor Relations Case No. MUP-10-6020 (July 12, 2013).

The DLR found that the Town had a bargaining obligation before unilaterally eliminating traffic supervisors' jobs and transferring the bargaining unit work to non-unit personnel. The DLR rejected the Town's argument that the municipal administration (who laid off the traffic supervisors) and the school committee (who hired "safety guards" to perform many of the same task performed previously by the bargaining unit) were separate employers for purposes of Chapter 150E.

In the Matter of Town of Plymouth and AFSCME Council 93, Department of Labor Relations Case No. MUP-11-1061 (Aug. 22, 2013).

The DLR found that the Town had a bargaining obligation prior to implementing a cell phone policy for the Town's DPW employees.

E. BIDDING/PROCUREMENT

Leder v. Superintendent of Schools of Concord, 465 Mass. 305 (2013).

A musical instrument sale and rental business brought an action against the school district and superintendent seeking declaratory and injunctive relief to prevent the district from endorsing other rental businesses or organizing rental nights without the business's participation. In affirming the trial court's denial of the business's motion for a preliminary injunction, the Court held that a finding of a statutory violation by the State Ethics Commission and a rescission request by a municipal agency were prerequisites to the filing of a private rescission action.

F. CONSTRUCTION

Lighthouse Masonry, Inc. v. Division of Admin. Law Appeals, ___ Mass. ___ (2013) (Dec. 31, 2013 slip opinion).

The SJC affirmed a Superior Court judgment affirming the prevailing wage law decision of a DALA hearing officer against a contractor who failed to pay the correct wage rates to certain employees on a public works construction project in violation of G.L. c. 149, § 27. The contractor had argued that it was not liable under the statute because the incorrect payment was due to a clerical error. The SJC held that, like the Wage Act and independent contractor statute, the prevailing wage law is a strict liability statute. The employer's intent (or lack of the same) to violate the statute is irrelevant.

Mello Const., Inc. v. Division of Capital Asset Management, 84 Mass. App. Ct. 625 (2013).

The Appeals Court affirmed the trial court's dismissal of a certiorari action by a general contractor challenging the denial by DCAM of the contractor's annual application for certification. DCAM had denied the application based on negative contractor evaluations received by DCAM from two public construction projects. The appeal concerned whether G.L. c. 149, § 44D(4) gives a contractor a cause of action against DCAM for money damages if an application for certification is denied. The Court held that the statute did waive the Commonwealth's sovereign immunity and even if it had, the legislative intent necessary to infer an implied right of private action was absent in the statute at issue. The Court further held that Mello failed to establish DCAM's decision was arbitrary or capricious. Mello had argued, in part, that all contractor evaluations completed by litigation opponents are inherently unreliable and should be completely disregarded by DCAM. The Court rejected this argument, finding that DCAM may permissibly consider any contractor evaluations possessing sufficient indicia of reliability.

G. FIREARMS LICENSING

Chardin v. Police Commissioner of Boston, 465 Mass. 314 (2013).

An applicant for a license to carry firearms sought judicial review of the police commissioner's denial of his application. The trial court entered a judgment of dismissal in favor of the police commissioner. The applicant appealed and filed an action in the nature of certiorari. The SJC held that the statutory prohibition from obtaining a license to carry a firearm if an applicant has been adjudicated a delinquent child for commission of a felony did not infringe on the applicant's right to keep and bear arms under the Second Amendment, and the Eighth Amendment's prohibition of cruel and unusual punishment did not apply where statute at issue was a regulatory statute, not a criminal penalty.

H. LAND USE/ZONING

1. ARTICLE 97

Mahajan v. Department of Environmental Protection, 464 Mass. 604 (2013).

Where the Boston Redevelopment Authority exercised its eminent domain power and took land in Boston for urban renewal purposes, the SJC held that such land was not taken for purposes of article 97 of the Massachusetts Constitution. Art. 97 provides in part that land taken or acquired for the purposes of clean air and water, freedom from excessive and unnecessary noise, or the natural, scenic, historic, and esthetic qualities of their environment, shall not be used for other purposes or otherwise disposed of except by a two-thirds vote of the Legislature. The SJC stated that the critical question was "not whether the use of the land incidentally serves purposes consistent with art. 97, or whether the land displays some attributes of art. 97 land," but whether the land was taken for art. 97 purposes, "or subsequent to the taking was designated for those purposes in a manner sufficient to invoke the protection of art. 97."

Curley v. Town of Billerica, 2013 WL 4029208 (Land Court 2013).

In a case relying in part on Mahajan, the Land Court distinguished a “park” from a “playground” for purposes of article 97 of the Massachusetts Constitution. The Land Court held that a playground is “a public recreational space that is improved with buildings and play structures or apparatus. A park, on the other hand, is a public open space that, for the most part, remains open and unimproved. ... Article 97 is intended to protect ‘the people in their right to the conservation, development and utilization of the ... natural resources’ of the environment. Parks protect that interest. Improved property, including playgrounds, does not.” Thus, the Land Court ruled that the land in question, which Billerica had taken “for playground purposes” in 1951, was not subject to art. 97 for purposes of constructing a cell tower thereon, and a two-thirds vote by the Legislature under art. 97 was not required.

2. COMPREHENSIVE PERMITS

Zoning Board of Appeals of Lunenburg v. Housing Appeals Committee, 464 Mass. 38 (2013).

The SJC upheld a ruling by the Superior Court affirming an order by the Housing Appeal Committee that the Lunenburg ZBA was required to issue a comprehensive permit to a developer seeking to build townhouse condominiums in Lunenburg. In weighing the regional need for affordable housing, the HAC correctly focused on housing subsidized by the federal or state government, rather than on the availability of low-cost, market-rate, unsubsidized housing in Lunenburg. Further, the ZBA failed to carry its burden of showing that the proposed condo development was inconsistent with the town’s local concerns embodied in its master plan.

Zoning Board of Appeals of Sunderland v. Sugarbush Meadow, LLC, 464 Mass. 166 (2013).

Relying in part on its decision in Zoning Board of Appeals of Lunenburg, the SJC upheld a ruling by the Superior Court affirming an order by the Housing Appeal Committee that the Sunderland ZBA was required to issue a comprehensive permit to a developer seeking to build several apartment buildings in Sunderland. In weighing the regional need for affordable housing, the HAC correctly focused on housing subsidized by the federal or state government, rather than on the availability of low-cost, market-rate, unsubsidized housing in Sunderland. Further, the ZBA failed to carry its burden of showing that the HAC had improperly weighed the safety of the proposed tenants and the town’s firefighters as a local concern. Lastly, the HAC correctly determined that the proposed project’s adverse fiscal impact upon the town was due to the inadequacy of existing town services or infrastructure, rather than due to any unusual topographical, environmental or other physical circumstances of the project.

3. VARIANCES

Grady v. Zoning Board of Appeals of Peabody, 465 Mass. 725 (2013).

A variance not recorded with the registry of deeds within one year after the variance had been granted did not take effect and had not lapsed, at least under the unusual circumstances of this case. Those circumstances included the facts that the variance

holders “had been issued a building permit and had taken substantial steps within the one-year period in reliance upon an otherwise valid variance; there was no apparent harm to any interested parties, including the plaintiff, other than any harm resulting from the original, uncontested grant of the variance; and the variance was recorded less than two weeks after the expiration of the one-year period.”

4. TAX TAKINGS

Town of Lancaster v. Owners Unknown, 2013 WL 2096397 (Land Court 2013).

Where various would-be owners of a 14.5 acre parcel of land in Lancaster sought to redeem the parcel by paying all overdue taxes and associated charges, the Land Court held that, on the record before the Court, the would-be owners had failed to show an ownership interest in the parcel sufficient to vest them with the right to redeem. Thus, two special permits issued by Lancaster to one of the putative owners for earth removal on the parcel was ruled to be a mere license, not a property interest. A claim against the town for adverse possession of the parcel was also denied as being insufficiently supported by an affidavit from one of the putative owners.

5. QUIET TITLE AND ADVERSE POSSESSION

Ryder v. Town of Nahant, 83 Mass. App. Ct. 1133 (2013)(unpublished).

Where approximately fifty feet of a ten-foot-wide strip of land abutting the plaintiff’s property was encumbered by the plaintiff’s barn, the Appeals Court denied his claim that he held title to the strip, as the town of Nahant had taken the land in 1899 for a public way. Although the public way had not been paved by the town, the town had spent money for road work and a sewer extension to the road including the disputed strip. Further, the plaintiff did not adversely possess the land because Nahant was holding the land for public purposes.

6. SUBDIVISION CONTROL LAW

Fox Gate, LLC v. Millbury Zoning Board of Appeals, 83 Mass. App. Ct. 1124 (2013)(unpublished).

The Millbury Planning Board had obtained a subdivision bond from the prior developer of a residential subdivision. Upon foreclosure, a subsequent purchaser of the subdivision notified the Planning Board that it, the new developer, did not intend to pay for the construction of the ways and infrastructure and that the Board should instead rely on the existing bond for those purposes. When the prior owner’s bond surety advised the Board that the bond was non-assignable and that the bond did not secure the new developer’s obligations to complete the ways and infrastructure, the Board acted within its power to deem the prior developer’s bond unavailable and insufficient as security for the completion of the ways and infrastructure. Thus, the Appeals Court ruled that the Millbury building inspector, having been informed by the Planning Board that there was no bond on the subdivision, acted properly under the subdivision control law in denying the new developer a building permit for one of the subdivision lots.

7. ALLEGED DEPRIVATIONS OF LANDOWNERS' RIGHT TO DEVELOP / USE THEIR LAND

Koontz v. St. Johns River Water Management Dist., ___ U.S. ___, 133 S. Ct. 2586 (2013).

The developer sought to develop the northern 3.7 acres of his property for a shopping center. Under Florida law, the developer needed land use permits from the St. Johns River Water Management District, since the proposed development would have an impact on wetlands. In mitigation, the developer offered to the District a conservation easement on the southern approximately 11 acres of his property. The District declined the offer as inadequate, and advised the developer it would approve his proposal only if he either agreed to reduce the size of his development to 1 acre and place a conservation easement on the remaining 13.9 acres, or agreed to expend money and make improvements to District-owned land several miles away. When the developer refused to accede to the District's mitigation demand, the District denied the permits. Then, claiming that the District's mitigation demands were excessive in light of the environmental impacts his proposed development would have caused, the developer sued the District as having violated his Fifth Amendment right to just compensation for property taken by the government when a land owner applies for a land-use permit. The U.S. Supreme Court had previously held in Nollan v. California Coastal Comm'n, 483 U.S. 825 (1987), and Dolan v. City of Tigard, 512 U.S. 374 (1994), that a governmental unit may not condition the approval of a land-use permit on the owner's relinquishment of a portion of his or her property unless there is a "nexus" and "rough proportionality" between the government's demand and the social costs of the proposed land use. In Koontz, the Court agreed with the developer, holding in a 5-to-4 opinion "that the government's demand for property from a land-use permit applicant must satisfy the ["nexus" and "rough proportionality"] requirements of Nollan and Dolan even when the government denies the permit and even when its demand is for money."

Brockton Power LLC v. City of Brockton, 2013 WL 2407220 (D. Mass. 2013).

The plaintiffs were developers of land in the city of Brockton who wished to build an electric power generating facility there. They sued the city, its city council and planning board, and various present or former city officials, claiming that the defendants had violated federal and state law based on an alleged conspiracy to systematically deprive the plaintiffs of their right to develop their land, among other constitutional rights. The U.S. District Court denied motions brought by the Brockton city council and the various city officials. The Court ruled that, at the early stage of the case, the plaintiffs had adequately alleged claims for violations of procedural due process, substantive due process and equal protection, as well as claims for tortious interference with advantageous relations and civil conspiracy. The Court also denied the defenses that the present or former city officials were entitled to absolute immunity (legislative, quasi-judicial or First Amendment) or to qualified immunity.

Tomaselli v. Beaulieu, 2013 WL 4780085 (D. Mass. 2013).

The plaintiffs were owners of property in the town of Salisbury. They opened a restaurant on their property in 1992. In 1994, the town's tax collector informed them that

the town was withholding their business licenses for non-payment of taxes, resulting in the shutting down of their restaurant. The taxes were for a betterment fee assessment and sewer usage fees, which the plaintiffs had been fighting from 1994 to the present. The U.S. District Court granted motions to dismiss brought by the town and various present or former city officials. The Court dismissed all claims alleging violations of both federal and state law including the Massachusetts Civil Rights Act, G.L. c. 93A, conversion, defamation, intentional infliction of emotional distress, abuse of process, invasion of privacy, intentional interference with advantageous business relations, misrepresentation and negligent misrepresentation.

Wentworth Precious Metals, LLC v. City of Everett, 2013 WL 441094 (D. Mass. 2013).

The plaintiff was a scrap metal recycling company holding permits from the city of Everett for operation of a facility for scrap metal, junk and recycling. The plaintiff claimed that it was singled out for unfavorable treatment because the LLC's manager refused to endorse or donate enough during and after the successful election campaign of the city's mayor; in particular, the plaintiff alleged that the Everett building inspector, at the direction of the mayor, brought zoning enforcement actions against the plaintiff and opposed renewal of the plaintiff's licenses to operate the scrap metal facility as well as an auto sales business. The named defendants were the city, the mayor, the code enforcement officer and the building inspector, all of whom moved for summary judgment against the various claims brought against them. They succeeded in having the Court dismiss the plaintiff's claims under the Massachusetts Civil Rights Act, for civil conspiracy and for violation of substantive due process. However, the Court declined to dismiss the plaintiff's claims for political retaliation and for selective enforcement; those claims were to be resolved at trial.

I. OTHER GENERAL MUNICIPAL

Easthampton Savings Bank v. Springfield, 736 F.3d 46 (1st Cir. 2013).

In Easthampton Savings Bank, the First Circuit considered the validity of two local ordinances by the City of Springfield relating to foreclosures which were challenged by six banks. These ordinances are retroactive to apply to all mortgages that existed on the ordinances' December 13, 2011 effective date. The federal district court had granted summary judgment to the City, deciding that the City's ordinances were valid, and the banks appealed. Two issues have been certified to the Supreme Judicial Court by the First Circuit. First, whether the City's ordinances are preempted in whole or in part by Massachusetts state law. Second, whether the "Foreclosure Ordinance," which requires the owner of a property in the foreclosure process to provide certain property maintenance and security and a \$10,000 cash bond to the City, violates the Massachusetts Constitution by imposing an unlawful tax. The First Circuit has retained jurisdiction over whether the City's Ordinances violate the Contracts Clause of the United States Constitution. The case has not yet been scheduled for argument before the Supreme Judicial Court.

City of Worcester v. College Hill Properties, LLC, 465 Mass. 134 (2013).

The SJC vacated injunctions and contempt judgments entered against property owners in a civil enforcement action that alleged the owners violated lodging house statutes by allowing more than three unrelated adults to reside in rental dwelling unit. Reviewing the legislative purpose behind the lodging house statutes and separate regulatory schemes for “rooming units” and “dwelling units,” the Court held that apartments are not “lodgings” for purposes of these statutes.

Retirement Board of Maynard v. Tyler, 83 Mass. App. Ct. 109 (2013).

The Appeals Court reversed a trial court decision in favor of a town retirement board, determining that the town retirement board’s suspension of former firefighter’s pension was not warranted where his criminal activity (the employee had molested a fellow firefighter’s son) did not constitute a “direct link” to his position at the town.

Durkin v. Boston Retirement Board, 83 Mass. App. Ct. 116 (2013).

The Appeals Court affirmed a retirement board decision to deprive a city police officer of his pension where his actions in assaulting a fellow police officer were directly linked to his position as a police officer, supporting the decision to deprive him of his pension.

McShea v. Town of Westford, 2013 WL 6838699 (Mass. App. Ct. 2013)(unpublished).

The plaintiff was a Westford police officer who received a disability retirement in 2000 due to an on-the-job accident. In December 2001, she signed a memorandum of agreement also signed by her police union representative and the Westford town manager. The MOA included a provision that obligated the town to indemnify her into the future for her medical expenses that were related to her retirement disability and that were incurred subsequent to November 13, 2001, when the town had voted to accept the post-retirement indemnification provisions of MGL c. 41, § 100B. She soon submitted expenses for massage therapists, chiropractors, and an annual membership in the Boston Sports Club. After the town convened a § 100B panel to review her medical expenses, the town denied her claim, leading her to sue the town for alleged breach of the MOA. The Appeals Court ruled that the MOA was not enforceable because it had not been signed by the town’s board of selectmen, as required by the Westford town charter.


III. Pending Legislation

A. MARIJUANA BILLS

1. HB1515 - An Act public possession of marijuana in a municipality

Amends Chapter 94C, Section 32L (which makes possession of an ounce or less of marijuana a civil not a criminal offense) so that it does not apply to persons found in possession of marijuana within a school, school yard, playground, public library, municipal owned land, municipal owned building, or municipal owned vehicle.


Sponsor Rep. Murphy, James (D)

Progress  Referred to Joint Committee on the Judiciary

2. HB1612 - An Act relative to the humanitarian use of marijuana

Amends the Act for The Humanitarian Medical Use of Marijuana to add the category of “laboratory agents” to those protected from punishment under state law for the medical use of marijuana


Sponsor Rep. Scibak, John (D)

Progress  Referred to Joint Committee on the Judiciary

3. HB1663 - An Act to affecting municipal rights regarding medical marijuana

Notwithstanding any law or special law to the contrary, cities, towns, districts, school districts or regional school districts may regulate, including prohibiting, the use of marijuana, including medical use of marijuana used for medicinal purposes. Prohibition of the use of or smoking marijuana, including medical use of marijuana on public property, shall not be deemed to be discrimination due to a medical condition under the laws of the commonwealth.


Sponsor Rep. Turner, Cleon (D)

Progress  Referred to Joint Committee on the Judiciary

4. HB1664 - An Act affecting landlords' rights regarding medical marijuana

Notwithstanding any law or special law to the contrary, residential and commercial landlords may regulate smoking of marijuana used for medicinal purposes on or in property that such landlord owns or controls. Prohibition of the use of or smoking marijuana, including medical use of marijuana on rental property, shall not be deemed to be discrimination due to a medical condition under the laws of the commonwealth.


Sponsor Rep. Turner, Cleon (D)

Progress  Referred to Joint Committee on the Judiciary

5. HB1917 - An Act relative to the regulation and oversight of medical marijuana

Amends G.L. c. 94C (Controlled Substances Act), Section 18, to authorize a prescription for medical marijuana to be issued by a physician who is licensed to practice medicine and registered in a contiguous state wherein he resides or practices, if required, and registered under federal law to write prescriptions. Also requires that no less than one million dollars of all fees paid to the Commonwealth by licensed cultivators and licensed distributors of medical marijuana be diverted to the Executive Office of Safety and Security for the purposes of reinstating and funding the Drug Diversion Unit of the Massachusetts State Police.

Sponsor Rep. Collins, Nicholas (D)

Progress  Referred to
Committee on Public Health

6. HB2039 - An Act establishing zoning standards for medical marijuana dispensaries

Increases the buffer distance between RMDs and certain uses from 500 feet (currently in the DPH regulations) to 1000 feet. Also expands the buffer requirements to include not only a school etc (currently in DPH regulations) but also a place of worship, civic center, drug free zone or non smoking zones as set by a municipality or the state, and a residential zone or residential use (unless the municipality adopts an ordinance or bylaw making the residential buffer zone requirement more or less restrictive).


Sponsor Rep. Murphy, James (D)

Progress  Referred to Committee on Public Health

7. HB2102 - An Act to affecting property owners and employers rights regarding medical marijuana

Notwithstanding any law or special law to the contrary, any person or entity that has regulated smoking on private property including business property open to the public, owned or controlled by such person or entity shall be deemed to have prohibited smoking of any marijuana as defined in Chapter 94 of the general laws, including medical marijuana, unless such person or entity affirmatively permits smoking of medical marijuana on their properties. Prohibition of smoking marijuana, including medical marijuana on private property, shall not be deemed to be discrimination due to a medical condition under the laws of the commonwealth.


Sponsor Rep. Turner, Cleon (D)

Progress  Referred to Joint Committee on the Judiciary

8. SB823 - An Act protecting the public from driving under the influence of marijuana

Amends Chapter 94C, Section 32L (which makes possession of an ounce or less of marijuana a civil not a criminal offense) so that it does not affect a police officer's determination that the odor of marijuana in a vehicle provides a police officer with probable cause to believe criminal activity is underway.

Sponsor Sen. Tarr, Bruce (R)


Progress  Referred to Joint Committee on the Judiciary

9. SB923 - An Act protecting minors from the harmful effects of marihuana

Amends Chapter 94C, Section 32L (which makes possession of an ounce or less of marijuana a civil not a criminal offense) so that it pertains to those age 21 or older (rather than 18 or older as is currently in statute). Also requires that any civil penalties imposed under the provisions of "An

Act Establishing A Sensible State Marihuana Policy” shall inure to the city or town where the offense occurred.

Sponsor Sen. Tarr, Bruce (R)

Progress  Referred to Committee on Mental Health and Substance Abuse

10. SB950 - An Act relative to the zoning of marijuana treatment centers

Amends Chapter 40A by adding a new Section 18 allowing for special permits for medical marijuana treatment centers.

Sponsor Sen. Hedlund, Robert (R)

Progress  Referred to Committee on Municipalities and Regional Government

11. SB1030 - An Act relative to the implementation date of a medical marijuana program

Changes the effective date of An Act for the Humanitarian Medical Use of Marijuana from January 1, 2013 to September 1, 2013.

Sponsor Sen. Keenan, John (D)

Progress  Referred to Committee on Public Health

12. SB1031 - An Act to establish the Massachusetts Medical Marijuana program

Extensive amendments to the Act for the Humanitarian Medical Use of Marijuana including: the requirement that permission for medical marijuana be the result of a bona fide physician-patient relationship (as defined in the proposed statute); further defines debilitating medical condition; and imposes separate requirements for cultivators and dispensaries.

Sponsor Sen. Keenan, John (D)


Progress  Referred to Committee on Public Health

B. GOVERNMENT/MUNICIPAL RELATED BILLS

1. HB63 - Proposal for a legislative amendment to the Constitution relative to voting by qualified voters of the Commonwealth

Proposes a Constitutional amendment authorizing the Legislature to provide by law for voting by qualified voters who, at the time of the election, are 1) absent from the city or town of which they are inhabitants, or 2) are unable by reason of physical disability to cast their votes in person at the polling places, or 3) hold religious beliefs in conflict with the act of voting on the day on which such an election is to be held, or 4) might otherwise choose to vote prior to the date of the election.

Sponsor Rep. Straus, William (D)

Progress  Referred to Committee on Election Laws; 5/6/13 Called for consideration in the joint session; 10/9/13 Joint session held and recessed to Wednesday, March 12, 2014

2. HB1188 - An Act to provide landowner's title protection (and SB700 sponsored by Sen. Cynthia Creem)

Any person having an interest in land, who has an unbroken chain of title to such interest for 50 years or more, shall be deemed to have a good and clear record and marketable title to that interest, subject only to certain provisions.

Sponsor Rep. Balser, Ruth (D)

Progress  Referred to Committee on the Judiciary (Hearing already occurred)

3. HB3788 - An Act relative to election laws

Consolidation of several proposed bills regarding election law reforms; requires city and town clerks to attend annual training on election laws; allows for on-line voter registration; allows for early voting for presidential primaries or presidential elections with a valid photo id.

Sponsor None


Progress  Engrossed by the House November 27, 2013 and referred to Senate Ways and means Committee December 5, 2013.

C. ZONING AND LAND USE REFORM

1. HB1859 - An Act promoting the planning and development of sustainable communities

Proposes extensive revisions to Chapter 40A (zoning Act) and Chapter 41, and a new Chapters 40X (“Consolidated Permitting”) and Chapter 40Y (“Planning Ahead for Growth Act”), along with other land use related amendments

Sponsor Rep. Kulik, Stephen (D) and Daniel A. Wolf

Progress  Referred to Committee on Municipalities and Regional Government (hearing occurred May 14, 2013 and report expected soon)