



Local Legal Lens: Insights on Municipal Law

Room 107BC



CONNECT **351**





Municipal Empowerment Act

Presented by Steven A. Torres for
the Massachusetts Municipal
Lawyers Association

CONNECT 



Municipal Empowerment Act (MEA)

- Re-filed in 2025: The bill was re-introduced in January 2025 with expanded provisions.
- Committee Hearings: Joint Committees on Public Service, Municipalities, and Revenue held hearings in late 2025, with recommendations now pending.
- New Local Options: Includes new ways for towns to raise revenue, like local-option taxes.
- Tax Relief: Expands property tax exemptions for seniors.
- Procurement Reforms: Aims to streamline how towns buy goods and services.

Municipal Empowerment Act - Continued

- MEA is intended to increase municipal flexibility, reduce administrative burdens, strengthen municipal finances, address municipal workforce challenges, and improve the efficiency of local operations.
- Combination of general reforms and local options
- Seeks to continue some Covid-era practices that worked
- Consistent with Massachusetts Home Rule Principles & State Constitution

MEA in the Joint Committee on Public Service

The Public Service Committee held the first hearing on Sept. 22, and focused on two provisions of the bill:

- To allow municipalities to apply for a critical shortage exemption from certain post-retirement limitations on employment for specific job titles and classes for a period of three years
- To establish an Other Post-Employment Benefits Commission to address unfunded liabilities from non-pension employee benefits

MEA in the Joint Committee on Municipalities and Regional Government

Key provisions include:

- Making the current remote and hybrid meeting flexibilities for public meetings permanent
- Reforming procurement procedures and regulations, including increasing the threshold for all municipal purchases under Chapter 30B, streamlining cooperative purchasing agreements, and including snow-hauling services with snowplowing services as exempt from 30B rules
- Updating borrowing rules for school projects by extending the borrowing term to 40 years
- Establishing enforcement mechanisms for prohibitions on doubled-up utility poles

MEA in the Revenue Committee

Focused on the local-option tax provisions in the bill which include:

- Extending property tax exemptions for seniors
- Increasing the maximum local-option meals tax from 0.75% to 1%
- Increasing the local-option tax on hotels, motels and other short-term rentals from 6% to 7% (and 6.5% to 7.5% in Boston)
- Allowing a surcharge to assessed motor vehicle excise taxes by up to 5%



State and Federal Case Law Review

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THE ATTORNEY GENERAL v. TOWN OF MILTON, SJC-13580

- The MBTA Communities Act, signed into law in January 2021, requires 177 cities and towns that host or are adjacent to MBTA service to create at least one district for multi-family housing near public transportation, without age restrictions, to support family housing and economic growth.
- “The act creates an affirmative duty for each MBTA community to have a zoning bylaw that allows for at least one district of reasonable size where multifamily housing is permitted as of right....”
- Every MBTA Community must have at least one zoning district of reasonable size where multifamily development is permitted by right.
- The Attorney General may enforce 3A and seek injunctive or declaratory relief.
- DHLC must follow the procedural requirements of the Administrative Procedures Act and re-issue guidelines. While the current guidelines are unenforceable, we expect the administration to act quickly to implement the Court’s decision.

TROY CURRENCE & others v. A.D. MAKEPEACE COMPANY & others.

- A complaint brought by ten Massachusetts residents seeking, under G. L. c. 214, § 7A (§ 7A), to enjoin certain defendants from continuing alleged commercial mining operations at sites in the town of Carver in violation of the town's earth removal bylaw
- The court held that the major purpose of Carver's earth removal bylaw is to protect against damage to the environment under G.L. c. 214, § 7A
- The court held that the Earth Removal Committee is not a proper defendant under § 7A as it is not "the person causing" environmental damage
- § 7A did not encompass their claim against the municipality's earth removal committee for failing to enforce the bylaw, which was properly dismissed
- A Superior Court judge properly dismissed a claim seeking relief in the nature of mandamus under G. L. c. 249, where the plaintiffs sought to compel a municipality's earth removal committee to perform a discretionary act, i.e., to enforce an earth removal bylaw and to issue penalties

BAK Realty, LLC v. Fitchburg, 495 Mass. 587

- A nonprofit organization, Crossing Over, Inc., operated a sober house in a three-family house located in a residential zoning district in Fitchburg. that housed 13 unrelated residents
- The facility exceeded the maximum of 4 unrelated persons who could be considered a "family" under Fitchburg's zoning code
- The Fitchburg zoning board determined that the sober house did not qualify as a three-family dwelling under the zoning code and was instead operating as an impermissible "boarding house" in the residential district
- At issue is whether the city of Fitchburg's zoning ordinances violate the anti-disability discrimination provision of the Zoning Act, G. L. c. 40A, § 3,
- Court held MGL Ch 40A sec 3. fourth par., entitles disabled people to be treated the same as nondisabled people are treated under local ordinances
- disabled people living in a congregate living arrangement meets the definition of “family” under the local regulations, then it is entitled to be treated as any similar-sized group of nondisabled unrelated people is treated under the local regulations

Stone v. Zoning Board of Appeals of Northborough Supreme Judicial Court

- Cable Matters sought to build a 20,000 square foot warehouse in an industrial zone and the property was also within the town's groundwater protection overlay district, which does not permit warehouses, requiring Cable Matters to obtain a use variance
- The zoning board granted the variance, finding the proposed warehouse would pose no risk to groundwater. • The planning board also granted a special permit with numerous conditions limiting the warehouse's operations. • The plaintiffs, who live across the street from the proposed warehouse, appealed the zoning board's decision
- When assessing a plaintiff's standing to challenge a zoning board's decision, the court should consider only the actual proposed use of the property as represented by the applicant and approved by the zoning board, not potential future uses
- A plaintiff's standing to challenge a zoning board's decision must be based on evidence of actual harm to a legally protected interest, not speculation or conjecture about potential impacts.
- When evaluating standing in a zoning appeal, the court must consider the conditions imposed on the project by the special permit that limit the proposed use

SUNPIN ENERGY SERVICES, LLC, & another v. ZONING BOARD OF APPEALS OF PETERSHAM. 105 Mass. App. Ct. 641

- Sunpin Energy Services sought to build a large-scale ground-mounted solar energy system on rural private property in Petersham which would require clearing vegetation and trees on approximately 14 acres of a 24-acre parcel
- The property was located outside the town's Solar Electric Overlay District (SEOD), requiring a special permit from the zoning board of appeals a three-member board
- One member voted no, resulting in denial. • The dissenting member acknowledged the project satisfied site plan requirements but opposed it primarily because it would require significant tree cutting
- A special permit may not be denied merely because the board would prefer a different use of the land or no use at all, particularly for uses protected by G.L. c. 40A, § 3
- Board cannot deny a permit based on its preferences or state "guidance" that has not been adopted by the Legislature or the town
- 40A, § 3, prohibits zoning ordinances or bylaws from prohibiting or unreasonably regulating solar energy systems except where necessary to protect public health, safety, or welfare
- G.L. c. 40A, § 9- requires unanimous vote for three-member boards to grant special permits

SUSANNAH KAY & another v. TOWN OF CONCORD

- The plaintiffs, Susannah Kay and Brooks S. Read, filed a public records request seeking unredacted versions of 14 emails between the town manager, select board members, and town employees regarding the Estabrook Trail
- The town refused to disclose the unredacted emails, citing attorney-client privilege and work product doctrine. (The contested emails were initially produced with redactions in a prior lawsuit regarding the public access to the Estabrook Trail)
- Communications between a client and representatives of the client made for the purpose of obtaining legal services can be protected by the attorney-client privilege, even if no attorney is directly involved in the communication
- The work product doctrine protects the single email between public works employees, as it reveals the mental impressions of the town's counsel
- As the town's agents, the town manager and select board members can have privileged communications related to seeking legal advice from town counsel. Four emails satisfied the elements of the attorney-client privilege by revealing legal advice from, or intent to request advice from, town counsel

SPRINGFIELD WATER AND SEWER COMMISSION & others v. DEPARTMENT OF ENVIRONMENTAL PROTECTION

- Sunpin Energy Services sought to build a large-scale ground-mounted solar energy system on rural private property in Petersham which would require clearing vegetation and trees on approximately 14 acres of a 24-acre parcel
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CITY OF SOMERVILLE v. SUPERVISOR OF PUBLIC RECORDS OF THE COMMONWEALTH

- Parking spaces in Somerville are limited, and permits are issued according to municipal rules and regulations
- The Boston Globe requested residential parking permit data including permit holders' names and addresses from the City of Somerville. The city refused to disclose names and addresses, citing statutory and privacy exemptions under public records law
- The supervisor of public records ordered the city to produce all requested records. Parking spaces in Somerville are limited, and permits are issued according to municipal rules and regulations
- The Driver's Privacy Protection Act only applies to state motor vehicle departments, not municipalities
- Names and addresses alone possess minimal privacy interest and are already available in public street lists.
- The public has substantial interest in monitoring how valuable parking permits are allocated. Exemptions to public records law must be construed narrowly to favor disclosure.
- The appellate court affirmed the Superior Court's amended judgment requiring the City of Somerville to disclose the names and addresses of residential parking permit holders while allowing redaction of vehicle descriptions

ALAN SLISKI v. BOARD OF ASSESSORS OF LINCOLN. *; 106
Mass. App. Ct. 1106

- Alan Sliski (taxpayer) owns two parcels of real estate located on the same road in the town of Lincoln appeals from the decision of the Appellate Tax Board affirming the town's Board of Assessors') denials of applications for abatement of real property
- It is well established that the burden of persuasion is on the taxpayer to show that the property was overvalued
- The ATB is entitled to "presume that the valuation made by the assessors was valid unless the taxpayers sustained the burden of proving the contrary."
- Assuming that the taxpayer satisfies the burden of presenting sufficiently persuasive evidence to call the assessors' valuation into question, then "a decision of the board in favor of the assessors must be supported by substantial evidence."
- If the taxpayer fails to offer persuasive evidence of overvaluation, a conclusion [by the board] that a presumptively valid assessment must stand is . . . not such an affirmative finding as to require substantial evidence

Key Take-Aways

- **Zoning & Permits:** Understand Basis upon Which you can Condition or Deny Permits/Variations/Licenses
 - Definitions
 - Checklists / Compliance Matrices
- **Public Records:** Communications may be Privileged, even without cc to the Atty – Understand and Maximize your Protections
- **Agency Review, Valuation, Takings** – Comparative and shifting burdens and burdens of proof – Paper your case for the Lawyers
- **MBTA Zoning** – What can I say, Comply: Zoning is delegated authority

CMAR RFP Requirement Compliance Checklist

CMAR Requirement	RFP Section/Contract Section
the time and date for receipt of responses to the RFP, the address of the office to which the responses are to be delivered, and the timeframe in which the public agency will respond to said responses	RFP 1.1
a general description of the project including preliminary concept designs and key factors important to the final selection	RFP 1.2
the evaluation procedure and criteria pursuant to subsection, including any rating system	RFP Section 5
a specific description of the scope of services expected of the selected construction management at risk firm during both the design, pre-construction and construction phases of the project	RFP 2.4
a general description of the anticipated schedule and estimated construction cost for the building project	RFP 2.1/2.2
a listing of the project team including the public agency, the designer, and the public agency's owner's project manager	RFP Cover Page
the criteria for the selection of the construction management at risk firm, including minimum experience, requirements for presentations, and the schedule for the selection process	RFP Section 5
a prohibition against any unauthorized communication or contact with the public agency outside of official pre-proposal meetings	RFP 1.10
Date, time and place for submission	RFP 1.1
Clear description of submission requirements, including separate price and technical components (below)	1.1/1.11/1.12
detailed information concerning the project scope including any preliminary design information, geotechnical reports, existing condition surveys and specifications	RFP 2.4
specific information on the project schedule including design deliverables, site availability and occupancy expectations	RFP 2.1/2.4
a detailed description of the scope of work and deliverables expected from the construction management at risk firm during the preconstruction phase	RFP 2.4
the minority business enterprise and women business enterprise inclusion goals and workforce inclusion goals for the building project	RFP 1.20
a clear description of the communication guidelines to be followed during the procurement process including any measures to assure that the selection process will be open and fair	RFP 1.5/1.10
the form of contract and general and supplemental conditions including any incentive provisions allowable under this statute and any damages for delay provisions	CM Agreement, General Conditions, Article VI(3); General Conditions and CM Agreement Generally
the budget for the project	RFP 2.2



Federal Funding: Considerations for Municipalities

Presented by Sam Dinning for the
Massachusetts Municipal Lawyers
Association



Federal Funding Actions

Program Terminations

Program Suspensions

Grant Terms & Conditions

Individual Grant Terminations

Investigations

Application Criteria

Application Denials

Investigations

- **False Claims Act**

[DOJ Civil Rights Fraud Initiative](#)

[DOJ Unlawful Discrimination Memo](#)

- **Other Authorities**

Title VII ([Austin](#), [Chicago](#))

Fair Housing Act ([Boston](#))

Grant Conditions (1 of 3)

- **“Gender Ideology”**

- **False Claims Act**

- **DEI**

- **Reproductive Rights**

- The recipient or applicant shall not use grant funds to promote “gender ideology,” as defined in Executive Order 14168, Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government;
- The recipient or applicant agrees that its compliance in all respects with all applicable Federal antidiscrimination laws is material to the U.S. Government’s payment decisions for purposes of section 3729(b)(4) of title 31, United States Code;
- The recipient or applicant certifies that it does not operate any programs that violate any applicable Federal anti-discrimination laws, including Title VI of the Civil Rights Act of 1964;
- The recipient or applicant shall not use any Grant Funds to fund or promote elective abortions, as required by Executive Order 14182, Enforcing the Hyde Amendment;

Grant Conditions (2 of 3)

- **PRWORA**

- **“Facilitat[ing]” Immigration**

- **Immigration Status Verification**

- The recipient or applicant must administer its grant in accordance with all applicable immigration restrictions and requirements, including the eligibility and verification requirements that apply under title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended (8 U.S.C. 1601-1646) (“PRWORA”) and any applicable requirements that HUD, the Attorney General, or the U.S. Center for Immigration Services [sic] may establish from time to time to comply with PRWORA, Executive Order 14218, or other Executive Orders or immigration laws;
- No state or unit of general local government that receives funding under this grant may use that funding in a manner that by design or effect facilitates the subsidization or promotion of illegal immigration or abets policies that seek to shield illegal aliens from deportation;
- Subject to the exceptions provided by PRWORA, the recipient or applicant must use SAVE, or an equivalent verification system approved by the Federal government, to prevent any Federal public benefit from being provided to an ineligible alien who entered the United States illegally or is otherwise unlawfully present in the United States;

Grant Conditions (3 of 3)

- **Immigration Enforcement Cooperation**

- **Executive Orders**

IX. Communication and Cooperation with the Department of Homeland Security and Immigration Officials

(1) All recipients and other recipients of funds under this award must agree that they will comply with the following requirements related to coordination and cooperation with the Department of Homeland Security and immigration officials:

- The recipient or applicant agrees that use of Grant Funds and its operation of projects assisted with Grant Funds are governed by all Executive Orders.

Municipal Litigation

King County v. Turner, 25-cv-00814 (W.D. Wash.) – HUD, DOT, HHS Conditions

Chicago v. DHS, 25-cv-05462 (N.D. Ill.) – DHS Securing the Cities Grant

San Francisco v. Trump, 25-cv-01350 (N.D. Cal.) – Immigration EOs

Chicago v. Noem, 25-cv-12765 (N.D. Ill.) – DHS Conditions

NCN v. McMahon, 25-cv-13242 (D. Mass.) – PSLF Regulations

NAEH v. HUD, 25-cv-00636 (D.R.I.) – HUD CoC NOFO

Litigation Tracking

[Just Security Litigation Tracker](#)

Caveat: Many trackers have become quickly outdated given the volume of litigation. Counsel should verify the status and accuracy of any case summaries.



Immigration Enforcement in Public buildings

Presented by Batool Raza for the
Massachusetts Municipal Lawyers
Association



Protocols and Procedures for interaction with Immigration Officials

Purpose and Core Principles:

- Ensure staff safety while respecting the law
- Protect residents, clients, and confidential information
 - Officials need judicial warrant for access to individual or PHI – refer to appropriate party – legal counsel, leadership, etc.
- Respond calmly, professionally, and without physical interference
 - Remind staff to not physically interfere with federal agents – risk arrest
- Follow clear protocols and document events accurately



Initial Contact with Immigration Agents



REMAIN CALM AND
PROFESSIONAL AT ALL TIMES



DO NOT INTERFERE PHYSICALLY OR
ATTEMPT TO BLOCK AGENTS



USE YOUR WORDS ONLY TO
PREVENT ACCESS, E.G., '*THIS IS A
PRIVATE AREA. PLEASE WAIT
HERE.*'



IMMEDIATELY NOTIFY A
SUPERVISOR OR DESIGNATED
LEADERSHIP CONTACT

Sample steps staff may take with Immigration Agents

1

Ask the agent to wait outside (or in a public space) while you contact legal counsel or other appropriate point person;

2

Inform the agent that you are not attempting to obstruct their actions, but that you are not authorized to respond to the request and need to contact the appropriate person before you can provide access;

3

Ask the agent if they have a judicial warrant or court order, and if so, ask for a copy of the document; and

4

Ask the agent for their name, identification number, and the name of the agency with which they are affiliated.

Public vs. Private Areas in Public Buildings

- Public areas: lobbies, cafeterias, or reception areas generally open to the public
- Private areas: offices, staff-only rooms, residential rooms, treatment areas
- Private areas should be clearly marked with signage (e.g., 'Staff Only' or 'Authorized Personnel Only')
- Immigration agents may not enter private areas without proper legal authority (e.g., a judicial warrant)
 - Determination of judicial warrant should be referred to legal counsel

SAMPLE SIGN



What kind of warrants are valid for release of information, or person

A designated staff member, like legal counsel should review the document presented by the immigration agent and ensure:



IS A VALID JUDICIAL WARRANT;



IS SIGNED BY A JUDGE OR
MAGISTRATE JUDGE;



STATES THE ADDRESS OF THE
PREMISES TO BE SEARCHED;



IF INDICATED, IS SOUGHT TO BE
EXECUTED DURING THE TIME
SPECIFIED ON THE WARRANT.



ICE Administrative Removal Warrants (Form I-200) or Arrest Warrants (Form I-205) warrants do not require municipalities or other organizations to grant ICE officers access to non-public areas.



Federal Arrest Warrants (Form AO 442) or Search and Seizure Warrants (Form AO 93) are issued by a federal court judge or magistrate judge. Prompt compliance with these warrants is usually required.

What to Do — and What Not to Do

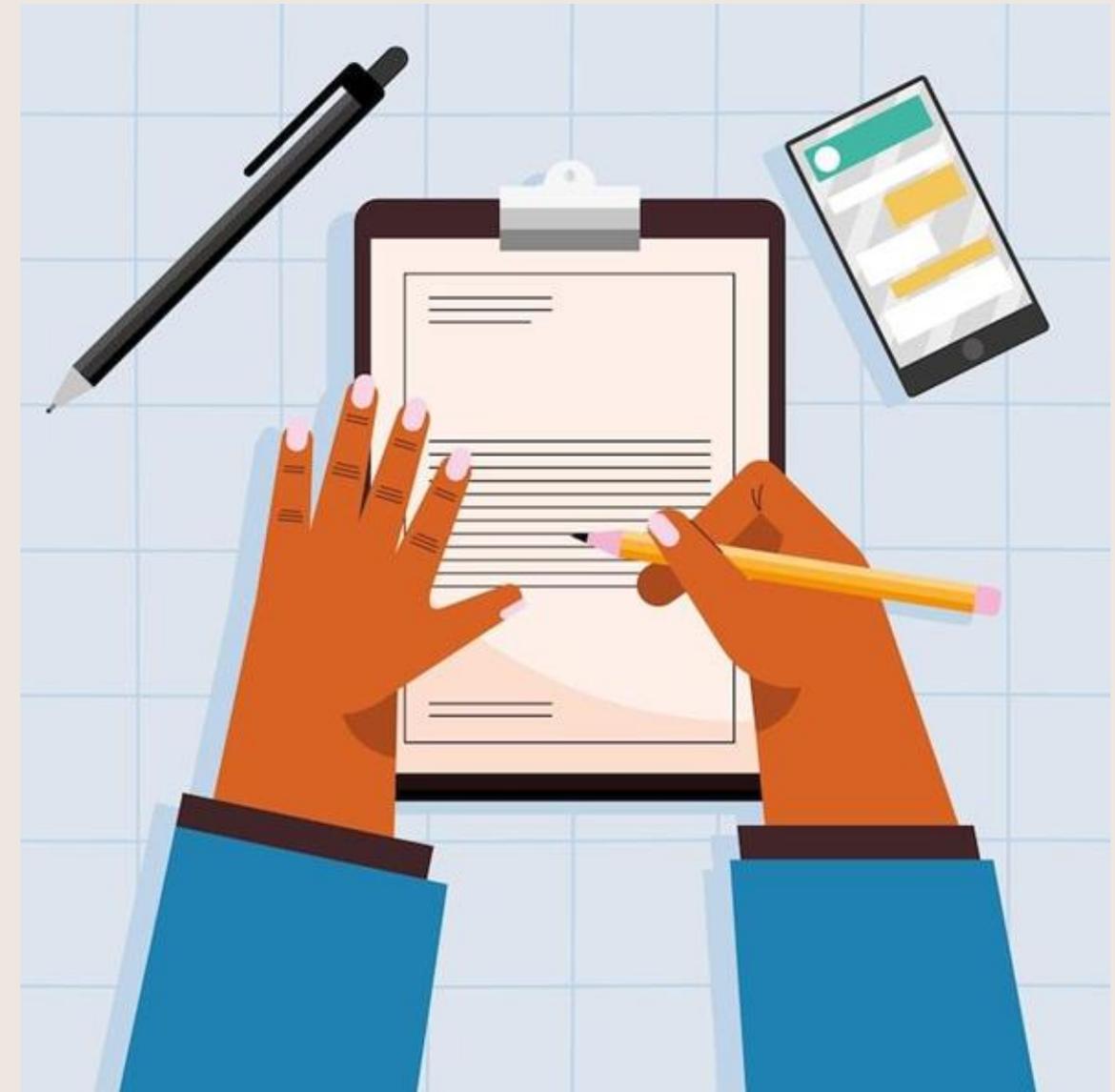
- ✓ DO: Ask agents to remain in public areas while leadership is contacted
- ✓ DO: Observe carefully and remember the sequence of events, or phrases used
- ✓ DO: Ask agents' names and agency association, e.g. ICE, FBI, Federal Marshal, etc.
- ⊘ DO NOT: Physically interfere with agents
- ⊘ DO NOT: Provide documents, information, or access unless authorized by leadership or legal counsel
- ⊘ DO NOT: Record them with your phones

Remember: Municipal employees, including members of local law enforcement agencies, cannot be compelled by the federal government to carry out federal civil immigration enforcement.



Documenting the interaction

- Draft an incident report as soon as possible while details are fresh
 - *Inform supervisors to have staff draft report before end of day/shift*
- Include: time, location, who was present, what was said, and actions taken
 - *The more specific the report is the better*
- Stick to factual observations — avoid speculation or opinions
 - *Remind staff these records are public records*
- Submit the report promptly to leadership per agency protocol
 - *Entity should maintain such incident reports in the event of future litigation or request for records*



Other Ways to Prepare and Support your staff

01

Hold all-staff town halls to answer questions or assuage anxieties among vulnerable staff (non-US citizens)

02

Share KYR trainings or materials from reliable resources: ACLU, MIRA, AILA, etc.

03

Develop an internal reference guide with information of reliable immigration resources: MOIA, ACLU, MIRA, PAIR, NLC

04

Remain up-to-date with current changes and share information with staff as it becomes available – anxieties are high

05

Ensure I-9 documentation is accurate for staff

Thank You

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