



Massachusetts Municipal Lawyers Association

'Dedicated to Effective Local Government Through the Advancement of Municipal Law'

March 5, 2024

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To: The Honorable Senator Jake Oliveira, Chair, Joint Committee on
Municipalities and Regional Government

The Honorable Representative Carole Fiola, Chair, Joint Committee
on Municipalities and Regional Government

Re: SB 2571, An Act empowering municipalities and local governments

Dear Chairs Oliveira and Fiola:

I am writing to you in my capacity as the President of the Massachusetts Municipal Lawyers Association ("MMLA"), the Commonwealth's municipal bar association to communicate our comments regarding SB 2571, An Act empowering municipalities and local governments (the "Municipal Empowerment Act" or the "Act").

At the outset, we commend Governor Healy and Lieutenant Governor Driscoll for their efforts in compiling this legislation, and we thank you for the opportunity to share our comments.

There are no sections in the Municipal Empowerment Act which the MMLA outwardly opposes. Our specific comments that are included in this letter are in response to the following sections:

- Sections 2-6, regarding the Open Meeting Law;
- Sections 7-14, regarding the Uniform Procurement Act; and
- Section 21, regarding outdoor dining.

Sections 2 through 6: Open Meeting Law

The MMLA supports the permanent codification of an option (opposed to mandate) for hybrid meetings of public bodies. As we've said before, the hybrid meeting process provides many benefits to all stakeholders. It allows for more access and flexibility for members of public bodies, for persons appearing before those bodies and for citizens and the public at large, it reduces absenteeism and cancelled meetings, eliminates the need for transit, provides equitable access to participate effectively in and to become engaged in public governance for diverse groups of participants, and it makes it easier for public bodies to address emergency and other complex situations.

Of note, in particular, with regard to language in Section 4 of the Act which provides that a public body must offer its selected adequate, alternative means of public access without “subscription, toll or similar charge to the public,” most communities use their local access network to stream hearings or zoom, so this may not be much of an issue but, it would be a new requirement, and many residents of the Commonwealth cannot afford to connect to otherwise toll-free meetings due to limited access to broadband or other video connection, but may have a land line for access via a phone.

We also note that Section 5 of the Act allows each Board to determine whether that body will engage in/allow remote participation. We suggest adding a provision that the Chief Executive Officer of each municipality “shall” issue a policy establishing the requirements and processes for remote participation for each body within that municipality. Such policy would allow exceptions for exceptional circumstances, or municipal-specific constraints. Requiring such a policy also requires municipal leaders in each community to assess their remote participation capabilities on a holistic level, and identify and resolve specific barriers to such participation.

Sections 7 through 14: The Uniform Procurement Act

Sections 7 and 8 and sections 10 through 13 of the Act increase the price thresholds in Chapter 30B to make municipal government thresholds match those for school districts. Although threshold increases involve some increased risk of improper bid splitting, there is still the requirement for a competitive process which is verified by municipal records. These increased and aligned thresholds eliminate the need to administer two different thresholds and facilitate more efficient purchasing in the context of limited staffing for procurement functions, and also permit joint procurements between municipal departments and school districts. It is also important to note that individual municipalities can (and often do) establish via ordinances and bylaws lower thresholds than 30B, if they want to exercise tighter control than established by 30B. Additionally, Section 7 permits, but does not require, government bodies to use a request for proposals for purchases up to \$100,000. This change would provide additional flexibility for municipal officials to apply comparative evaluation criteria in addition to price when procuring supplies and services.

Section 21: Outdoor Dining

Section 21 proposes to override local zoning to allow permanent outdoor dining. In addition, Section 21 further proposes to allow a streamlined process for the local liquor licensing authority to approve liquor licenses within outdoor dining areas. For the reasons set forth below, we support the streamlined liquor licensing process for liquor service in conjunction with outdoor table service but oppose overriding local zoning.

As written, Section 21 moves matters that have always been under the purview of municipal zoning to local liquor licensing authority.

The precursor to Section 21 arose during the unprecedented global pandemic which put an enormous strain on commercial business in the Commonwealth. During the period when the

State of Emergency was in effect (~2020-2021), after restaurants were permitted on a limited basis to re-open to serve patrons, strict social distancing requirements were in place indoors. In addition, many residents of the Commonwealth were hesitant to dine indoors where face masks could not be used while eating and drinking. These extraordinary circumstances justified the creation of a streamlined process by which restaurants could expand their service to the outdoors. It served many purposes, including allowing for more restaurants to remain in business and for residents to enjoy some semblance of normalcy by being able to leave their homes to enjoy a meal. This emergency streamlined process (that was permitted notwithstanding existing local zoning permit requirements) was workable, in part, because there was less indoor use and overall, less commercial traffic to restaurants and the surrounding commercial areas in which most restaurants are located. Therefore, issues related to parking and other matters generally governed by local zoning were easier to address.

While restaurants worked to recover from the economic impact of the pandemic, the temporary acts that allowed for outdoor dining without zoning compliance were extended. As a significant period of time has passed since all State of Emergency restrictions have been lifted, restaurants have been able to return to their pre-pandemic indoor occupancy. Many restaurants that were able to successfully expand during the State of Emergency to outdoor areas that they did not use pre-pandemic have already taken the necessary steps to obtain or amend their local permitting process to make their outdoor spaces permanent. This is not an onerous process but it is necessary. Permitting boards and their staff are already fully equipped to review changes to site plans to address impacts on parking capacity, circulation, and vehicular and pedestrian safety that may arise when patrons are seated in outdoor areas.

Section 21's proposed subsections 3B(b) and (d) attempt to address these matters, but these provisions fall short for the following reasons:

- Subsection (b) provides that *"a city or town may approve a request for expansion of outdoor table service"*. This creates an immediate ambiguity. Under the General Laws, a provision that states that a city or town has authority typically refers to a city council or town meeting. While that does not appear to be the intent of Section 21 to require such local legislative authorization, that may be the legal import of such clause.
- Subsection (b) further requires the mayor, select board or other chief executive officer "shall establish a process for approving such requests". Therefore, these municipal officers must promulgate rules and policies that set forth the requirements and the process for reviewing the appropriateness of the proposed outdoor dining. In addition, subsection (d) requires the local licensing authority to "address potential issues with snow removal, pedestrian traffic or similar concerns." Given that the city or town has already done this through the adoption of its zoning ordinance or bylaw, this is both redundant and inefficient and is likely, in most cases, to result in a restatement of the same requirements of the existing zoning regulations.
- With respect to the extension of a liquor license to an outdoor area that is properly permitted under zoning for any food establishment, the simplified process provided for subsection (c) is appropriate. However, Chapter 40A (the Zoning Act) is not the

appropriate chapter in which to include a law related to liquor licensing.

The proposed changes to allow streamlined issuance of new or amended liquor licenses for outdoor dining areas are an appropriate delegation of such authority to the local licensing authority. Such a provision is properly included with the relevant provisions of Chapter 138 of the General Laws. Attached hereto as Exhibit A is a copy of Section 21 with our recommended revisions.

Thank you for your time and attention to these comments. We are available to discuss the above, and the attachments hereto in greater detail.

Sincerely,

/s/ Karis L. North

Karis L. North President, MMLA

cc: The Honorable Senator Edward Kennedy, Vice Chair, Chair, Joint Committee on Municipalities and Regional Government
The Honorable Representative Lindsay Sabadosa, Vice Chair, Chair, Joint Committee on Municipalities and Regional Government

EXHIBIT A
(MMLA Comments to SECTION 21)

SECTION 19. Section 49 of said chapter 40, as so appearing, is hereby amended by adding the following sentence:- Nothing in this section shall preclude a town from providing any of the reports or information pursuant to this section in an electronic format.

SECTION 20. Said chapter 40, as so appearing, is hereby amended by adding the following section:-

Section 70. Cities, towns and districts shall report a known cybersecurity incident, as defined through regulation by the secretary of technology services and security, to the commonwealth security operations center, in a manner prescribed by the executive office of technology services and security. Reporting shall take place as soon as practicable, but no later than at the conclusion of the risk assessment process. Reports shall not include any information that would jeopardize attorney-client privilege nor any information that would have a demonstrated impact on the defense and management of any liability claims, including litigation or demand for damages. Nothing in this section shall satisfy a city, town or district's reporting requirements under chapter 93H. The executive office of technology services and security shall promulgate regulations to implement this section.

SECTION 21. Chapter ¹³⁸~~40A~~ of the General Laws, as appearing in the 2022 Official Edition, is hereby amended by inserting ⁱⁿ after section ¹~~3A~~ following ^{defined term}~~section~~:-

~~Section 3B. (a) As used in this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:-~~

~~“Commission”, the alcoholic beverages control commission, established by section 70 of chapter 10.~~

“Outdoor table service”, restaurant service that includes food prepared on-site and under a food establishment permit issued by a municipal authority pursuant to 105 CMR 590.00 that is served to seated diners outside the restaurant building envelope, whether on a sidewalk, patio, deck, lawn, parking area or other outdoor space.

~~(b) Notwithstanding the provisions of this chapter, any special permit, variance or other approval issued thereunder or any general or special law to the contrary, a city or town may approve a request for expansion of outdoor table service, including in the description of licensed premises as described in subsection (c), or an extension of an earlier granted approval. Before such approval, the mayor, select board or other chief executive officer, as established by charter or special act, shall establish the process for approving such requests. Such process shall not be required to comply with the notice and publication provisions of section 11 of this chapter. An approval under this section may be exercised immediately upon filing of notice thereof with the city or town clerk, without complying with any otherwise applicable recording or certification requirements.~~

SECTION 21A. Chapter 138 of the General Laws, as appearing in the 2022 Official Edition, is hereby amended by inserting after Section 12C, the following section: -

~~Section 12D. (c) Pursuant to subsection (b), a~~ local licensing authority may grant approval for a change in the description of the licensed premises for the purpose of permitting outdoor alcohol service **in conjunction with outdoor table service** as the local licensing authority deems reasonable and proper, and issue an amended license to existing license holders, without further review or approval from the commission prior to issuance. Upon approval of an amended license, the local licensing authority shall provide notice of the amended license to the commission. Nothing in this section shall prevent the commission from exercising the commission’s enforcement authority over an amended license.

~~(d) Before approving any request to extend an earlier granted approval, a city, town or local licensing authority may modify the scope of the approval as the city, town or local licensing authority deems proper and appropriate including, but not limited to, modifying the terms of an earlier granted approval to address potential issues with snow removal, pedestrian traffic or similar concerns.~~

SECTION 22. Chapter 40Q of the General Laws, as appearing in the 2022 Official Edition, is hereby amended by striking out section 3 and inserting in place thereof the following section:-

Section 3. (a) The city or town may retain all or part of the tax increment of an invested revenue district for the purpose of financing the development program. When a development program for an invested revenue district is adopted, the city or town shall adopt a statement of the percentage of tax increment to be retained in accordance with the development program. The statement of percentage may establish a specific percentage or percentages or may describe a method or formula for determination of the percentage. The assessor shall certify the amount of the tax increment to the city or town each year.

(b) On or after the formation of an invested revenue district, the assessor of the city or town in which it is located shall, on request of the city or town, certify the original assessed value of the taxable property within the boundaries of the invested revenue district on the base date. Each year, after the formation of an invested revenue district, the assessor of the city or town shall certify the amount of the new growth adjustment to the levy limit of the city or town, as certified by the commissioner of revenue, that is attributable to parcels within the district.