



*Massachusetts Municipal Lawyers Association*

# **MMLA MUNICIPAL MINUTE**

## **VOLUME I, ISSUE 13 – AUGUST 3, 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.

### **2022-23 MMLA Membership Applications and Dues**

If you have not already done so, please renew your MMLA membership for the membership year that began July 1, 2022 and ends June 30, 2023.

**As a reminder, all** applications **must** be made electronically this year. If you are part of a municipality, non-municipal government agency, law firm or other private organization with six (6) or more attorneys eligible for membership, an **Organizational Membership Application Spreadsheet** can be downloaded and submitted on behalf of you and all other eligible members and dues paid at one of three (3) flat rates. All other applications must be made using Survey Monkey. Please see the information found [here](#) for specific instructions for submitting applications and dues payments, including links to the spreadsheet and 2022-2023 dues schedule.

### **Volunteer for MMLA Committees**

If you are interested in serving, or continuing to serve, on one of the many MMLA standing and ad hoc committees, please complete and submit a committee volunteer form using this [link](#).

The revised [Bylaws](#) approved at the MMLA's June 8, 2022 Annual Business Meeting established several new standing committees that provide additional opportunities for members to serve. Serving on a MMLA committee is open to all MMLA members and is a great opportunity to advance MMLA's objectives and goals, tap into your interests and skills, and meet and network with other MMLA members. The work by our members on Committees is critical to the success of the organization.

Under the Bylaws, starting in 2022, committee appointments will be made for staggered two- or three-year terms depending on the committee. Therefore, **all members** wishing to serve, **including those currently serving on a committee**, will need to complete and electronically submit a committee volunteer form.

Please complete and submit your committee volunteer form by close of business on **Friday, August 19, 2022.**

### **Upcoming Programs and Events:**

- **Register Now** – The August Half-Day Luncheon and Seminar is back! This year we will hold this annual event in the tent at the Publick House in Sturbridge on Thursday, August 11, 2022, beginning at 11:30 a.m. Chaired once again by Mark G. Cerel, Franklin and Medway Town Counsel, this year's program will focus on municipal shared services, such as intermunicipal agreements, regionalization, and mutual aid. Panelists for the program are Kathleen Colleary (retired Department of Revenue), Donna Brewer (Miyares and Harrington, LLP), Cheryl Sbarra (Massachusetts Association of Health Boards), Jack Collins (Collins & Associates) and Steve Torres (West Group Law PLLC). You can find further details about this event on the MMLA website [here](#). Use this [link](#) to register now.
- **Executive Board Meetings**: MMLA members are welcome to attend monthly Executive Board meetings, typically held on the second **Thursday** of each month. The next Executive Board meeting/retreat is scheduled for **Thursday, August 11, 2022**. To attend, please contact MMLA Executive Director/Secretary-Treasurer Jim Lampke ([jlampke@massmunilaw.org](mailto:jlampke@massmunilaw.org)).

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

- In Chapter 107 of the Acts of 2022, the Legislature extended certain COVID-related amendments to the Open Meeting Law, as modified by Chapter 22 of the Acts of 2022, and permitting remote meetings and participation until March 31, 2023. At MMLA's urging, and as previously reported, no additional changes were made to the Open Meeting Law.
- A Conference Committee Report on Senate Bill 3096 (S.3096) was enacted by the House and Senate and laid before Governor Baker on Monday, August 1. The Report is available by selecting "Download PDF" [here](#). This legislation, if signed into law, will have a significant impact on municipalities and marijuana establishments, including host community agreements.
- **Brayton Point Energy, LLC v. Board of Assessors of Somerset** (Massachusetts Appeals Court, July 29, 2022) – "This appeal from a decision of the Appellate Tax Board (board) presents the question whether 'disregarded entities' -- entities that are not classified as separate from their owners for purposes of paying Massachusetts corporate excise taxes -- are nonetheless business corporations subject to the excise tax under G. L. c. 63, § 39. If disregarded entities are business corporations subject to the State excise tax, then the taxpayer, Brayton Point Energy, LLC (Brayton Point), qualified for an exemption in G. L. c. 59, § 5, Sixteenth (2) (clause 16 [2]), for purposes of paying local property taxes on coal and fuel oil that it owned. If disregarded entities are not business corporations

subject to the excise tax, then Brayton Point did not qualify for the exemption, and was obligated to pay the local property tax. The board concluded that Brayton Point did not qualify for the exemption. We affirm the board's decision."

- [\*The Haven Center, Inc. v. Town of Bourne\*](#) (Supreme Judicial Court, July 28, 2022) – Appeal dealing with permissibility of town-enacted ban of recreational marijuana establishments under M.G.L. c. 94G, § 3(a)(2). The SJC agreed that the ban, which was adopted as an amendment to a general bylaw, did not violate the Home Rule Amendment to the Massachusetts Constitution. It also noted that municipalities could properly regulate or prohibit recreational marijuana establishments through general or zoning bylaws. "In sum, our analysis of the foregoing factors does not demonstrate that article 14 must be treated as a zoning bylaw. In light of that conclusion, as well as our conclusion that G. L. c. 94G, § 3(a)(2), permits municipalities to prohibit recreational marijuana establishments through general bylaws as well as zoning bylaws, we hold that article 14 is not a zoning bylaw and that it is not subject to the requirements of G. L. c. 40A . . . Because article 14 does not merely regulate the time, place, and manner of recreational marijuana establishment operations, but bans them entirely, it is subject to the requirements of § 3(a)(2) rather than those of § 3(a)(1) . . . But as we already have discussed at length, G. L. c. 94G, § 3(a)(2)(i), explicitly authorizes municipalities to adopt such a ban. This specific authorization supersedes any contrary interpretation that might be drawn from the more general requirement that bylaws must not be unreasonably impracticable."
- [\*City of Boston v. Conservation Commission of Quincy\*](#) (Supreme Judicial Court, July 25, 2022) – "The issue here is whether the DEP's order supersedes the commission's decision. The commission claims it relied on the local ordinance's reference to 'cumulatively adverse effect[s] upon wetland values,' and that this language is more stringent than the language in the act. However, we conclude that the DEP order supersedes that of the commission because the commission did not rest its determination on more stringent local provisions."
- [\*Bask, Inc. v. Municipal Council of Taunton\*](#) (Supreme Judicial Court, July 21, 2022) – "This case presents the question of the permissible scope of a Land Court judge's authority. Specifically, in connection with an appeal from the denial of a special permit, pursuant to G. L. c. 40A, § 17, a Land Court judge ordered the issuance of the special permit to the applicant; he also issued a second injunction that, in effect, enjoined a municipal licensing authority from conducting previously scheduled licensing proceedings to consider applications from nonparties themselves seeking licenses to operate a retail marijuana dispensary. We conclude that the second injunction exceeded the permissible scope of the judge's authority. Further concluding that the judge did not err in his factual findings or in his conclusion that the denial of the special permit was arbitrary and capricious, we affirm that portion of the judgment."

***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).*

### **Other News and Reminders:**

- The MMLA has new employment opportunities posted on its website for:
  - [Mead, Talerman & Costa, LLC](#) – up to 3 associates
  - [City of Somerville, City Solicitor](#)
  - [City of Somerville, Assistant City Solicitor](#)
  - [City of Somerville, Special Counsel to Mayor's Office of Strategic Planning](#)
  - [City of Somerville, Chief Labor Counsel/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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