TOWN OF FALMOUTH
SELECT BOARD
AGENDA
SATURDAY, MARCH 1, 2025 – 9:00 A.M. to 12:00 P.M.
SELECT BOARD MEETING ROOM
TOWN HALL
59 TOWN HALL SQUARE, FALMOUTH, MA 02540

The Select Board may discuss and vote appropriate action on any item listed on this Agenda unless a different disposition is noted. At the discretion of the Chair, agenda items may be taken out of order.

THIS IS A WORKSHOP MEETING – THERE WILL BE NO PUBLIC COMMENT.

9:00 a.m. OPEN SESSION- WORKSHOP

1. Call to Order
2. Discussion on immigration enforcement procedure and practice.
3. Discussion on the proposed Land Acknowledgement Policy.
4. Discuss drafting a letter in opposition to the Mass DEP proposed $50 million wastewater construction funding application cap included in the 2025 Clean Water State Revolving Fund (CWSRF) Intended Use Plan (IUP).
5. Discussion and update on use of municipal funding for IA septic systems.
6. Adjourn

Nancy Robbins Taylor, Chair
Select Board

OPEN SESSION

BUSINESS

2. Discussion on immigration enforcement procedure and practice

March 10, 2025

TOWN OF FALMOUTH
OFFICE OF TOWN COUNSEL
MEMORANDUM

TO: MICHAEL RENSHAW, TOWN MANAGER AND MEMBERS OF THE SELECT BOARD

FROM: MAURA O'KEEFE, TOWN COUNSEL

SUBJECT: OVERVIEW OF LUNN V. COMMONWEALTH

DATE: FEBRUARY 27, 2025

The following is a brief overview of the matter of Lunn v. Commonwealth, the guiding caselaw on the issue of Federal civil immigration detainers and local law enforcement in Massachusetts. 477 Mass. 517 (2017)

On February 6, 2017, following the dismissal of criminal charges again Sreynuon Lunn, he was detained in a holding cell at the Boston Municipal Court at the request of a Federal immigration officer, pursuant to a Federal civil immigration detainer issued by the Dept. of Homeland Security. Even though there were no longer any criminal charges pending against Lunn, the Court held him on the DHS civil detainer. The next day, Lunn's attorney filed a petition requesting that Lunn be released from Court, but ICE agents had already picked him up and taken him into Federal custody.

Despite the issue being moot as to Lunn himself, the issue was reported to the MA Supreme Judicial Court because the matter was likely to recur.

The principle federal law governing immigration matters in the U.S. is the Immigration and Nationality Act (the "INA"). 8 U.S.C. §§ 1101 *et seq.* Lunn, 477 Mass. at 521-22. The INA sets forth the terms, conditions and procedures for admitting and removing non-citizens into the United States. While violations of some aspects of the INA are criminal in nature, others are merely civil infractions. For example, entering the U.S. illegally is a crime. 8 U.S.C. § 1325(a). Being present in the U.S. illegally, without additional infractions, is not a crime. 8 U.S.C. § 1227(a)(1)(B); Arizona v. U.S., 567 U.S. 387 (2012)("It is not a crime for a removable alien to remain in the United States").

Immigration removal procedures are civil in nature. Lunn, 477 Mass. at 522. This remains true even if the underlying reasons for removal are criminal. Id. A civil detainer is a request from Federal authorities to a State custodian to voluntarily hold a person for up to forty eight hours after the person would otherwise be released from custody.

Federal civil immigration detainers are nothing more than requests. Lunn, 477 Mass. at 526.[1]

Given the above statutory framework for federal immigration law, adhering to a federal civil immigration detainer is the equivalent of making an arrest. Lunn, 477 Mass. at 527. An arrest occurs when there is actual or constructive detention or seizure, with or without a warrant, performed with the intent to effect an arrest, as understood by the person detained. Comm. v. Powell, 459 Mass. 572 (2011). Using this definition, holding a person pursuant to a civil detainer is an impermissible arrest and a violation of the 4th Amendment to the Constitution. Lunn, 477 Mass. at 528.

The Lunn Court concluded that Massachusetts law does not provide any authority for local law enforcement to arrest and or hold an individual based solely on a federal civil immigration detainer.

[1] Not only is the language of the INA permissive as to detainers, but the 10th amendment to the US Constitution, which limits the federal government to its powers and establishes states' rights, prohibits an interpretation that local law enforcement is required to adhere to a federal immigration detainer. See also Printz v. U.S., 521 U.S. 898 (1997)(federal law enforcement cannot force local law enforcement to carry out an order).

Overview of AGO Legal Guidance on Immigration Enforcement

Mass Municipal Lawyers Association

February 26, 2025

AGO Released Guidance

1. Education:

Guidance Regarding K-12 Schools' Obligations to Protect Students and their Information.

Information for Massachusetts Colleges and Universities Regarding Immigrant Students.

2. Healthcare Providers:

Information for Massachusetts Healthcare Providers Regarding Immigration Enforcement and Access to Care and Assistance Programs.

3. Service Provider Organizations:

General Information for Massachusetts Service Providers Regarding Immigration Enforcement.

Prepare for Potential ICE Activity

Policies and Practices to Consider:

1. Train and prepare:

- Hold "Know Your Rights" trainings.
- Distribute rights cards.
- Consult guidance from organizations and agencies like the Office for Refugees and Immigrants, MIRA Coalition, and the National Immigration Law Center.

2. Designate a staff member as responsible for interactions with ICE and other law enforcement.

3. Identify private areas within the facility that are closed to the public.

- Use signage, key cards, or locks to promote a safe environment conducive to the organization's mission.
- Law enforcement agencies, including ICE **cannot** **gain access to such designated private areas without the organization's consent or a judicial warrant or court order. They can access public areas.**

Steps that Can be Taken if Approached by ICE

1. Request officer's name, identification number, and agency affiliation.
2. Request a **judicial warrant or court order**.
   - You are **not** required to comply with an administrative warrant that is issued by ICE. An administrative warrant does **not** authorize entry into non-public spaces.
3. **Inform the officer**:
   - You are **not** attempting to obstruct their actions; you are **not** authorized to respond to their request until you contact the appropriate point person.
4. **Contact appropriate legal counsel** to review documents with designated staff member.
5. Ask the officer to wait outside until you contact legal counsel and/or designated staff member.

Judicial Warrant/Subpoena *v.* Administrative Warrant

- *If presented with a warrant or court document, designated staff member and legal counsel should confirm:*
  - *(1) It is a **valid** judicial warrant.*
  - *(2) It is **signed by a judge or magistrate judge.***
  - *(3) It states **name** of person sought or **address** of premises to be searched.*
  - *(4) If indicated, is sought to be executed during the **time** specified on the warrant.*

K-12 Schools Guidance

- **All children are entitled to a free public education.**
- **Avoid school policies that discourage or deny access to school on the basis of immigration and citizenship status.**
  - Schools **must** enroll students and provide equal access to education regardless of immigration status.
  - Schools should **revise** enrollment policies to collect only the information necessary to verify a child's age and residence.
    - EX: Districts should **not** collect documents containing passport, visa, or Social Security information
  - Districts should accept a range of documents, not limited to government issued ID. For example, districts may accept an affidavit indicating the child's date of birth from a parent.

K-12 Schools Guidance

Protection of Student Information under the Federal Educational Rights and Privacy Act of 1974 (FERPA) and Massachusetts Student Records Regulations:

- Schools **cannot** disclose to ICE agents a student's personally identifiable information (PII) without the parent or guardian's specific, informed consent, or pursuant to a judicial warrant, court order or subpoena, or a health and safety emergency.
- PII includes a student's name, name of student's parents or family members, address, student's social security number, date of birth, or place of birth.

K-12 Continued

- The law generally considers inside of schools to be private spaces as the front doors are locked and they're not open to the general public.

- **Front line school personnel should refer ICE to the district's central office. The superintendent or designee should immediately contact district counsel** for assistance in reviewing the warrant or other documents provided to determine if administrative or judicial, and to determine the scope of authority the document provides.

- School directory information is only shareable if in compliance with the school's privacy policies, FERPA, and the parent's disclosure preferences. Schools should revisit/amend their policies annually in accordance with parents' privacy concerns.

Institutions of Higher Education

Inclusion and Support of Immigrant Students:

- Massachusetts Institutions of Higher Education (IHEs) welcome immigrant students who have legal protection or recognition, such as DACA, TPS, parole, or a green card.
- Neither federal law nor Massachusetts law prohibits the admission or enrollment of undocumented immigrants at IHEs nor are there any legal restrictions on an undocumented student's ability to fully participate in the campus community and extracurricular programs.
- IHEs should provide clear and accurate information to immigrant students about admission, enrollment, and available resources.

Institutions of Higher Education

IHEs should:

- Develop protocols if immigration officers request access to a space on campus or seeks to interview or take custody of a member of a campus community.
- Proactively inform their communities that immigration officers may be present on campus for reasons unrelated to detention or deportation.
- Review the information they collect from students to ensure they do not unnecessarily obtain information about a student's or family members' immigration or citizenship status.

Healthcare Provider Guidance

Understand ICE access to patient information.

- Protected Health Information (PHI) is protected by federal state and privacy laws, including the Health Insurance Portability and Accountability Act (HIPAA).
  - Healthcare providers may **not** provide PHI to law enforcement officials, except under certain limited circumstances.
- Providers are **not** required to ask about immigration or citizenship status and may treat anyone regardless of immigration or citizenship status.

Healthcare Provider Guidance

- Emergency departments are **required** to provide emergency screening and stabilization services without asking about immigration, citizenship, or insurance status.
- Under current federal policy, receipt of noncash benefits does not impact an individual's immigration status
  - EX: Medicaid (MassHealth), CHIP (Children's Health Insurance Program), Health Safety Net / health insurance through Health Connector, SNAP (Supplemental Nutrition Assistance Program).

General Organizations Guidance

- **General practices discussed above also apply to service organizations. (KYRs, interactions with ICE, designating point person, etc.)**
- **A Public charge** determination evaluates a noncitizen's likelihood of becoming primarily dependent on the government for subsistence, focusing on receipt of public cash benefits.
- The public charge test **does not** apply to green card renewals, those seeking immigration status as refugees, asylees, Temporary Protected Status recipients, U & T visa holders, Special Immigrant Juveniles, or self-petitioners through the Violence Against Women Act.
- Assistance from private organizations is **not** considered a public benefit under the public charge rule.

Resources for Individuals Who Are Detained

- **ICE Detainee Locator:** Can determine if a family member has been detained and location of detention. (https://locator.ice.gov/odls).
- **Legal Assistance:** Immigration lawyers, accredited representatives, or legal aid organizations can help secure the release of a detained individual or arrange family visits. (Detention & Deportation | Massachusetts Legal Help and https://www.mass.gov/info-details/finding-a-lawyer)
- **Consulate or embassy** of the individual's country of origin may provide further information and assistance.

MA AGO Resources

MA AGO Guidance Landing Page:

https://www.mass.gov/info-details/resources-for-immigrants-in-massachusetts

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Attorney General Guidance:
General Information for Massachusetts Service Providers Regarding Immigration Enforcement

All members of our community should feel encouraged to seek assistance and reassurance in times of need. Our office has heard concerns about how changes in the federal government's approach to immigration enforcement might impact our immigrant communities and those who provide them services. This guidance is meant to provide information to service providers[1] (hereinafter "organizations") about serving immigrant residents, and a broad overview of steps these organizations can do to prepare for potential encounters with Immigration and Customs Enforcement (ICE) officials and answer some questions people may have about the ability of immigrants to access financial or other government assistance because of their immigration status.

This guidance is not legal advice or a formal legal opinion of the Attorney General. An organization should consult with legal counsel about specific questions and concerns and to determine how the considerations discussed below affect any particular organization.

QUESTIONS AND ANSWERS

Should an organization collect information on immigration status?

In most cases it is not necessary to collect information about a person's immigration status to provide services. If personal information is not needed, it should not be collected. Organizations that provide immigration-related services may need to collect information about immigration status; these organizations can help assure individuals by explaining what information will be collected, why the information is necessary, and how the organization limits access to the information.

When collecting any personal information, including information about immigration status, an organization should ensure that personal documents containing sensitive information are shielded from view by others, and that conversations regarding such information cannot be easily overheard.

[1] For the purposes of this guidance, services providers include, but are not limited to, charitable institutions, service organizations, and non-profit organizations generally.

Where does ICE conduct enforcement activity?

Many organizations are concerned about the possibility of ICE enforcement activity, particularly given the recent rescission of ICE guidelines that generally prohibited ICE agents from conducting enforcement activities in or near "sensitive" or "protected" areas[2] such as schools, places of worship, social service establishments, and healthcare facilities. The language of the updated directive does not include concrete rules or procedures for ICE agents to follow but instructs agents to use "common sense" when determining where to engage in immigration enforcement.

What steps can an organization take to prepare for ICE activity?

Organizations should consider adopting comprehensive policies and procedures that apply to any law enforcement activity, including immigration enforcement activity by ICE. Recommended policies include:

Training and Preparation: Organizations can hold "Know Your Rights" trainings; provide rights cards; and consult guidance from other organizations and state agencies, such as the Office for Refugees and Immigrants, the MIRA Coalition, and the National Immigration Law Center. Organizations may also consider, where applicable, engaging in emergency planning with those they are serving to prepare for the possibility of arrest or detention by ICE. For more information on emergency planning, please see the Attorney General's Emergency Planning Guide for Parents with Uncertain Immigration Status.

Designation of Private Areas: Organizations may develop policies on how to designate private areas that are not accessible to the general public. Designating such areas through signage, key cards, or locks can promote a safe environment conducive to the organization's mission. Like other law enforcement agencies, ICE cannot gain access to such designated private areas without the organization's consent or a judicial warrant or court order.[3]

Organizations should train all staff members and, if possible, designate a staff member for potential interactions with ICE or other law enforcement officials.[4] Any response may include the following steps:

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[2] *See* Statement from a DHS Spokesperson on Directives Expanding Law Enforcement and Ending the Abuse of Humanitarian Parole at https://www.dhs.gov/news/2025/01/21/statement-dhs-spokesperson-directives-expanding-law-enforcement-and-ending-abuse.

[3] The authority of ICE like that of other law enforcement agencies is governed by the Fourth Amendment to the U.S. Constitution, which protects against ***unreasonable search and seizure***. Whether a search is permissible in any particular area depends on whether a person has a reasonable expectation of privacy in the place ICE seeks to be entered. If a reasonable expectation of privacy exists, the U.S. Constitution prohibits access without consent, a judicial warrant signed by a judge, or certain exigent circumstances that excuse the warrant requirement.

[4] If the organization works with municipal, state, or campus police, you should ask if their practices are consistent with *Lunn v. Commonwealth*, 477 Mass. 517 (2017). In this case, the Massachusetts Supreme Judicial Court ruled

(1) Ask the officer for their name, identification number, and the name of the agency with which they are affiliated;

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

(3) Inform the officer 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; and

(4) Ask the officer to wait outside (or in a public space) while you contact your organization's legal counsel or other appropriate point person.

What types of documents may an ICE official present when conducting immigration enforcement activity and what should you look for?

Immigration officials may present a variety of documents, not all of which are warrants in the constitutional sense. Organizations are not required to consent to a search of the private areas of their premises unless presented with a judicial warrant, signed by a judge or magistrate, and based on probable cause. Subpoenas, whether administrative or judicial, are documents that request the production of documents or testimony. They generally do not require immediate responses and can be challenged in court. If feasible, a designated staff member should review all documents presented by immigration officials with the assistance of legal counsel. Organizations may want to advise staff not to physically interfere with the actions of immigration officials or any law enforcement officers.

If presented with a warrant or other court document by immigration or other law enforcement officials, a designated staff member at an organization should review whether the document: (1) is a valid judicial warrant; (2) is signed by a judge or magistrate judge; (3) states the address of the premises to be searched; (4) 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) authorize ICE officers to arrest a person suspected of violating the immigration laws. These are not warrants within the meaning of the Fourth Amendment to the U.S. Constitution, are not signed by a judge or magistrate judge and are not based on a showing of probable cause of a criminal offense. These warrants do not require organizations to grant ICE officers access to non-public areas.

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that law enforcement officers may not hold an individual "solely on the basis of a Federal civil immigration detainer."

Federal Arrest Warrants (Form AO 442) or Search and Seizure Warrants (Form AO 93) are issued by a federal court judge or magistrate judge based on a finding of probable cause and authorize the search and seizure of property in a specified location or the arrest of a person named in the warrant, including in non-public areas. Prompt compliance with these warrants is usually required. If feasible, an organization should review the document and consult with legal counsel.

How do the services an organization provides impact a recipient's immigration status?

Under current federal policy[5], the receipt of non-cash benefits for which one is eligible does not impact an individual's immigration status. These include, among others, SNAP (Supplemental Nutrition Assistance Program), Head Start, Workers' Compensation, Medicaid (MassHealth) (other than for nursing home care), and CHIP (Children's Health Insurance Program). Assistance from private organizations is **not** considered a public benefit under the public charge rule.

A public charge inadmissibility determination is based on a noncitizen's likelihood of becoming primarily dependent on the government for subsistence and focuses on the receipt of public cash benefits for income maintenance or long-term institutionalization at the government's expense. The public charge test **does not** apply to green card renewals, those seeking immigration status as a refugee, asylee, Temporary Protected Status, holders of U and T visa, Special Immigrant Juveniles, or self-petitioners through the Violence Against Women Act.

What are some resources that an organization can provide if an individual is detained?

In the event an individual is detained by immigration authorities, organizations should consider referring them or their family member(s) to the following resources.

ICE Detainee Locator

The ICE detainee locator (https://locator.ice.gov/odls/homePage.do) can help people determine if their family member has been detained and where the family member is being held. In using the ICE detainee locator, it is helpful to know the individual's date of birth, country of birth, and 'A-Number' (Alien Registration Number), if there is one. Please note: The ICE detainee locator is intended only for locating individuals who are already detained. If someone has general questions about his or her immigration status, they should consult legal counsel.

[5] The current rule was promulgated in 2022. The public charge designation cannot be changed through Executive Order. Changes to the rule require a lengthier federal rulemaking process.

Legal Assistance

Immigration lawyers in private practice, accredited representatives (who are affiliated with Recognized Organizations and assist immigrants in immigration proceedings), or legal aid organizations may be able to provide legal assistance to secure the release of a detained individual or help arrange for family members to visit them. The following resources may be helpful to you in finding legal representation: Detention & Deportation | Massachusetts Legal Help and https://www.mass.gov/info-details/finding-a-lawyer.

Information about whether a lawyer is licensed and in good standing can be found through the Board of Bar Overseers (https://www.massbbo.org/s/). A list of Recognized Organizations in Massachusetts accredited by the Board of Immigration Appeals (BIA) to represent immigrants before the Department of Homeland Security (DHS) and the Executive Office Immigration Review (EOIR) can be found here: https://www.justice.gov/eoir/page/file/942306/dl#MASSACHUSETTTS.

Consulate or Embassy

The consulate or embassy of an individual's country of origin may be able to offer additional information and assistance. For a list of consulates in Massachusetts visit mass.gov/consular-corps-in-massachusetts/locations?page=0.

Who can the organization contact at the AGO with questions or to report an incident?

If you have questions or need further assistance, you may contact the Office of the Attorney General at (617) 963-2917.

February 7, 2025

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ATTORNEY GENERAL

GUIDANCE REGARDING K-12 SCHOOLS' OBLIGATIONS TO PROTECT STUDENTS AND THEIR INFORMATION

The Office of the Attorney General has heard concerns from school administrators and others about how potential changes to federal immigration policies might affect their students, communities, and classrooms. This guidance describes some of the issues that might impact immigrant students in K-12 schools, and describes some of schools' legal obligations as well as steps they can take to support students and families and maintain an environment conducive to learning for all. It includes information about the rights of all children to access a free public education regardless of immigration or citizenship status and the ongoing legal obligations of schools[1] to ensure that appropriate steps are taken when responding to requests for access to students or their information by U.S. Immigration and Customs Enforcement (ICE) agents.

This advisory is not legal advice or a formal legal opinion of the Attorney General. A school district or parent should consult with legal counsel about specific concerns.

All Students are Entitled to Equal Access to Free Public Education

Schools must provide equal access to education to all students regardless of race, color, sex, gender identity, religion, national origin, sexual orientation, disability, or immigration status. Schools must meet this fundamental obligation and avoid policies that discourage or deny access to school on the basis of immigration or citizenship status.

Information that Schools Collect and Maintain for Enrollment Purposes

State and federal law require that school districts enroll all school-aged children who reside in the district without regard to immigration status. Districts should ensure that their enrollment policies do not prevent, discourage, or delay immigrant families from enrolling their children in school, and should work proactively with families to ensure that they promptly enroll their children in school.

School districts may want to consider revising their enrollment policies to collect *only* the information necessary to verify the student's age and residence. Further, school districts may not limit the forms of verification they accept to a narrow list of documents, such as government issued ID. Districts should instead accept a range of documents and methods to verify the child's age and to confirm the child lives in the district. For example, if a family does not have a birth

[1] This guidance applies to all K-12 public schools in Massachusetts and may also apply to private schools that receive federal or state education funding.

certificate showing a child's age, the district may accept an affidavit from the parent indicating the child's date of birth. As a general matter, schools should not collect for enrollment purposes or maintain documents that contain passport information, visa information, and Social Security numbers. This information is not necessary to confirm age or residency and collecting it creates additional data protection obligations, and risks deterring enrollment on the basis of immigration or citizenship status.

For more information, see:

- Attorney General's Advisory Regarding Equal Access to Public Education for All Students Irrespective of Immigration Status (updated April 2022).
- Upholding the Rights of Immigrant Students to Enroll in School: Guidance for School Committees and Districts (December 2024).

ICE Requests to Meet or Interview Students

If an ICE agent requests access to a student, schools should refer the agent to the district's central office to ensure proper protocol is followed.[2] The school or district should also immediately notify the student's parent or guardian. Superintendents should contact the district's legal counsel to discuss the appropriate response before proceeding.

In the event that an ICE agent asks to question or remove a student from their classroom, schools must obtain the specific, informed written consent of a parent or guardian or be provided with a valid, judicial warrant signed by a federal or state judge. If the agent presents a warrant, the school district should immediately consult school legal counsel and review the warrant to confirm that it is a judicial rather than administrative warrant and to determine the scope of the search or arrest authority the warrant provides.

ICE Requests for Students' Information

Under the Family Educational Rights and Privacy Act of 1974 (FERPA) and the Massachusetts Student Records Regulations, schools are prohibited from giving, either orally or in writing, a student's personally identifiable information (PII)[3] contained in education records to third parties, including ICE agents, without the specific, informed written consent of a parent/guardian (or eligible student), or absent a specific exception as described below.

[2] For charter schools or districts without a central office, the school leader should immediately contact their legal counsel to discuss the appropriate response before proceeding.

[3] Personally Identifiable Information includes, but is not limited to—(a) The student's name; (b) The name of the student's parent or other family members; (c) The address of the student or student's family; (d) A personal identifier, such as the student's social security number, student number, or biometric record; (e) Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name; (f) Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or (g) Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

Third parties who obtain written parent/guardian consent and receive PII are prohibited from further releasing the information without the specific, informed written consent of a parent/guardian (or eligible student).

Exceptions Permitting Disclosure of Student Information Without Consent

Unless an exception to this general rule applies, schools cannot, either orally or in writing, confirm any information in a student's educational record when asked. Schools may respond with statements such as "the school can neither confirm nor deny a student's personally identifiable information." If a staff member believes an exception may apply in any given situation, they should contact the district superintendent immediately and wait for their instructions before making any disclosure. School superintendents should consult legal counsel to ensure they are adhering to student privacy laws.

1. Judicial Order or Subpoena

Where a lawfully issued judicial order or subpoena is presented, schools must make a reasonable effort to notify the parent (or student, if 18 years or older) of the judicial order before complying with it to allow the parent an opportunity to seek a protective order or other relief in court. Prior notification to a parent of a judicial order is not required in the following circumstances:

1. The court has explicitly prohibited disclosure in its order, or the order was obtained by the United States Attorney General (or designee) concerning investigations or prosecutions of an act of terrorism or other specified offenses.
2. The parent is a party to a court proceeding involving child abuse and/or neglect, dependency matters, or legal actions against the school.

2. Education officials

Schools must provide education department officials access to student records that are necessary for an audit, evaluation, or enforcement of federal and state education laws or programs or otherwise required by law. If a school district believes information has been requested by education officials for some other, impermissible purpose, it should seek legal counsel. Also, data collected by education officials must be protected so that third parties cannot personally identify the students and their parents/guardians. Before releasing the student data, schools should seek assurance that the requester will maintain the data in a manner that protects PII from third parties. Furthermore, schools should confirm that PII will be destroyed when no longer needed for the intended audit, evaluation, or enforcement purposes, as required by law.

3. Police, Prosecutors, Department of Children and Families (DCF) investigators, or health department staff in case of Health or Safety Emergency

In connection with a health or safety emergency, schools may (or, in certain situations must)[4] release student record information without the specific, written consent of eligible student or parent/guardian to police, prosecutors, DCF investigators, or health department staff upon proof that knowledge of this information is necessary to protect the health or safety of the student or other individuals. Before release, however, schools must require agreement from the requester to not further disclose the requested information to any third party.

4. Directory Information

Directory information means information contained in an education record of a student that would generally not be considered harmful or an invasion of privacy if disclosed. Examples of directory information:

- A student's name
- A student's phone number
- A student's grade level
- A student's dates of attendance
- A student's participation in officially recognized activities and sports
- Honors and awards received by a student

Schools may release information designated as directory information to third parties, however, schools should carefully consider what information, if any, should be officially designated as directory information. For example, schools may wish to consider limiting the information contained in the directory to the examples bullet-listed above. Schools may also limit disclosure of directory information to specific parties, for specific purposes, or both. For example, schools may decide to limit disclosure of directory information to members of the school community. Moreover, schools must notify parents or guardians of policies on the disclosure of directory information and provide a meaningful opportunity to opt out. If a parent or guardian opts out of including their child's information in the directory, the school is not permitted to share the information.

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[4] Examples of situations where the schools must release certain, narrow categories of student information without the specific, written consent of eligible student or parent/guardian are listed below:

a. Schools must disclose to local law enforcement information regarding serious incidents of bullying or retaliation or other criminal incidents or activity if the principal has a reasonable basis to believe that criminal charges may be pursued against the aggressor.
b. Schools must file a dangerous weapon report with the local chief of police, DCF, the office of student services or its equivalent in any school district, and the local school committee.
c. Schools must file a 51A report with DCF if staff has reasonable cause to believe that a child is suffering physical or emotional injury.
d. Where a student or former student has been reported missing, schools must report any request concerning the records of such child to the appropriate law enforcement authority.
e. Schools must provide student's health records such as immunization records to school health staff and local and state health department staff upon showing that access is required in the performance of official duties.

a. Review and Limit Directory Information

Schools must exclude any sensitive personal information that could generally be considered harmful or an invasion of privacy if disclosed as directory information. While a student's address and place of birth is allowed, schools may want to consider reviewing and excluding this information from the directory.

b. Annual Notice to Parents and Allow Opt-out

Schools are required to give public notice to students and their families of what information is included in the directory at least once a year. Schools must allow parents to opt-out at any time of having students' information disclosed in the directory. If the student's parent or guardian has limited English proficiency, the district must utilize translation or interpretation services to communicate this information.

Share *Plan Ahead* Resources with Students and their Families

Our office understands concerns that changes in federal immigration policy could result in increased arrest and detention activity that will impact school communities. As part of a school district's broader planning efforts related to circumstances that might make it unsafe for a child to return home, they should prepare for the event in which a parent is arrested or detained by ICE. Schools may consider taking the following proactive steps:

- Provide parents/guardians regular opportunities to update emergency contact information, alternative caretaker contacts, and authorized pick-up contacts.
- Share *plan ahead* resources with students and their families. For more on planning ahead in case of emergency situations, see: Emergency Planning Guide for Parents with Uncertain Immigration Status.
- Review your school's policy or guidance to make sure it includes steps to take if a student cannot safely return home.
- Take steps to support the needs of students who are facing increased anxiety as well as those whose families have been directly affected by changes to federal immigration policy.

Contact the Attorney General's Office

Taking these steps will help protect students and their information and help to ensure classrooms are safe for learning. Doing so is also consistent with schools' legal obligation to provide all students with equal access to education and will help to create environments in which all students are welcome and safe, regardless of immigration status.

If you have other questions or need further assistance, contact the Civil Rights Division of the Office of the Attorney General at (617) 963-2917.

Dated: January 24, 2025

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

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Attorney General Guidance:
Information for Massachusetts Healthcare Providers Regarding Immigration Enforcement and Access to Care and Assistance Programs

The Office of the Attorney General of Massachusetts has received inquiries from healthcare providers about the impact of new and anticipated executive orders and federal policies on immigrants who seek healthcare in the Commonwealth. It is important to note that no executive action has prohibited (or could prohibit) healthcare providers from continuing to provide services to all residents, regardless of immigration status, and from protecting the privacy of their patients as required by law. The Attorney General's Office will continue to closely monitor relevant executive orders, federal rulemaking, and legislation, and will update this guidance as needed.

Healthcare providers are seeking information about how to respond if U.S. Immigration and Customs Enforcement (ICE) conducts enforcement activities at healthcare facilities or requests information from healthcare providers about patients. They are also concerned that individuals may be deferring necessary healthcare out of fear that they may be ineligible to receive healthcare services, and that accessing care might lead to enforcement or otherwise adversely impact their immigration status. This guidance addresses the rights of healthcare providers and patients with respect to requests for access or information by ICE. It also provides information about access to care and government assistance programs.

This guidance is not legal advice or a formal legal opinion of the Attorney General. A healthcare provider or organization should consult with legal counsel about specific questions and concerns and to determine how the considerations discussed below affect a particular healthcare environment.

QUESTIONS AND ANSWERS

Information about ICE Enforcement Activities

What should a healthcare provider do if ICE asks for information about a patient?

Protected health information (PHI) held by a healthcare provider is protected by federal and state privacy laws, including the Health Insurance Portability and Accountability Act (HIPAA),[1] irrespective of a patient's immigration, visa, or residency status. Healthcare providers may not provide PHI to law enforcement officials, including ICE, except under certain limited circumstances.[2] Prior to releasing PHI, a healthcare provider must comply with federal and state privacy requirements that apply in the particular circumstance and should consult their organization's internal policies and procedures, which may include requiring law enforcement to obtain a court order, warrant, subpoena, or summons and which may be more protective of patient privacy.[3]

What level of access can ICE officials have at healthcare facilities?

Many providers are newly concerned about the possibility that ICE could conduct enforcement at or near a healthcare facility, given the recent recission of ICE guidelines that generally prohibited ICE agents from conducting enforcement activities in or near healthcare facilities and other "sensitive" or "protected" areas.[4]

The authority of ICE, like that of other law enforcement agencies, is governed by the Fourth Amendment to the U.S. Constitution, which protects against ***unreasonable search and seizure***.[5] Where a reasonable expectation of privacy exists, the U.S. Constitution prohibits access without consent, a judicial warrant, or certain exigent circumstances that excuse the warrant requirement.[6]

How can a healthcare facility prepare for potential ICE enforcement activity?

Healthcare providers should consider adopting comprehensive policies and procedures that apply to any law enforcement activity, including immigration enforcement activity by ICE. Recommended policies include:

- ***Designating private areas*** within the facility that are closed to the public. Access to private areas should be limited to individuals receiving and providing care, and

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[1] *See* 45 C.F.R. Parts 160 and 164.
[2] *See* 45 C.F.R. § 164.512(k)(5)(i).
[3] *See* 45 C.F.R. §§ 164.512(e), 164.512(f)(1)(ii)(A).
[4] The language of the updated directive does not include concrete rules or procedures for ICE agents to follow but instead instructs agents to use "common sense" when determining where to engage in immigration enforcement. *See* Statement from a DHS Spokesperson on Directives Expanding Law Enforcement and Ending the Abuse of Humanitarian Parole.
[5] *Katz v. United States*, 389 U.S. 347 (1967).
[6] *Id.*

those needed to accompany them, and should exclude all others. A waiting area at a healthcare facility can be open to the public or can be limited to patients and those accompanying them, and there can be a posted policy requiring all visitors, including immigration and other law enforcement officials, to sign in.[7]

- Ensuring that no sensitive information in writing is openly in ***plain view*** in public spaces, and that no conversations regarding such information can be easily overheard.

- ***Designating a staff member*** as authorized and responsible for any interactions with ICE officers and law enforcement personnel. All staff should refer ICE officers and other law enforcement personnel to this designated staff member and inform them that only the designated staff member is authorized to consent to provide access to private areas of the healthcare facility and to review any warrant documents. Staff can further be trained and advised to refer any questions about a patient or any patient information to the designated staff member.

A healthcare facility may also distribute clear procedures to staff members about what to do if an ICE official or other law enforcement officer requests access to a patient or a patient care area. A healthcare facility may want to include the following steps in any such procedures:

- First, ask the officer for his or her name, identification number, and the name of the agency with which he or she is affiliated;

- Second, ask the officer if they have a judicial warrant or court order, and if so, ask for a copy of the document. Without a court order or warrant signed by a judge, immigration officers cannot compel a healthcare provider or their staff to comply with their requests;

- Third, inform the officer 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 point person before you can provide access; and

- Fourth, ask the officer to wait outside while you contact your legal counsel or other appropriate point person.

What types of documents may an ICE official present when conducting immigration enforcement activity and what to look for?

If presented with a warrant or other court document by immigration or other law enforcement officials, a designated staff member at a healthcare facility should review whether the document: (1) is a valid judicial warrant; (2) is signed by a judge or

[7] For additional information *see* National Immigration Law Center (December 2024), "Health Care Providers and Immigration Enforcement: Know Your Rights, Know Your Patients' Rights."

magistrate judge; (3) states the address of the premises to be searched; and (4) if indicated, is sought to be executed during the time specified on the warrant.

Immigration officials may present a variety of documents, not all of which are warrants in the constitutional sense. Healthcare providers are not required to consent to a search of the private areas of a facility unless presented with a judicial warrant, signed by a judge or magistrate, and based on probable cause. Subpoenas, whether administrative or judicial, are documents that request the production of documents or other evidence. They generally do not require immediate responses and can be challenged in court. If feasible, a designated staff member or other appropriate point person should review all documents presented by immigration officials with the assistance of legal counsel. Healthcare facility staff are advised to not physically interfere with the actions of immigration officials or any law enforcement officers.

ICE Administrative Removal Warrants (Form I-200) or Arrest Warrants (Form I-205) authorize ICE officers to arrest a person suspected of violating the immigration laws. These are not warrants within the meaning of the Fourth Amendment to the U.S. Constitution, are not signed by a judge or magistrate judge and are not based on a showing of probable cause of a criminal offense. These warrants do not require healthcare providers to grant ICE officers access to a facility's 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 based on a finding of probable cause and authorize the search and seizure of property in a specified location or the arrest of a person named in the warrant, including in non-public areas. Prompt compliance with these warrants is usually required. If feasible, a healthcare provider should review the document and consult with legal counsel.

Information About Access to Healthcare and Government Insurance Coverage

Are healthcare providers required to verify their patients' immigration or citizenship status?

No. Healthcare providers in Massachusetts are not required to ask about immigration or citizenship status and may treat anyone regardless of immigration or citizenship status. An individual may be required to disclose his or her immigration status to apply for certain government benefits, including government-funded health insurance; however, application to such programs is voluntary.

What protections are currently in place for patients who seek care at a hospital or other healthcare provider?

Emergency departments are required to provide emergency screening and stabilization services without asking about immigration, citizenship, or insurance status.[8] Some

[8] Emergency Medical Treatment & Labor Act (EMTALA) 42 U.S. Code § 1395dd.

providers are required to treat anyone living in their service area, irrespective of immigration status.[9]

In addition, the Massachusetts Public Accommodation Law prohibits making any distinction, discrimination, or restriction in admission to or treatment in, a healthcare facility, including dental and medical offices, pharmacies, clinics, hospitals, and nursing homes, based on *race, color, religious creed, national origin, ancestry, sex, gender identity, sexual orientation, deafness, blindness, or any physical or mental disability*.[10] State licensure requirements also mandate that hospitals shall not discriminate in the provision of service against any person on the basis of race, creed, color, sex, handicap, or national origin.[11] Many healthcare providers have their own non-discrimination policies that may be found on their websites (for example, in a Patient's Rights section).

Is a patient's immigration status affected if he or she receives a government-subsidized healthcare service or applies for government insurance, such as MassHealth?

No. The potential expansion of the concept of "public charge" – a designation that can adversely impact an immigrant's legal status[12] – is of particular concern to healthcare providers. Under current federal policy, effective September 9, 2022, the receipt of non-cash benefits for which one is eligible, including but not limited to Medicaid (MassHealth) (other than for nursing home care), CHIP (Children's Health Insurance Program), Health Safety Net or health insurance through the Health Connector, SNAP (Supplemental Nutrition Assistance Program), or any benefits related to immunization or testing for communicable diseases, does not impact an individual's immigration status.[13] Any changes to the public charge designation require federal rulemaking, which involves a lengthier process than an executive order.

What programs are available to individuals without regard to immigration or citizenship status?

Massachusetts has programs for low-income children and adults without regard to citizenship or immigration status. Information about these programs can be found at http://www.mass.gov/eohhs/consumer/insurance/ or at the following links: MassHealth Limited, Health Safety Net, and Children's Medical Security Plan. A local Navigator or Certified Application Counselor can assist with applications for coverage through public assistance programs.[14]

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[9] *See, e.g.*, Public Health Service Act Section 330(a)(1) (PHSA, 42 U.S.C. § 254b). Federal law requires "health centers," as defined by statute, to serve all residents in their federally-approved service area.
[10] M.G.L c. 272, §§ 92A, 98, and 98A.
[11] *See, e.g.*, 105 CMR 130.206.
[12] Currently, the rule established by President Biden remains in effect, *see* https://www.federalregister.gov/documents/2022/09/09/2022-18867/public-charge-ground-of-inadmissibility.
[13] *See* 8 C.F.R. 212.20 through 212.23; "Public Charge Ground of Inadmissibility," September 9, 2022 (2022 Final Rule), https://www.govinfo.gov/content/pkg/FR-2022-09-09/pdf/2022-18867.pdf.
[14] For help locating enrollment assistance service, *see* https://my.mahealthconnector.org/enrollment-assisters. For MassHealth Information for Noncitizens, *see* https://www.mass.gov/info-details/masshealth-information-for-noncitizens.

As of November 1, 2024, Deferred Action for Childhood Arrivals (DACA) recipients are eligible for coverage under the Affordable Care Act (ACA) through the Massachusetts Health Connector.[15] Applicants are encouraged to seek assistance from a Certified Assister through the Massachusetts Health Connector.

When applying for coverage through the Massachusetts Health Connector, applicants will have to provide information about their immigration status to determine eligibility. The Massachusetts Health Connector will not share this information with immigration enforcement agencies.[16] The Health Connector provides a list of immigration statuses that can qualify for coverage.

Additional Information

What steps might healthcare providers take to protect patients and their information?

A healthcare provider should collect and maintain only as much patient immigration or citizenship information as may be necessary for treatment or regulatory compliance purposes. A healthcare provider should consult with their organization's policies and procedures regarding the collection and release of patient information.

May a healthcare provider educate patients about their rights with regard to immigration enforcement activities?

Yes. Healthcare providers are permitted to educate patients about their legal rights. A healthcare provider may, for example, post information about rights, distribute information, and hold educational sessions. Before engaging in and funding such activities, a healthcare provider should consider whether any limitations might preclude the use of certain funds for this purpose, including any restrictions that may accompany grants to fund particular projects or programs.

Who can a healthcare provider contact at the AGO with questions or to report an incident?

If you have questions or need further assistance, you may contact the Office of the Attorney General at (617) 963-2917.

Updated January 31, 2025

[15] *See* https://www.masshealthmtf.org/health-connector-coverage-daca-recipients-update/. An injunction in a federal case in North Dakota does not affect applicants in Massachusetts, but they are advised to monitor the effect of ongoing litigation on their eligibility for coverage.
[16] *See* https://www.mahealthconnector.org/immigration-status.

SELECT BOARD

SelectBoard@natickma.org ◆ (508) 647-6410

13 East Central St. Natick, MA 01760 ◆ www.natickma.gov

Policy on Immigration Documentation

In order to ensure the Town of Natick complies with federal and state laws regarding immigration; the Select Board (the "Board") of the Town of Natick ("Town"), pursuant to its authority as the executive body of the Town, hereby adopts the following Policy:

1. Under 8 U.S.C. §1373 and §1644 and Commonwealth v. Lunn, 477 Mass 517 (2017), state and federal law prohibits town officials from imposing limits on maintaining, exchanging, sending, or receiving information regarding citizenship and immigration status with any federal, state, or local government entity.

2. No Town policy, procedure or regulation shall violate federal laws or the laws of the Commonwealth of Massachusetts.

3. No employee of the Town shall inquire about or collect any information regarding the citizenship or immigration status of any individual unless Federal Laws or the laws of the Commonwealth of Massachusetts require municipal employees to do so.

4. No employee of the Town shall detain a person based solely on the belief that the person is not present legally in the United States or that the person has committed an immigration violation.

5. No employee of the Town shall perform the functions of an immigration officer, nor shall the Town use Town funds, resources, facilities, property, equipment or personnel to directly assist in the enforcement of federal civil immigration laws.

6. Nothing in this policy shall prevent an officer, employee or department of the Town from lawfully discharging duties in compliance with and in response to a lawfully issued judicial warrant, judicial subpoena, or judicial detainer.

Natick Select Board

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Kathryn M. Coughlin, Chair

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Bruce T. Evans, Vice Chair

Richard Sidney, Clerk

Kristen T. Pope

Linda Wollschlager

Adopted: xxxxx x, 2024

OPEN SESSION

BUSINESS

3. Discussion on the proposed Land Acknowledgement Policy

March 10, 2025

Original request

March 10, 2025

Falmouth Land Acknowledgement Policy Proposal to the Falmouth Select Board, November 20, 2024.
Submitted by: Sandra Faiman-Silva, Ph.D. [redacted] and listed endorsers.

Purpose

The purpose of a Land Acknowledgement is to demonstrate recognition and respect for Indigenous peoples in our community and region, both in the past and the present, and the contributions they have made to our communities and the nation.

Scope

This policy will provide a Land Acknowledgement for the Town of Falmouth, MA, and an overview of when the Land Acknowledgement should be used relative to Falmouth Select Board and community meetings and events. Also, herewith are proposals for on-going educational activities, events, signage, and informational materials designed to educate residents and visitors about the Wôpanâak [Wampanoag] people, their history and culture; in order to build collaborative, accountable, continuous, and respectful relationships with Wôpanâak [Wampanoag] people residing in and around Falmouth and Southeastern Massachusetts.

1. Definitions

1. 1.1 **First Nations Peoples or Indigenous Peoples** means original inhabitants of the land that is now Falmouth, and who were the first to encounter sustained European contact, settlement, and trade.
2. 1.2 **Wôpanâak [Wampanoag] People, 'People of the First Light,'** include original inhabitants of Southeastern Massachusetts, Cape Cod, Nantucket, and Martha's Vineyard, including but not limited to members of the Mashpee Wampanoag Tribe, Herring Pond Wampanoag, and Wampanoag Tribe of Aquinnah (see: 1920px-Wôpanâak_Nation_c_1620-01.svg.png).

2. Proposed Land Acknowledgement:

As we gather on the unceded ancestral homelands of the Wôpanâak [Wampanoag] Nation, we recognize, honor and acknowledge the Wôpanâak [Wampanoag] people, traditional custodians and keepers of this land for more than 12,000 years. As we recognize historic losses experienced by the Wampanoag people, we hereby pledge to honor and pay respect to the sovereign Wôpanâak [Wampanoag] Nations, build enduring relationships, and foster opportunities to learn about and celebrate the rich indigenous cultures and heritage of First Nations people in what is now known as Falmouth, Massachusetts.

3. The Land Acknowledgement should be shared to enhance cultural sensitivity and historical understandings. As such, it is recommended that:

a. once adopted, the Town provide cultural sensitivity and historical information and materials and public sessions to inform the Town on why a Land Acknowledgement is being adopted, the contents of the Acknowledgement statement, and how the Town can use the Land Acknowledgement to honor and pay respect to indigenous people and their descendants in Falmouth and our region;

b. the **Land Acknowledgement** be posted on the Town of Falmouth website, on public displays, and shared to open meetings and special events, such as examples detailed below.

c. Recommended events may include regular, annual, or periodic events, such as:

1. Regularly scheduled Falmouth Town Meeting;

2. Select Board observances related to Indigenous Peoples Day and other observances;
3. High School Graduations [using Falmouth Public Schools Acknowledgement];
4. Special and regularly held town-sponsored meetings and events.

4. In order to be meaningful and enduring, adopting a Land Acknowledgement should also include on-going educational, outreach, and community engagement. It is requested that the Town of Falmouth partner with community members to create, host and/or sponsor programs, develop informational materials and public displays, and build enduring relationships, such as:

a. educational, social, and civic programs, public signs, displays, and informational pamphlets;

b. building and maintaining lasting partnerships with Wôpanâak [Wampanoag] Tribe members;

c. helping to secure funding to support events, programs, and displays;

d. and, it is recommended that the Town of Falmouth consider forming a permanent ***Committee*** or ***Working Group*** to implement meaningful and enduring educational events, programs, and opportunities for community engagement.

4a. Promoting lasting and meaningful educational, social, and community events,

It is proposed that lasting and meaningful events be organized by community members, local organizations and agencies, with support from Town Boards and Departments. Funding may be secured through grants, donations, and the Town of Falmouth. Events and programs may be developed in coordination with existing town Committees and organizations, such as the Falmouth Cultural Council, Falmouth Public Library, Highfield Hall, Falmouth Historical Society, the Falmouth DEIB Advisory Committee, Mashpee Wampanoag Tribe, and the Falmouth DEIB Officer (pending hire), among others.

4b. Events/Activities should include:

a. An annual event on Indigenous Peoples Day: This event aims to reaffirm through a public acknowledgement ceremony and/or educational event, our commitment to honor our Wôpanâak [Wampanoag] forebears and educate community members about the history, culture, and legacy of the Wampanoag people, 'People of the First Light.'

b. At least one other event annually: This event aims to bring First Nations People and other community members together to educate Falmouth residents and visitors about the history and culture of the first inhabitants of our region, the Wôpanâak [Wampanoag] People.

c. Other events, memorials, displays and informational materials, pending funding.

d. formal engagement with regional Tribes, Tribal Councils and tribal leadership.

4c. It is suggested that the Falmouth Select Board formalize relationships with regional tribes, including those that are federally recognized. Tribes include the Mashpee Wampanoag Tribe, the Wampanoag Tribe of Gay Head (Aquinnah), and the Herring Pond Wampanoag Tribe. We propose that formal engagements with the region's tribal leaders be instituted through an introductory meeting and annual or periodic meetings. The author of this Proposal is available to assist with organizing meetings with area Tribes.

5. Funding for lasting and enduring events, observances, activities, and signage related to Indigenous community engagement.

We request that the Town of Falmouth establish a permanent fund to support annual and periodic events, observances, and activities, to promote lasting fellowship and engagement with Wampanoag and other indigenous people and communities in our region, including the Wampanoag Tribes. Funds from an ***Indigenous Peoples Engagement Fund*** would support costs associated with annual Indigenous Peoples Day observances, other educational and community activities, posting of appropriate signage, other expenses for speakers, performers and other community engagement events and activities.

We request that the Select Board establish a budget line item in the amount of $5,000 annually to be authorized to pay expenses related to engagement, enrichment, and outreach activities.

6. Monitoring and Review of the Policy

The Falmouth Select Board is responsible for the administration, maintenance, and review of this policy.

ENDORSED BY:

Debra Berglin, LICSW. *Falmouth, Director, Cape Cod Campus, Boston University School of Social Work*
Roxanne Mills Brown, *Mashpee Wampanoag and Falmouth Resident*
Sandra Faiman-Silva, Ph.D. *Falmouth Liaison to the Barnstable County Human Rights Advisory Commission and Falmouth Town Meeting Member.*
Falmouth Affirmative Action Committee (endorsed April 3, 2024)
Falmouth No Place for Hate *(endorsed August, 2024).*
Reverend Nell Fields, *Minister, Waquoit Congregational Church*
Meghan Hanawalt, *Falmouth Town Meeting Member, Small Business Consultant, Founder & CEO, getmygoats;*
ChinMapp, *Falmouth, Member, Falmouth Diversity, Equity, Inclusion & Belonging Committee and, LWV DEIB Committee.*
Travis Mapp, *Falmouth, High School educator, Member, Barnstable County Human Rights Advisory Commission*
Joanne Treistman, *Falmouth, Member, LINK, Linking Indigenous and Non-Indigenous Knowledge, Inc.,*
Christine Uljua, *Falmouth Town Meeting Member*
Waquoit Congregational Church, *15 Parsons Lane, Waquoit.*
Olivia Masih White, Ph.D., *Falmouth No Place for Hate Steering Committee Member*

Suggested edits

March 10, 2025

Proposed ~~Land~~ Historical Acknowledgement:

As we gather today on the ~~unceded~~ ancestral homelands of the Wôpanâak [Wampanoag] Nation, we

recognize, honor and acknowledge the Mashpee, Aquinnah, Herring Pond, and Assonet Wôpanâak [Wampanoag] ~~people~~tribes~~,~~ as the traditional custodians

~~and keepers~~ of this land for more than 12,000 years before colonization. ~~As w~~We recognize the tragic~~historic~~ losses the Wampanoag people experienced

here~~by the Wampanoag people~~, and we are compelled by history to be worthy and responsible stewards of this land. As part of town government in what is now known as Falmouth, Massachusetts, we hereby pledge to honor and ~~pay~~ vow to respect ~~to~~ the sovereign Wôpanâak [Wampanoag] Nations~~,~~ by building enduring relationships, investing in reconciliation~~,~~ and fostering

opportuni~~;~~ties to learn about and celebrate the rich indigenous cultures and heritage of First Nations people.

~~in what is now known as Falmouth, Massachusetts.~~

OPEN SESSION

BUSINESS

4. Discuss drafting a letter in opposition to the Mass DEP proposed $50 million wastewater construction funding application cap included in the 2025 Clean Water State Revolving Fund (CWSRF) Intended Use Plan (IUP)

FOR IMMEDIATE RELEASE

From The Office of Barnstable County Board of Regional Commissioners

Barnstable County Commissioners Take Action on Funding Changes That Threaten Cape Cod's Wastewater Projects

Renew Arts Foundation's Regional Designation, Review PFAS Remediation Efforts and Key Findings from the Regional CSEC Report 2024

February 26, 2025 (BARNSTABLE, MA)- At today's meeting of the Barnstable County Board of Regional Commissioners the Commissioners discussed opposition to proposed changes in the Clean Water State Revolving Fund (CWSRF), updates on child sexual exploitation cases from the Regional CSEC Report 2024, progress on PFAS remediation efforts, and the re-designation of the Arts Foundation of Cape Cod as the Regional Arts Agency.

Barnstable County Commissioners Oppose Clean Water Fund Changes

Cape Cod's unique environmental landscape depends on responsible wastewater management to protect its water quality, marine life, and local economy. The Clean Water State Revolving Fund (CWSRF) is a critical source of financing for municipal wastewater infrastructure, helping towns upgrade outdated systems and reduce nitrogen pollution that threatens Cape Cod's bays and estuaries. Today, Andrew Gottlieb, Executive Director of the Association to Preserve Cape Cod (APCC), addressed the Barnstable County Commissioners regarding proposed changes to the Clean Water State Revolving Fund (CWSRF) Intended Use Plan and their potential impact on Cape Cod municipalities. The Commissioners oppose these changes, which include:

1. A $50 million annual cap per town on state revolving fund loans, which could delay or prevent large-scale wastewater projects that require consistent funding over multiple years.
2. The elimination of guaranteed multi-year funding, meaning towns must reapply for financing each year rather than securing long-term commitments. This uncertainty complicates project planning, affects voter confidence, and may stall essential infrastructure improvements.

Mr. Gottlieb emphasized that these unexpected rule changes undermine Cape Cod communities' ability to move forward with wastewater management efforts and access 25% principal forgiveness through the Cape & Islands Water Protection Fund. He urged the Commissioners to submit formal opposition during the public comment period and join other Cape communities in pushing for a return to the previous funding structure.

To address long-term funding shortages, APCC has proposed a $500 million state bond authorization, which could expand financing capacity for water infrastructure projects. The Commissioners voted to approve a resolution opposing the CWSRF changes and to submit a letter to the Massachusetts Department of Environmental Protection (DEP) advocating for a reversal of these policies. Several Cape Cod towns have already written to the Governor and DEP, voicing strong opposition.

The Commissioners agreed that state and municipal collaboration is crucial to maintaining the viability of wastewater infrastructure funding and authorized a resolution in opposition to the Clean Water State Revolving Fund Intended Use Plan and execution of a letter to Department of Environmental Protection Commissioner Heiple stating their opposition.

Addressing the Growing Crisis of Child Exploitation: Key Findings from the Regional CSEC Report 2024

Jacob Stapledon, Community Engagement and Education Program Manager at Children's Cove, a department of Barnstable County, presented key findings from the Regional Commercial Sexual Exploitation of Children (CSEC) Report 2024. Children's Cove is a Child Advocacy Center (CAC), a facility that provides a coordinated, victim-centered response for children who have experienced abuse or exploitation.

Mr. Stapledon highlighted the growing crisis of child sexual exploitation in Southeastern Massachusetts, reporting that referrals to CACs increased by 46% in 2024, impacting 471 children—more than half of whom were victims of online exploitation. The report emphasized that child exploitation is not confined to urban areas but occurs within local communities, often in victims' homes. Artificial intelligence has exacerbated the issue, with deepfake technology being used to manipulate children's images, alongside rising concerns about

revenge porn and peer-to-peer exploitation. A major misconception addressed in the report is that victims will report their abuse—90% do not disclose due to fear and lack of understanding. The report calls for increased community awareness, parental involvement, and proactive reporting of suspected cases.

Mr. Stapledon also detailed the CAPE Emergency Response Protocol (CERT), a structured approach for coordinating an immediate 24/7 joint response to cases of child abuse and exploitation. This protocol involves Law Enforcement, the Department of Children & Families (DCF), the District Attorney's Office, and Children's Cove to ensure rapid intervention. CERT criteria include cases of sexual abuse reported within 72 hours, situations where critical evidence may be lost, and cases involving child exploitation. For physical abuse, CERT is activated in severe injury cases, including brain damage or life-threatening harm. When CERT is triggered, DCF and law enforcement coordinate forensic interviews with Children's Cove, ensuring a victim-centered response. The presentation reinforced the importance of early intervention, collaboration among agencies, and proactive community engagement in addressing these growing concerns.

Barnstable County Advances PFAS Remediation Efforts at Former Fire Training Site

Paul Ruszala, P.E., Barnstable County's Assets and Infrastructure Manager, along with environmental experts from GZA GeoEnvironmental, John Paquin, P.G. and David Leone, LSP, provided an update on PFAS remediation efforts at the former municipal fire training site. GZA GeoEnvironmental is actively analyzing groundwater flow to track PFAS migration, utilizing geophysical surveys and numerical modeling to understand its movement, which primarily heads southeast toward Mary Dunn Pond and nearby drinking water wells. To mitigate contamination, a Permeable Reactive Barrier (PRB) system is being implemented, injecting powdered carbon underground to trap PFAS and prevent further spread. Additionally, the efficiency of the current pump and treat system is under review to optimize cost and effectiveness.

Further investigations are underway, including installing additional monitoring wells, collecting soil samples, and conducting ecological assessments to evaluate environmental impact. A $4 million ARPA grant has been allocated for the PRB system, while future cleanup costs are estimated to be between $10 million and $60 million. Discussions are ongoing regarding cost-sharing among responsible parties to ensure financial responsibility is fairly distributed.

Next steps involve refining remediation strategies based on continued data collection and modeling, implementing the PRB system, and maintaining collaboration with regulatory agencies and municipalities to manage the site and prevent further contamination.

Barnstable County Renews Arts Foundation's Regional Designation, Securing Federal Funding Opportunities

The Barnstable County Commissioners unanimously re-designated the Arts Foundation of Cape Cod as the Regional Arts Agency for March 2025–March 2026, a designation granted annually since 2021. Chris Azarian, Director of Grants and Communications, highlighted that this status has helped secure $220,000 in federal funding since 2021, supporting COVID recovery, artist grants, and community projects. Recent initiatives include therapeutic drumming for individuals with disabilities and a documentary on Asian experiences on Cape Cod. The designation enables the Foundation to apply for additional NEA funding, which has previously positioned it as the only local arts agency in Massachusetts to receive such grants.

About Barnstable County Regional Government of Cape Cod

Barnstable County provides exemplary government functions and services to keep our community healthy and safe, promote sustainable growth, and offer a proactive, open government that enhances the quality of life for the citizens of Barnstable County. Learn more at www.capecod.gov.

Media Contact: Sonja Sheasley. Communications Coordinator | (508) 375-6896 | sonja.sheasley@capecod.gov

For Children's Cove-related inquiries:

Jacob Stapledon
Community Engagement and Education Program Manager, Children's Cove
Jacob.stapledon@childrenscove.org | | 508-375-0410

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CAPE COD AND ISLANDS
WATER PROTECTION FUND

February 24, 2025

Via E-mail

Bonnie Heiple, Commissioner
Massachusetts Department of Environmental Protection
100 Cambridge Street
Boston, MA 02133

Re: 2025 Clean Water Intended Use Plan

Dear Commissioner Heiple,

I write on behalf of the Cape Cod and Islands Water Protection Fund Executive Committee with exceptional concern about provisions included in the Draft 2025 Clean Water State Revolving Fund (CWSRF) Intended Use Plan (IUP) that have the potential to stop dead in its track all progress on wastewater management on Cape Cod. With no advance public notice the draft 2025 IUP caps applicants to $50 million each and provides no carryover costs for new projects in subsequent years. The IUP states that projects that need additional financing should reapply for future IUPs. These two rule changes undermine years of work done at the local, regional and state levels to create a financing approach that provided certainty to towns working to advance multiyear and expensive projects. This IUP, without notice and adequate forethought, destroys a hard-earned consensus on how towns can finance and advance wastewater management on Cape Cod.

We understand that the SRF is oversubscribed and that changes are required to ensure it remains a reliable source of project financing. That said, the proposed response is the wrong choice. A major change in the financing rules should have been discussed and vetted prior to issuance of the funding round being advertised so that the impact could be assessed and understood prior to towns investing in the effort to make the application.

The towns proposing projects for the 2025 funding cycle did so assuming that the terms of financing would be what they have been in prior years. Few towns, if any, proposing projects that require multi-year financing will be able to obtain voter approval of the entire debt for a project with uncertainty about SRF funding past year 1. The impact of this policy change is amplified on Cape Cod because access to the 25% subsidy from the Cape Cod and Islands Water Protection Fund is contingent on SRF financing. Few town meetings will authorize funding a large multiyear project lacking clarity on the debt and subsidy structure of the financing. Let us be clear, the multi-year nature and magnitude of most Cape wastewater projects means that this policy change, if implemented, will bring progress on wastewater management to a halt.

The limiting of funding to individual towns will have a similar chilling effect on the ability of towns to proceed. Cape projects are big because the problems we are solving are big. Arbitrary limits on how

much a town can finance is the functional equivalent of not offering financing at all. The proposal puts towns in the position of having to seek blended financing with lesser subsidy, higher interest rates and greater complexity. This imposition of increased costs on tax levy financing will increase local taxpayer costs at a time when we are all working to make Cape Cod more affordable to year-round residents. This change to the IUP runs directly counter to many policy initiatives of the Healey Administration and makes no sense.

It is our request that the above discussed changes to the 2025 IUP be rescinded and that the terms and conditions of financing revert to those that have been historically in place. We look forward to working with you and the Clean Water Trust on longer-term solutions to SRF capacity, but feel strongly that the direction you have chosen is wrong for Cape Cod and Massachusetts and must be reversed.

Thank you for your consideration.

Sincerely,

Kevin Galligan
Chair, Cape Cod and Islands Water Protection Fund Management Board

TOWN OF YARMOUTH

1146 ROUTE 28, SOUTH YARMOUTH, MASSACHUSETTS 02664-2445
Telephone (508) 398-2231, ext. 1271, Fax (508) 398-2365

February 25, 2025

Robin McNamara, Acting Director of Municipal Services
Massachusetts Department of Environmental Protection
100 Cambridge Street, Suite 900
Boston, MA 021114
Email: robin.mcnamara@mass.gov

Re: Town of Yarmouth, MA CY2025 PEF Application and Draft IUP – Written Testimony
CWSRF-19063: Phase 1 WRRF and Collection System
CWSRF 8349: Phase 1 WRRF and Collection System

Dear Ms. McNamara:

The Select Board of the Town of Yarmouth hereby expresses its grave concerns that proposed changes in the Clean Water State Revolving Fund 2025 Intended Use Plan (CWSRF IUP) which eliminate the carry-over provisions may prevent our Town from completing its critical Wastewater Phase 1 project, which is currently under construction. The portion of the Phase 1 project proposed for approval under the 2025 IUP covers the connections from the remainder of the system to the Town's Wastewater Treatment Facility. Without adequate funding for this part of the system, the remainder of the $207,244,000 Phase 1 would be rendered useless.

For this reason, in accordance with the Public Hearing Notice for the 2025 Draft State Revolving Fund Intended Use Plans (IUPs), the Town of Yarmouth is requesting the Massachusetts Department of Environmental Protection (MassDEP):

1. Rescind the funding cap per applicant of $50 million.
2. Rescind the language requiring applicants with multi-year carryover projects to reapply for future IUPs as this creates an unnecessary burden and cost on the applicant to reapply for funding that has been previously approved in prior Intended Use Plans.

Item 1. Applicant funding cap $50M

According to the 2025 Draft State Revolving Fund Intended Use Plan (IUP):

For the Trust and MassDEP to continue to support these carryover project commitments, it is necessary to limit the new projects offering in this IUP to the highest priority projects, cap applicants to $50 million each, and provide no carryover costs for new projects in subsequent years. Projects that need additional financing should reapply for future IUPs.

Due to the size of this program, and number of contracts currently underway and plans to be issued, there are several years when the estimated annual cash flow will exceed the annual applicant cap of $50m. Yarmouth is concerned if the applicant cap is exceeded the project could be unnecessarily delayed.

Yarmouth has experienced significant challenges in both permitting and financing wastewater strategies to remove nitrogen loading from our sensitive coastal embayments. The SRF Program, with its favorable financing terms represents the primary State funding subsidy to enable our efforts to be successful. Completion of the Phase 1 improvements without delays is critical for this project to meet our environmental goals while minimizing further disruption to those living and working in the project area. We are critically concerned that the new proposed rules may prevent our community from achieving our shared goals.

Item 2. Multi-year carry-over refiling

Referring to the italicized section in Item 1 above, we have concerns regarding the requirement for multi-year projects to annually re-file for future IUPs. This new requirement creates uncertainty and confusion for municipal leaders and voters, and places in jeopardy the amounts required in the subsequent year to complete the project under this important program. Moreover, the elimination of the carryover provision further jeopardizes and creates additional confusion regarding the allocation of the Cape and Islands Water Protection Fund (CIWPF) to support this project. The Town's subsidy under the CIWPF has been established as 25% of SRF approved project costs. Eliminating the carryover provisions will reduce the Town's CIWPF subsidy and place these funds at risk.

The passage of large, multi-year SRF projects is already a difficult process for many towns. By enforcing an application cap with no carryover, the entire project is placed at undue risk. Additionally, voters may also have concerns about approving important water and wastewater projects due to the uncertainty of making future IUPs, yet further destabilizing our ability to implement critical wastewater management strategies.

The Town of Yarmouth respectfully requests that the proposed new rules for the 2025 IUP impacting carryovers be rescinded to enable the Towns to proceed with ongoing projects as currently planned. By changing the rules of the game in mid-project, the Town is placed at risk of not completing Phase 1 as an entire project. We stand ready to work together with the Clean Water Trust to address future SRF capacity challenges with more long-term solutions, but we need the certainty that we will be able to complete our Phase 1 project which is already under construction.

We appreciate your consideration of these requests. If you have any questions, please feel free to contact the Select Board through our Town Administrator, Robert L. Whritenour, Jr. at 508 398-2231, ext. 1271.

Sincerely,

Select Board of the Town of Yarmouth

Dorcas McGurrin, Chairman

Tracy Post, Vice Chairman

Mark Forest

Joyce Flynn

Liz Argo

OPEN SESSION

BUSINESS

5. Discussion and update on the use of municipal funding for IA septic systems

GEOFFREY E. SNYDER
COMMISSIONER

REBECCA H. FORTER
DEPUTY COMMISSIONER

The Commonwealth of Massachusetts
Department of Revenue
Rulings and Regulations Bureau
P.O. Box 9566
Boston, MA 02114-9566

October 30, 2024

Stephen Leighton
Water Quality Management Committee
Falmouth MA.
sbleighton@verizon.net

Dear Stephen Leighton,

Your recent inquiry regarding the eligibility requirements to claim the Title 5 septic credit was forwarded to me for review and response.

Taxpayers who repair or replace a failed septic system may be entitled to a credit ("Title 5 credit") against personal income tax due. G.L. c. 62, § 6(i). In general, a septic system that is repaired or replaced must have been determined to be a "failed system" pursuant to an inspection performed prior to such repair or replacement. TIR 97-12: Personal Income Tax Credit for Failed Cesspool or Septic System Title 5 Expenditures.

TIR 99-5: The Title 5 Credit and Federally Mandated Sewer Connections allowed taxpayers who connect to a sewer system pursuant to a federal court order, consent decree, or similar mandate from a federal court of competent jurisdiction to take the Title 5 credit. DOR Directive 01-6: The Title 5 Credit and State Mandated Sewer Connections extended the Title 5 credit to taxpayers who connect to a sewer system pursuant to an Administrative Consent Order from the Massachusetts Department of Environmental Protection ("DEP"), a Massachusetts state court order, consent decree, or similar mandate from a state court of competent jurisdiction.

The legislature recently amended G.L. c. 62, § 6(i) to allow the Title 5 credit to taxpayers who repair, replace, or upgrade a cesspool or septic system or who connect to a sanitary sewer collection system, if such repair, replacement, upgrade or sewer connection is required pursuant to the provisions of Title 5 of the State Environmental Code, 310 CMR 15.000, a watershed permit issued by the DEP, or other requirements or conditions for implementation of the watershed permit imposed by the permittee or the DEP.

This amendment clarifies that eligible repairs, replacements, upgrades, or connections shall include, but not be limited to: (1) upgrades to best available nitrogen reducing technology pursuant to 310 CMR 15.215(2)(a) or (2)(d)1, or pursuant to the requirements of a watershed permit issued in accordance with 314 CMR 21.00; and (2) connections to a sewer pursuant to the requirements of a watershed permit. Working Draft TIR: Tax Provisions in the Fiscal Year 2025 Budget Section II (c).

The credit is generally available to eligible taxpayers beginning in the tax year in which the work required to repair, replace, or upgrade a septic system or connect to a sewer was "completed." *See* G.L. c. 62, § 6(i); TIR 97-12. For purposes of claiming the credit, such year is the year stated in the verification letter. Taxpayers claiming the Title 5 credit must attach a copy of the verification letter to Schedule SC when filing their Form 1 or Form 1-NR/PY.

Generally, if a system is repaired, replaced, upgraded, or connected and does not met the requirements as stated in TIR 97-12, TIR 99-5, DD 01-6 or pursuant to 310 CMR 15.215(2)(a) or (2)(d)1, or pursuant to the requirements of a watershed permit issued in accordance with 314 CMR 21.00, a taxpayer will not be eligible to claim the Title V septic credit.

Very truly yours,

John E. Tully

John E. Tully, Tax Counsel
Rulings and Regulations Bureau

#600536

TOWN OF FALMOUTH
Office of the Town Manager & Select Board
59 Town Hall Square, Falmouth, Massachusetts 02540

TO: Mike Renshaw, Town Manager

FROM: Peter Johnson-Staub, Assistant Town Manager

SUBJECT: Legal issues related to providing Town subsidies for I/A septic systems and urine diversion toilets

DATE: September 11, 2024

In August, Finance Director emeritus Ed Senteio and Town Counsel Maura O'Keefe became aware that the Water Quality Management Committee has been discussing the potential for the Town to subsidize Innovative best available technology nitrogen removal septic systems (AKA I/As) for those households that will be required to install such systems under the watershed permits that are presently being developed to comply with recent Title V legislation. Jointly, they researched the ability of a municipality in the Commonwealth to subsidize improvement on private property. Based on the research they have done to date, it appears municipal funds cannot be used for improvements on private property. Maura has advised that grant funds could be used to subsidize improvements to private property assuming the use is consistent with the scope of the grant.

At the heart of the legal framework is the anti-aid amendment. This constitutional provision prohibits the expenditure, grant or use of municipal funds for the benefit of a private party unless there is some public purpose for doing so. While denitrification of the Town's watersheds is a clear public purpose that serves the good of all residents, this must be balanced against the private benefit that a few individuals would receive by having their residences improved by Falmouth tax dollars. There is a realistic risk that the Town would be subjected to a legitimate 10 tax payer lawsuit for the improper expenditure of municipal funds.

The same concept applies to urine diversion as well. We can spend Town funds on a study and for some of the costs associated with the pilot project that is being considered such as testing, evaluation, consulting and perhaps project management. But if we paid for the installation of plumbing fixtures in private homes under current general law the legality of the expenditure could be challenged via a 10 tax payer lawsuit. Ed suggested we could consider re-allocating AFCEE grant funds (Airforce Center for Environmental Excellence) previously allocated to a sewer project but unspent, and apply those funds toward the urine diversion pilot project, assuming that moves forward in April.

If you would like to find a way to subsidize homeowners who are required to install enhanced nitrogen removal septic systems and/or urine diversion toilet fixtures in connection with a regulatory requirement such as the watershed permits, we could consider pursuing special legislation. Through special legislation the Town could seek permission to assess a betterment for the installation of the nitrogen removal systems and issue low or no interest loans repayable over 20 years to homeowners who are required to install these systems. This would mirror the existing betterment assessment process for connecting to municipal sewer systems. There may be other towns facing a similar situation which could improve the chances for adoption. We should also consider that subsidizing I/As is not presently included in the capital plan and the potential cost is in the millions.

Please let us know if you would like to meet to discuss this further before we release this information to interested parties including the Water Quality Management Committee, Select Board and urine diversion working group.

CC: Maura O'Keefe
Laura Sitrin
Ed Senteio
Amy Lowell

//Subsidizing IAs and UDs

Municipal Expenditures: Proper Public Purposes

Mary Mitchell, Esq. (retired) - Municipal Finance Law Bureau

The following article, originally published in the February, 2006 edition of City & Town, is being republished[1] due to ongoing interest in the subject.

Increasingly over the past few years, DLS legal and accounting staffs are asked if certain expenditures made by cities and towns are allowable. Many of these issues arise as the municipal accounting officer reviews departmental bills for payment. This article discusses the rules regarding the expenditure of public funds and makes recommendations for ensuring proper payment.

Authority to Spend

The authority for cities and towns to spend money arises under Section 5 of MGL c. 40. That section provides that:

"[a] town may at any town meeting appropriate money for the exercise of any of its corporate powers; provided, however, that a town shall not appropriate or expend money for any purpose, on any terms, or under any conditions inconsistent with any applicable provision of any general or special law.[2]"

Cities and towns are free to exercise any power or function, except those denied to them by their own charters or reserved to the State, that the Legislature has the power to confer on them, as long as the exercise of these powers is not inconsistent with the Constitution or laws enacted by the Legislature.[3] In general, the properties and purposes for which cities and towns are authorized to spend are not specified, but rather they include any necessary expenditures arising from the exercise of their powers or functions.

Public Purpose Limitation

Cities and towns can spend only for public purposes. Public funds cannot be used for private purposes. Thus, cities and towns have the right to spend money for any purpose where the public good will be served but not where the expenditure of money is directly for the private benefit of certain individuals. This principle is expressed in the Massachusetts constitution and in numerous cases.[4]

In some situations, however, the expenditure of public funds advances both public and private interests. In those situations, if the dominant motive for the expenditure is a public one, incidental private benefits will not invalidate the expenditure.[5] If, however, the dominant motive is to promote a private purpose, the expenditure will be invalid even if incidentally some public purpose also is served.[6]

Prohibitions Against Certain Expenditures

In addition to the general prohibitions against spending money for any purpose or under any conditions inconsistent with any general or special law, there are two other prohibitions on municipal spending.

1.) Anti-Aid Amendment

The first is a prohibition against the giving of money or property by a city or town to or in aid of any individual, association or corporation embarking upon any private enterprise. This prohibition is referred to as the Anti-Aid Amendment.(7) It provides in pertinent part:

"No grant, appropriation or use of public money or property or loan of credit shall be made or authorized by the Commonwealth or any political subdivision thereof for the purpose of founding, maintaining or aiding any infirmary, hospital, institution, primary or secondary school, or charitable or religious undertaking which is not publicly owned and under the exclusive control, order and supervision of public officers or public agents authorized by the Commonwealth."

This amendment prohibits the use of public money or property by cities and towns for the purpose of maintaining or aiding any institution or charitable or religious undertaking that is not publicly owned. The kinds of expenditures barred by the amendment are those that directly and substantially benefit or "aid" private organizations in a way that is unfair, economically or politically.(8)

The prohibition against using public funds for private organizations includes any grants, contributions or donations made by a city or town to an organization for the specific purpose of directly supporting or assisting its operations. However, the Anti-Aid Amendment does not preclude a city or town from purchasing specific services from private organizations in order to carry out a public purpose.(9) Further, as with the public purpose limitation discussed above, if an expenditure is for a public purpose but also incidentally benefits a private organization, the expenditure generally will not violate the Anti-Aid Amendment.(10)

2.) Wines, Liquors, Cigars

In addition to the prohibition against the use of public funds for private organizations, there is also a prohibition against the use of public funds to purchase alcohol and tobacco under Section 58 of MGL c. 44.

What Constitutes a Public Purpose?

The question of what constitutes a permissible "public purpose" has been discussed in many cases.(11) The cases "do not, however, establish any universal test."(12) Instead, they generally stress the certainty of benefits to the community.(13) Thus, the basic test is whether the expenditure is required for the general good of the inhabitants of the city

or town.(14)

Generally speaking, local government spending for the following purposes satisfies the public purpose test:

- **Wages and Benefits -** Cities and towns have the right to spend reasonable amounts to execute their powers and duties.(15) This right includes the right to compensate people for services rendered.(16) Compensation for services may include sick leave and vacations.(17) Cities and towns also have the right to settle employment or other claims that may be made upon them arising out of their administration of their municipal affairs.(18)

- **Merit Awards -** Cities and towns may spend reasonable amounts on awards for students.(19) Cities and towns may also spend reasonable amounts on retirement gifts, plaques, merit service payments, and other similar awards for municipal employees and officials. The expenditure of public money in recognition of services rendered, even though such expenditure of money is directly for the private benefit of certain individuals, is a public purpose where the benefit is conferred as an appropriate recognition of distinguished and exceptional service, such that the public welfare will be enhanced or the loyalty and productivity of the other employees will be promoted.(20)

By contrast, local government spending for these purposes does not satisfy the public purpose test:

- **Gifts and Gratuities -** Since public money can only be expended for public purposes, cities and towns have no power to appropriate money for gifts or gratuities to persons whose situations may appeal to public sympathy.(21)

- **Lobbying -** Cities and towns cannot spend money to influence elections.(22)

Frequently Asked Questions

We are asked frequently whether the following expenditures are for public purposes and may be paid:

- **Alcohol purchased by a department to be served at a fundraiser or for compliance testing**

The language of MGL c. 44, s. 58 is prohibitive. It reflects an explicit Legislative disapproval of spending municipal resources for alcoholic beverages and cigarettes. We have advised, however, that they can be purchased for the limited purpose of compliance testing for law enforcement or public health purposes. For example, local officials may stage purchases of alcohol or cigarettes by minors from local stores using money for anti-smoking or underage drinking campaigns. We think those expenditures

would not be prohibited because they are not for consumption but to ensure compliance with local regulations and state statutes.

- **Floral arrangements for funerals of municipal employees**

Funeral flowers, sympathy cards and other expenses for the customary expression of sentiments that are incidental to the social relationships that employees develop during work are not expenses made for public purposes. Those expenses are not within a municipal department's budget simply because the relationships developed in conjunction with the conduct of departmental business. Therefore, it is not appropriate to pay for funeral flowers or sympathy cards out of municipal funds. They should be covered from private donations.

- **Plaques and gifts awarded to persons retiring from municipal government or to current employees for outstanding performance during the year**

Retirement gifts, plaques, merit payments and other similar awards given to retirees or employees may be considered a proper purpose for the expenditure of municipal funds if they are not excessive and are used to (i) encourage continuity of service or to (ii) enhance efficiency and loyalty or to (iii) promote productive performance. Similarly, appreciation gifts to volunteers and unpaid interns may also be considered a proper municipal expenditure if the purpose is to promote volunteerism and they are in token amounts. The expense of holding a retirement party should be covered from private donations because it is mostly an expression of support and appreciation from colleagues. However, paying for the cost of dinner for the retiree would be appropriate. By contrast, paying for the dinners, gifts or party expenses for any attendees other than the retiree would generally be considered a mere gratuity and not for a proper municipal purpose.

- **Refreshments at public functions, such as a ribbon cutting ceremony, an opening day, a reception or banquet, or a presentation**

Refreshments and meals may be served at legitimate public functions such as ribbon-cutting ceremonies, opening day events, receptions or banquets, presentations, and the like so long as they are modest and served to provide a benefit for the city or town by helping to keep the participants alert and receptive. The public function must be a department sponsored public event for authorized persons and related to the public purpose of the department sponsoring it. If the function is open only to select groups or individuals, or spouses are in attendance, it is more likely to be considered a private celebration of primarily a social character.

- **Refreshments served to employees, such as coffee made available at a staff meeting or light refreshments provided to election workers or lunch served at an all-day training program or planning meeting**

Refreshments and meals may be served to officers or employees of the city or town or persons doing business with the municipality at official meetings or official events so long as they are modest and benefit the city or town by helping to keep the participants alert and receptive or by enhancing efficiency by avoiding loss of time and disruption if participants leave the premises. The official meeting or event must be a department or municipal sponsored meeting or event for authorized persons and related to the public purpose of the sponsor.

- **Reimbursement of a department head for attending retirement or department dinners or parties or for attending other events not sponsored by the department or municipality**

Employees and officials may be reimbursed for the expenses of attending functions that relate to their public duties. The function must relate to and further the public purpose of the department sponsoring it. If a department head incurs an expense in the performance of official duties in the representation of his or her department, the expense is reimbursable. Thus, the cost of a department head's attendance at a retirement dinner or department party at which he or she is the official presenter of token gifts or awards, as a representative of his or her department, would be a legitimate municipal expense. If the event is arranged and funded by department employees or others, and attendance is optional, then the event would seem to be social and for private purposes rather than for public ones. In addition, if the event is outside of the municipality and not related to the department or the community, the use of municipal funds would not be appropriate.

- **Reimbursement of purchases or expenses incurred during authorized travel or while engaged in authorized business**

Employees who are out of town or working late on business or attending training programs or conferences on behalf of a city or town may be reimbursed for out-of-pocket costs of travel, meals, and other purchases incurred in furtherance of that objective and as a term or condition of employment. These types of expenses are permissible municipal expenses, provided that attendance is authorized by the municipal official or board with the authority to expend department funds. Included within the realm of reimbursable expenses are: (i) registration charges, including late fees; (ii) local surcharges and taxes on car rentals; (iii) taxes and tips on meals, and (iv) taxes on petty cash purchases, so long as these expenses are reasonable and not in conflict with the reimbursement policies of the city or town. Late registration fees are considered to be part of the contract price for the training program or conference. Similarly, surcharges, taxes and tips are a necessary and customary part of legitimate expenses incurred by employees in the course of their employment.

- **Payment of expenses associated with fundraising for departments, e.g., mailings seeking donations or door prizes and refreshments at a fundraising event.**

Municipal departments, like the Parks and Recreation Department, the Library, the Historic Commission, or the schools, may want to raise money for a particular departmental project. Generally, solicitations for donations or financial support from private individuals or businesses must be conducted in accordance with MGL c. 268A, the Conflict of Interest law. In that regard, the State Ethics Commission has issued Advisory Opinion EC-COI-12-1, which provides guidance on fundraising by municipal employees. We suggest that you consult with your municipal counsel for advice before proceeding with fundraising.

Fundraising activities that go beyond applying for grants or soliciting contributions and involve expending municipal funds or receiving funds in exchange for goods are more problematic. For example, if the Recreation Department wants to sell T-shirts as a fundraiser, then it would need an appropriation from which to purchase the T-shirts(23)and proceeds from their sale would be general fund revenue, which could not be spent without an appropriation.(24) Arguably, such a transaction is more in the nature of a profit on a business transaction than a donation. We believe the better practice in such a case is to have a private entity, such as a "friends" group, sponsor and conduct the fundraising event and turn over the net proceeds to the municipal department as a grant or gift under MGL c. 40, s. 53A. Under section 53A, the funds are held by the treasurer in a separate gift account and may be spent by the department for the purposes of the gift without appropriation upon the approval of the board of selectmen, or the city manager and city council, or the mayor and city council, as appropriate.

An additional issue arises when municipal resources are used to assist a private group's fundraising activities even if the activities will benefit the municipality. Pursuant to the Anti-aid Amendment, public funds may not be used to assist a private organization's fundraising activities, no matter how worthy or related the cause. For example, the school department cannot pay to print and mail a flyer by the Parent-Teachers Organization to promote a car wash it is holding to raise monies for the schools.

Sharing the expenses of a community event co-sponsored by a municipal department and a private organization also raises Anti-Aid Amendment issues because the event is not under the exclusive control of public officers.

Conclusion

DLS strongly recommends that municipalities develop clear, written policies or guidelines, preferably by bylaw or ordinance, about allowable expenditures. For example, to ensure the municipality receives the maximum benefit from its sales tax exemption, there should be clear standards about when department employees can purchase necessary supplies or materials and be reimbursed. Travel expenses are often set out in collective bargaining agreements, but the municipality should also adopt a policy to cover travel expenses for nonunion employees. DLS also recommends that standards be established for merit awards, food or fundraising expenses. Finally, DLS recommends that accounting officers advise managers and employees at the beginning of each fiscal year of the municipality's policies. This will help to avoid uncertainty or disagreements about whether certain expenditures are permissible and payable.

1.) With appropriate updating.

2.) MGL c. 40, s. 5 applies to cities under MGL c. 40, s. 1.

3.) See art. 2 of the Amendments to the Massachusetts Constitution, as appearing in art. 89, sec. 6, 7 and 8.

4.) Mass. Const., Art. XI, c. 2, s. 1 and Art. IV, c. 1, s. 1; *Lowell v. City of Boston*, 111 Mass. 454, (1873);*Matthews v. Inhabitants of Westborough*, 131 Mass. 521 (1881); *Mead v. Acton*, 139 Mass. 341 (1885); *In re Opinion of Justices*, 190 Mass. 611 (1906); *Whittaker v. Salem*, 216 Mass. 483 (1914); *In re Opinion of Justices*, 240 Mass. 616 (1922); *Jones v. Inhabitants of Town of Natick*, 267 Mass. 567 (1929);*D.N. Kelley & Son, Inc. v. Selectmen of Fairhaven*, 294 Mass. 570 (1936); *Quinlan v. City of Cambridge*, 320 Mass. 124 (1946); *Eisenstadt v. County of Suffolk*, 331 Mass. 570 (1954).

5.) *See e.g., Opinion of the Justices*, 313 Mass. 779 (1943) ("The fact that the owner of a way may profit by expenditures 'for the removal of snow and ice'...does not invalidate expenditures...where the primary purpose of such removal is the benefit of the public to whose use the way is open.").

6.) *See e.g., Salisbury Land & Improvement, Co. v. Commonwealth*, 215 Mass. 371 (1913) (act was unconstitutional where it authorized the condemnation of lands for a public beach and the sale or leasing to private parties of any portion not needed for the public beach).

7.) The Anti-Aid Amendment is contained in Section 2 of Article 46 of the Amendments to the Massachusetts Constitution (as amended in 1974 by Art. 103 of the Amendments).

8.) *See Commonwealth v. School Committee of Springfield*, 382 Mass. 665 (1981); *Helmes v. Commonwealth*, 406 Mass. 873 (1990).

9.) *See e.g.*, *Commonwealth v. School Committee of Springfield*, 382 Mass. 665 (1981)(court held that the purchase of services by the school committee from private schools to meet the needs of special education students did not run counter to the anti-aid amendment because the purpose was to fulfill the obligation of the public school system which had chosen not to provide the services in its own schools).

10.) *See e.g., Benevolent & Protective Order of Elks, Lodge No. 65 v. Planning Board of Lawrence*, 403 Mass. 531 (1988) (the taking of property for urban renewal project did not violate the Anti-Aid Amendment because the taking had a public purpose to eliminate a blighted open area and any benefit to college was incidental to that purpose).

11.) *See Eisenstadt v. Suffolk County*, 331 Mass. 570, 573 (1954) and cases cited.

12.) *Allydonn Realty Corp. v. Holyoke Housing Authority*, 304 Mass. 288, 292 (1939).

13.) *See e.g.*, *Opinion of the Justices*, 313 Mass. 779, 784-85 (1943) (expenditures for snow removal from private ways that were open to public were for the public purpose of accommodating the public as to means of travel and transportation); *McLean v. Boston*, 327 Mass. 118 (1951) (expenditure of money for the development of housing for residents made homeless by tunnel expansion was for the public purpose of addressing a local emergency caused by a public improvement); *Opinion of the Justices*, 349 Mass. 794 (1965) (payments by city for retirement of certain alcoholic beverage licenses was for the public purpose of cleaning up of the city).

14.) *See Opinion of the Justices*, 337 Mass. 777, 781 (1958).

15.) *See e.g.*, M.G.L. c. 40, s. 4 ("A city or town may make contracts for the exercise of its corporate powers..."); *Leonard v. Middleborough*, 198 Mass. 221 (1908).

16.) *See e.g.*, *Curran v. Holliston*, 130 Mass. 272 (1881); *Attorney General v. Woburn*, 317 Mass. 465

(1945).

17.) *See e.g., Quinlan v. City of Cambridge*, 320 Mass. 124 (1946); *Wood v. Haverill*, 174 Mass. 578 (1899).

18.) *See Matthews v. Westborough*, 131 Mass. 521 (1881); *Jones v. Natick*, 267 Mass. 567 (1929); *George A. Fuller Co. v. Commonwealth*, 303 Mass. 216 (1939).

19.) *See e.g.*, M.G.L. c. 71, s. 47 (specifically authorizes the expenditure of municipal funds for student prizes).

20.) *See e.g.*, *Eisenstadt v. County of Suffolk*, 331 Mass. 570 (1954); *In re Opinion of Justices*, 190 Mass. 611 (1906); *see also In re Opinion of Justices*, 240 Mass. 616 (1922).

21.) *See e.g., Matthews v. Westborough*, 131 Mass. 521, 522 (1881); *Whittaker v. Salem*, 216 Mass. 483(1914); *Jones v. Inhabitants of Town of Natick*, 267 Mass. 567 (1929).

22.) *See e.g.*, *Anderson v. Boston*, 376 Mass. 178 (1978), *appeal dismissed*, 439 U.S. 1060, 99 S. Ct. 822 (1979).

23.) MGL c. 44, sec. 31.

24.) MGL c. 44, sec. 53.