City of Fall River Massachusetts
Office of the City Clerk

ALISON M. BOUCHARD
CITY CLERK

INÊS LEITE
ASSISTANT CITY CLERK

MARCH 9, 2012
MEETINGS SCHEDULED FOR NEXT WEEK
TUESDAY, MARCH 13, 2012

6:00 P.M. COMMITTEE ON FINANCE
1. Disc. with Alfred Lima of Save Our Neighborhoods re Community Preservation Act
2. Update from Administration re return of Fire Chief position to Civil Service

AGENDA
7:00 P.M. REGULAR MEETING OF THE CITY COUNCIL
PRIORITY MATTERS - None

PRIORITY COMMUNICATIONS
1. *Mayor and resolution re Local 1199 SEIU United Healthcare Workers East
2. *Mayor and loan order re Britland Park Improvments
3. *Licensing Board and pro. Ordinance re Responsible Beverage Server Training & Social Host
4. Traffic Commission recommending amendments to the traffic ordinances

COMMITTEE REPORTS
Committee on Finance recommending:
Referral to the Com. on Public Works & Transportation:
5. Resolution re street sweeping

Committee on Public Works and Transportation recommending:
Adoption:
6. Southeastern Regional Transit Authority-- to remove160.1 feet of curbing @ 118 Fourth Street

Committee on Ordinances & Legislation recommending:
Second Reading and enrollment, as amended:
7. *Fall River Tree Ordinance

ORDINANCES
Second Reading & Enrollment:
8. *Traffic, misc.

RESOLUTIONS
9. *Com. on Ords. & Legis. review ordinance 14-661 regarding door-to-door solicitation
10. *Utility Companies remove double pole locations as soon as weather allows
11. *Com. on Ords. & Legis. meet to discuss the Best Practices Model from Streamlined Local Permitting Guide
12. *Rep. from School Dept. be invited to a future meeting of the Com. on Finance to discuss the F.R. Master School Building Oversight Committee's Final Report re Tansey School
13. *City Council oppose centralization of community colleges
14. *Administration consider taking out bonds to repair roads and sidewalks

CITATIONS – None

ORDERS – HEARINGS FOR TONIGHT
Jt. Pole location:
15. Sykes Road – One (1) joint pole location

ORDERS – HEARINGS TO BE SCHEDULED - None

ORDERS – NO HEARING REQUIRED – None

One Government Center • Fall River, MA 02722
TEL 508-324-2220 • FAX 508-324-2211 • EMAIL city_clerks@fallriverma.org

ORDERS – MISCELLANEOUS

16. Police Chief's report on licenses
17. Transfer auto repair license no. 251 from Louis M. Nanni to Vincent Nanni d/b/a Vin's Motor Sales, Inc. located at 1426 Plymouth Avenue

COMMUNICATIONS – INVITATIONS – PETITIONS

18. *Claims
19. *Atty. John Mitchell re transfer of taxi cab licenses from Buddy's Transportation, Inc. d/b/a Yellow Cab to Town Transportation, LLC d/b/a Town Taxi

BULLETINS – NEWSLETTERS – NOTICES - None

Alison M. Bouchard
City Clerk

#2 Finance

An Act Relative to the Appointment and Status of the Fire Chief and the Board of Fire Commissioners in the City of Fall River.

BE IT ORDERED, that the City of Fall River, acting by and through its City Council and Mayor, does hereby petition the General Court of the Commonwealth of Massachusetts under the provisions of Section 8 of Article 89 of the amendments to the Constitution of Massachusetts, for a Special Act, as follows:

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section 1. Notwithstanding the provisions of any general or special law to the contrary, the position of Fire Chief for the City of Fall River shall be governed by the provisions of Massachusetts General Laws Chapter 31.

Section 2. Notwithstanding the provisions of any general or special law to the contrary, the Fire Chief in the City of Fall River shall be the head of the Fire Department and shall be responsible for the management and operation of said department and shall be the "Appointing Authority" for all employees of the fire department in accordance with Section 1 of General Laws Chapter 31, with all the rights, duties and privileges appurtenant thereto and as contained in subsequent sections of Chapter 31 and any other general or special law applicable to chiefs of departments.

Section 3. The Fire Chief shall be appointed by the Mayor in accordance with the provisions of Sections 59 of General Laws Chapter 31, and the terms and conditions of his employment shall be established pursuant to a contract dully negotiated according to the provision of General Laws Chapter 41 Section 108O.

Section 4. The Board of Fire Commissioners shall consist of three persons to be appointed by the Mayor in accordance with the provisions of the city charter and shall be advisory in nature.

Section 5. Notwithstanding section 53 of General Laws Chapter 31, or any general or special law to the contrary, the position of the incumbent fire chief of the City of Fall River, at the time of the passage of this act, shall be governed by the provisions of Chapter 31, with all the rights, privileges and duties appurtenant thereto and specifically, the duties as defined under this act, and shall retain his eligibility to take a competitive promotional exam for the position of permanent civil service chief in accordance with the provisions of section 59 of General Laws Chapter 31.

Section 6. This Act shall take effect immediately upon passage.

City of Fall River
Massachusetts
Office of the Mayor

WILLIAM A. FLANAGAN
Mayor

RECEIVED

2012 MAR -1 P 3:09

CITY CLERK
FALL RIVER, MA

March 1, 2012

Honorable Members of the Council
City of Fall River
One Government Center
Fall River, MA 02722

Dear Madam President and Members of the Honorable Council:

On behalf of Local 1199 SEIU United Healthcare Workers East I respectfully submit the attached resolution for your consideration. I fully support this resolution and I ask that the members of the Honorable Council join me in going on record to support Local 1199 SEIU United Healthcare Workers East and their members who are employed in the Personal Care Attendant program.

The Personal Care Attendants program provides vital services to many citizens of our great City and offers them quality in home care. Please afford this request your every consideration. If additional information is needed please do not hesitate to contact me.

Respectfully,

William A. Flanagan
Mayor

WAF/amos

One Government Center • Fall River, MA 02722
TEL (508) 324-2600 • FAX (508) 324-2626 • EMAIL mayor@fallriverma.org

City of Fall River, *In City Council*

WHEREAS, the Personal Care Attendant (PCA) program is a central piece of the Massachusetts long term care system wherein PCAs offer skillful assistance with "activities of daily living" that allow more than 20,000 Massachusetts residents to live independent lives at home; and

WHEREAS, the PCA program is already both the most popular and cost-efficient state long term care program and is also ideally positioned to play a crucial role in future efforts to increase primary care services, implement new coordinated care systems, and control overall health care costs; and

WHEREAS, the PCA program infuses over $400 million in state dollars in to local Massachusetts communities, where this funding has a tremendous positive impact on the local economy and provides quality jobs to over 30,000 PCAs throughout the state; and

WHEREAS, the PCA program employs more than 640 individuals residing in the city of Fall River, which brings more than $8.3 million in state dollars to the community; and

WHEREAS, 1199SEIU United Healthcare Workers East, the state administration and the PCA Quality Home Care Workforce Council are committed to ensuring that PCA program consumers are efficiently provided the highest possible quality of health care and that consumers of, their surrogates, and the PCA workforce are treated with the highest degree of dignity and respect; and

WHEREAS, the purpose of organizing the PCA workforce and negotiating a collective bargaining agreement is to promote quality jobs for Personal Care Attendants and harmonious, respectful relations between the parties in their pursuit of these shared commitments; and

NOW, THEREFORE, BE IT RESOLVED, that the Fall River City Council strongly supports the Massachusetts PCA program and the organized PCA workforce; and respectfully urges the state administration and the PCA Quality Home Care Workforce Council to negotiate in good faith for a new collective bargaining agreement that benefits the PCA program, workforce and consumers.

2

City of Fall River
Massachusetts
Office of the Mayor

WILLIAM A. FLANAGAN
Mayor

RECEIVED

2012 MAR -9 P 2:44

CITY CLERK
FALL RIVER, MA

March 8, 2012

Honorable Members of the City Council
City of Fall River
One Government Center
Fall River, MA 02722

Dear Members of the City Council:

It is respectfully requested that the City Council approve the Britland Park project loan order.

The City has been awarded a $500,000 grant to fund the Britland Park Project, which will include the construction of a watercraft launch area, entrance and parking areas, paths and picnic areas, and interpretive signage, and the installation of a synthetic turf field.

The Massachusetts Executive Office of Energy and Environmental Affairs Division of Conservation Services requires a certified copy of the Council's vote, so your expeditious approval is appreciated.

Respectfully Submitted,

William A. Flanagan
Mayor

One Government Center • Fall River, MA 02722
TEL (508) 324-2600 • FAX (508) 324-2626 • EMAIL mayor@fallriverma.org

City of Fall River, *In City Council*

CITY OF FALL RIVER
LOAN ORDER
(PARK IMPROVEMENT – BRITLAND PARK)

ORDERED, that the City hereby appropriates the sum of Eight Hundred and Seventy Five Thousand Dollars ($875,000) to pay the costs of making renovations and improvements to Britland Park, including the costs incidental and related thereto, and that to meet this appropriation the City Treasurer, with the approval of the Mayor, is authorized to borrow said sum under M.G.L. Chapter 44, Section 7(25) or any other enabling authority, and to issue bonds or notes of the City therefore, and

ORDERED, that the Treasurer is authorized to file an application with the appropriate officials of The Commonwealth of Massachusetts (the "Commonwealth") to qualify under Chapter 44A of the General Laws any and all bonds of the City to be issued pursuant to this Order, and to provide such information and execute such documents as such officials of the Commonwealth may require, and

ORDERED, that the Mayor is authorized to file on behalf of the City any and all applications deemed necessary for grants and/or reimbursements from the Commonwealth under the Urban Self-Help Program pursuant to 301 CMR 5.00 et sequitur in any way connected with the scope of this Order, and that the City and the Board of Park Commissioners be authorized to expend any and all sums received in accordance with the requirements of said grant.

3

City of Fall River
Massachusetts
Licensing Board

WILLIAM A. FLANAGAN
Mayor

RECEIVED
2012 MAR -2 A 10:49
CITY CLERK
FALL RIVER, MA

March 1, 2012

Fall River City Council
1 Government Center
Fall River, MA 02720

Re: Responsible Beverage Server Training Ordinance and Social Host Ordinance

Dear Honorable Members of the Council:

The Fall River Licensing Board and the B.O.L.D. Coalition is requesting the Council to consider adopting the attached ordinances.

Thank you very much for your time on this matter.

Licensing Board

John Hanlin
Chenery Esposito
Executive

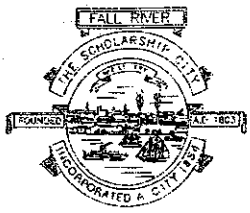
One Government Center • Fall River, MA 02722
TEL (508) 324-2530 • FAX (508) 324-2531 • EMAIL kayash@fallriverma.org

City of Fall River

Office of the Corporation Counsel

WILLIAM A. FLANAGAN
Mayor

STEVEN A. TORRES
Corporation Counsel



ELIZABETH S. PEREIRA
First Assistant Corporation Counsel

GARY P. HOWAYECK
Assistant Corporation Counsel

December 28, 2010

Kerri B. Ayash
Licensing Department
City of Fall River
One Government Center
Fall River, MA 02722

Re: Legal Opinion - Social Host Ordinance

Dear Kerri:

This letter is written in response to your request for a legal opinion regarding whether a Social Host Ordinance could withstand legal scrutiny. For the foregoing reasons, the Social Host Ordinance, as drafted and attached hereto, would likely survive a legal challenge.

There is a dearth of municipal social host ordinance case law. Generally, litigation ensues over tort liability. For example, parties litigate whether a social host possesses a duty of care to an intoxicated person at the social host's premises. *See* Lev. v. Beverly Enterprises – MA, Inc., 929 N.E.2d 303, 311 (Mass. 2010) (holding no liability exists in a wrongful death action where the social host neither served nor made alcohol available to defendant).

Mass. Gen. Laws ch.138 § 34 provides that ". . . whoever furnishes any such beverage or alcohol for a person under 21 years of age shall be punished by a fine of not more than $2,000 or by imprisonment for not more than one year or both . . . . [T]he word 'furnish' shall mean to knowingly or intentionally supply, give, or provide to or allow a person under 21 years of age . . . to possess alcoholic beverages on premises or property owned or controlled by the person charged." The statute is both criminal and civil in nature as evidenced by the respective intent and control requirements, whereas the proposed ordinance is only civil in nature, thereby eliminating the need for intent but keeping the control requirement.

Although Mass. Gen. Laws ch. 138 § 34 imposes penalties upon social hosts who furnish alcoholic beverages to minors, it is unlikely that the City of Fall River is preempted from enacting an ordinance that mirrors Massachusetts's civil penalty. Municipalities may not adopt

N.E.2d 882, 887 (Mass. 2005) (citing Boston Gas Co. v. Newton, 682 N.E.2d. 1336 (Mass. 1997)). To determine whether an ordinance is inconsistent with a state statute, the court looks to express legislative intent to forbid the local regulation. Id. In the absence of express legislative intent, the court assesses whether the ordinance would frustrate the purpose of the statute. Id. An inference of preemption arises where the statutory provision is so comprehensive that local enactment would frustrate the statute's purpose. Boston Edison Co., 831 N.E.2d at 887 (citing Boston Gas Co. v. Somerville, 652 N.E.2d 132 (Mass. 1995)).

Mass. Gen. Laws ch. 138 § 34 does not contain an express intent to forbid local regulation of social hosts who furnish alcohol to minors. (The statute omits language which imposes penalties upon social hosts who furnish drugs to minors). Nor does the proposed ordinance seem to frustrate the purpose of the statute. *See* Boston Edison Co. v. Town of Bedford, 831 N.E.2d 882, 884, 888-89 (Mass. 2005) (town by-lay imposing penalty for failure to remove old utility poles within prescribed time period was preempted by statute because of comprehensiveness of statute, authority was delegated to state agency, and local regulation would frustrate the legislature's intent to ensure uniform enforcement of utility services).

Moreover, the Home Rule Amendment provides, in pertinent part: "Any city or town may, by the adoption, amendment, or repeal of local ordinances or by-laws, exercise any power or function which the general court has power to confer upon it, which is not inconsistent with the constitution or laws enacted by the general court . . ." MA Const. art. 89, § 6.

Although the proposed ordinance is civil rather than criminal in nature, it does not shield the law from constitutional scrutiny under the vagueness doctrine. Am. Dog Owners Ass'n v. City of Lynn, 533 N.E.2d 642, 646 (Mass. 1989) (citing Custody of a Minor (No. 2), 378 Mass. 712, 717 (1979). The ordinance must therefore define the activity proscribed "with sufficient definiteness that ordinary people can understand what conduct is prohibited." Am. Dog Owners Ass'n, 533 N.E.2d at 646 (citing Commonwealth v. Williams, 395 Mass. 302, 304 (1985)). Otherwise, the law is subject to arbitrary and discriminatory enforcement. Id. (citing Caswell v. Licensing Comm'n for Brockton, 387 Mass. 864, 873 (1983). The proposed ordinance, as drafted, would likely withstand a challenge under the vagueness doctrine since the law defines the prohibited conduct and penalties with clarity.

Should the City Council make additional changes to the proposed ordinance, this office should be consulted to assess the legality of such changes.

Very truly yours,

Elizabeth S. Pereira

Elizabeth S. Pereira,
First Assistant Corporation Counsel

BE IT ORDAINED by the City Council of the City of Fall River, as follows:

By inserting Chapter XX, a new Article XX, SOCIAL HOST and, inserting under said article, the following new sections to read as follows:

Intent:

It is the purpose of this section to protect the public interest, welfare, health and safety within the City of Fall River by prohibiting the services to and consumption of alcoholic beverages and drugs by minors at private premises located within the City. The City Council finds that the occurrence of social gatherings at private premises where alcoholic beverages or drugs are served to or consumed by minors is harmful to themselves and a threat to public welfare, health and safety. Minors often obtain alcoholic beverages or drugs at social gatherings. Persons who rent, own, or control the premises where service or consumption of alcoholic beverages or drugs occurs are in the best position to ensure that alcoholic beverages and drugs are neither served to nor consumed by minors.

Definitions:

For purposes of this section, the following terms are defined as follows:

"Alcoholic beverage," as defined by Mass. Gen. Laws ch. 138 § 1, means any liquid intended for human consumption as a beverage and containing one half of one per cent or more of alcohol by volume at sixty degrees Fahrenheit.

"Control" means the authority and ability to regulate, direct, or dominate.

"Drug," as defined by Mass. Gen. Laws ch. 94C § 1, means the following:

(a) substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

(b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

(c) substances, other than food, intended to affect the structure, or any function of the body of man and animals; or

(d) substances intended for use as a component of any article specified in Mass. Gen. Laws ch. 94C § 1 clauses (a), (b) or (c), exclusive of devices or their components, parts or accessories.

"Minor" means any person under the age of twenty-one (21).

"Open House Party" means a social gathering at premises with one or more minors present."

"Person" means a human being, corporation or unincorporated entity.

"Premises" means any dwelling unit, including a hotel or motel room, yard, hall or meeting room, whether owned, leased, rented, or used regardless of compensation for use.

Prohibition:

Any person who owns, rents, or otherwise controls any premises shall be responsible when an open house party takes place at said premises where any alcoholic beverage or drug is being unlawfully possessed, served to or consumed by minors.

Exceptions:

The provisions of this section shall not apply to:

(a) the possession or consumption of a drug for which the individual has a current, valid prescription or as otherwise permitted by applicable law;

(b) the practice of legally recognized religious observances,

(c) any parent charged with serving any alcoholic beverage to the parent's child; and

(d) any grandparent charged with serving any alcoholic beverage to the grandparent's grandchild.

Warning and Fines:

(a) A first violation of this ordinance shall result in a warning which shall be issued by the Chief of Police or designee.

(b) A second violation of this ordinance at the same premises or by the same person within a twelve (12) month period shall be fined $150.00. Any violation occurring after the twelve (12) month period shall constitute a first violation.

(c) A third or subsequent violation of this ordinance at the same premises or by the same person within a twelve (12) month period shall be fined $300.00. Any violation occurring after the twelve (12) month period shall constitute a first violation.

A warning issued pursuant to this ordinance shall remain in effect for a twelve (12) month period.

Appeal:

Any person who receives a warning or fine pursuant to Article XX may appeal in a non-criminal proceeding by making a written request within twenty-one (21) calendar days to the Law Department of the City of Fall River.

Severability:

The invalidity of any portion or portions of this article shall not invalidate any other portion, provision or section thereof.

City of Fall River

Office of the Corporation Counsel

WILLIAM A. FLANAGAN
Mayor

STEVEN A. TORRES
Corporation Counsel

ELIZABETH S. PEREIRA
First Assistant Corporation Counsel

GARY P. HOWAYECK
Assistant Corporation Counsel

March 14, 2011

Kerri B. Ayash
Licensing Department
City of Fall River
One Government Center
Fall River, MA 02722

Re: Legal Opinion – Responsible Beverage Service Training Ordinance

Dear Kerri:

This letter is written in response to your request for a legal opinion regarding whether a responsible beverage service training ordinance (RBST) would withstand legal scrutiny, and, if so, whether an establishment may be limited to obtaining alcohol beverage server training certification from one particular training program. For the foregoing reasons, a service training ordinance would likely survive legal challenge, and requiring server certification from one particular training program would likewise be permissible.

A significant lack of case law exists regarding the legality of RBST ordinances. Although several cities and towns in Massachusetts have enacted RBST ordinances, apparently none of the ordinances have been challenged in a court of law. The State of Rhode Island enacted an Alcohol Server Training ordinance in 2004, which has not been challenged either. *See* R.I. Gen. Laws § 3-7-6.1 (2010). A recent Tenth Circuit opinion decided on December 3, 2010, reviewed the legality of New Mexico's Liquor Control Act. U.S. Airways, Inc. v. O'Donnell, 627 F.3d 1318, 1322 (10th Cir. 2010). The Act regulated the sale, service and consumption of alcoholic beverages in the State of New Mexico, required airplane carriers who served liquor to passengers to obtain a license, and prohibited any one holding a license to serve alcoholic beverages unless they obtained alcohol server training within 30 days of employment. Id. U.S. Airways challenged the validity of the Act alleging that Congress preempted the state from regulating service of alcoholic beverages in flight. Id. at 1323. The Court agreed, holding the Federal Aviation Act occupied the field of aviation safety to the exclusion of the states. Id. at 1326.

O'Donnell is persuasive but not controlling law in our jurisdiction, and, in any event, the case would not likely apply here because Fall River is not occupying a field of law "long . . .

dominated by federal interests." O'Donnell, 627 F.3d at 1325 (citing Montalvo v. Spirit Airlines, 508 F.3d 464, 471 (9th Cir. 2007)). There would likely be a presumption against federal preemption since alcoholic beverage regulation is a field traditionally occupied by state law. *See* O'Donnell, 627 F.3d at 1325 (citing Buckman Co. v. Plaintiffs' Legal Comm., 531 U.S. 341 (2001) (noting that the presumption against preemption did not apply because the field of law at issue was hardly one which the States traditionally occupied)). While federal preemption is unlikely to be an issue, preemption by the Commonwealth needs exploration.

Mass. Gen. Laws ch. 138 regulates alcoholic beverages but does not contain an express intent to forbid local regulation of licensing. In fact, the Commonwealth specifically allows local licensing authorities to impose reasonable requirements upon *special* license holders. Mass. Gen. Laws ch. 138 § 14; 204 CMR 7.01; 204 CMR 7.06. The pertinent provision reads:

> Whenever, in the opinion of the *local licensing authorities*, any applicant for a *special license* fails to establish to their satisfaction his compliance with the requirements of M.G.L. c. 138, duly promulgated state *or local regulations, or any reasonable requirements which the local authorities may from time to time make* with respect to such licenses or to the conduct of business by such licensees, *said authorities may refuse to issue or reissue to any such applicant such license.* Whenever in their opinion any special license holder fails to maintain compliance with the requirements of M.G.L. c. 138, regulations, and requirements, they may, after hearing or opportunity therefore, modify, suspend, cancel or revoke such license. The licensing authorities shall mail a notice of such action to the applicant or licensee, stating the reasons such action and shall at the same time mail a copy of such notice to the Commission.

204 CMR 7.06 (emphasis added). Therefore, the licensing authority may regulate M.G.L. c. 138 § 14 Special License holders. Although no similar express authority to regulate is given over any other licensee, M.G.L c. 138 § 12, which regulates licenses for beverages to be drunk on premises, provides in relevant part that ". . . limitations relative to service and consumption . . . [are] deemed reasonable and proper by the local licensing authority . . . ." Again, no Massachusetts Court has interpreted this statute within the context of a RBST ordinance, but this Office believes, in good faith, that the local licensing authority ("LLA") may issue a RBST ordinance since the proposed ordinance places a limitation upon the service and consumption of alcoholic beverages.

You have also indicated that the proposed RBST ordinance would regulate M.G.L. c. 138 § 15 licensees (licenses for sale of alcoholic beverages not to be drunk on the premises). The aforementioned statute does not expressly or implicitly grant LLAs with the power to impose requirements upon § 15 licensees. "A municipality may have powers not expressly granted in an

enabling statute, if they 'are essential and not merely convenient to the implementation of express powers conferred by statute.'" Greater Boston Real Estate Bd. v. Boston, 494 N.E.2d 1301, 1306 (1986). A claimant "bears a heavy burden in demonstrating that a local ordinance exceeds statutory authority." Grace v. Brookline, 399 N.E.2d 1038, 1042 (1979). Despite the fact that the Alcohol Beverage Control Commission promulgates and enforces regulations "for the proper and orderly conduct of the licensed business," the LLA historically (and in practice) works in tandem with the Commission, thereby showing that the proposed RBST ordinance is "essential and not merely convenient." Mass. Gen. Laws ch. 138 §24. (Applications are filed with the LLA who then forwards the application to the Commission. 204 CMR 2.01(9); LLAs determine the license fee. Mass. Gen. Laws ch. 138 § 15).

Moreover, the proposed RBST ordinance does not appear to frustrate the purpose of the statute. *See* Boston Edison Co. v. Town of Bedford, 831 N.E.2d 882, 884, 888-89 (Mass. 2005) (town by-law imposing penalty for failure to remove old utility poles within prescribed time period was preempted by statute because of comprehensiveness of statute, authority was delegated to state agency, and local regulation would frustrate the legislature's intent to ensure uniform enforcement of utility services).

Finally, the LLA's regulation will be presumed valid, unless it exceeds the Home Rule Amendment (or statutory authority). Springfield Pres. Trust, Inc., v. Springfield Library & Museums Ass'n, Inc., 852 N.E.2d 83, 92(Mass. 2006) (citing Beard v. Salisbury, 392 N.E.2d 832, 836 (Mass. 1979). The Home Rule Amendment provides, in pertinent part: "Any city or town may, by the adoption, amendment, or repeal of local ordinances or by-laws, exercise any power or function which the general court has power to confer upon it, which is not inconsistent with the constitution or laws enacted by the general court . . . ." MA Const. art. 89, § 6. The Home Rule Amendment confers broad powers on municipal governments. Beard, 393 N.E.2d at 836 (holding that an ordinance violated the Home Rule Amendment since the ordinance regulated outside the municipality's geographical boundaries).

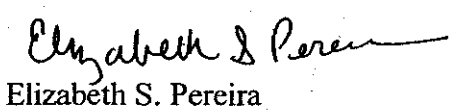
The proposed RBST ordinance is a reasonable exercise of the LLA's power and function under M.G.L. c. 138 §§ 12, 14 and 15 given the enabling provision in 204 CMR 7.01, the implicit language in M.G.L. c. 183 § 14, the nature of the relationship between the Commission and LLAs, a lack of frustration of statutory purpose, and the broad powers conferred upon municipalities by the Home Rule Amendment. While litigation contesting the validity of a RBST ordinance would be one of first impression in the Commonwealth, the foregoing reasons suggest that such a claim may fail.

You also indicated that the licensing authority is interested in requiring server certification from one particular training program rather than a host of programs. We find no relevant case or statutory law to provide insight on the matter, and the issue does not appear to

present a facial question of Constitutional law. Therefore, it is for the City Council to determine whether such a requirement is advisable.

If you have further questions in the above-matter, please do not hesitate to contact me.

Very truly yours,



Elizabeth S. Pereira
First Assistant Corporation Counsel

cc: City Clerk
Alison Brett

Enclosure (proposed RBST ordinance)

BE IT ORDAINED by the City Council of the City of Fall River, as follows:

By inserting Chapter XX, a new Article XX, Responsible Beverage Service Training and, inserting under said article, the following new sections to read as follows:

Findings and intent: INSERT FINDINGS & INTENT

Definitions:

For purposes of this section, the following terms are defined as follows:

"licensing authority" means the local licensing authority as defined in Mass. Gen. Laws ch. 138 § 1.

"licensed establishment" means one who is issued a license under Mass. Gen. Laws ch. 138 §§ 12 or 15.

"responsible beverage service training program" means a training program developed by 21 Proof for employees or agents of pouring and non-pouring establishments.

Provisions:

A. All agents and employees of a licensed establishment involved in the sale or service of alcoholic beverages shall attend 21 Proof's responsible beverage service training program within thirty (30) days of the date of hire and shall be retrained every three (3) years.

B. No liquor license shall be issued or reissued to a licensed establishment which does not verify that the licensee's managers have successfully completed 21 Proof's responsible beverage service training program.

C. A signed certification of each agent or employee which indicates that said agent or employee received the responsible beverage service training shall be maintained on the employer's premises. Copies of each signed certification shall be available to the licensing authority, or any authorized agent thereof, upon demand.

Enforcement: The Chief of Police or the Health Director by his/her designee may initiate alcohol compliance checks at any licensed establishment at any time. Refusal to cooperate will constitute a violation of Article XX.

Penalties: Any liquor licensee who fails to comply with any provision of Article XX shall be subject to the following sanctions:

A. an initial written warning for the first violation;
B. a fine not to exceed two hundred fifty dollars ($250) for a second violation;
C. three to seven consecutive days suspension of license for a third violation; and
D. revocation of license for a fourth violation.

In the event that there are no offenses within thirty-six (36) successive months from the date of the last offense, then the next offense shall be treated as the first offense.

Notice & hearing: Prior to imposing a penalty for a third or fourth violation, the Licensing Authority shall conduct a hearing. The hearing notice shall be given to the licensee at least ten (10) days prior to the hearing. The notice will include the date, time, and place of the hearing, and state the nature of the charges against the licensee.

Appeal: A licensee who receives a penalty for a third or fourth violation pursuant to Article XX may appeal the decision of the Licensing Authority by making a written request within twenty-one (21) calendar days to the Law Department of the City of Fall River.

Severability:

The invalidity of any portion or portions of this article shall not invalidate any other portion, provision or section thereof.

CITY OF FALL RIVER

7

To the City Council

Councillors:

The Committee on Ordinances and Legislation at a meeting held on March 5, 2012 voted unanimously to recommend the accompanying proposed ordinance be passed through second reading, as amended.

Colleen A. Taylor
Clerk of Committees

City of Fall River, *In City Council*

BE IT ORDAINED, by the City Council of the City of Fall River, as follows:

That Chapter 54 of the Revised Ordinances of the City of Fall River, Massachusetts, 1999, which chapter relates to Public Facilities be amended as follows:

By inserting in said Chapter, the following:

54-133 Fall River Tree Ordinance

(a) Title:
This ordinance will be known as the Fall River Tree Ordinance.

(b) Purpose and Intent:
This ordinance establishes policies, regulations and standards necessary to ensure that the City of Fall River will continue to realize the benefits provided by its urban forest. The provisions of this ordinance are enacted to meet the goals of the Street Tree Management Plan. These goals are summarized below:

(1) Establish and maintain the maximum of tree cover on public property in the city;
(2) Maintain city trees in a healthy and non-hazardous condition through proper arboricultural practices when possible;
(3) Establish and maintain diversity in tree species and age classes to provide a stable and sustainable urban forest;
(4) Foster public advocacy for the urban forestry through education and public outreach.

54-134 Definitions

The following words, terms, and phrases and their derivatives when used in this ordinance shall have the meanings ascribed to them in this chapter, except where the content clearly indicates a different meaning. When not inconsistent with context, words used in the present tense include the future and words in singular number include the plural number.

Abuse means any abnormal act causing the improper loss of root, stem or leaf tissue rendering the tree prone to decline and death.

Caliper means the diameter on inches of a tree as measured either at six (6) inches or twelve (12) inches above the trunk base of the tree.

Canopy means the leaves and branches of the tree.

DBH means diameter at breast height as measured 54 inches above ground level.

Drip-line means the edge of the canopy.

Fall River Tree Administrative Guidelines means arboricultural standards, practices and protocols used to facilitate the management of municipal trees and to implement provision of this ordinance.

Habit of growth means the genetically inherited natural shape of the tree.

Public tree shall include all trees now or hereafter growing on any street, park, or any other public place.

Removal includes any act that will cause a tree to die within a three (3) year period.

Shall as used in this ordinance, denotes a mandatory requirement.

Should as used in this ordinance, denotes an advisory recommendation.

Topping means the harmful practice of cutting large upright branches between nodes, leaving large stubs.

Tree replacement means the act of replacing a removed tree with a new sapling(s).

Tree Warden means a qualified designated official of the City assigned to carry out the enforcement of this ordinance.

Urban forest means the collection of soils, shrubs, trees and other natural resources found within city limits.

54-135 Jurisdiction

The terms and provisions of this chapter shall apply to all public property in the city. The City of Fall River shall have control of all street trees, shrubs, and other plantings now or hereafter in any street, park, public right of way or easement, or other public place within the city limits, and shall have the power to plant, protect, care for, maintain, remove and replace such trees, shrubs and other plantings.

54-136 Local Government Liability Disclaimer

Nothing contained in this ordinance may be deemed to impose any liability upon the city, its officers or employees, nor to relieve the owner of any property from the duty to keep any tree, shrub or plant upon any street area on his/her property or under his/her control in such condition as to prevent it from constituting a hazard or an impediment to travel or vision upon any street, park, right of way, easement or public place within the city.

54-137 Enforcement

The Board of Park Commissioners, with the recommendation of the Urban Tree Commission through the Tree Warden, is hereby charged with the responsibility of the enforcement of this ordinance and may serve notice to any person in violation thereof or institute legal actions as may be required, and the Chief of Police and Corporation Counsel are hereby authorized to institute appropriate proceedings to that end.

54-138 The Board of Park Commissioners

The Board of Park Commissioners shall have jurisdiction over all municipal tree care operations including the planting, protection, maintenance, care of, and removal of trees, shrubs and other plants on public property for which it is responsible.

The duties of the Board shall be to act on recommendations from the Urban Tree Commission with cooperation of the Tree Warden, duties interpreted to include, but not be limited to, the planting, protection, maintenance, care of, and removal of trees on public property, and to make such recommendations from time to time to the Mayor and City Council as to the desirable legislation concerning the tree program and activities for the city.

The Board shall also hear and decide appeals from the provisions of this Ordinance.

54-139 Urban Tree Commission

There is hereby established the Urban Tree Commission to advise and assist the Tree Warden on all matters concerning public street trees including but not limited to the selection of trees for street tree plantings, planting and pruning of trees, treatment of disease and the preservation and regular maintenance of trees. The Urban Tree Commission members shall serve without compensation and be appointed by the Mayor.

(a) Powers and Duties
   (1) Through the Board of Park Commissioners, in conjunction with the Director of Community Maintenance and the Tree Warden, the Urban Tree Commission is authorized to promulgate the rules, regulations and policies necessary to implement this ordinance and Tree Maintenance Plan.
   (2) Coordinate the City's Arbor Day and educational urban forestry programs.
   (3) Assist City officials and citizens in the dissemination of information regarding the benefit of trees, as well as the protection, maintenance, removal and planting of trees on city streets.
   (4) Annually review the Tree Maintenance Plan that sets forth the standards for planting and maintenance of public shade trees along city streets.
   (5) Regularly revise the Tree Maintenance Plan and review the implementation of the policies that it encompasses.
   (6) Provide input into resolutions of public tree issues when requested by the Tree Warden.
   (7) Keep an inventory and database of city street trees.
   (8) Submit an impact statement to the Mayor/City Council or other City agencies, when requested by the City Engineer and/or the Tree Warden, on the effect of any construction project on existing trees or the ability to plant trees in that area in the future.
   (9) Work with the Tree Warden to seek grants or other assistance concerning the preservation and maintenance of trees.

(b) Composition of Tree Commission

There shall be seven voting members of the Urban Tree Commission. Two of the original appointees shall serve for one (1) year, two for (2) years and three for three (3). The commission shall offer recommendations for replacement when an opening exists. The Tree Warden or such other municipal official/entity responsible for the urban forest should serve as the 8th non-voting member.

Commissioners are as follows:
(1) Certified Arborist
(2) Landscape Architect
(3) Member of Fall River Street Tree Planting Program
(4) Member of Planning Division/Conservation Commission
(5) Citizen interested in preservation and care of trees
(6) Member of business community
(7) Board of Park Commissioners member (designated by Chairman of Park Board)

(c) On Going Education
Attendance at one or more urban forestry/or similar program per year is required.

(d) Certified Arborist/Firm
The City shall hire by contract or permanent employment a certified arborist to act in harmony with and support Board of Park Commissioners in conjunction with the Urban Tree Commission and Tree Warden.

(e) Duties and Responsibilities of the Board of Park Commissioners
The Park Board, in conjunction with the Urban Tree Commission, by use of city employees or private consultants or contractors, may:
(1) Plant, protect, maintain and care for or, if necessary, remove trees in any public places in the city, or
(2) Cause or order to be removed, trimmed, or treated any tree or part thereof on private property which is in an unsafe condition so that it poses no threat to the public or public property or the health of the city's urban forest.

The responsibilities shall include but not be limited to:
(1) Direct all municipal tree care operations including planting, maintenance, and removal;
(2) Prepare the annual municipal tree care budget;
(3) Evaluate and approve permits for activities that may affect trees;
(4) Enforce ordinance provisions through the Tree Warden and other available means.

54-140 Tree Warden
The City shall appoint a Tree Warden which must be the Manager of Cemeteries or Parks & Recreation. A Stipend shall be paid for this position to compensate this individual for extended duties and extra workload.

54-141 Duties & Responsibilities of the Tree Warden

The Tree Warden, under the general supervision of the Board of Park Commissioners, shall have the authority and responsibility to do the following:

By use of city employees or private consultants or contractors, shall:

(1) Plant, protect, maintain and care for or, if necessary, remove trees in any public places in the city, or
(2) May cause or order to be removed, trimmed, or treated any tree or part thereof on private property which is in an unsafe condition so that it poses no threat to the public or public property or the health of the city's urban forest.

The responsibilities shall include but are not be limited to:

(1) Direct municipal tree care operations including planting, maintenance, and removal;
(2) Assist in the preparation of the municipal tree budget;
(3) Assist the Urban Tree Commission in the review of the Street Tree Management Plan and Administrative Standards;
(4) Evaluate and approve permits for activities that may affect trees;
(5) Participate in the organization of community outreach and educational programs;
(6) Enforce ordinance provisions;
(7) In conjunction with the arborist, conduct hazard tree assessments to identify potentially hazardous trees and implement hazard tree removal;
(8) Oversee work of outside contracts by timely inspection;
(9) Exercise the duties of Tree Warden as defined by Massachusetts General Law.

On Going-Education:

(1) Join the Massachusetts Tree Wardens and Foresters Association (MTWFA)
(2) Obtain training and experience in urban forestry/arboriculture by attending a minimum of two training sessions per year.

54-142 Performance Evaluation of the Ordinance

The Tree Warden working in conjunction with the Urban Tree Commission shall collect and maintain all records and data necessary to objectively evaluate whether progress is being made toward the intent, purpose and objectives of this ordinance. The Tree Warden, working in conjunction with the Urban Tree Commission, shall prepare an annual report for the Board of Park Commissioners. The Board of Park Commissioners should consider the report's recommendations and take all appropriate actions to accomplish the goals and objectives contained in this report.

54-143 Cooperation between Local Departments and Public Utilities

(A) All municipal departments (i.e. Community Maintenance, Planning, etc.,) shall notify the Urban Tree Commission through the Board of Park Commissioners of any applications for new curb, gutter, sidewalks or driveway installations, or other improvements which might require the removal of or cause injury to any public tree, or interfere with the fulfillment of any provision of this chapter.
(B) Any public utility maintaining overhead wires or underground pipes, shall comply with all aspects of this chapter. Said utility shall in no way injure, deface, prune, or remove

any tree until their plans have been reviewed and approved by issuance of a permit by the Board of Park Commissioners in conjunction with the Urban Tree Commission and the Tree Warden.

54-144 Permit Required

A permit shall be required but is not limited to planting, transplanting, pruning, applying chemicals, staking and/or guying, removing, or disturbing any public tree, or conducting any construction activities within the drip-line of a public tree.

54-145 Permit Standards

In determining whether or not a permit should be granted, the Board of Park Commissioners, in conjunction with the Urban Tree Commission and the Tree Warden, shall consider the following:

(a) The condition of the tree or trees with respect to its health and mechanical stability, danger of falling, and proximity to proposed structures and interference with utility services;
(b) The necessity of removing the tree or trees in order to construct the proposed improvements to allow reasonable economic use of the property;
(c) The number and density of trees in the area and the effect of tree removal on property values and other existing vegetation;
(d) Whether any tree in question is a tree worthy of preservation.

54-146 Permit Procedure

(a) A permit shall be a written document that authorizes the bearer thereof to perform the proposed work as outlined on such permit. The permit shall be issued only by the Board of Park Commissioners in conjunction with the Urban Tree Commission and the Tree Warden.
(b) Any person desiring a permit, as required by this chapter, shall submit a written application to the Board of Park Commissioners in conjunction with the Urban Tree Commission and the Tree Warden. The application required herein shall identify the reason for the permit, the number of trees affected, and any other information reasonably necessary to make a fair determination of whether a permit should be issued.
(c) As a condition of permit approval, the applicant shall be required to comply with the arboricultural principals and practices of the Fall River Tree Administrative Guidelines.
(d) Upon approval or rejection of said application, Board of Park Commissioners in conjunction with the Urban Tree Commission and the Tree Warden the Park Board shall either issue said permit or notify the applicant of rejection of the application.
(e) Board of Park Commissioners in conjunction with the Urban Tree Commission and the Tree Warden shall be notified by the bearer of said permit upon satisfactory completion of the designated work.
(f) Planting. Board of Park Commissioners, in conjunction with the Urban Tree Commission and the Tree Warden, shall have the right to make the determination as to location, species, cultivar or variety, or caliper size of each tree before issuing said permit.

(g) Removal, Replanting and Replacement.

(1) Wherever it is necessary to remove a tree in connection with the paving of a sidewalk, or the widening of a portion of a street or highway, or other type of public improvement undertaken by the City, the City shall replace the tree by planting another if at all possible.

(2) No person, public utility, or other governmental agency shall remove a public tree for the purpose of construction without first filing an application and obtaining a permit from the Board of Park Commissioners in conjunction with the Urban Tree Commission and the Tree Warden. The Board of Park Commissioners, in conjunction with the Urban Tree Commission and the Tree Warden, may require replacement of a removed tree or financial reimbursement of a removed tree as a condition of the issuance of the permit.

(3) Such replacement shall meet the standards of size, species and placement as provided for in the permit issued by the Board of Park Commissioners in conjunction with the Urban Tree Commission and the Tree Warden. The person, business, public agency or property owner shall bear the cost of removal and replacement of all trees removed.

(h) Failure to Comply With Permit.

If the Board of Park Commissioners, in conjunction with the Urban Tree Commission and the Tree Warden, determines that the permit holder has failed to comply with the terms of the permit and the plan set forth herein, he or she shall immediately serve upon the permit holder a notice to comply which shall be sent by registered or certified mail to the address specified by the permit holder on his/her permit application. Such notice shall set forth specifically the measures needed to come into compliance with such permit and shall specify the time within such measures shall be completed. If the permit holder fails to comply within the specified time, the holder may be subject to revocation of the permit and fine as determined by the City Comptroller.

54-147 Appeals

To be effective, an appeal must be filed within ten (10) working days after the decision of the Board of Park Commissioners, in conjunction with the Urban Tree Commission and the Tree Warden. The appeal shall be in writing and shall be filed with the Board of Park Commissioners for placement on the Board's agenda. The appeal shall clearly specify what adjustments are being requested, reasons such adjustments are being requested, reasons why such adjustments are warranted, and shall be accompanied with such supplemental data as is deemed necessary to substantiate the adjustment. The Board may approve, modify, or deny the requested adjustment, based upon protection of public interest, preservation of the intent of this ordinance, and possible unreasonable and unnecessary hardships involved in this case. The Board shall act on the application as expeditiously as possible and shall notify the applicant in writing within ten (10) working days of the action taken by the board on said appeal. The action of the Board shall be final.

Nothing in this chapter shall be construed to limit the jurisdiction of any court of law with respect to such appeals.

54-148 Abatement of Public Hazard or Nuisance

(a) It shall be the duty of any person(s) owning or occupying real property bordering on any public street or thoroughfare, upon which property there may be trees, to prune in such manner that they will not obstruct or shade street lights, obstruct the passage of pedestrians on sidewalks, obstruct vision of traffic signs or obstruct the view of any street or intersection so as to pose a threat to pedestrian and vehicular safety. The minimum clearance of any overhanging portion thereof shall be eight (8) feet over sidewalks, and twelve feet (12) over all streets and thoroughfares and/or at the discretion of the Board of Park Commissioners, in conjunction with the Urban Tree Commission and the Tree Warden;

(b) It shall further be the duty of any person owning or occupying real property upon which there may be tree(s), to prune, remove, or treat any tree(s) or part thereof which is in an unsafe condition or which, by reason of its nature, poses a threat to persons or public property, or is injurious to sewers or other public improvements or rights of way, or is afflicted with an injurious parasite, insect, or other pest so as to constitute a threat to the health and welfare to the public as well as that of the city's urban forest;

(c) Notice to Prune, Remove, or Treat Tree(s) on Private Property.

(1) Should any person owning real property bordering on any street or public thoroughfare fail to prune, remove or treat any tree(s) as herein provided above, the Board of Park Commissioners, in conjunction with the Urban Tree Commission and the Tree Warden, shall inform such person that corrective action shall be taken within three (3) weeks or sooner, depending on the seriousness of the problem, upon receipt of a written notice from Board of Park Commissioners, in conjunction with the Urban Tree Commission and the Tree Warden;

(2) The order required in this section shall be a written notice, served by certified mail, from the Board of Park Commissioners, in conjunction with the Urban Tree Commission and the Tree Warden, to the property owner at his or her last known address;

(3) When a person to whom an order for tree care is directed fails to comply within a reasonable time, it may be lawful for the Board of Park Commissioners in conjunction with the Urban Tree Commission and the Tree Warden to take such action as is necessary to insure public safety and that of the urban forest. A charge for services rendered should be assessed to the property owner and shall constitute a property lien in the event it remains unpaid.

54-149 Prohibited Activities

(a) It shall be a violation of the provisions of this chapter for any person to abuse, mutilate, or destroy any tree on public property or to attach any wire, rope (except for supporting a broken tree or young sapling), sign, poster, and vending machine, or allow any gaseous, liquid, or solid substance which is harmful to such trees to come in contact with their roots, trunks, or leaves. Also, no person and/or public agency shall cause or allow any wire charged with electricity to be placed or attached to any tree without first obtaining

permission from the Board of Park Commissioners in conjunction with the Urban Tree Commission and the Tree Warden.

(b) No person shall excavate any ditches, tunnels, or trenches or place any building material, excess dirt, or other debris, within the drip-line of any public tree without first obtaining a permit from the Board of Park Commissioners in conjunction with the Urban Tree Commission and the Tree Warden.

(c) No person shall place, store, or maintain upon any public place any stone, brick, sand, dirt, concrete or any other materials or chemicals which may impede the passage of water, air, and nutrients to the roots of any public tree except by valid permission of the Board of Park Commissioners in conjunction with the Urban Tree Commission and the Tree Warden.

(d) Tree topping to reduce either the height or width of public trees shall be a prohibited activity in violation of this ordinance. Such replacement shall meet the standards of size, species and placement as provided for in the permit issued by the Board of Park Commissioners in conjunction with the Urban Tree Commission and the Tree Warden. The person, business public agency or property owner should bear the cost of removal and replacement of all trees removed.

54-150 Authority of Tree Warden to Treat or Remove Trees on Private Property

(a) The Board of Park Commissioners, in conjunction with the Urban Tree Commission and the Tree Warden, under the power herein given, may cause or order to be removed, pruned, or treated, any tree or part thereof on private property which is in an unsafe condition so that it poses a threat to the public or public property or which by reason of its nature is injurious to sewers or other public improvements or rights of way, or is afflicted with an injurious fungus, insect or other pest so as to constitute a threat to the health of the City's urban forest.

(b) The Board of Park Commissioners, in conjunction with the Urban Tree Commission and the Tree Warden shall have the right of entry upon any private property within the city to treat or cause or order to be treated, any, tree infested with a parasite, insect or pest, when it shall be deemed necessary in the collective opinions to do so to prevent the breeding of any parasite, insect or pest, and to prevent danger there-from to persons or property, or to trees planted in the public streets or other public places. Due notice shall be given to the property owner prior to any action on the part of the Board of Park Commissioners in conjunction with the Urban Tree Commission and the Tree Warden.

(c) It shall be unlawful for any person to hinder, prevent, delay or interfere with the Board of Park Commissioners in conjunction with the Urban Tree Commission and the Tree Warden, while engaged in the lawful execution of this ordinance. This shall not be construed as an attempt to prohibit the purpose of any legal or equitable remedy in a court of competent jurisdiction.

(d) It shall be the duty of any person(s) owning or occupying real property bordering on any public street or thoroughfare, upon which property there may be trees, to prune in such a manner that they will not obstruct or shade street lights, obstruct the passage of pedestrians on sidewalks, obstruct vision of traffic signs or obstruct the view of any street or intersection so as to pose a threat to pedestrians and vehicular safety. The minimum clearance of any overhanging portion thereof shall be eight (8) feet over sidewalks and twelve (12) feet over all streets and thoroughfares and/or at the discretion of the Board of

Park Commissioners in conjunction with the Urban Tree Commission and the Tree Warden.

(e) It shall further be the duty of any person owning or occupying real property upon which there may be tree(s), to prune, remove, or treat any tree(s) or part thereof which is in an unsafe condition or which, by its nature poses a threat to the public or public property or is injurious to sewers or other public improvements or rights of way, or is afflicted with an injurious fungus, insect or other pest so as to constitute a threat to the health of the city's urban forest.

(f) Notice to Prune, Remove, or Treat Tree(s) on Private Property.

(1) Should any person owning real property bordering any street or public thoroughfare fail to prune, remove or treat any tree(s) as herein provided above, the Board of Park Commissioners in conjunction with the Urban Tree Commission and the Tree Warden shall inform such person that corrective action shall be taken within three (3) weeks or sooner depending on the severity of the situation, upon written notice of the Board of Park Commissioners in conjunction with the Urban Tree Commission and the Tree Warden;

(2) The order required by this section shall be a written notice, served by certified mail from the Board of Park Commissioners in conjunction with the Urban Tree Commission and the Tree warden to the property owner at his or her last known address;

(3) When a person to whom an order for tree care is directed fails to comply within a reasonable time, it shall be lawful for the Board of Park Commissioners in conjunction with the Urban Tree Commission and the Tree Warden to take such action as is necessary to insure public safety and that of the urban forest. A charge for services rendered will be assessed to the property owner and should constitute a municipal lien in the event it remains unpaid.

54-151 Penalties for any Violation

(a) In the event a person abuses or destroys a tree in violation of this section, the violator, shall be responsible to undertake remedial actions that the Board of Park Commissioners, in conjunction with the Urban Tree Commission and the Tree Warden, determines to be reasonably necessary to protect public safety and property, and to help the tree survive the tree abuse damage.

(b) If the natural habit of growth or mechanical stability is seriously compromised, the violator shall remove the abused tree and install a replacement tree.

(c) Tree replacement criteria shall be consistent with that established in Appendix Q of the Fall River Tree Administrative Guidelines.

(d) Replacement tree shall be installed on-site. In the event, the site cannot accommodate the replacement tree(s), the replacement tree(s) shall be installed on public lands approved by the Park Board. If no suitable public lands are located, the violator shall pay a replacement contribution into the city's planting fund. The replacement contribution will be determined using a schedule for current value of the replacement tree plus installation and maintenance for one year by the Fall River Tree Administrative Guidelines.

(e) Remedial actions and replacement required under this chapter shall be completed within ninety (90) days of notice from the city that such actions are required. The City may

require the violator to immediately undertake remedial actions in the event the abused tree is an immediate threat to the public or property.

54-152 Compensation for Trees Destroyed in Violation of this Chapter

The City shall be compensated for any tree damaged beyond repair or destroyed in violation of this chapter. Unless an exemption is granted by the Board of Park Commissioners, in conjunction with the Urban Tree Commission and the Tree Warden, the compensation shall be in the form of (1) replacement tree or trees or (2) the replacement value of each tree damaged or destroyed.

The quantity of the replacement tree or trees shall be based on the size in girth (i.e. caliper or DBH) of the damaged or destroyed tree in accordance with the replacement tree formula found in the Fall River Tree Administrative Guidelines. The species and planting location of the replacement tree(s) shall be determined by the Board of Park Commissioners in conjunction with the Urban Tree Commission and the Tree Warden.
The violator shall bear all the costs associated with the purchase and installation of the replacement tree or trees.

The replacement value(s) shall be equal to the purchase and installation cost of the replacement tree multiplied by the quantity of replacement tree or trees as based on the size in girth (i.e. caliper or DBH) of the damaged or destroyed tree(s) as found in the Park Board Guidelines. A check in the amount of the tree replacement value shall be made payable to the City of Fall River and presented to the Park Board for deposit in the Tree Replacement Fund where it will be available for funding future tree planting.

54-153 Registration of Private Tree Care Firms

To protect the public, the Board of Park Commissioners, in conjunction with the Urban Tree Commission and the Tree Warden, shall require any person who plants, maintains prunes, cares for, or removes trees on public property as a business to:

(1) Obtain Workman's Compensation Insurance to the extent required by Mass. General Law;
(2) Obtain public liability and property damage insurance in an amount as determined by the City to cover and save harmless the city and its agents from all suits, claims, or actions of every class and nature, or on persons or property damage caused by or claimed to be caused, directly or indirectly, by the conduct of the work;
(3) Have on its staff an arborist certified by the Massachusetts Tree Warden's Association or The International Society of Arboriculture. This arborist must oversee all contract work and certify that all the work complies with the Fall River Tree Administrative Guidelines.

54-154 Exceptions-Waiver of chapter

In the event any tree shall be determined to be in a hazardous or dangerous condition so as to endanger the public health, welfare, or safety, and require less immediate removal, pruning, or treatment without delay, verbal authorization may be given by the Board of Park Commissioners, in conjunction with the Urban Tree Commission, and the Tree Warden and/or Director of Community Maintenance and such treatment as shall be required to remedy the situation shall be undertaken without obtaining a permit as herein required.

54-155 Emergencies

The requirements of this chapter may be waived by the Mayor in the case of emergencies such as wind storms, ice storms, pest outbreaks, or other disasters so that they in no way, shall hinder private or public work to restore order in the city. This work shall follow maintenance standards as outlined by the Board of Park Commissioners, in conjunction with the Urban Tree Commission, the Tree Warden, the Director of Community Maintenance and other municipal officials involved with storm damage clean-up and repair.

City of Fall River, *In City Council*

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BE IT ORDAINED by the City Council of the City of Fall River, as follows:

That Chapter 70 of the Revised Ordinances of the City of Fall River, Massachusetts, 1999, which chapter relates to traffic be amended as follows:

Section 1.

By inserting in Section 70-241, which section relates to stop intersections designated in proper alphabetical order the following:

Westbound drivers on Airport Road at Riggenbach Road

Section 2.

By inserting in Section 70-371, which section relates to parking prohibited at all times in proper alphabetical order the following:

Meridian Street, east side, from the entrance of the Silvia School
for a distance of 150 feet southerly and 120 feet northerly

Section 3.

By striking out in Section 70-387 which section relates to handicapped parking the following:

Niagara Street, north side, starting at a point 135 feet west of Foster Street,
for a distance of 23 feet westerly
Notre Dame Street, west side, starting at a point 163 feet south of Saint Joseph Street,
for a distance of 20 feet southerly
Palmer Street, north side, starting at a point 121 feet east of Vale Street,
for a distance of 20 feet easterly

City of Fall River, *In City Council*

(Councilor Michael L. Miozza)
(Councilor Eric Poulin)

WHEREAS, there is door-to-door solicitation occurring after dark, and

WHEREAS, there are many citizens frightened by this night time solicitation, and

WHEREAS, there is genuine concern in the community for the safety of these individuals, and

WHEREAS, city ordinance 14-661 does not address hours of solicitation, and

WHEREAS, the ordinance is narrow in scope because it only covers door-to-door sales solicitation and not non sales solicitation, therefore

BE IT RESOLVED, that the Committee on Ordinances review ordinance 14-661 with the intent of revising said ordinance to include language that defines door-to-door solicitation hours and expands the scope of coverage to include non sales solicitation.

City of Fall River, *In City Council*

(Councilor David J. Dennis)

WHEREAS, there are numerous double pole locations throughout the City of Fall River, and

WHEREAS, when a utility pole has been compromised by a vehicle accident, many times an additional pole is secured to the existing pole, and

WHEREAS, many times these double poles are left in place for months, now therefore

BE IT RESOLVED, that utility companies remove these double poles as soon as weather conditions allow.

City of Fall River, *In City Council*

11

(Council President Linda M. Pereira)
(Councilor Eric Poulin)
(Councilor Daniel M. Rego)
(Councilor Michael M. Miozza)
(Attorney Bradford L. Kilby)
(Councilor Raymond A. Mitchell)
(Councilor David J. Dennis, Esq.)
(Councilor Pat Casey)

WHEREAS, the Massachusetts Association of Regional Planning Agencies published "A Best Practices Model for Streamlined Local Permitting" guide on November 30, 2007, and

WHEREAS, this guide contains 26 best practices that cities and towns can adopt to make their communities more business friendly, and

WHEREAS, the unemployment rate in Fall River is still too high and adopting some or all of these practices may aid in attracting and/or retaining jobs in the city, now therefore

BE IT RESOLVED, that the Committee on Ordinances and Legislation convene a future meeting with representatives of the Chamber of Commerce, Office of Economic Development, Redevelopment Authority, Mayor's Office, Planning Department and other relevant parties to discuss how Fall River can implement some or all of the recommendations contained in this guide.

City of Fall River, *In City Council*

(Councilor Eric Poulin)
(Councilor David J. Dennis, Esq.)
(Councilor Raymond A. Mitchell)
(Councilor Michael L. Miozza)
(Attorney Bradford L. Kilby)
(Council President Linda M. Pereira)
(Councilor Daniel M. Rego)
(Councilor Pat Casey)

WHEREAS, the Fall River Master School Building Oversight Committee's Final Report, which was published in April of 2002, called for the expansion and/or reconstruction of the Tansey School to take place between the years of 2010 to 2015 and we are currently in the year 2012, now therefore

BE IT RESOLVED, that representatives from the School Department be invited to a future City Council Committee on Finance meeting to discuss the status of this expansion/reconstruction project and whether or not it is still planned to move forward and if so how the City Council can assist in this endeavor.

City of Fall River, *In City Council*

(City Council)

WHEREAS, Governor Deval Patrick has proposed centralization of community colleges within the State, and

WHEREAS, Bristol Community College President Jack Sbrega has expressed concerns with this proposal, and

WHEREAS, the New Bedford City Council has also opposed this centralization, now therefore

BE IT RESOLVED, that the Fall River City Council join Bristol Community College and the City of New Bedford and oppose the centralization of community colleges and send a letter to the Governor stating such.

City of Fall River, *In City Council*

(Councilor Raymond A. Mitchell)
(Councilor Daniel M. Rego)
(Councilor Eric Poulin)

WHEREAS, there are approximately 250 miles of roads in the City of Fall River, and

WHEREAS, most of our roads and sidewalks need to be resurfaced, and

WHEREAS, interest rates are low at this present time, now therefore

BE IT RESOLVED, that the Administration consider the feasibility of taking out bonds while interest rates are low to aggressively repair and replace our roads and sidewalks.

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RECEIVED

2012 FEB 27 P 12: 41
Claim #12-17
CITY CLERK
FALL RIVER, MA

CLAIM FORM
City of Fall River, Massachusetts

Name: Judith Lemelin

Address: 582 Hicks Street
Fall River MA 02724

Phone #: 5086784868

Type of Claim: X M.G.L. Chapter 84 ____ M.G.L. Chapter 258 ____ Other

Date of Incident: 1/31/12
Time of Incident: 1:00 p.m
Location of Incident: Dwelly street Fall River

Provide a detailed description of your claim (attach additional sheets if necessary):

I was driving down dwelly street toward South Main St and hit a large pot hole with my front drivers side tire. The damage was a ripped tire and a damaged rim. I have enclosed photos, police report as well as a bill that has been paid out of my pocket.

wrig & 2 Copies Law
1 DPW
1 CC
1 City Council

* Please consult with your own attorney in preparing this Claim Form to understand your legal rights

* Please file this Claim Form with: City Clerk, One Government Center, 2nd Floor, Fall River, MA 02722

RECEIVED

2012 FEB 27 P 3:07

CITY CLERK
FALL RIVER, MA

CLAIM FORM
City of Fall River, Massachusetts

12-19

Name: Diane Simons

Address: 235 Highridge Road Somerset, MA 02726

Phone #: 617-943-8561

Type of Claim: ✓ M.G.L. Chapter 84 ____ M.G.L. Chapter 258 ____ Other

Date of Incident: Friday, February 3, 2012
Time of Incident: 7:00 P.M.
Location of Incident: Bay Street, Fall River, MA

Provide a detailed description of your claim (attach additional sheets if necessary):

On Friday, February 3, 2012, I was driving North on Bay Street in Fall River. I hit a huge pothole which could not be seen to avoid. The impact immediately sliced the sidewall of the passenger side front tire of my vehicle. A report was filed with the police department, please see attached. The tire was replaced at a cost of $261.59, enclosed is a copy of the bill.

any + 2 Copies Law
1 DPW
1 Clerk
1 City Council

*You should consult with your own attorney in preparing this Claim Form to understand your legal rights

CLAIM FORM
City of Fall River, Massachusetts

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2012 FEB 27 A 9:51
CITY CLERK
FALL RIVER, MA

Claim #12-18

Name: Terri Lee Medeiros

Address: 181 Beattie St
Fall River MASS. 02723

Phone #: 1774-488-4274

Type of Claim: ____M.G.L. Chapter 84 ____M.G.L. Chapter 258 ____Other

Date of Incident: 12/30/2011
Time of Incident:
Location of Incident: 181 Beattie St.

Provide a detailed description of your claim (attach additional sheets if necessary):

Police were called to bring my son Cory Medeiros to Charlton Hospital for non compliance of medication, Cory locked himself in bathroom Police officer cracked door frame trying to get him out.

11-9168-OF

any + 2 copies Law
1 Police
1 city clerk
1 city Council

Terri Lee Medeiros

* You should consult with your own attorney in preparing this Claim Form to understand your legal rights.

CC

Amica
AUTO HOME LIFE

Amica
PO Box 9690
Providence, RI 02940-9690

Toll Free: 1-888-70-AMICA
(1-888-702-6422)
Fax: 1-866-381-3239

February 28, 2012

City of Fall River
One Government Center
Fall River, MA 02722
Attn City Clerk

#12-20

RECEIVED
2012 FEB 29 A 10: 29
CITY CLERK
FALL RIVER, MA

File Number: 60001152443
Date of Loss: 01/27/2012
Owner/ Insured: James D. Pereira
Street: 1025 Langley St
Town: Fall River
Type of Loss: Wind

To Whom This May Concern:

Please be advised that we insure the above named individual(s). A claim has been made for Damage to Real Property and as the insurer; we are presently in the process of adjusting the loss.

We are mandated to comply with Massachusetts General Laws, Chapter 139 and as such, if there are any present liens on the above property, please notify us within 10 days of receipt of this letter. If we do not hear from you, we will be under no obligation to pay you any portion of this claim.

Very truly yours,

Stephen R. Norsek

Stephen R. Norsek
Claims Department
888-702-6422 x21133
SNORSEK@AMICA.COM

Orig + 2 copies Law
1 Water
1 CC
1 City Counsel

19

JOHN R. MITCHELL

Attorney at Law
105 Bank Street
Fall River, Massachusetts 02720
Telephone (508) 676-6000 • Fax (508) 676-6600
e-mail: jrmitchlaw@gmail.com

RECEIVED
2012 MAR -8 A 10:46
CITY CLERK
FALL RIVER, MA

March 7, 2012

City of Fall River
Alison M. Bouchard, City Clerk
One Government Center
Room 227
Fall River, MA 02722

Re: Buddy's Transportation, Inc. d/b/a Yellow Cab/Town Transportation,LLC, d/b/a Town Taxi

Dear Mrs. Bouchard:

In follow-up to our conversation of several weeks, on behalf of my clients Buddy's Transportation, Inc., d/b/a Yellow Cab and Town Transportation, LLC, d/b/a Town Taxi, I am requesting that the licenses of Buddy's Transportation, Inc., d/b/a Yellow Cab be transferred from Buddy's Transportation, Inc. to Town Transportation, LLC, d/b/a Town Taxi. The licenses that we are requesting be transferred are the following City medallions: 8, 9, 13, 21,23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42.

On behalf of my clients, I ask that you process this matter according to the appropriate procedure.

I thank you for your attention to this matter and remain,

Sincerely yours,

John R. Mitchell (cac)

John R. Mitchell, Esquire

JRM:cac
Enc.