



## WHAT'S NEW IN MUNICIPAL LAW 2019

### Links to New Legislation and Court Decisions

#### NEW LEGISLATION

An Act Regulating and Insuring Short-term Rentals, St. 2018, c. 337, as amended by St. 2019, c. 5, §§ 8–11, 32-37 and 45–47.

<https://malegislature.gov/Laws/SessionLaws/Acts/2018/Chapter337>

<https://malegislature.gov/Laws/SessionLaws/Acts/2019/Chapter5>

An Act Making Appropriations For The Fiscal Year 2020, St. 2019, c. 41, §§ 29, 30, 105 and 107.

<https://malegislature.gov/Laws/SessionLaws/Acts/2019/Chapter41>

#### ALPHABETICAL LISTING OF COURT DECISIONS

*AirBnB, Inc. v. City of Boston*, U.S. District Court, Mass., Order on Motion for Preliminary Injunction, Civil No. 18-12358-LTS (May 3, 2019) – Preliminary Injunction allowed in part and denied in part regarding enjoining certain provisions in a City of Boston ordinance aimed at regulating short-term rentals.

<https://www.courthousenews.com/wp-content/uploads/2019/05/MA-airbnb.pdf>

*Animal Rescue League of Boston v. Board of Assessors of the Town of Bourne*, Appellate Tax Board (ATB) Docket Nos. F317304, F317305, F317306, F319210, F319211, F319212, F322696, F322697, F322698, F325779, F325780, F325781, November 8, 2018 – ATB upheld assessors denial of Animal Rescue League's claim for a charitable exemption on grounds that there was insufficient evidence that League occupied the subject property for its charitable purposes. Abatements ordered on grounds of overvaluation of one of the parcels.

<https://www.mass.gov/doc/animal-rescue-league-of-boston-v-board-of-assessors-of-the-town-of-bourne-november-8-2018/download>

*Atlantic Union College v. Board Of Assessors Of The Town Of Lancaster*, ATB Docket Nos. F324281-F324292, F326402-F326413, F329370-F329381, October 12, 2018 - Despite being stripped of accreditation from 2011-2015, educational institution continued to operate in furtherance of its charitable purposes. Assessors denied charitable exemption. On appeal, ATB held that requirement of occupancy of property for educational purposes was met during the time the college struggled to regain accreditation and the exemption was allowed.

<https://www.mass.gov/doc/atlantic-union-college-v-board-of-assessors-of-the-town-of-lancaster-october-12-2018/download>

*Chelsea Housing Authority v. McLaughlin*, 482 Mass. 579, July 9, 2019 - Where plaintiff sues its accountant for negligent failure to detect fraud in plaintiff's operations, the accountant is liable, but only for percentage of fault attributed to the accountant (as opposed to fault of all others involved.) Court concluded that in enacting G. L. c. 112, § 87A ¾, the Legislature by necessary implication preempted the common-law doctrine of in pari delicto in cases where an accountant is found liable for negligently failing to detect and reveal a plaintiff client's fraud.

<http://masscases.com/cases/sjc/482/482mass579.html>

Chief of Police of Taunton v. Caras, 95 Mass. App. Ct. 182, April 19, 2019 - Appeals Court overturned decision of a District Court judge ordering the chief of police to reinstate the firearms license of a man who had left the gun unsecured in the glove compartment of his car which allowed his grandson to access same. District Court impermissibly substituted its judgment for that of the Chief.

<http://masscases.com/cases/app/95/95massappct182.html>

Cichocki v. Rehoboth, 481 Mass. 1002, November 15, 2018 - Taxpayer whose property was foreclosed upon sued for mandamus relief from the judgment. Taxpayer had obtained appellate review of the foreclosure. Mandamus relief was denied because taxpayer had already exercised his right of appeal and had an adequate remedy at law.

<http://masscases.com/cases/sjc/481/481mass1002.html>

Cuticchia v. Andover, 95 Mass. App. Ct. 121, April 3, 2019 - Andover violated moratorium on increases in retirees' percentage contribution to health insurance, imposed on municipalities that took advantage of health care reform under a 2011 law. Moratorium extended to July 1, 2018, so Andover unlawfully raised percentage contributions while it was in effect.

<http://masscases.com/cases/app/95/95massappct121.html>

Desmond v. West Bridgewater, 94 Mass. App. Ct. 1122, Mem. and Order pursuant to Rule 1:28, February 19, 2019 - Appeals Court upheld dismissal of police officer found by the Civil Service Commission to have lied under oath and engaged in one instance of conduct unbecoming an officer.

[https://scholar.google.com/scholar\\_case?case=5901109089447053242&hl=en&as\\_sdt=40000006](https://scholar.google.com/scholar_case?case=5901109089447053242&hl=en&as_sdt=40000006)

Essex Regional Retirement Bd. v. Swallow, 481 Mass. 241, January 18, 2019 - Police officers convicted of crimes were not subject to pension forfeiture under 32:15(4) where their off-duty crimes were not factually connected to their positions as police officers. Moreover, the laws under which they were convicted were not made expressly applicable to public officials and employees.

<http://masscases.com/cases/sjc/481/481mass241.html>

Ithaca Finance, LLC v. Leger, TL 14-148761, May 10, 2019 - Court vacates a tax foreclosure judgment against the defendant Leger where city of Lawrence had assigned the tax title regarding Leger's property under G.L. c. 60, § 2C. Court found a due process violation where the assignee (the second private entity to receive the assignment) failed to comply with the agreement with the City of Lawrence to communicate with the property owner and provide certain notices. [Note – The attorney representing Leger in the acquisition of the property failed to obtain a municipal lien certificate which would have shown the outstanding taxes and tax taking at the time of her acquisition.]

<http://masscases.com/cases/land/2019/2019-14-148761-DECISION%20&%20ORDER.html>

Lyttle v. Zoning Board of Appeals of the Town of Hull, Land Court MISC 13-480974, May 23, 2017 – Land Court upholds Violation Notice issued by Hull building inspector which directed landowner to cease and desist from his use of a single-family dwelling unit "for transient rental purposes/uses and/or business/commercial use" in violation of the Hull Zoning Bylaw.

<http://masscases.com/cases/land/2017/2017-13-480974-DECISION.html>

Nstar Electric Co. v. Assessors of Boston, 94 Mass. App. Ct. 1123, Mem. and Order pursuant to Rule 1:28, February 22, 2019 - Appeals Court upheld the ATB's decision to value utility personal property giving equal weight to net book value and replacement cost new less depreciation as methodologies. Special circumstances applied to justify variance from presumptive use of net book value for assessing utility property. FAR denied, 482 Mass. 1102, May 9, 2019.

[https://scholar.google.com/scholar\\_case?case=5592093292676090368&hl=en&as\\_sdt=40000006](https://scholar.google.com/scholar_case?case=5592093292676090368&hl=en&as_sdt=40000006)

Pittsfield v. Local 447 Int'l Brotherhood of Police Officers, 480 Mass. 634, October 3, 2018 - Public policy did not prohibit enforcement of arbitrator's award of reinstatement of a police officer who had been terminated on grounds of conduct unbecoming a police officer, untruthfulness, and falsifying records. Court was obligated to credit the arbitrator's conclusion that officer's statement was no more than misleading. Officer acted without intent to impede, obstruct, or otherwise interfere with any criminal investigation or proceeding, but merely to avoid discipline. Collective bargaining agreement precluded termination.

<http://masscases.com/cases/sjc/480/480mass634.html>

Rauseo v. Assessors of Boston, 94 Mass. App. Ct. 517, November 26, 2018 - Easements in gross for parking, reserved by a condominium declarant from the interests included in master deed and not appurtenant to any condominium, were subject to tax. Taxpayer's argument that parking easements were part of the condo common area and taxable only as such under 183A:14 was rejected.

<http://masscases.com/cases/app/94/94massappct517.html>

Reid v. Boston, 95 Mass. App. Ct. 591, July 12, 2019 - Plaintiff's claim under the Tort Claims Act was not precluded by city's claim of immunity in circumstances where police officer's intervention in a calm situation triggered third party's drawing a gun and shooting. Plaintiff was shot in the leg in the gun fight. Immunity under 258:10(h) and 258:10(j) was rejected.

<http://masscases.com/cases/app/95/95massappct591.html>

Styller v. Building Inspector of the Town of Lynnfield, Land Court MISC 16-000757, September 19, 2018 - Homicide committed during large party held at short-term rental premises over Memorial Day Weekend. Land Court upholds Cease and Desist Order issued by building inspector directing landowner to cease and desist from his use of a single-family dwelling for short-term rentals in violation of the zoning bylaw. Land Court upholds town's regulation of short-term rentals through zoning by-laws.

<http://masscases.com/cases/land/2018/2018-16-000757-DECISION.html>

Tallage Lincoln, LLC v. Williams, TL 16-001739, April 17, 2019 - Where assignee paid subsequent years taxes of tax delinquent for property which had previously been taken and assigned under 60:52, assignee could not add its post-taking tax payments and 16% interest to the redemption amount. Taxes subsequent to the taking are addressed by a lien under 60:60.

<http://masscases.com/cases/land/2019/2019-16-001739-MEMO%20&%20ORDER.html>

Tamiru v. Board of Assessors of Everett, ATB Docket No. F337029, March 3, 2019 - Where water consumption tracked by a water meter spiked, homeowner was advised to have a leak fixed. Water consumption dropped dramatically as homeowner fixed the leak. Homeowner failed to prove that the water bill was inaccurate.

<https://www.mass.gov/doc/tamiru-yeshi-v-board-of-assessors-of-the-city-of-everett-march-26-2019/download>

Trimount Foundation, Inc. v. Board Of Assessors Of The City Of Newton, ATB Docket Nos. F328464, F331510, F332637, January 16, 2019 - Charitable organization which leased property from owner, also a charitable entity, showed by substantial evidence that it offered religious, educational and other charitable services to the public at the subject property. Exemption granted where occupancy for charitable purposes was found.

<https://www.mass.gov/doc/trimount-foundation-inc-v-board-of-assessors-of-the-city-of-newton-january-16-2019/download>

United Salvage v. Assessors of Framingham, Nos. F329077, F332069 (ATB Decision W/O Findings) July 23, 2018- Entity not entitled to Clause 45<sup>th</sup> exemption where it did not supply power to property taxable under Ch. 59.

<https://www.mass.gov/media/2041646/download>

Valley Green Grow, Inc. v. Charlton, MISC 18-000483, March 7, 2019 - Court invalidated Charlton Warrant Article 2 purporting to ban all non-medical cannabis uses within the town. Warrant article was an improper attempt by town to exercise zoning power through a general by-law by regulating a use already regulated in its zoning by-law.

<http://masscases.com/cases/land/2019/2019-18-000483-MEMO%20&%20ORDER.html>

Valley Green Grow, Inc. v. Charlton, MISC 18-000483 and 19-000226, August 14, 2019 – Proposed cultivation of marijuana was allowed use under zoning. Planning Board's motion for summary judgment denied on appeal of its denial of site plan.

<http://masscases.com/cases/land/2019/2019-18-000483-MEMO-ORDER.html> and  
<http://masscases.com/cases/land/2019/2019-18-000483-JUDGMENT.html>

Veolia Energy Boston, Inc. v. Assessors of Boston, 95 Mass. App. Ct. 26, March 8, 2019, Further Appellate Review denied, 482 Mass. 1102, May 9, 2019 - Appeals court upheld ATB dismissal of taxpayer's petition for FY 15 abatement where taxpayer failed to file a proper abatement application. Taxpayer's letters to collector referring to its ATB abatement application for FY 14, though sent before the abatement application deadline, did not satisfy strictures of 59:59. There is no good faith exception to mandatory requirements of statute governing abatement relief. Assessors' request for attorney's fees was denied because case was not frivolous.

<http://masscases.com/cases/app/95/95massappct26.html>

Veolia Energy Boston, Inc. v. Assessors of Boston, 483 Mass. 108, September 11, 2019 – On direct appellate review, Supreme Judicial Court upheld ATB decision to abate in full the \$2 million FY 14 personal property tax assessed on manufacturing corporations property as such property was exempt under G.L. c. 59, § 5, cl. 16(3) because the property was part of a "great integral machine."

<http://masscases.com/cases/sjc/483/483mass108.html>

Vigorito v. City of Chelsea, 95 Mass. App. Ct. 272, May 9, 2019 - Court upheld dismissal of property buyer's action to enjoin demolition of structure where the original owners, when served with the city's demolition order, did not act to challenge the order within the time allowed by 139:2. City was not required to re-serve subsequent property owners with an order of demolition. Case was moot anyway because demolition had been carried out.

<http://masscases.com/cases/app/95/95massappct272.html>