



## A Career of Public Service Excellence

**Sean Cronin - Senior Deputy Commissioner of Local Services**

**November 1st, 2018**

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### By the Numbers

*City & Town* provides updates on the progress of the tax rate and certification season while also allowing you to follow the tax rate setting process in real time. Thanks to our Municipal Databank staff, this public information is available 24/7 by [clicking here](#).

Prelim. Certifications

As our colleagues in local government may be aware, DLS Municipal Finance Law Bureau Chief Kathleen Colleary is retiring after more than 38 years of public service. Kathleen is a truly dedicated professional and has left her mark on the policy and administration of municipal finance in Massachusetts. She began her career focused on the implementation of Proposition 2 ½ and most recently provided critical leadership, insight, and policy direction for municipal modernization efforts, an initiative to update obsolete laws, increase local independence, streamline state oversight, and provide municipalities with greater flexibility. Kathleen's attention to detail, deep subject matter knowledge, and willingness to tackle a seemingly endless backlog of arcane and conflicting laws, policies and regulations led to the development of "An Act to Modernize Municipal Finance and Government", legislation hailed as the most comprehensive set of reforms in decades. For this work, Kathleen was honored as the 2016 Carballo Award winner for Excellence in Public Service.

While this public recognition was well deserved, I also want to highlight one of the more unsung areas where Kathleen's skills played an integral role: the development of training programs for local officials. Over the years, DLS has provided many forms of trainings that help keep assessors, accountants, auditors, collectors, treasurers and CFO's informed and aware of new and forthcoming legislation, regulations and judicial decisions that impact municipal finance. Kathleen was always directly involved in both the development of the programs and the direct delivery of trainings. If you ever attended one of our "What's New in Municipal Law" seminars, you've benefitted firsthand from her expertise. In fact, if you're a new assessor and never had to leave your home or office to take our Course 101 Assessment Administration online modules, you've also benefitted. Kathleen has played a vital role in all these trainings and demonstrated her commitment to promoting and fostering professional development for local government officials. She deserves an immense amount of credit for this and for the lasting, positive impact it has on the public good.

Approved: 41

Final Certification: 18 (of 69 total)

LA4 Approved: 179 (206 submitted)

LA13/ New Growth Approved: 178 (200 submitted)

Tax Rates Approved: 41

Balance Sheets Approved: 185

Total Aggregate Free Cash Approved: \$798,875,431

## Important Dates & Information

### DLS Municipal Law Seminar Materials Now Available Online

Over 400 local officials attended the 33rd annual "What's New in Municipal Law" seminars held on September 27, 2018 at The Lantana in Randolph and October 4, 2018 at The Log Cabin Banquet & Meeting House in Holyoke.

In the general session in the morning, they heard Municipal Finance Law Bureau attorneys Kathleen Colleary, James Crowley, John Gannon, Donald Gorton, Patricia Hunt and Kenneth Woodland review new legislation and recent court and Appellate Tax Board cases. In the afternoon session, the attorneys led three workshops that focused on current and recurring issues related to: (1) tax administration, including

While I've only had the pleasure of working with Kathleen for just over 3 ½ years, I can say that Kathleen is the gold standard for those who have chosen a career in public service. Brilliant, dedicated, mission-driven and selfless – just a few ways to describe her and her work ethic. Her profound understanding of Massachusetts General Laws, statutes, and regulations and their related histories, coupled with her unflagging work ethic, have made her an invaluable resource to the Commonwealth. On behalf of everyone at DLS and beyond, I want to offer my deepest gratitude, commend her on a job amazingly well done, and wish her all the best going forward. I am going to miss Kathleen as a person along with her wisdom and professionalism immensely.

While it is the end of an era, I am thrilled to announce the promotion of Municipal Finance Law Bureau attorney Patricia Hunt into the Bureau Chief position. Patricia has spent her career in public service, the last 5+ here at DLS in Kathleen's bureau. She also served on her town's finance committee, board of selectmen and community preservation committee, in addition to serving as general counsel for the Quincy Housing Authority. In a future edition of *City & Town*, Patricia will be sharing her goals and vision for the legal bureau. Congratulations, Patricia!

## Consider Your Options

### Bobbi Jo Colburn - Bureau of Accounts Field Representative

Local option excise taxes and surcharges can provide an alternative to the property tax for communities seeking additional funds for specific types of purchases or for general purposes which may include helping to reduce taxpayers' overall property tax burden. Around the country, these alternatives allow local governments to capture prosperity in certain areas of economic activity. In Massachusetts, three such alternatives have been approved by the Legislature and have already been accepted by many communities. They include restaurant meal sales, room rentals and the sale of recreational marijuana.

This article will review the three local options and provide detail on the Community Preservation Act surcharge. It will include tips on how to recognize a local option and questions to consider before accepting one as well as guidance on reporting acceptance to the Division of Local Services (DLS). A link to a general summary of Massachusetts local option excises and surcharges completes the piece.

### Three Alternatives to the Property Tax

*Local Option Meals Excise - [G.L. c. 64L](#)*

the administration of classified forest, farm and recreational lands (Chapters 61, 61A and 61B); (2) collection of taxes and charges, including the creation and administration of tax title and deferral accounts; and (3) special revenue funds, including the Community Preservation Fund. If you were not able to attend one of this year's seminars, all morning presentation and reference materials and afternoon workshop books and discussion summaries are available on [our website](#).

We look forward to seeing you at the 34th annual "What's New in Municipal Law" next fall. Save the date information will be posted on [our website](#) as soon as it becomes available.

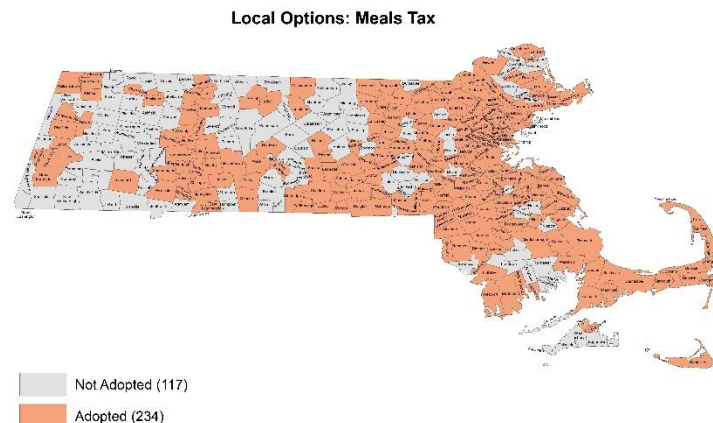
### **DLS Issues LFO on Local Option Marijuana Sales Tax Revenues & Host Community Agreement Payments**

The Division of Local Services has released a Local Finance Opinion (LFO) on the municipal finance treatment of local option marijuana sales tax revenues and host community agreement payments from marijuana establishments and medical marijuana treatment centers. Please note that the LFO does *not* address the nature and treatment of any agreed to payments for purposes of the marijuana host agreement statute. The LFO can be found by [clicking here](#).

Accepting this excise allows a community to impose an additional .75% tax on a meal sold by or bought from restaurants or any restaurant part of a store. First permitted by law in 2009, this local option is in addition to the 6.25% tax imposed by the state for these meals. Acceptance is by majority vote of the municipal legislative body, subject to local charter. [G.L. c. 64L, § 2\(a\)](#).

As of the writing of this article, 234 communities have reported their acceptance to DLS. For FY2018, more than \$133 million was distributed to 223 communities. Since FY2010, \$838.7 million has been distributed to cities and towns. Revenue from this excise is accounted for in the General Fund, however the [Municipal Modernization Act \(c. 218 of 2016\)](#) included a provision within [G.L. c. 40, §5B](#), that allows communities who adopt it to dedicate not less than 25% of certain excise taxes collected to a special purpose stabilization fund. This dedication is applicable to the local option meals excise. For further information on the dedication of revenues to stabilization funds, see [IGR No. 17-20](#). For further information on this excise, see [Bulletin 2009-15B](#).

The following map provides an indication where the meals excise has been adopted in Massachusetts.



(To view a larger version of this map, please [click here](#).)

### **Room Occupancy Excise - [G.L. c. 64G](#)**

Accepting this excise allows a community to impose up to an additional 6% tax (6.5% for Boston) on rooms rented for \$15 or more per day in hotels, motels, lodging houses and bed and breakfast establishments. First permitted by state law in 1985, this local option is in addition to the 5.7% tax imposed by the state for these room rentals.

Acceptance is subject to the provisions of [G.L. c. 64G, § 3A](#):

- City with a Plan A, Plan B or Plan F charter requires acceptance by a majority vote of the city council with the approval of the mayor

All current LFOs are posted on the DLS Guidelines, Opinions and Advisories website. They can be found by [clicking here](#).

### **New Signature Requirements for Tax Rate Submission**

The DLS Bureau of Accounts (BOA) now requires a majority of the Board of Assessors to electronically sign both the LA-5 form and the Tax Rate Recap form. *Attaching a scanned copy of the paper form is no longer permitted.*

Please contact your local Gateway Administrator or [DLS Gateway Support](#) to open a Gateway account. Contact your BOA Field Representative with questions about the form submission requirements. To view the DLS Staff Directory, please [click here](#).

### **OSD: Latest Issue of *Buy the Way Now* Available**

Don't miss the October 2018 edition of [Buy the Way](#), the monthly Newsletter of the Operational Services Division (OSD).

Click [here](#) to get news and updates from OSD delivered to your inbox.



- City with a Plan C, Plan D or Plan E charter requires acceptance by a majority vote of the city council
- Town with a town meeting form of government requires acceptance by a majority vote of the annual town meeting or a special meeting called for the purpose
- Town with a town council form of government requires acceptance by a majority vote of the town council

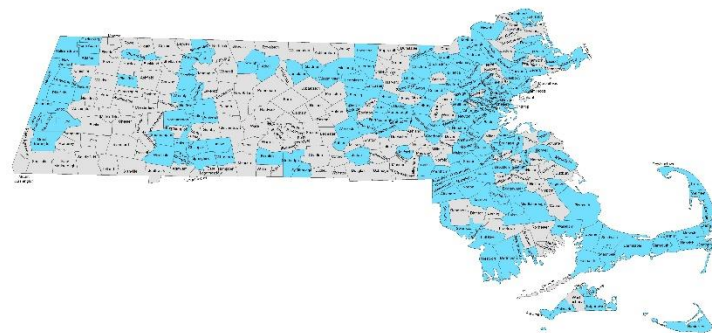
As of the writing of this article, 187 communities have reported their acceptance to DLS. Of these:

- 125 had an additional 6%
- 2 had an additional 5%
- 59 had an additional 4%
- 1 had an additional 2%

For FY2018, \$211.8 million was distributed to 164 communities. Over the last 10 fiscal years, \$1.6 billion has been distributed to cities and towns. Revenue from this excise is accounted for in the General Fund. However, the Municipal Modernization Act's provision regarding the dedication of funds to a special purpose stabilization fund as indicated in the previous excise is also applicable to this excise. For further information on this excise, see [TIR 09-13](#) or [Bulletin 2009-15B](#).

The following map provides an indication where the Room Occupancy Excise has been adopted in Massachusetts.

Local Options: RoomsTax



Not Adopted (164)  
Adopted (187)

(To view a larger version of this map, please [click here](#).)

### *Meals and Room Excise Tax Distributions*

Meals and Room excise distributions over time have added significant dollars to the General Fund of a city or town that accepted the excise. The following chart illustrates total dollars distributed over the last several fiscal years.



**Other DLS Links:**

[Local Officials Directory](#)

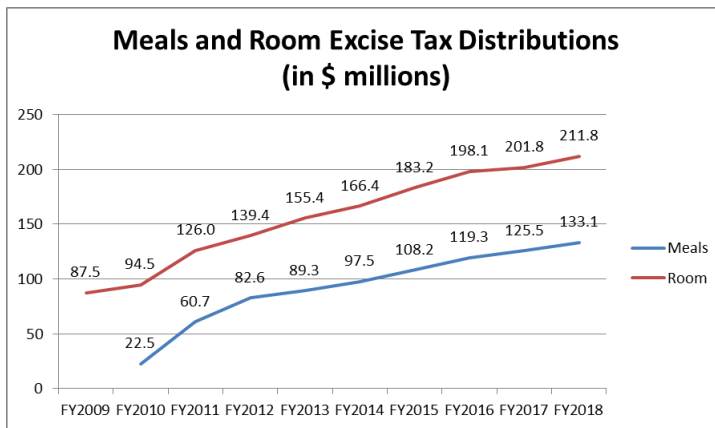
[Municipal Databank](#)

[Information Guideline Releases \(IGRs\)](#)

[Bulletins](#)

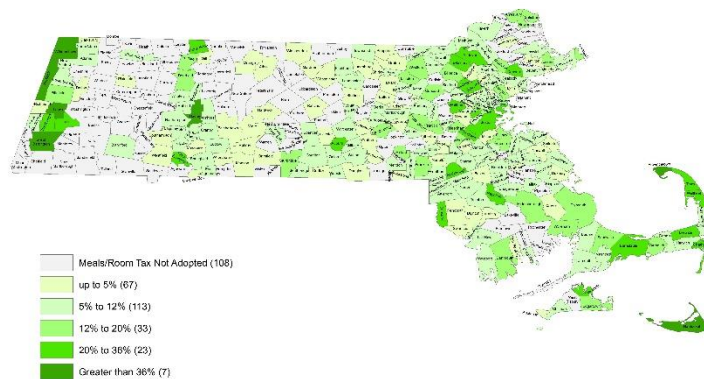
[Publications & Training Center](#)

[Tools and Financial Calculators](#)



The following provides an indication of where the local option excise meals and/or room excises has/have been accepted. Note that the darker the color, the greater the percentage that the combined distribution makes up of total FY2018 estimated receipts.

**Estimated Meals and Rooms Tax Revenue as a Percentage of Total Local Receipts**



(To view a larger version of this map, please [click here.](#))

**Marijuana Excise - [G.L. c. 64N, §3](#)**

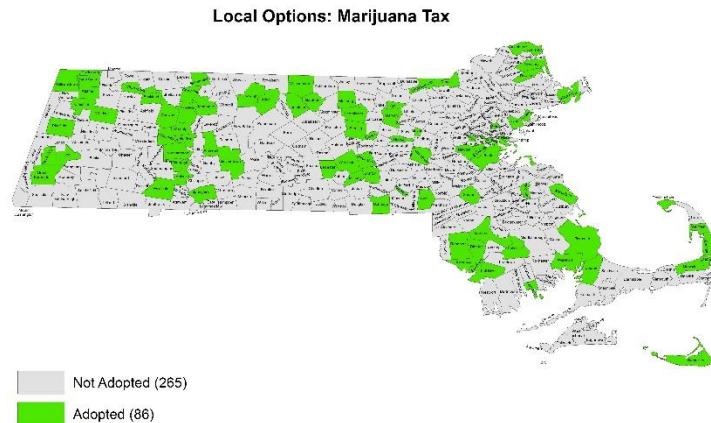
On July 1, 2018, Massachusetts put into effect a 3.75% tax upon the sale of marijuana or marijuana products by a marijuana retailer to anyone other than a marijuana establishment. Accepting this excise allows a community to impose up to an additional 3% tax on the retail sale of marijuana for adult use. Acceptance is by majority vote of the community's legislative body, subject to local charter (G.L. c. 64N, § 3).

As of the writing of this article, 86 communities have reported their acceptance to DLS, each one having accepted the 3% legal maximum. In a 2017 analysis by the Massachusetts Department of Revenue, the state could collect \$44 million to \$82 million from the 3.75% tax.

Revenue from this excise is accounted for in the local government's General Fund. However, as in the case of the

meals and room excises, the Municipal Modernization Act's provision regarding the dedication of funds to a special purpose stabilization fund is also applicable to this excise. For further information on this excise, see [Bulletin 2018-3](#) and DLS [LFO 2018-3](#).

The following map provides an indication where the Marijuana Excise has been adopted in Massachusetts.



(To view a larger version of this map, please [click here](#).)

[Click here](#) for a link for a timetable on collection and distribution dates for meals, rooms, and marijuana excises taxes.

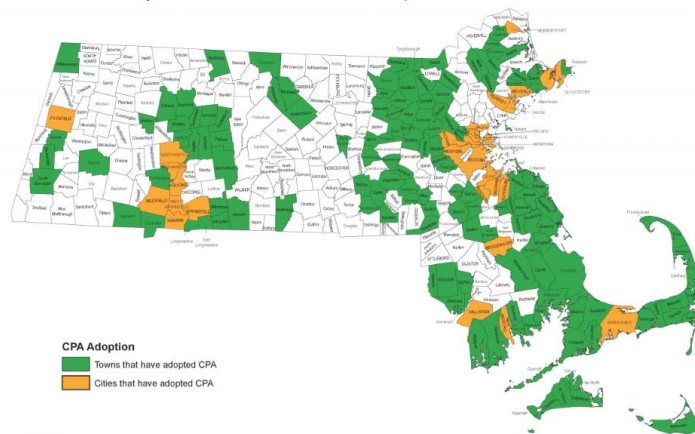
#### *Community Preservation Act (CPA) Surcharge - [G.L. c. 44B](#)*

Accepting this surcharge allows a community to impose up to an additional 3% tax over and above the property tax already due on each parcel of taxable real estate. Total surcharges received are then reserved into a local CPA fund to preserve open space and historic resources, create affordable housing and develop outdoor recreational facilities. A state trust fund, created from recording fees at the Registry of Deeds and Land Court, provides an additional source of revenue for the local CPA fund. First permitted by law in 2002, these surcharges are not subject to the tax limitations of Proposition 2½. For further information on this local option surcharge, please read ["Discussing Community Preservation"](#) in the August 2nd, 2018 edition of *City & Town* or for specific approval requirements, sample questions, surcharge exemptions, revocation procedures and effective dates, visit the [Massachusetts Secretary of State's website](#).

The following map provides an indication where the Community Preservation surcharge has been adopted in Massachusetts.

## Community Preservation Act Adoption

May 2018



(To view a larger version of this map, please [click here](#).)

### Recognizing a Local Option Excise or Surcharge

If the act authorizing the excise or surcharge includes key words such as “if locally accepted,” “if locally adopted,” or “if locally authorized,” then it’s a local option. There may be additional reference to approval by local charter, by-law provision or [G.L. c. 4, §4](#) which indicates:

*Wherever a statute is to take effect upon its acceptance by a municipality or district, or is to be effective in municipalities or districts accepting its provisions, this acceptance shall be, except as otherwise provided in that statute, in a municipality, by vote of the legislative body, subject to the charter of the municipality, or, in a district, by vote of the district at a district meeting.*

[G.L. c. 4, §7](#) defines “legislative body” as:

*that agency of the municipal government which is empowered to enact ordinances or by-laws, accept an annual budget and other spending authorizations, loan orders, bond authorizations and other financial matters and whether styled a city council, board of aldermen, town council, town meeting or by any other title.*

The act itself will usually reference whether it involves an excise or surcharge.

### Questions to consider before accepting a local option

Is acceptance right for your community? Is it even applicable to your community? Local option excises normally apply to all cities and towns, but not to regional school or special purpose districts.

Is local acceptance required before a certain date to allow budgeting for 12 months of revenue in the first year? Is there local interest in the option? Will businesses be adversely affected? Is there a need for the excise or will it add an additional expense to taxpayers at the wrong economic

time?

Have neighboring communities in Massachusetts accepted the local option? Are taxes similar in a bordering state? What is the process to revoke a local option in the future if necessary?

### **Reporting to the Division of Local Services**

City and town clerks in communities that have accepted, amended or rescinded any of the local option excises and surcharges indicated in this article as well as others must [notify the DLS Databank](#) within 48 hours of the vote. Such a step is particularly important if DOR is collecting the excise.

City and town clerks must also notify the Databank if the CPA has been accepted, amended or rescinded as soon as practicable after the referendum election, but it must be received not later than September 15 of the fiscal year following the close of the fiscal year the surcharge is first assessed in order for the community to receive distributions from the State Trust Fund.

As of the writing of this article, only 58 towns or about 17% of all 351 cities and towns have not accepted any one of the four alternatives detailed in this article, and 47 or 81% of the 58 towns have populations under 5,000.

Notification forms for these excises, surcharges and for other laws can be found by following this [link](#) to the DLS website.

### **A General Summary**

Follow [this link](#) for a general summary of Massachusetts local option excises and surcharges.

## ***Ask DLS: Betterments and Special Assessments - Part 3***

This month's *Ask DLS* features frequently asked questions about the lien securing betterments and special assessments made for particular types of improvements. Additional questions about betterments and special assessments will be featured in future editions of *City & Town*. Please let us know if you have other areas of interest or send a question to [cityandtown@dor.state.ma.us](mailto:cityandtown@dor.state.ma.us). We would like to hear from you.

### **How is a lien for a betterment or special assessment created?**

A betterment or special assessment is a lien on the property benefited. In order to enforce collection, the board or officer



making the assessment (Assessing Board) must establish a valid lien. The lien is created by a recorded instrument and takes effect as of the date recorded.

Generally, a property owner is not personally liable for the assessment. However, there is personal liability for betterments under [M.G.L. c. 111, § 127B½](#) for septic system improvements, or for the cost of removal of lead paint or of an underground fuel storage tank.

### **What are the requirements for recording the lien?**

In order to create a lien that binds current and future owners of the property, the Assessing Board must record the following information at the Registry of Deeds:

**A.) Betterments:** The Assessing Board must record: (1) the order laying out the improvement and stating that betterments are to be assessed (which includes the owners of all parcels to be assessed as of the prior January 1 for tax purposes), (2) plan of the area benefited and (3) estimated betterment amounts. The information must be recorded within 90 days of the date the order is adopted or if for streets, acceptance of the street layouts, relocation or alterations, if acceptance required. [M.G.L. c. 80, §§ 1 and 2](#).

**B.) Water Assessments:** The Assessing Board must record: (1) the order laying out and constructing the water distribution plant, (2) list of ways the distribution plant will be installed and (3) parcels not abutting the ways to be assessed identified in same way as of prior January 1 for tax purposes using assessors' maps and (4) list of owners of all parcels to be assessed as of prior January 1 for tax purposes. The information must be recorded "forthwith." [M.G.L. c. 40, § 42I](#).

**C.) Sewer/Sidewalk Assessments:** The Assessing Board must record: (1) the order laying out or constructing the sewer system plant or sidewalks and (2) list of ways in which the sewer plant or sidewalks will be located. It should also record a list of owners of all parcels to be assessed as of prior January 1 for tax purposes. The information must be recorded "forthwith." [M.G.L. c. 83, § 27](#).

### **Is there an alternative timetable for recording the required information?**

Yes. The legislative body may authorize use of a deferred recording procedure under [M.G.L. c. 80, § 12](#) for betterments authorized by [M.G.L. c. 80](#), and sewer or sidewalk assessments authorized by [M.G.L. c. 83](#). The authorization may be by vote or bylaw or ordinance. Under the deferred recording procedures, the required information is not recorded until after the project is completed, assessments are made, and bills issued and then only for those properties where the assessment was not paid in full within the 30 day period for paying without incurring interest.

If the deferred recording procedure is used in the community, the collector should be informed of projects for which betterments or special assessments may be made so that it may be noted on any municipal lien certificates issued before the Assessing Board records the lien under “Improvements Voted For Which There Will Probably Be Betterments/Special Assessments.” This will put prospective purchasers not otherwise aware of the project on notice of the potential assessment.

### **What happens to the lien when the assessed property is divided?**

As with a property tax lien, when a property is divided by a recorded sale, one of the owners of the new parcels may ask the Assessing Board for a division of the lien that exists for the outstanding betterment or special assessment. [M.G.L. c. 80, § 15](#). The division must be transmitted to the assessors and collector so that the annual installment payments can be allocated and added to the new sub-parcels and any lien certificates properly prepared.

### **Can a collector subordinate the municipality’s lien?**

No. By law, a municipality’s tax liens have priority over any other liens or encumbrances. A property owner may ask the collector to subordinate the municipality’s lien in order to refinance the mortgage or otherwise obtain financing using the property as security, i.e., ask to agree that the other lien will take priority over the municipality’s lien. However, a collector cannot subordinate the city or town’s interest or lien in the assessed property to the interest of a bank or other third party. The collector has a duty to protect the municipality’s interest and ability to collect the amounts owed.

## **Data Highlight of the Month: Did You Know?**

### **Anthonia Bakare - DLS Municipal Databank**

The Municipal Databank has a repository of [reports](#) that can aid users in their day-to-day data or analysis needs. Information found in most of these reports comes from data submitted by local officials in [Gateway](#). Other data is sourced by state and federal agencies such as the Registry of Motor Vehicle (RMV), Massachusetts Department of Transportation (MDOT) and the U.S. Census Bureau. There is also data from rating agencies such as [Moody](#) and [Standard & Poor](#). Below are some databank resources that users may not be as familiar with, yet might find helpful.

- [Local Option Meals & Rooms](#) Occupancy Taxes

- [Community Preservation Act \(CPA\) Payments, Decile Reports and Other Information](#)
- [Property tax reimbursement as reported on MDM-1 form](#)

The DLS Gateway application offers local officials a central location to enter, review and submit data required for most of the regulatory review programs. There are also a number of relevant public reports on the [Gateway](#) log in page. After searching the site, if there are data points you want to delve deeper into or you are seeking additional information, feel free to contact the Municipal Databank Data Request or Question page. Remember to visit the [Municipal Finance Trend Dashboard](#) which includes additional financial data related to communities.

We hope you become better acquainted with the data the Division of Local Services has to offer through the *Data Highlight of the Month*. For more information, contact us directly at [databank@dor.state.ma.us](mailto:databank@dor.state.ma.us) or (617) 626-2384.

## November Municipal Calendar

- |    |                       |  |
|----|-----------------------|--|
| 1  | Taxpayer              | <p><b>Semiannual Tax Bills - Deadline for First Payment</b><br/>Per <a href="#">M.G.L. c. 59, §§ 23D and 57</a>, this is the deadline to pay the first actual or optional preliminary tax payment without interest in a semiannual community that mailed tax bills by October 1. If the bills were mailed after October 1, the deadline is 30 days after the mailing date.</p> |
| 1  | Taxpayer              | <p><b>Semiannual Tax Bills – Deadline for Property Tax Abatement Application</b><br/>Per <a href="#">M.G.L. c. 59, § 59</a>, applications for abatement are due on the same date as the first actual tax installment for the year.</p>   |
| 1  | Taxpayer              | <p><b>Quarterly Tax Bills - Deadline for Paying 2nd Quarter Tax Bill</b><br/>Per <a href="#">M.G.L. c. 59, § 57C</a>, this is the deadline to pay the 2nd quarter tax payment without interest.</p>  |
| 1  | Selectmen & Assessors | <p><b>Hold Classification Hearing (recommended date)</b><br/>The Board of Selectmen holds a public hearing at which the Assessors present information to assist it in determining whether to apply uniform or different tax rates to the various classes of real and personal property.</p>  |
| 30 | Accountant            | <p><b>Deadline to Submit Schedule A</b><br/>Failure to file Schedule A to BOA by November 30 may result in the withholding or forfeiture of state aid.</p>   |

30 Assessors **Submit Tax Recap and all Schedules to BOA**

30 State  
Treasurer **Notification of Monthly Local Aid Distributions**, monthly breakdown  
by program is available [here](#).

**Editor:** Dan Bertrand

**Editorial Board:** Sean Cronin, Anthonia Bakare, Linda Bradley, Paul Corbett, Theo Kalivas,  
Patricia Hunt and Tony Rassias

Contact *City & Town* with questions, comments and feedback by emailing us at  
[cityandtown@dor.state.ma.us](mailto:cityandtown@dor.state.ma.us).

To unsubscribe to *City & Town* and all DLS alerts, email [dls\\_alerts@dor.state.ma.us](mailto:dls_alerts@dor.state.ma.us).