



# The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

DIVISION OF LOCAL MANDATES

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SUZANNE M. BUMP, ESQ.  
AUDITOR

June 23, 2011

Ms. Robin L. Craver, Town Administrator  
Town of Charlton  
37 Main Street  
Charlton, Massachusetts 01507

**RE: An Act Relative to Fire Safety in the Commonwealth, St. 2004, c. 304**

Dear Ms. Craver:

At the request of Senator Stephen M. Brewer, the State Auditor's Division of Local Mandates (DLM) has reviewed the issue you raised regarding the Local Mandate Law, M. G. L. c. 29, § 27C, and the above-referenced state law. In relevant part, Chapter 304 requires that applicants for certain liquor licenses submit a certificate of inspection, as provided by the State Building Code, to the Alcoholic Beverages Control Commission. "The certificate of inspection shall attest to the safety of the building or structure in which the applicant intends to sell alcoholic beverages to be consumed on the premises and that the building or structure meets or exceeds the requirements of the state building code." This certificate must be issued by the local building inspector, and signed by the fire chief.

Because you anticipate that this change in law may impact the work loads of your building inspector and fire chief, you question whether Chapter 304 is an unfunded mandate subject to the provisions of M. G. L. c. 29, § 27C. Following a review of the history of pertinent statutes, regulations, and case law, DLM has reached the opinion that these elements of Chapter 304 are not unfunded state mandates within the meaning of M. G. L. c. 29, § 27C. As explained below, this is primarily because the Local Mandate Law does not apply to pre-1981 mandates, and state regulations have required local inspectors to issue certificates of inspection at least as far back as 1979.

**M. G. L. c. 29, § 27C:**

In general terms, the Local Mandate Law provides that any post-1980 law or regulation that imposes additional costs upon any city or town must either be fully funded by the Commonwealth, or subject to local acceptance. Any community aggrieved by an unfunded state mandate may petition the superior court for an exemption from compliance, until the Commonwealth provides funding to assume the cost. Through this process, the courts have emphasized that pre-1981 state mandates are not subject to M. G. L. c. 29, § 27C. To invoke the provisions of the Local Mandate Law, a new state law or regulation must change pre-1981 law or regulation "...so as to impose obligations... that were not previously imposed." See *City of Worcester v. the Governor*, 416 Mass. 751, 759 (1994). Based upon this precedent, the Local Mandate Law will apply only where there has been a genuine change in law, and will not apply to a mere clarification of pre-1981 obligations.

**State Building Code and Fire Prevention Law:**

The duty of local building inspectors to conduct periodic inspections of buildings used for public assembly and other purposes can be traced at least as far back as the Third Edition of the State Building Code in effect in 1979. (780 CMR 108 *et seq.*) It was the obligation of the local inspector to "insure compliance with all code requirements for the safety, health, and general welfare of the public." The Code

set the minimum frequency for inspections depending upon the type of use and occupancy capacity. For nightclubs and similar uses, the minimum inspection schedule was twice per year for buildings that could accommodate over 400 people, and once per year for smaller facilities. Certification of these types of buildings was required at least once per year, and the Code provided that, "A certificate of inspection...shall not be issued until an inspection is made certifying that the building...complies with all the applicable requirements of this code..." including those relative to protections against fire hazards, means of egress, and occupancy limits.

The Eighth (and current) Edition of the Code maintains the same minimum schedule for inspection and certification of buildings used for nightclubs and similar purposes. Following enactment of Chapter 304, the State Board of Building Regulations and Standards added a statement that "the inspection for the Certificate of Inspection should include and be timed to satisfy the requirements of [Chapter 304]." The Board also added a provision that the issuance of certificates of inspection for nightclubs and other buildings where alcohol may be consumed on the premises will be subject to Chapter 304 and the long-standing inspection schedule defined by the code. (780 CMR 110.7.1) It is clear that state regulators intend that Chapter 304 inspections be made in conjunction with traditional inspection requirements to minimize the burden to local officials and the owners of these facilities.

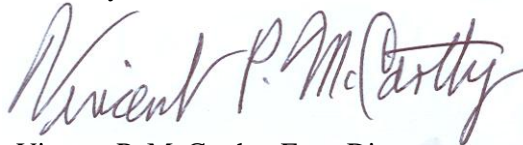
Finally, we note that local fire chiefs also have had a long-standing responsibility to enforce the provisions of the State Building Code and Fire Prevention Law. (See M. G. L. c. 148, in relevant part dating back to 1945.) This includes the duty to enter buildings to investigate any conditions that likely present the danger of fire or present obstacles to emergency exit, and order the remedy of offenses.

In short, it does not appear that Chapter 304 imposes substantive new duties upon municipal inspectors and fire chiefs that did not exist under pre-1981 law and regulation. Rather, the Act requires relatively minor inquiries that may be satisfied during the course of regularly scheduled inspections conducted pursuant to pre-1981 law and regulation. In terms of the obligations of municipal personnel, Chapter 304 clarifies prior duties in relation to the special dangers potentially present at venues licensed to serve alcoholic beverages.

**Conclusion:**

It is the opinion of the Division of Local Mandates that M.G.L. c. 29, § 27C does not apply to the provisions of Chapter 503 of the Acts of 2004. Please be advised that this conclusion is subject to revision in the event that you raise factors that would require a different result. Additionally, this opinion does not prejudice your right to seek judicial review of the issues pursuant to G. L. c. 29, § 27C (e). I thank you for bringing this matter to our attention. Please call with further questions or comments you may have.

Sincerely,



Vincent P. McCarthy, Esq., Director  
Division of Local Mandates

cc: The Honorable Stephen M. Brewer