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AUDITOR OF THE COMMONWEALTH

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February 19, 2014

Mr. Robert J. Halpin
Town Manager
Town of Framingham
150 Concord Street, Room 121
Framingham, Massachusetts 01702

**RE: Processing of Emergency Hotel/Motel Stays to Prevent Homelessness
Department of Veterans' Services Letter #13-004 Dated August 23, 2013**

Dear Mr. Halpin:

Since 1861, the Commonwealth and its cities and towns have partnered to provide aid and relief to veterans and their families pursuant to the Veterans' Benefits Statute, M.G.L. c. 115 *et seq.*, with much of the direct service work being performed by municipal veterans' services departments. With high numbers of veterans returning from the wars in Afghanistan and Iraq, a heavy burden has been placed on cities and towns to fulfill the needs of veterans and their families. In that context, State Auditor Suzanne Bump asked that I respond to your October 7, 2013 request that the State Auditor's Division of Local Mandates (DLM) determine the fiscal impact, under the provisions of the Local Mandate Law, M.G.L. c. 29, § 27C, of the above-referenced letter from the Department of Veterans' Services (DVS).

As you know, DVS sent this directive to all municipal Veterans' Services Officers (VSOs) in August 2013 to detail procedures that DVS will utilize in providing temporary emergency shelter to homeless veterans and their families, while DVS's Statewide Housing Advocacy for Reintegration and Prevention (SHARP) team assists VSOs in securing permanent housing solutions. Because there are a limited number of veteran's shelters that can accommodate families, SHARP will temporarily place them in hotels and motels with affordable rates. Since a number of budget hotels and motels are located in Framingham (Town or Framingham), you believe that this short-term homelessness remedy will place an unfair and disproportionate financial burden on the Town. Specifically, Framingham VSO Peter Harvell states that, in the short term, the Town would be responsible for the payment of various types of

financial, educational, and medical benefits to these families, including assumption of \$2,460 in monthly hotel or motel charges, potentially totaling \$9,480 monthly for a family of four.

We understand your concerns about the potential temporary and long-term impact that DVS's emergency placement of homeless veterans' families in Framingham may impose on your Town. However, DLM concludes that the Local Mandate Law does not provide the remedy that you seek in this case. As explained in the following discussion, this is primarily because there are a long-established state law (M.G.L. c. 115) and regulations (108 C.M.R. § 1.00 *et seq.*) that direct DVS to aid veterans and their families in need of assistance, including those requiring emergency shelter, and mandate that cities and towns provide benefits, a major portion of which are state-reimbursed, to eligible veterans and dependents who reside in those cities and towns. The August 2013 Advisory Letter merely clarifies the intent of these DVS statutory and regulatory provisions, and therefore does not constitute a new law or regulation that would be subject to the Local Mandate Law. In addition, SHARP has not placed any homeless veterans' families in your Town, thus, so far, no costs have accrued to Framingham.

Further, you should have by now received the January 21, 2014 DVS letter sent to all VSOs that responds to the concerns that you raised in your petition, and in a subsequent meeting with DLM Assistant Director Anthony D'Aiello. According to that letter, the state will reimburse affected communities 100% of the hotel or motel costs resulting from these emergency placements. In fact, the FY 2014 state budget in pertinent part states that:

notwithstanding any general or special law to the contrary, 100 percent of the amounts of veterans' paid by cities and towns to residents of a . . . homeless shelter, or transitional housing facility shall be paid by the commonwealth to the several cities and towns.

See Chapter 38 of the Acts of 2013, Line Item 1410-0400.

Basis for the Conclusion: M.G.L. c. 29, § 27C Does Not Apply to Department of Veterans' Services Letter #13-004

In relevant part, the Local Mandate Law provides that any state law "taking effect on or after January 1, 1981" that imposes additional costs on cities and towns must either be subject to local acceptance or fully funded by the Commonwealth. A municipality 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. Prior to taking this step, a city or town may request an opinion from DLM as to whether the Local Mandate Law applies in a given case, and, if so, have DLM determine the amount of the cost imposed by the mandate. Pursuant to the Local Mandate Law, courts accept DLM's cost determination as *prima facie* evidence of the amount of state funding necessary to sustain the local mandate. *See* M.G.L. c. 29, § 27C(a), (d), and (e).

Applying this analysis to the issues that you raised, we have determined that DVS Advisory Letter #13-004 is not a new law, rule or regulation that imposes additional costs on municipalities. Rather, the letter constitutes a clarification of an existing law and regulations that

have been in existence since before the effective date of the Local Mandate Law. Also, no additional costs have been imposed on the Town by the Commonwealth from which Framingham could seek a court exemption from compliance. In addition, as stated above, DVS and the Commonwealth have expressed a commitment to fully reimburse communities that incur hotel and motel charges for the temporary shelter of these homeless families.

Chapter 115 of the General Laws of Massachusetts, governing the state administration of veterans' services and the provision of benefits by cities and towns to veterans and their dependents in need of aid, derives from a state law dating back to 1861. Originally added by a 1946 amendment (St. 1946, c. 584, § 1), Section 2 of Chapter 115 grants DVS broad authority to adopt regulations "to insure the proper administration of the provisions" of Chapter 115, and to issue directives to municipal VSOs that provide them with guidance in the performance of their duties. Section 2 allows DVS to assist veterans' families who have become homeless seek emergency care by placing them in temporary shelters, including hotels and motels. Section 2 also empowers DVS to order a city or town to pay veterans' benefits to a qualifying applicant on an application approved by DVS, and further requires that cities and towns render assistance to meet an emergency or hardship situation faced by applicants residing in that community who seek veterans benefits. In addition, Section 5, also added in 1946, makes clear that:

Veterans' benefits shall be paid to a veteran or dependent by the city or town wherein he resides . . . without any waiting period.

In these circumstances, the community where the hotel or motel is located is considered the city or town of residence for the homeless veteran's family. This is consistent with one element of DLM's 2011 mandate determination in the homeless student school transportation issue, which was made on behalf of the City of Waltham and the Town of Danvers, in which DLM found that the Local Mandate Law did not apply to educational costs resulting from homeless children living in hotels and motels who choose to attend the public schools of city or town where these emergency lodgings are located because of a long-standing state law that mandates that a school district provide for the education of a child residing in that city or town.¹

In addition to pre-1981 statutory law, DVS regulations, 108 C.M.R. § 1.00 *et seq.*, promulgated on January 1, 1978, further outline the duties of municipal VSOs. For example, Section 4.02, "Applicant Procedures," states that every veteran and dependent has a right to file an application for veterans' benefits, and, should they do so, VSOs must accept those applications, determine eligibility pursuant to §§ 5.01 and 8.01, prepare a budget in accordance with DVS's Budget Standards Chart, and pay the veteran applicant and his or her family's basic living and other expenses, including room and board, food, shelter, clothing, utilities, and medical insurance.

In short, there exists long-established statute and regulation, since at least 1946, that defines the responsibilities that DVS and cities and towns bear in providing benefits to veterans and their families who apply and qualify for public assistance, including emergency aid. The 2013 Advisory Letter only seeks to address situations where veterans' families find themselves

¹ Temporary Housing for Homeless Families and Children, Education Cost Impacts for the City of Waltham (2011), <http://www.mass.gov/auditor/docs/dlm-mandate/2011/121211-waltham-homeless-busing.pdf>.

homeless and in need of temporary shelter until a long-term, permanent housing solution can be found, and thus is not a new law or regulation that would trigger the anti-mandate provisions of M.G.L. c. 29, § 27C.

Timeframe of the Commonwealth' Reimbursement of All Allowable Benefits and All Emergency Hotel and Motel Stays

As you know, the Commonwealth, sensitive to the cost burden cities and towns experience in providing public assistance to eligible veterans and their families, increased from 50% to 75% the amount it reimburses communities for these costs. *See* Chapter 628, § 2 of the Acts of 1987, amending M.G.L. c. 115, § 6. However, pursuant to the reimbursement schedule that has been in effect since 1946, cities and towns are not reimbursed until as late as November 10 in the year *after* the expenditures are incurred.

While you expressed a desire that DVS pay the hotels and motels directly, or at least reimburse municipalities as soon as they incur these emergency shelter expenses, DVS has advised the VSOs, by a letter dated January 21, 2014, that the Commonwealth will provide 100% reimbursement of any such costs, but DVS will follow the same long-established timetable as for the payment of other benefits costs. Once again, that is not a new law or regulation. Consequently, this is not an issue in which the Local Mandate Law can provide relief.

The Local Mandate Law Not Proper Avenue to Dispute Concerns of Residency

We also understand the Town's concerns about the possible costs that it may incur providing benefits to veterans' homeless families who had previously resided in other neighboring cities and towns. As you may know, Section 2 of M.G.L. c. 115 grants the Secretary of DVS the authority to "decide all controversies between municipalities relative to the residence of applicants for veterans' benefits, and subject to the approval of the attorney general, his decision shall be final." Similar authority granted to the Secretary is found in the 1978 regulations, 108 C.M.R. § 3.04 (7). Therefore, this statutory and regulatory mechanism, and not the Local Mandate Law, is the proper avenue the Town should pursue should such disputes occur.

In our meeting with DVS personnel, they expressed a willingness, should the need arise, to work with Framingham, SHARP, and the community of last residence to determine the possibility of both municipalities sharing any costs that may result from DVS's emergency shelter placements. DVS personnel stated that these emergency placements are intended to be temporary, until a permanent housing solution can be found, and they are in no way intended to cause veterans to leave their home communities. According to DVS, currently there is only one veteran with family housed in a hotel or motel on an emergency basis in Massachusetts, but not in Framingham. However, we were also encouraged to hear in our meeting with you and Mr. Harvell that the Town would have no objection to providing benefits to qualifying veterans and their families from other communities should they eventually become permanent residents of Framingham. This is a testament to the Town's willingness to help veterans and their families in need, and to Framingham's efficient and successful veterans' services program. As Mr. Harvell has noted, Framingham presently is handling 54 individual cases of veterans and/or dependents

of veterans receiving Chapter 115 benefits, and his department's budget in FY 2013 was \$335,000, or the equivalent of six teachers' salaries.

The Massachusetts Integrated Plan to Prevent and End Homelessness Among Veterans

As you may know, DVS has established a steering committee, comprised of various federal, state, and community veterans' affairs, housing, shelter, and urban development agencies, including SHARP and the Home Base Program, tasked with combining their resources to meet a goal of significantly reducing by 1,000 the number of homeless veterans in the Commonwealth by the end of calendar year 2015. According to the most recent data, currently there are a total of approximately 1,300 homeless veterans in Massachusetts.

To assist in accomplishing this goal, the Executive Branch plans on spending \$71 million to build or preserve approximately 1,700 housing units, and launching a campaign to increase the hiring of veterans. For example, provisions contained in pending legislation, the so-called Valor Act II, would, if enacted, provide added momentum to increasing employment opportunities for veterans returning home from duty.

Conclusion

Homelessness in Massachusetts is a serious and growing problem facing the Commonwealth and its cities and towns. Federal, state, and local resources continue to be expended to solve this issue. On the specific issue that you raised, we realize the burden that can be imposed on Framingham should DVS locate a veteran's homeless family previously residing in another community in a Town hotel or motel, especially given the Town's significant, current veterans' services caseload.

In summary, however, the Local Mandate Law does not provide the relief that you seek in preventing DVS from making these placements. As discussed above, the DVS Advisory Letter is not a new law, rule, or regulation that would trigger the anti-mandate provisions of M.G.L. c. 29, § 27C. Instead, the Letter is intended to clarify pre-1981 requirements which require the state and cities and towns to assist veterans and their families who find themselves homeless and in need of emergency temporary shelter. Should DVS locate these families in Framingham budget lodgings, it will reimburse 100% of resultant costs, and, by means of statutory and regulatory provisions, DVS is authorized to resolve questions between an applicant and a VSO, or between VSOs concerning an applicant's place of residence. Finally, as DVS has expressed a willingness to assist the Town with these issues, we encourage Framingham to contact DVS and SHARP for any needed assistance.

Please be aware that this initial opinion is subject to revision in the event that you offer factors that we may not have considered that would change the result. Additionally, this opinion does not prejudice the right of any city or town to seek independent review of the matter in Superior Court in accordance Section 27C of Chapter 29.

Thank you for bringing this issue to our attention, and we encourage you to contact DLM with further concerns you may have on this or other matters impacting state and local finance.

Sincerely,

A handwritten signature in black ink that reads "Vincent P. McCarthy". The signature is written in a cursive style with a large, prominent "V" at the beginning and a long, sweeping underline that extends across the rest of the name.

Vincent P. McCarthy, Director
Division of Local Mandates

cc: Coleman Nee, Secretary, Ma. Department of Veterans' Services
Cheryl Lussier Poppe, Deputy Secretary, Ma. Department of Veterans' Services
Claudia B. McKelway, General Counsel, Ma. Department of Veterans' Services
Peter R. Harvell, Veterans' Services Officer, Town of Framingham