



The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

DIVISION OF LOCAL MANDATES

ONE WINTER STREET, 9th FLOOR
BOSTON, MASSACHUSETTS 02108

TEL (617) 727-0980
TEL (800) 462-COST
FAX (617) 727-0984

SUZANNE M. BUMP, ESQ.
AUDITOR

February 27, 2013

Mr. Peter Bogren, Jr.
Chairman, Board of Selectmen
Town of Paxton
697 Pleasant Street
Paxton, Massachusetts 01612

RE: Chapter 193 of the Acts of 2012 - An Act Further Regulating Animal Control

Dear Mr. Bogren:

This letter is in response to your request on behalf of the Paxton Board of Selectmen to the State Auditor's Division of Local Mandates "(DLM)" regarding the anticipated costs to be incurred by the Town of Paxton "(the Town)" in implementing the requirements of the above-referenced Act, Chapter 193 of the Acts of 2012 ("Chapter 193" or "the Act"). As you know, Chapter 193 in major part amended or repealed M.G.L. c. 140, §§ 136A-175, which has been in effect since at least 1934, relating to dogs and animal control and safety. In addition to researching whether the numerous changes the 2012 Act made to the pre-existing statute imposed any unfunded mandates on cities and towns, thereby implicating the Local Mandate Law, M.G.L. c. 29, § 27C, DLM staff met with Paxton Town Administrator Carol Riches to obtain information on the three major mandate concerns raised in the Board's petition to our office: (1) the potential for greater costs for sheltering stray animals; (2) anticipated new costs to purchase a scanner to inspect for microchips in stray dogs for identification prior to euthanasia; and (3) additional training requirements for municipal Animal Control Officers ("ACO's"). In addition, we conducted telephone interviews of personnel from both the state Department of Agricultural Resources ("DAR") and its Division of Animal Health in an effort to gather additional input regarding the Town's petition.

In the final analysis, DLM has reached the conclusion that the Local Mandate Law does not apply to the issues that the Board raised, primarily because Chapter 193 has not changed the fundamental pre-1981 mandate that municipalities are responsible for the regulation of dogs in their communities, including sheltering stray dogs, and must designate and train a dog officer to attend to all complaints or others matters pertaining to such animals. Furthermore, DAR has informed us of its willingness to assist the Town in purchasing the required scanner at little or no cost, while the ACO training requirements, when they are imposed, possibly in 2014, will be funded by the Commonwealth. The following explains DLM's conclusion.

The Local Mandate Law

In general terms, the Local Mandate Law provides that any post-1980 state law, rule, or regulation that imposes additional costs upon any city or town must either be fully funded by the Commonwealth or subject to local acceptance. Pursuant to the Local Mandate Law, any community aggrieved by an unfunded state mandate may petition the Superior Court for an exemption from complying with the mandate until the Commonwealth provides funding to assume the cost. DLM's determination of the compliance cost of any unfunded mandate shall be prima facie evidence of the amount of state funding necessary to sustain the mandate. Alternatively, a community may seek legislative relief.

To determine whether the anticipated local cost impact of a state law is subject to the Local Mandate Law, we apply the framework for analysis developed by the Supreme Judicial Court in *City of Worcester v. The Governor*, 416 Mass. 751 (1994). Of particular relevance to your petition, the challenged law must take effect on or after January 1, 1981, and the law must effect a genuine change and be more than a clarification of existing obligations.

Chapter 193

As you know, Chapter 193 was enacted with broad support from a coalition of animal safety and welfare groups including the Massachusetts Association for the Prevention of Cruelty to Animals, the Animal Control Officers Association of Massachusetts, the Massachusetts Animal Coalition, and DAR. The major amendments to M.G.L. c. 140 championed by these and other stakeholders include:

- the establishment of a statewide dangerous dog provision prohibiting cities and towns from enacting by-laws banning specific breeds of dogs from their communities;
- the inclusion of family pets under the protection of domestic abuse restraining orders;
- the creation of a state Homeless Animal Prevention and Care Fund (“the Fund”) designed to pay for the vaccination, spaying, and neutering of homeless dogs, and to assist with the training of municipal ACO’s;
- the reduction in the length of time communities can hold and shelter stray dogs from ten days to seven;
- an increase in both the fees cities and towns can collect for dog and kennel licenses, and fines for animal cruelty and other violations;
- a requirement that, with the exception of emergencies, stray dogs may only be euthanized by the administration of barbiturates;
- a requirement that each municipality purchase a universal scanner so that ACO’s can examine stray animals for computer chips prior to euthanasia or turning over the animal to another party; and

- limits on the manner, conditions, and time owners can keep their dogs outside.

Application of the Local Mandate Law to Chapter 193

As noted above, the Local Mandate Law applies to post-1980 laws that impose substantive new obligations at the municipal level. The relevant provisions of Chapter 193, however, essentially clarify or fill in the details of a law that has been in effect well over 50 years. The 2012 Act did not change the primary pre-1981 duty of municipal officials to regulate dogs in their communities. For example, pursuant to M.G.L. c. 140, § 137, in effect since at least 1932, municipal clerks are still required to register, number, describe, and license dogs. They must also continue to ensure that owners provide proof that their dogs are vaccinated against rabies, and are controlled and restrained for the purposes of protecting the public from injury or damage, and from killing or harassing livestock. One substantive change that the new Act has made to pre-existing law is that municipalities can now charge a higher fee for dog licenses than the \$3 (male) and \$6 (female) previously allowed; also, communities now have the option to increase dog kennel license fees and fines, as well as fines for unregistered and unlicensed dogs and animal cruelty violations.

In addition, Section 151 of M.G.L. c. 140, in effect since at least 1934, still mandates that municipalities appoint one or more dog officers, now called ACO's, whose required duties remain to attend to "all complaints or other matters pertaining to dogs" in their cities and towns. Under this section, they must check the description of dogs licensed in their communities before disposing of any dog in confinement. As you know, Chapter 193 amended this section to now require that ACO's employ a scanner, costing approximately \$100 to \$200, to check a dog or cat in their possession for the presence of a microchip in order to identify the animal and to provide notice to the owner before it is euthanized or turned over to another party. When contacted recently by DLM staff, the Director of DAR's Division of Animal Health, Michael Cahill ("Mr. Cahill"), offered to assist the Town in purchasing the required scanner at little or no cost through a group purchasing agreement DAR has with scanner vendors. He also offered to put the Paxton's part-time ACO in touch with animal safety groups, such as the Massachusetts Animal Coalition, to assist the Town in its animal control responsibilities.

Also under Section 151, ACO's are still required to undergo training under the supervision of a veterinarian in humane techniques for the execution of animals. Chapter 193, however, added a new Section 151C, requiring the Commissioner of DAR to provide for a training course for ACO's when monies are available from the Fund, which is financed by a voluntary check-off on state income tax forms. According to Mr. Cahill, the training, expected to begin in 2014 after a DAR Advisory Committee is formed and rules and regulations are promulgated, will be at no cost to municipal ACO's.

Furthermore, § 151A, also in operation since at least 1934, continues to require that ACO's "seek out, catch, and confine all dogs" within their communities which have not been licensed, collared, or harnessed and tagged as required by the applicable provisions of M.G.L. c. 140, and that they detain stray dogs in their possession for ten days in a place suitable for dogs in a sanitary condition. Chapter 193 has amended this section to shorten the period of detention to seven days, and supporters hope that this will result in a reduction in costs for confining stray dogs, and allow them to be put up for adoption sooner.

Conclusion

In summary, DLM has concluded that the pre-1981 provisions of M.G.L. c. 140, §§ 136A-175, relative to the regulation of dogs in cities and towns, have not been substantially changed by Chapter 193 in a manner that would impose new, unfunded municipal costs within the meaning of the Local Mandate Law. The specific concerns you raised in your petition to DLM -- the newly required scanner, which DAR has offered to help the Town purchase at little or no cost; the ACO training, which will be at no cost to ACO's; and the sheltering of stray dogs, which has been shortened from ten to seven days -- do not appear at this time to be issues which would come under the purview of the Local Mandate Law.

The chief intent of the 2012 Act is to promote the safety and welfare of dogs, prohibit discrimination of dogs based solely on breed, and require a more humane method of animal euthanasia. Supporters of Chapter 193 also state that the new law will act to lessen local costs relative to animal control. For example, monies from the Fund, in addition to providing free ACO training, will also pay for the spaying or neutering of homeless dogs. According to DAR, it is hoped that these efforts will decrease the number of homeless and stray animals and thereby lessen costs that cities and towns incur in capturing, housing, and caring for these animals.

Thank you for bringing this issue to our attention. Please be advised that this conclusion is subject to revision in the event you raise factors that would require a different result. Please call with additional comments or questions you may have, and I encourage you to contact Mr. Cahill at DAR.

Sincerely,



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

cc.: Atty. Jessica H. Burgess, Acting General Counsel, DAR
Mr. Michael Cahill, Director, DAR Division of Animal Health