

City and Town

Navjeet K. Bal, Commissioner • Robert G. Nunes, Deputy Commissioner & Director of Municipal Affairs



A Publication of the Massachusetts Department of Revenue's Division of Local Services

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New Officials Finance Forum provides timely advice

[The Division of Local Services](#), as part of its mission to educate elected and appointed local officials on the state's public finance law for cities and towns, annually sponsors a day-long meeting in June called the [New Officials Finance Forum](#), or as it is better known in the office, NOFF.

This year's NOFF is set for Wednesday, June 1, at the Hogan Campus Center at the College of the Holy Cross in Worcester, a central location for those all over the state.

The course is designed to not only provide hard information, but to encourage municipal officials to think of themselves as working on a team that is knowledgeable and well-versed in municipal finance, and that understands the interrelationships of the various municipal offices.

I would strongly urge new municipal appointed and elected officials to attend this valuable conference and to speak with DLS staff who will be at every table. Those who haven't attended in a while may also find it a useful refresher.

I will kick off the conference with opening remarks and an overview of the Department of Local Services, followed by sessions that will focus on an overview of municipal government, the budget process, the tax recapitulation process, and reserve and debt policies.

[DOR Commissioner Navjeet K. Bal](#), a strong support of the work done in DLS, will kick-off the afternoon session.

In the lounge adjoining the ballroom, subject matter experts will staff information tables, and a representative from the [Operational Services Division \(OSD\)](#) will be on hand to provide information on cost-saving procurements.

Seating is limited, and reservations must be received by Friday, May 20. I urge you to take advantage of this opportunity.

[Deputy Commissioner & Director of Municipal Affairs](#)

Court Order Prevails over Public Records Request

James Crowley, Esq., Bureau of Municipal Finance Law

[The Supreme Judicial Court](#) has ruled that the public records law does not require disclosure of documents that were received in the course of litigation and then sealed pursuant to a judicial protective order. Records protected by a court order cannot be disclosed even though the public records law does not expressly exempt them from disclosure. The decision is [Commonwealth v. Fremont Investment & Loan, 459 Mass. 209 \(2011\)](#).

In October 2007, the [Attorney General](#) sued Fremont Investment & Loan (Fremont) under the consumer protection law alleging that the mortgage company had acted unfairly in originating certain “subprime” mortgage loans in Massachusetts. “Subprime” loans are offered to borrowers who would not qualify for conventional mortgages. During pretrial discovery the Attorney General and Fremont filed a joint motion for a protective order governing the exchange of documents that were claimed by the parties to be confidential. A Superior Court judge granted the motion and these documents which number about 5.5 million pages remained sealed after the case was settled and a consent order was issued in June 2009.

Samuel Lieberman who was himself involved in a lawsuit against Fremont sought access to the documents in the Massachusetts case. He filed a [public records request](#) in May 2009 which the Attorney General denied on the grounds that they were subject to a protective order. Lieberman then sued alleging that that he should have access to the documents under the public records law. While that case was pending in Superior Court, Lieberman filed a motion to intervene in the original enforcement case against Fremont so as to challenge the scope of the protective order. Lieberman claimed that many documents were improperly designated as confidential. When Lieberman lost on both legal theories in Superior Court, he appealed and the Supreme Judicial Court agreed to hear the case.

The Court first addressed Lieberman’s public records request. Lieberman claimed that all the documents submitted by Fremont in its litigation with the Attorney General should be made available to him since there was no express statutory exemption from disclosure for documents placed under a protective order. Lieberman alleged that the public records law ([M.G.L. Ch. 66 Sec. 10](#)) compels disclosure of records unless some exemption provision in [M.G.L. Ch. 4 Sec. 7 Cl. 26](#) applies to the situation at hand. Lieberman did agree that M.G.L. Ch. 4 Sec. 7 Cl. 26 (g) exempts “trade secrets or commercial or financial information voluntarily provided to an agency.” In its litigation with the Commonwealth, however, Fremont was required to submit these documents in pretrial discovery to the Attorney General. Lieberman argued that the [Legislature](#) never intended to exempt from disclosure under paragraph (g) any records whose production was compelled. In the absence of some statutory exemption, Lieberman argued that the requested documents should be released.

The Supreme Judicial Court agreed there was no express legislative exemption for records subject to a protective order. The Court thus had to decide whether the public interest in acquiring access to government records supersedes the authority of courts to issue protective orders thereby requiring the Attorney General to release the documents to Lieberman. The Court observed that the judiciary has certain inherent powers which are essential for the operation of the court. Among those powers was

the ability to issue protective orders which facilitate discovery for trial. In the Court's view, these inherent powers exist independently of state statute and for separation of powers reasons are protected by [Article 30 of the Massachusetts Declaration of Rights](#), which states in pertinent part that, "the legislative department shall never exercise the executive and judicial powers, or either of them." The Court declined to interpret the public records law as overriding a protective order since it would raise State constitutional questions about the validity of the statute. According to the Court, the public records law did not abrogate judicial protective orders. The Court reasoned that this decision was consistent with its holding in [Suffolk Construction Company v. Division of Capital Asset Management, 449 Mass. 444 \(2007\)](#). In *Suffolk Construction*, the Court held that the public records law did not abrogate the attorney-client privilege even though the legislation was silent on this issue. The Court reasoned that the same logic applied in the case at hand since the public records law was similarly silent on inherent judicial powers.

Having dismissed Lieberman's public records claim, the Court then addressed the plaintiff's motion to intervene to modify the protective order. Lieberman argued that he should be allowed to intervene on a theory of permissive intervention as found in [Rule 24 \(b\) of the Massachusetts Rules of Civil Procedure](#). Lieberman contended that permissive intervention was appropriate under Rule 24 (b) where he could bring a separate action to challenge the protective order and because it would be more efficient for the trial judge who managed the discovery and issued the protective order to hear the challenge to the order. The Court ruled that Lieberman did have standing to challenge the protective order and to argue that changed circumstances rendered some of the documents no longer validly covered by the protective order. For this reason, the Court remanded the case to the Superior Court judge to rule whether modification of the protective order was appropriate.

By this decision in *Fremont* the Supreme Judicial Court made an important interpretation of the public records law.

Local Aid Estimates based on House Final Budget

The Division of Local Services has posted updated local aid estimates based on amendments to the House Ways & Means Committee's (HWM) proposed budget that were approved by the House during budget debates this week. Except for amendments to provide for smart growth school reimbursements under MGL Chapter 40S and changes to the regional public library appropriation language, the numbers are unchanged from the HWM estimates.

Click [here](#) to view updated estimates on the Division's website.

It is important for local officials to remember that the local aid estimates are still preliminary and are subject to change as the legislative budget process unfolds.

If you have questions regarding the updated local aid estimates, please contact Lisa Juskiewicz, Jared Curtis or Donnette Benvenuto at (617) 626-2384 or databank@dor.state.ma.us.

Municipal Calendar

May 1: Taxpayer Deadline for Payment of Semi-Annual and 4th Quarterly Tax Bill Without Interest According to M.G.L. Ch. 59, Sec. 57, this is the deadline for receipt of the 2nd half actual tax payment, or the actual tax payment if an optional preliminary bill was issued. According to M.G.L. Ch. 59, Sec. 57C, this is the deadline for the 4th Quarter tax payment.

May 1: Treasurer Deadline for Payment of 2nd Half of County Tax

May 1: Accountant/Treasurer Notification of Amount of Debt Due in Next Fiscal Year As required by M.G.L. Ch. 44, Sec. 28, the Accountant or Treasurer must notify the Assessors of all debt due in the next fiscal year because the municipality is required to pay its debts, appropriated or not. Since all debt service must be paid, any debt service not covered by appropriations is added to the "Other Local Expenditures" category, found on page 2 of the Tax Recapitulation Sheet. It is important that the Assessors have this information in order to avoid setting a tax rate lower than required and raising insufficient revenue to cover the municipality's expenditures.

May 15: Treasurer 3rd Quarterly Reconciliation of Cash

May 15: DOR/BLA Commissioner Determines and Certifies Telephone and Telegraph Company Valuations

June 1: Clerk Certification of Appropriations This is done after City/Town Council or Town Meeting so the Accountant may set up accounts for each department in the municipality.

June 1: Assessors Determine Valuation of Other Municipal or District Land In certain communities where land is owned by another community or district, the value of the land is determined by the Assessors in the year following a revaluation year, for in-lieu-of-tax payments.

June 15: Commissioner Determines and Certifies Pipeline Valuations

June 15: Assessors Deadline for Appealing Commissioner's Telephone & Telegraph Valuations

June 15: Assessors Make Annual Preliminary Tax Commitment The preliminary tax commitment must be based on the prior year's net tax on the property and may not exceed, with limited exceptions, 50% of that amount. This should be done early enough for the annual preliminary quarterly or semi-annual bills to be mailed by July 1.

June 20: Assessors Final Date to Make Omitted or Revised Assessments As required by M.G.L. Ch. 59, Sections 75 and 76, if a property is inadvertently excluded or mistakenly under-assessed on the warrant for property taxes, it is the Assessors' role to correct the mistake and assess the property correctly. Such an assessment may not be made later than June 20 of the taxable year or 90 days after the date the tax bills are mailed, whichever is later.

June 30: State Treasurer Notification of Quarterly Local Aid Payments Before June 30

June 30: Assessors Overlay Surplus Closes to Surplus Revenue Each year, any balance in the overlay reserve accounts in excess of the remaining amount of the warrant to be collected or abated in that year, is certified by the Assessors. The transfer from overlay reserves to the overlay surplus is done on the Assessors' initiative or within 10 days of a written request by the chief executive officer. Once in overlay surplus, these funds may be appropriated for any lawful purpose. Any balance in the overlay surplus at the end of the fiscal year shall be closed to surplus revenue and, eventually, free cash.

June 30: Assessors Physical Inventory of all Parcels for Communities that Accepted M.G.L. Ch. 59, Sec. 2A(a)

June 30: Taxpayer Deadline for Applying to Have Land Classified as Forest Land, M.G.L. Ch. 61 According to M.G.L. Ch. 61, Section 6, this is the deadline to apply to the State Forester to have land classified as forest land.

June 30: Assessors Submit Annual Report of Omitted or Revised Assessments

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June 30: Assessors Last Day to Submit Requests for Current Fiscal Year Reimbursements of Exemptions Granted Under the Various Clauses of Ch. 59, Sec. 5 If an exemption is granted to a residential property owner, the property tax is lowered, and the city or town collects fewer tax revenues than anticipated. These exemptions are partially reimbursed by the state as indicated under "Payments for Loss of Taxes," section B of the Cherry Sheet. It is the responsibility of the Assessors to submit all exemptions to DOR so that the community may be reimbursed for statutory exemptions. If the Assessors fail to submit a request, the town's loss of tax revenues will not be offset by exemption reimbursements from the state. These reimbursements may not be filed retroactively for any year. If tax bills are mailed late, assessors may submit requests for reimbursement until August 20.

July 1: Collector Mail Annual Preliminary Tax Bills For communities issuing annual preliminary tax bills, the preliminary quarterly or semi-annual bills should be mailed by this date.

July 15: Accountant Certification Date for Free Cash: Anytime after Books are Closed Two weeks after the close of a fiscal year, all accounts are closed out and the resulting balance sheet and supplemental documentation submitted to DOR. Free cash is certified any time after this date.

July 15: Accountant Report Community Preservation Fund Balance: Anytime after Books are Closed After the close of a fiscal year, the fund balance is submitted to DOR (Form CP-2) and notice given to the Community Preservation Committee and other financial officers. The fund balance may be appropriated anytime after that report.

July 15: School Business Officials Certification Date for Excess and Deficiency (E&D) Fund Two weeks after the close of a fiscal year, all accounts are closed and the resulting balance sheet (a pre-closing trial balance or audited financial statements will not be accepted unless requested by the Director of Accounts) and supplemental documentation are submitted to DOR. E&D Fund is certified any time after this date.

July 15: Assessors Deadline for Appealing Commissioner's Pipeline Valuations to ATB

July 20: DOR/BLA Notification of Changes in Proposed EQVs (even numbered years only)

July 20: DOR/BLA Notification of Changes in Proposed SOL Valuations (every 4th year after 2005)

August 1: Taxpayer Quarterly Tax Bills — Deadline for Paying 1st Quarterly Tax Bill Without Interest According to M.G.L. Ch. 59, Sec. 57C, this is the deadline for receipt of the 1st Quarter preliminary tax payment without interest, unless the preliminary bills were mailed after July 1. If mailed by August 1, the 1st Quarterly payment is due August 1, or 30 days after the bills were mailed, whichever is later, and the 2nd Quarterly payment is due November 1. If mailed after August 1, the preliminary tax is due as a single installment on November 1, or 30 days after the bills were mailed, whichever is later.

August 1: Taxpayer Annual Boat Excise Return Due

August 1: Accountant Notification of Total Receipts of Preceding Year The total actual local receipts (e.g., motor vehicle excise, fines, fees, water/sewer charges) of the previous fiscal year must be included on Schedule A of the Tax Rate Recapitulation Sheet (Recap) which is submitted by the Assessors to DOR. On the Recap, the Accountant certifies the previous fiscal year's actual revenues, and the Assessors use this information to project the next fiscal year's revenues. Any estimates of local receipts on the Recap that differ significantly from the previous year's actual receipts must be accompanied by documentation justifying the change in order to be approved by the Commissioner of Revenue.

August 10: Assessors Deadline for Appealing EQVs to ATB (even numbered years only)

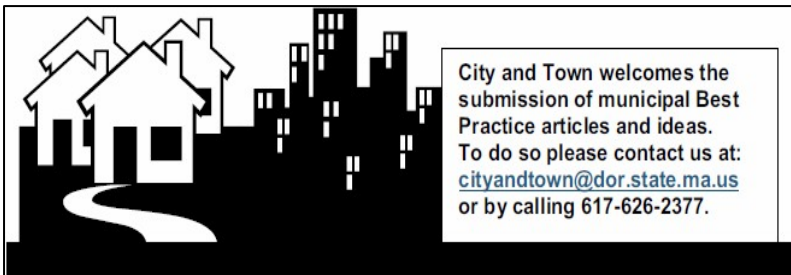
August 10: Assessors Deadline for Appealing SOL Valuations to ATB (every 4th year after 2005)

August 15: Assessors Deadline to Vote to Seek Approval for Authorization to Issue Optional Preliminary Tax Bills For semi-annual communities issuing optional preliminary property tax bills, the Assessors must vote to seek authorization to issue the bills from DOR by this date. After receiving approval, Assessors must submit a Pro-forma Tax Rate Recap Sheet to DOR for review and issue the tax bills by October 1.

August 31: Assessors Begin Work on Tax Rate Recapitulation Sheet (to set tax rate for semi-annual bills) Until the Tax Rate Recap Sheet is completed and certified by the Commissioner of Revenue, the community may not set a tax rate nor send out its property tax bills (unless it issues preliminary quarterly tax bills or requests from DOR the authority to send out preliminary tax notices if DOR requirements are met). Communities should begin gathering the information in enough time for the tax rate to be set and tax bills mailed by October 1. The Tax Rate Recap Sheet provides Mayors or Selectmen with a ready-made financial management tool because the town's most important financial management information is summarized on this form. The Mayor or Selectmen should review the Recap Sheet in preliminary form in order to understand the following financial information: Page 1 (Tax Rate Summary) — The proposed tax levy should be compared to the levy limit. If a town does not levy to its limit, the remaining levy is referred to as excess levy capacity. Excess levy capacity is lost to the community for the current fiscal year although it will always remain in the levy limit calculation; Page 2 (Amount To Be Raised) — This section includes appropriations and other local expenditures not appropriated. These include overlay deficits, revenue deficits, state and county charges, Cherry Sheet offset items, and the allowance for abatement and exemptions. By comparing this information to the prior year(s), any significant changes can be determined; Page 2 (Estimated Receipts & Revenues From Other Sources) — In particular, Section C shows the amount appropriated from free cash and other available funds. By comparing the amounts appropriated to the balances in these accounts (available from the Accountant/Auditor), the Mayor or Selectmen can get a sense of how their non-property tax revenues are being used; Page 3, Schedule A (Local Receipts Not Allocated) — By comparing these figures to prior year(s), the Mayor or Selectmen can determine any changes in these revenues; Page 4, Schedule B (Certification of Appropriations and Source of Funding) — This section includes financial votes of City/Town Council or Town Meeting not previously reported on last year's recap.



Please remember to update the online Local Officials Directory so that both municipal and state officials have accurate contact information.



City & Town

City & Town is published by the Massachusetts Department of Revenue's Division of Local Services (DLS) and is designed to address matters of interest to local officials.

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