

BOS Mail  
10/24/08

11/3/08  
18

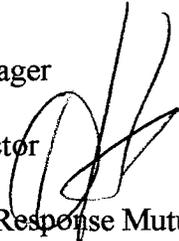


## INTERDEPARTMENTAL COMMUNICATION

Acton Board of Health - Telephone 978-264-9634 - Fax 978-264-9630

October 23, 2008

TO: Steve Ledoux, Town Manager

FROM: Doug Halley, Health Director 

SUBJECT: Public Health Emergency Response Mutual Aid Agreement  
Town of Concord

The Health Director of Concord, Brent Reagor, and I have discussed the possibility of Acton and Concord reaching a Public Health Mutual Aid Inter-municipal Agreement for use in a public health emergency response. As we each have developed our communities public health emergency response capacity we have identified many instances where a localized incident could quickly overwhelm the available staff and volunteer resources. Recognition of this potential shortfall is being examined across the State and local public health departments have looked to their neighboring communities to develop Mutual Aid Agreements (somewhat similar to the Police and Fire process) to mitigate these inherent deficiencies.

A thorough examination of the resources available in adjacent communities has identified Concord as a primary source of assistance, if it were needed and available. The most advantageous mutual aid agreement for the Town of Acton is one where the partner has similar resources and response capacity, so that it becomes a true partnership. Entering into an agreement with a community that lacks the resources Acton can provide would be a one-way agreement with little or no benefit for its citizens. Concord has an equivalent public health structure with multiple staff available in various specialties.

This past summer, MGL Ch 49 S4A was modified to allow for the chief executive or executive authority of a Town to enter into an inter-municipal agreement with another community without Town meeting approval (see attached). Also included with this memo is a copy of a public health mutual aid agreement that was reached between Andover, Tewksbury and Wilmington.

Please advise as to whether you would like discussions on a Mutual Aid Agreement should begin with the Town of Concord.

# State releases draft of rules for flaggers

By Matthew G. Feher

**O**n Aug. 13, the Executive Office of Transportation and Public Works released a draft of new rules governing the use of civilian "flaggers" rather than paid police details on certain public works construction sites.

Once the regulations are implemented, Massachusetts will join every other state in the nation in allowing the use of civilian flaggers on road work sites.

The draft rules clearly exempt any pre-existing collective bargaining agreements at both the state or local level as well as local ordinances or bylaws.

In instances where no collective bargaining agreement or local statute to the con-

trary exists, the regulations classify public works projects according to three tiers that, in turn, ultimately determine whether flaggers or police details would be required.

Police details would be required at project sites on roads with a legal speed limit of 45 mph or higher unless the Construction Zone Safety Plan allows for the use of flaggers. The plan would be developed by the state or local awarding authority in consultation with law enforcement personnel.

Flaggers could be used on roads classified as "low speed roads" (speed limit of less than 45 mph) and "low traffic high speed roads" (traffic volumes below 4,000 vehicles per day). The Con-

struction Zone Safety Plan, however, may call for the use of paid police details on such roads.

Under certain circumstances, neither flaggers nor police details may be required if appropriate under the Construction Zone Safety Plan.

In all cases, the awarding authority's authorized representative shall determine the number and placement of flaggers and/or police details. The representative may be a municipal employee.

An "immediate needs" transportation bond act passed in April required the Executive Office of Transportation and Public Works to develop the flagger rules within 90 days.

The State Transportation Finance Commission had recommended a significant reduction in the use of paid police details at road work sites. The commission's report indicated that the cost of police details on MassHighway projects alone increased by 48 percent over three years, from \$15.5 million in 2003 to \$22.6 million in 2006. The commission reports that 4.5 percent of the total cost of MassHighway's construction projects goes to pay for police details.

A public hearing on the draft regulations was tentatively scheduled for Monday, Sept. 15, at 5 p.m. at the State Transportation Building in Boston. \*

## New law consolidates certain land-use hearings

**O**n Aug. 11, Gov. Deval Patrick signed a law that allows cities and towns in which the planning board also serves as the special permit granting authority to hold a single consolidated hearing on any subdivision plan that also requires a special permit.

The state zoning act (Ch. 40A, Sect. 11) requires the local special permit granting authority to hold a public hearing prior to the issuance of a special permit, while the subdivision control law (Ch. 41, Sect. 81I) re-

quires a local planning board to hold a hearing prior to approving or disapproving a subdivision plan.

In many circumstances, a subdivision of land requires approval of the subdivision plan by the planning board as well as a special permit. In communities where the special permit-granting authority is also the planning board, state law did not allow the board to hold a single consolidated hearing, causing the same body to review the same plan twice.

The new law (Ch. 239 of

the Acts of 2008) eliminates the requirement for a second hearing, which should ease

the burden on volunteer local planning board members.

- Matthew G. Feher

## Send personnel changes to the MMA

**R**etirements, elections, resignations and hirings bring about frequent changes in a community's personnel. Keep the MMA up-to-date with your community's personnel changes

by sending an e-mail to [database@mma.org](mailto:database@mma.org). Please include the person's name, title, and start date. If you have any questions, contact the MMA database coordinator. \*

## \* Law lowers barriers to intermunicipal agreements

**O**n July 18, Gov. Deval Patrick signed MMA legislation that will make it easier for towns to enter into agreements to share resources across borders.

Under the new law (Ch. 188 of the Acts of 2008), such agreements shall be approved by a town's chief executive officer or executive entity.

Resource sharing among municipalities can improve the efficiency and effectiveness of service delivery, but state law (M.G.L. Ch. 40, Sect. 4A) had required towns to obtain legislative (town meeting) approval of intermunicipal agreements. This requirement often impeded timely and creative resource-sharing and collaboration, in large part because town meetings generally meet only once or twice a year.

The new law retains all of the financial safeguard and record-keeping requirements under state law.

The legislation was filed by Sen. Pam Resor of Acton. Joining the MMA in support of the measure were the Massachusetts Association of Regional Planning Agencies and the Metropolitan Area Planning Council.

- Matthew G. Feher

## PART I. ADMINISTRATION OF THE GOVERNMENT

## TITLE VII. CITIES, TOWNS AND DISTRICTS

## CHAPTER 40. POWERS AND DUTIES OF CITIES AND TOWNS

**Chapter 40: Section 4A. Governmental units; joint operation of public activities; termination of agreement; "governmental unit" defined; financial safeguards**

Section 4A. The chief executive officer of a city or town, or a board, committee or officer otherwise authorized by law to execute a contract in the name of a governmental unit, as hereinafter defined, may enter on behalf of such unit into an agreement with one or more other governmental units to perform jointly or for such other unit or units any services, activities or undertakings which any of the contracting units is authorized by law to perform, if such agreement is authorized by the parties thereto, in a city by the city council with the approval of the mayor, and in a town or district by the town or district meeting; provided, however, that when such agreement involves the expenditure of funds for educational purposes accepted pursuant to section fifty-three A of chapter forty-four, or the expenditure of funds for establishing supplementary education centers and innovative educational programs, the agreement and its termination shall be authorized by the school committee. Any such agreement shall be for such maximum term, not exceeding twenty-five years, and shall establish such maximum financial liability of the parties, as may be specified in the authorizing votes of the parties thereto. A governmental unit, when duly authorized to do so in accordance with the provisions of law applicable to it, may raise money by any lawful means, including the incurring of debt for purposes for which it may legally incur debt, to meet its obligations under such agreement. Notwithstanding any provisions of law or charter to the contrary, no governmental unit shall be exempt from liability for its obligations under an agreement lawfully entered into in accordance with this section. The words "governmental unit" as used herein shall mean a city, town, a regional school district, a district as defined in section one A, regional planning commissions, however constituted, regional transit authorities established under the provisions of chapter one hundred and sixty-one B, a water and sewer commission established under the provisions of chapter forty N or of a special law, and counties.

All agreements put into effect under this section shall provide sufficient financial safeguards for all participants, including, but not limited to: accurate and comprehensive records of services performed, costs incurred, and reimbursements and contributions received; the performance of regular audits of such records; and provisions for officers responsible for the agreement to give appropriate performance bonds. The agreement shall also require that periodic financial statements be issued to all participants. Nothing in this section shall prohibit any agreement entered into between governmental units from containing procedures for withdrawal of a governmental unit from said agreement.

All bills and payrolls submitted for work done under any such agreement shall be plainly marked to indicate that the work was done under authority thereof. Any reimbursement for or contribution toward the cost of such work shall be made at such intervals as the agreement provides. The amount of reimbursement received under any such agreement by any governmental unit shall be credited on its books to the account of estimated receipts, but any funds received under the provisions of section fifty-three A of chapter forty-four for contribution toward the cost of such work may be expended in accordance with the said provisions. The equipment and employees of a governmental unit while engaged in performing any such service, activity or undertaking under such an agreement shall be deemed to be engaged in the service and employment of such unit, notwithstanding such service, activity or undertaking is being performed in or for another governmental unit or units.

Go To:
<a href="#">Next Section</a>
<a href="#">Previous Section</a>
<a href="#">Chapter Table of Contents</a>
<a href="#">MGL Search Page</a>
<a href="#">General Court Home</a>
<a href="#">Mass.gov</a>

## **Mutual Aid Agreement among Public Health Agencies in Emergency Preparedness**

**This Mutual Aid Agreement ("Agreement") is entered into by and between the public health agencies of the following cities and towns: Andover, Wilmington and Tewksbury.**

### **Section 1: Purpose**

The purpose of this Agreement is to provide for mutual aid and assistance between the municipalities entering into the Agreement when the resources normally available to a municipality are not sufficient to cope with a situation which requires public health action. The health and well being of a community will best be protected through the concerted efforts of multiple public health agencies providing assistance to one another. The promotion and coordination of this assistance through this Agreement is desirable for the effective and efficient provision of mutual aid and assistance.

This Agreement is in no way intended to substitute for the ordinary public health activities of any city or town. The parties intend that designees from the Sending Agency will not operate as the sole personnel of the Receiving Agency.

### **Section 2: Authority**

Pursuant to M.G.L. Chapter 40, Section 4A, mutual aid agreements may be made among municipalities or municipal agencies, with the authorization of the City Council and Mayor in a city, and of Town Meeting in a town.

### **Section 3: Definitions**

**Authorized Representative** means an official of a signatory entity who is authorized to request, offer, or otherwise provide assistance under this Agreement, and is authorized by law to execute a contract in the name of a governmental unit. A member/designee of the public health agency, if so authorized shall be the authorized representative. If a member/designee of the public health agency is not authorized, the authorized representative shall be the chief executive officer or other officer so authorized; and this officer shall work jointly with a member/designee of the public health agency.

**Mutual Aid** means aid to another public health agency in the form of personnel, equipment, facilities, services, supplies, or other resources appropriate to public health programs, including but not limited to inspections; vaccination clinics; centers for the distribution of pharmaceuticals; administrative assistance; specimen collection, conveyance, and testing; consulting; environmental assessment; and other programs.

**Public Health Agency** means the appropriate and legally designated health authority of the city, town, or other legally constituted governmental unit within the Commonwealth having the usual powers and duties of the board of health or health department of a city

or town.

**Receiving Agency** means the public health agency requesting mutual aid from another public health agency.

**Region** means one of the Emergency Preparedness Regions established by the Massachusetts Department of Public Health.

**Sending Agency** means the public health agency that provides mutual aid to another public health agency.

#### **Section 4: Other Agreements**

This Agreement recognizes and does not supersede present and future mutual aid agreements or intermunicipal agreements among the signatories of this Agreement.

This Agreement does not limit any party jurisdiction's ability to enter into mutual aid agreements in the future with neighboring municipalities and public health agencies.

#### **Section 5: Requests for Assistance**

1. The public health agency of each party jurisdiction shall designate an authorized representative in accordance with Section 3. The authorized representative of a Receiving Agency may request the assistance of another party jurisdiction by contacting the authorized representative of that jurisdiction. The authorized representative of a Sending Agency may authorize the sending of mutual aid.

2. The provisions of this Agreement shall apply only to requests for assistance made by and to the authorized representative.

A. Requests may be verbal or in writing.

B. If verbal, the request shall be confirmed in writing at the earliest possible date, but no later than 10 calendar days following the verbal request.

C. Written requests shall provide the following information:

(1) A description of the function for which assistance is needed;

(2) The amount and type of personnel, equipment, materials, services, supplies, and/or other resources needed, and a reasonable estimate of the length of time they will be needed; and

(3) The specific place and time for staging of the Sending Agency's response and a point of contact at that location.

D. The parties recognize that especially during an emergency, the requirements for protection of the public health and safety may require work, services, or supplies beyond that contained either in an oral or written request (confirmation). Nothing in this Agreement should be construed to limit the ability of either agency or its personnel to respond in any manner necessary for the preservation of the public health and safety. To the extent such services or supplies are extended, the provisions of this Agreement shall apply.

## **Section 6: Limitations**

1. The provision of mutual aid is voluntary. Neither the Sending nor Receiving Agency shall be required to deplete its own resources.
2. The extent of assistance to be furnished under this Agreement shall be determined solely by the Sending Agency, and the assistance furnished may be recalled at the sole discretion of the Sending Agency; provided however, that the Receiving Agency shall determine the scope of services to be delivered by the Sending Agency. Unless otherwise specified by the Receiving Agency in its request for assistance or otherwise, persons from the Sending Agency shall have the same legal enforcement authority in the receiving community as other persons serving in similar capacities in the Receiving Agency.

## **Section 7: Supervision and Control**

1. Personnel sent to assist another community under this Agreement will continue under the command and control of their regular supervisors, but they will come under the operational control of the Receiving Agency. The Receiving Agency may use an incident command system (ICS) or unified command system.
2. Employees shall remain employees of their own agencies at all times. Each agency, sending or receiving, shall be responsible for its own employees' wages, benefits, and similar obligations.

## **Section 8: Powers and Rights**

Each Receiving Agency may afford to the personnel of any Sending Agency operating within the Receiving Agency's jurisdiction the same powers and rights as are afforded to like personnel of the Receiving Agency.

## **Section 9: Liability**

1. Each party may be liable for the acts and omissions of its own employees and not for the employees of any other agency in the performance of this Agreement to the extent provided by the Massachusetts Tort Claims Act, M.G.L. c. 258.
2. By entering into this Agreement, none of the parties have waived any governmental immunity or limitation of damages which may be extended to them by operation of law.
3. This Agreement is by and between the municipalities which have executed it. Each states that it is intended for their mutual benefit alone and is not intended to confer any express or implied benefits on any other person. This Agreement is not intended to confer third party beneficiary status on any person.

## **Section 10: Workers Compensation**

If applicable, each party jurisdiction shall provide for the payment of workers compensation and death benefits to the personnel of its own jurisdiction.

#### **Section 11: Reimbursement**

1. Under this Agreement, there is no expectation of automatic or contractual reimbursement for the provision of any mutual aid. However, the parties may develop compensation agreements separately or within the context of this Agreement.
2. In the event of an emergency requiring state or federal assistance, Sending and Receiving Agencies may apply for any type of state or federal assistance.
3. In any fiscal year in which a Sending Agency provides service to a Receiving Agency under this Agreement, both agencies shall keep records appropriate to record the services performed, costs incurred, and reimbursements and contributions received. Such records shall be available for, and shall be subject to, audit as is otherwise required by law for municipal financial records. Such records shall also be summarized in a financial statement that will be issued to the Receiving Agency, and to any other participant in the Agreement upon request.

#### **Section 12: Implementation**

1. This Agreement shall be binding and in effect after it is signed in accordance with the local charter, ordinances or bylaws, and upon its approval by the legislative body, of any two municipalities.
2. Additional parties may join this Agreement upon acceptance and execution of it.

#### **Section 13: Term of Agreement**

This Agreement is to remain in effect for an initial period of twenty-five years from the date when it is first executed by any two or more signatory entities, after which time it may be extended, in writing, for additional periods of no more than twenty-five years, in accordance with Massachusetts law. Any such further extensions or additional periods shall only be binding upon those parties to the Agreement who execute the written extension(s). Any party may withdraw from this Agreement at any time by sending fourteen (14) days prior written notice to all other parties. This Agreement shall continue to be in effect among the remaining parties. Additional parties may be added to this Agreement upon prior written notice to all parties to this Agreement at the time of notice, but only if unanimous written consent is received from all such parties to parties to the Agreement.

#### **Section 14: Severability**

Should any portion of this Agreement be judged to be invalid by any court of competent

jurisdiction, such judgment shall not impair or invalidate the remainder of this Agreement, and for this purpose the provisions of this Agreement are declared severable.

Date: 11/20/07

Town of Andover, MA

By: Board of Health

Cosmanlin  
Margaret N. Lause

Ch. S. Choe, Director of Health

Approved by:

[Signature] 6/13/07  
Town Manager Date

Approved as to form:

[Signature] 6/6/07  
Town Counsel Date

Date: \_\_\_\_\_

Town of Wilmington, MA

By: Board of Health

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Approved by:

Mark Alan 8/28/07  
Town Manager Date

Approved as to form:

R.R. Ramon/ryh 08/06/07  
Town Counsel Date

Date: 7/19/07

Town of Tewksbury, MA

By: Board of Health

Edward J. Smith  
Robert K. Blagov  
Charles E. Kemm  
Michael W.  
Robert E.

Approved by:

Paul Blum 7/23/07  
Town Manager Date

Approved as to form:

Paul 7-10-07  
Town Counsel Date