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The magazine of the Maine Municipal Association

OCTOBER 2018

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ALSO IN THIS ISSUE
Legislative Wrap
Tackling Marijuana
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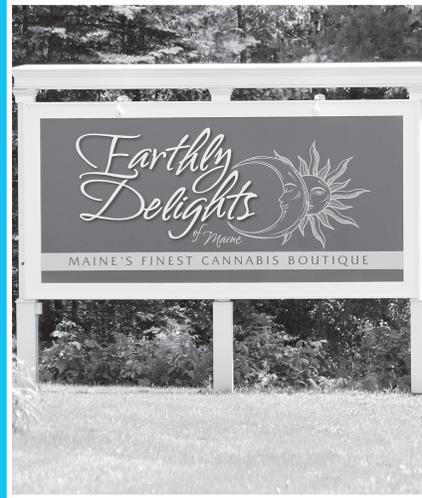
Maine Town & City

October 2018 | Volume 80 | Issue 9

The Magazine of the Maine Municipal Association

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We Can See Clearly Now



The Town of Acton in York County took a unique and thoughtful approach to determine its course on regulating commercial marijuana.

MMA backs bond measures: Our Executive Committee voted to support Questions 2 through 5 on the November election ballot. [Page 15](#)

When citizens help: The community of Cranberry Isles elects a Municipal Advisory Committee at town meeting each year. [Page 27](#)

ABOUT THE COVER: Freelance photographer Jeff Pouland took this photo of Tom Freitas and Ryan O'Sullivan in Lewiston earlier this fall.

Work That Really Matters

Every hour in Maine, municipal employees do work that citizens count on. Some days, they even save lives.

[Page 21](#)

Session's Merciful End

It ran into September, but the 2018 session is over. A law was enacted to change the process for property taxes and liens involving seniors. [Page 7](#)

New Laws

Yet more new laws were enacted as the 2018 Legislative Session wrapped up last month. See our list. [Page 9](#)

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A MESSAGE FROM MMA

BY ERIC CONRAD / EDITOR

A 'wiser' state, with much work to be done

Social researcher and professor Eric Klinenberg wrote a book a few years ago called, "Going Solo: The Extraordinary Rise and Surprising Appeal of Living Alone." We liked the data and the writing so much that we hired Klinenberg in 2015 to be the keynote speaker at the Maine Municipal Association Annual Convention.

One key finding in his research isn't shocking, yet in a sense it is: People, especially Americans and western Europeans, live much longer than they once did. In 1930, fewer than one in 10 people in these countries lived to the age of 65. Today, the average life expectancy in the U.S. and Europe is 30 years longer than it was back then. Our newfound longevity holds many ramifications for the future.

By now, most of you have heard that Maine is the "oldest state in the nation." The latest figures show the median age here is 44.6 years old. By comparison, Utah, which is the youngest state, has a median age of 31 years. Some optimists call us the "wisest state," because we tend to learn as we go forward. That may sound good, but what does it mean for municipal government?

Most immediately, it means more police officers, town clerks, managers and public works supervisors are nearing retirement than entering the work force. Augusta City Manager Bill Bridgeo once described this as the "silver tsunami," as many of us who still work have gray hair.

MMA's Executive Committee addressed this last year by authorizing staff to partner with Burgess Marketing and Advertising in Falmouth on a job-awareness campaign,

largely promoted through social media, called "Hometown Careers." A few weeks ago, we approved a new round of ads featuring municipal positions from library technician to city planner, from town treasurer to EMT/paramedic. The fourth phase in this campaign is going on now and will run through this month.

There's more. Four summers ago, MMA started our annual HR and Management Conference, which is held at Thomas College in Waterville. It touches on many personnel-related issues; employee recruiting and retention is certainly one of them.

There's also an important place for you, as municipal leaders. A few months ago, I spoke at Sugarloaf to the annual gathering of the Jobs for Maine Graduates "specialists," an impressive group of professionals who teach students throughout the state.

One role they play is helping juniors and seniors think about their next steps, ones that may not be as obvious as attending a four-year college or going to work where a parent does. It was surprising how few of the specialists, and how *very* few of their students, even considered careers with their hometowns.

After the appearance, a JMG specialist from York County reached out to me. I provided background information and said the best contact, and probably the one who would most impress her students, would be a city official from her area. She agreed and promised to inquire about that possibility. ■

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At last, the Legislature adjourns; senior foreclosure bill is enacted

Described by some as a “solution in search of a problem,” LD 1629 creates new pre-foreclosure and post-foreclosure processes for towns and cities to follow.

By Kate Dufour, Director of State & Federal Relations, MMA

The longest “short” legislative session in Maine history finally ended on Sept. 13, 2018. What should have been an 83 business day session extended over 176 work days and included week-long recesses providing legislative leaders the time necessary to negotiate the terms of highly polarizing issues. With the Clean Election Act program funding released, the adoption of an income tax package that conforms with several of the changes recently enacted at the federal level and the passage of several bills seeking to remedy problems with the Department of Health and Human Services’ Bureau of Child Protective Services, the members of the 128th Maine Legislature were ready to retire.

With the hot button issues decided, the general consensus among political pundits and gadflies was that the Legislature’s last day in session would be perfunctory and celebratory in nature, lasting only a few hours. However, as the members of the House and Senate began to process the final vetoes, confirmations and orders, Governor Paul LePage was mounting a media campaign calling on the Legislature to enact his proposed senior tax lien foreclosure bill. The pressure from the Governor’s Office ranged from vowing to call the Legislature back for a special session the day after adjournment to complete its work, to promising to actively campaign against certain legislative candidates.

After several partisan caucuses and discussions, LD 1629, *An Act To Protect Homeowners Affected by Tax Lien Foreclosures*, was placed before the Legislature for a vote. Although many members of the Legislature expressed concerns with and opposition to the bill, with some going so far as to describe it as

a “solution in search of a problem,” a heavily amended version of the bill was finally enacted.

In a nutshell, the bill makes it more difficult and time consuming for municipalities to dispose of the tax acquired property previously owned by homeowners 65 years of age or older who meet certain income and asset eligibility standards.

Specifically, LD 1629 creates the following new pre-foreclosure and post-foreclosure tax lien processes:

Pre-foreclosure process

Under terms of the new law, tax collectors will now be required to use the “demand notice” currently required under Title 36, §942 to inform a delinquent property taxpayer, who is receiving the homestead exemption, of the right to apply for a poverty tax abatement and of the ability to contact the state’s Consumer Credit Protection Bureau for assistance to avoid tax lien foreclosure. The additional information required to be included in the demand notice will be provided by the state to the Maine Municipal Association for distribution to municipal officials.

Post-foreclosure process

As enacted, the law also creates a new process for disposing of the tax-acquired property previously owned by qualifying homeowners.

Special Process. If the municipal-



ity decides to sell the tax-acquired property previously owned by a qualifying homeowner, the community is required to try to sell the property on the open market. As provided in the newly enacted law, a municipality must enter into a six-month contract with a real estate broker to sell the property at its fair market value or at a price at which the property is anticipated to sell within six months. If

the contracted broker is unable to sell the home within six months, or if after contacting three real estate brokers the municipality is unable to retain the services of a broker to sell the tax-acquired home, the municipality is authorized to dispose of the property in the same manner that all other tax-acquired property in the community is sold.

Qualifications. To qualify for this new process, at least one of the former owners must be 65 years of age or older on the date the tax lien certificate is recorded and have received the homestead exemption. In addition, the former owner or owners must demonstrate to the municipal officers (or officers’ designee) that their previous year’s adjusted gross income was less than \$40,000 after medical expenses, and that the value of liquid assets is less than \$50,000 for an individual or \$75,000 for a multi-person household. Under the terms of the enacted bill, “liquid assets” are defined as something of value available to an individual that can be converted to cash in three

months or less and includes bank accounts, certificates of deposit, money market or mutual funds, life insurance policies, stocks and bonds, lump-sum payments and inheritances and funds from a home equity conversion mortgage that are in the individual's possession whether they are in cash or have been converted to another form."

Determining Eligibility. The law further establishes a timeline and application process for determining eligibility for the sale of tax acquired property. At least 90 days prior to listing the property for sale, the municipal officers (or officers' designee) must notify the former owner, by first-class mail, of the right to require the special sale process. The municipality must include in that notice an application form with instruction and submission information necessary for the municipality to determine eligibility. The former owner(s) must be provided at least 30 days, from the date the notice is mailed, to submit the application. Within 30 days of receiving the application, the municipal officers must determine whether the applicant is eligible for the special process and, if denied, inform the applicant of the right to appeal the decision through the Maine Rule of Civil Procedure, Rule 80B process.

The state tax assessor is directed to prepare the application forms, notices and instructions that must be used by municipalities. Furthermore, all applications or information submitted in support of an application, files and communications related to the application and the determination of eligibility are to be treated as confidential records.

Return of Net Proceeds. If the previous homeowner meets those qualifications, any revenue from the sale of the home must be returned to the former owner – after the municipality is reimbursed for back taxes, property taxes that would have been assessed while the municipality owned the property, accrued interest, fees and other expenses incurred by the municipality while selling or maintaining the property. This return of net proceeds provision is in effect only if the home is sold through the contracted real estate broker process.

Mandate fiscal note

The silver lining in the law is the inclusion of a fiscal note obligating the state to reimburse municipalities for

90 percent of the costs associated with implementing the new mandate. For this reason, municipalities are urged to keep close tabs on the resources, materials and time spent to administer both the pre-foreclosure and post-foreclosure elements of this program and to seek appropriate reimbursement from the state.

Effective Date. The provisions of the law are effective on Dec. 13, 2018.

Other new laws

Provided in a separate article in this edition of *Maine Town & City* are descriptions of several recently enacted municipally relevant bills. Of special interest are descriptions of two laws (LD 238 and LD 1539) that extend municipal regulatory authority over commercial caregiver medical marijuana operations.

Looking ahead

MMA's newly elected 70-member

Legislative Policy Committee is working on the association's 2019-20 legislative platform for consideration by the next Legislature. Not surprisingly, a preliminary survey of LPC members shows that measures focused on restoring funding for the Municipal Revenue Sharing Program and calling on the Legislature to honor the commitment to fund its statutorily required share of K-12 education are on the top of the priority list. Increasing investments in the state's transportation network, workplace recruitment – particularly as it pertains to attracting and retaining public safety officials – and the need to address the opioid and mental health crises that are placing burdens on local resources, are also of concern to municipal leaders.

The LPC met in October and will meet again in November to finalize its legislative platform. Results of those efforts will be described in the December edition of this magazine. ■

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NEW LAWS

128th Legislature – Second Special Session

Effective dates. Emergency legislation became effective on the date it was signed by the Governor unless otherwise noted. If the new law was an emergency measure, it is so-noted before the Public Law (PL) citation. Non-emergency legislation becomes effective 90 days after adjournment of the legislative session in which it was enacted. The effective date of non-emergency legislation enacted in the Legislature's second special session will be December 13, 2018.

Mandate preamble. Legislation enacted with a "mandate preamble" contains the following language: "*This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, two-thirds of all of the members elected to each House have determined it necessary to enact this measure.*" If the new law was enacted with a mandate preamble, it is so-noted along with the Public Law citation.

Agriculture, Conservation & Forestry

LD 1809 – An Act To Amend the Laws Governing the Issuance of Burn Permits. (Sponsored by Sen. Saviello of Franklin County) **Emergency Enacted; PL 2017, c. 449 (7/9/18)**

This emergency Act allows municipalities to use software created by a private party to issue burn permits. The software must be approved by the Director of the Bureau of Forestry within the Department of Agriculture, Conservation and Forestry and meet standards established by state agency rulemaking. The Act also limits, to two, the number of private party burn permit software programs that may be approved and in operation in the state. The Act further prohibits the vender from assessing a software user fee to the municipality or charging a burn permit issuance fee to an applicant.

Appropriations & Financial Affairs

LD 925 – An Act Making Certain Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government. (Sponsored by Rep. Gattine of Westbrook) **Emergency Enacted; PL 2017, c. 460 (7/9/18)**

This emergency Act makes supplemental allocations and appropriations in the second year (FY 2019) of the current biennial state General Fund budget. Of municipal law enforcement interest, the Act: (1) upon request, allows funds from the sales of forfeited property to be assigned to a law enforcement agency that provides case management and other social services to persons with substance use disorders; (2) makes aggravated trafficking of a scheduled drug a Class A crime when the drug is a contributing factor in the death of another person or a Class B crime in a situation where the drug contributes to the serious bodily injury of another person; and (3) makes the aggravated trafficking of more than 6 grams or more than 269 individual units (e.g., bags, folds, packages, envelopes, etc.) of fentanyl powder a Class A crime.

LD 1815 – An Act To Authorize a General Fund Bond Issue To Improve Multimodal Facilities, Highways and Bridges and Municipal Culverts. (Sponsored by Sen. Hamper of Ox-

ford County) **PL 2017, c. 467**

This Act sends out to the voters a proposed \$106 million bond issue for transportation purposes. \$80 million of the bond revenue is dedicated to the construction, reconstruction and rehabilitation of Priority #1, #2 and #3 state highways, the municipal partnership initiative, and to replace and rehabilitate bridges. \$20 million is dedicated to capital improvements to ports, harbors, marine transportation, aviation, freight and passenger railroads, and bicycle and pedestrian trails. \$1 million is dedicated to making improvements to the Maine Maritime Academy's water front pier in Castine. The bond proceeds are estimated to leverage \$137 million in federal and other funds. An additional \$5 million, which does not leverage any federal funding, is dedicated to a competitive grant program matching local funding for upgrading municipal culverts at stream crossings in order to improve fish and wildlife habitats and increase community safety.

Criminal Justice & Public Safety

LD 1490 – An Act To Stabilize Funding for County Jails. (Sponsored by Sen. Cyrway of Kennebec County) **PL 2017, c. 450**

This Act appropriates \$6.21 million in the second year (FY 2019) of the current biennial state General Fund budget to support county jail operations. Specifically, a one-time allocation of \$3 million is made available to reimburse county and regional jails that incurred unusually high operations costs during the fiscal year ending on June 30, 2018. For FY 2019, the state appropriation for county jail operations is increased from \$12.2 million to \$15.2 million, with \$1.7 million of the \$3 million increase dedicated to funding community corrections programs. An additional \$120,000 is allocated to fund the Kennebec County Criminogenic Addiction Recovery Academy program in FY 2019.

Education & Cultural Affairs

LD 1286 – An Act To Facilitate Compliance by School Employees with Criminal History Record Check and Fingerprinting Requirements. (Sponsored by Sen. Millett of Cumberland County) **Enacted; PL 2017, c. 426**

Beginning on January 1, 2019 and every quarter thereafter, this Act requires all school systems in the state to submit to the Department of Education (DOE) a list of the names of all employees subject to criminal history record check and fingerprinting requirements, indicating the date the person most recently commenced employment with the school administrative unit. The DOE must immediately notify the school system if it is determined that a person on the list does not comply with any applicable criminal history record check or fingerprinting requirement. The Act also appropriates approximately \$13,000 in FY 2019 to reimburse school units for 90% of the costs associated with the state mandate.

LD 1666 – An Act To Ensure the Successful Implementation of Proficiency-based Diplomas. (Sponsored by Rep. Kornfield of Bangor) **PL 2017, c. 466**

This Act makes a school administrative unit's implementation of proficiency-based diplomas voluntary rather than mandatory.

LD 1845 – An Act To Provide Incentives To Attract Trained Firefighters to Maine and To Retain Trained Fire-

fighters by Expanding the Provision of Live Fire Service Training. (Sponsored by Rep. Herbig of Belfast) **PL 2017, c. 444**

This Act establishes the Live Fire Service Training Facilities Fund providing eligible municipalities with grants for the construction, repair or replacement of regional live fire service training facilities. The Maine Fire Protection Services Commission is charged with developing eligibility criteria, awarding grants and directing the Maine Fire Service Institute, housed within the Maine Community College System, to make grant payments to municipalities. The Institute is prohibited from issuing grants after June 30, 2021, unless explicitly authorized by the Legislature to do so. A one-time \$500,000 appropriation is provided to capitalize the grant program.

LD 1869 – An Act To Establish the Total Cost of Education and the State and Local Contributions to Education for Fiscal Year 2018-19. (Sponsored by Sen. Langley of Hancock County) **Emergency Enacted; PL 2017, c. 446 (7/8/18)**

This emergency Act appropriates \$1.1 billion as the state share of K-12 education in FY 2019 as calculated by the Essential Programs and Services (EPS) school funding model, as well \$181.5 million in state contributions to the unfunded actuarial liabilities of the Maine Public Employees Retirement System attributable to teachers, retired teacher health insurance and retired teacher life insurance. The total amount of money – both state and local – the model identifies as necessary to fund K-12 education, and including teacher related unfunded actuarial liability costs, is \$2.431 billion, which puts the state share at 53.3 percent. (When the unfunded actuarial liability costs are excluded from total expenditures, the state's share of K-12 education is 49.6 percent.) To meet the minimum local share (\$1.13 billion), the mill rate is set at 8.48 mills, an increase of 3.5 percent from the FY 2018 mill rate of 8.19. This increase is due, in large part,

to the fact that 100% of EPS costs are now recognized in the funding formula.

Health & Human Services

LD 238– An Act To Amend the Maine Medical Use of Marijuana Act. (Sponsored by Sen. Brakey of Androscoggin County) **Emergency Enacted; PL 2017, c. 447 (7/9/18)**

This emergency Act replaces the limited municipal school setback and dispensary regulatory authorizations in the pre-existing Medical Use of Marijuana Act with express recognition of home rule authority to comprehensively regulate medical marijuana primary caregivers, dispensaries, and testing and manufacturing facilities. Two limitations are imposed on home rule: municipal bans on primary caregiver activities, as well as limitations on the number of primary caregivers authorized to operate within a municipality, are not allowed.

The new law also provides for accredited third-party testing of medical marijuana, authorizes the manufacture of medical marijuana products using non-hazardous extraction and concentration processes, and requires processors who utilize hazardous substances to be certified as safe by a state-licensed professional engineer. The manufacture of medical marijuana products using both hazardous and non-hazardous extraction and concentration processes is authorized for all persons, subject to any existing limitations and forthcoming state rules, with “tier 1” processors authorized to possess up to 40 pounds of harvested marijuana, and “tier 2” processors authorized to possess up to 200 pounds of harvested marijuana.

Note: The term “primary caregiver” in the Act will be replaced with “registered caregiver” when LD 1539 takes effect on Dec. 13, 2018.

LD 1539 – An Act To Amend Maine’s Medical Marijuana Law. (Sponsored by Rep. Sanderson of Chelsea) **PL 2017,**

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This Act re-writes much of Maine’s Medical Use of Marijuana Act. Amendments made to the Act as a result of this legislation include the following:

Local Control. The Act’s pre-existing municipal school setback and dispensary regulatory authorities are replaced with express recognition of the comprehensive home rule authority to regulate registered medical marijuana caregivers, dispensaries, and testing and manufacturing facilities. Two general limitations are imposed on home rule: municipal prohibitions on registered caregivers, as well as limitations on the number of registered caregivers authorized to operate within a municipality, are not allowed. Another limitation, described below, grandfathers caregiver retail stores operating with municipal approval on the effective date of this law while applying a municipal opt-in requirement to storefronts aiming to open after the effective date.

Municipal Opt-in Requirement and Grandfathering. Registered caregiver retail stores, registered dispensaries, marijuana testing facilities and manufacturing facilities not operating on the effective date of the law are prohibited from operating in a municipality until its legislative body has voted to adopt or amend an ordinance or approved a warrant article allowing such entities to operate. Municipalities are not authorized by the terms of this law, however, to prohibit those entities already operating *with municipal approval* prior to the effective date.

State Verification for Code Enforcement. When requested by the code enforcement officer, state officials are required within two business days to verify the validity of a person’s state-issued registration identification card and whether the card-holder’s conduct is authorized, as well as the location at which the conduct is authorized if necessary to verify the card to the code enforcement officer. The code enforcement officer, or other municipal officer in municipalities without code enforcement officers, are required to keep the information received confidential.

Qualifying Patients. Four key changes are made with respect to patient activities:

1. Patients will be able to receive written prescription certifications to use medical marijuana for any medical condition their physician believes may be alleviated by the patient’s use of marijuana;
2. The maximum per-patient prescription limit is expanded from 2.5 ounces to up to 2 pounds, and the amount that may be possessed by patients is expanded from 2.5

ounces to up to 8 pounds;

3. Each patient may grow a maximum of 6 mature plants, 12 immature plants, and unlimited seedlings;
4. Patients may share seeds and plants with one another;
5. Patients may use medical marijuana in certain assisted living and residential care facilities provided the use is consistent with facility policies; and
6. Patients may designate multiple primary caregivers rather than only one caregiver.

Caregivers. Seven key changes are made with respect to caregiver activities:

1. The term “primary caregiver” is replaced in the Act with a new distinction between un-registered and registered caregivers. Caregivers who only serve two households or family members are not required to register with the state. All other caregivers are required to register with the state and are referred to in the new law as “registered caregivers;”
2. Registered caregivers are authorized to operate retail stores provided that the municipality has opted to allow the activity;
3. Each caregiver may grow a maximum of 30 mature plants, 60 immature plants, and unlimited seedlings;
4. Caregivers are allowed to employ any number of assistants (under the pre-existing Act employees were capped at one person per designated patient served);
5. Caregivers may transfer products between one another (under the pre-existing Act caregivers were only allowed to transfer products to dispensaries); and
6. Tracking and reporting on seed and plant sourcing and sales is required of registered caregivers and dispensaries.

Dispensaries. This law authorizes the state to issue six additional dispensary certifications (in addition to the existing eight) until 2021, after which time there will be no cap on the number of dispensary certificates issued statewide. The law also removes the previous requirement that dispensaries operate as non-profits.

Inspections. State inspection authority is limited to registered caregivers, dispensaries, testing, and manufacturing facilities. Such inspection is authorized on demand of the Department of Health and Human Services, but is disallowed in areas where marijuana-related activities are not taking place and,

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in the case of registered caregivers, when the caregiver is not present. Two or more absences on the part of the caregiver are grounds for state revocation of their certification.

Immunity. The pre-existing immunity for dispensary employees and directors is extended to registered caregivers and their employees as well as to hospitals and long-term care facilities and their directors, employees or agents.

Testing. Accredited third-party testing of medical marijuana is authorized.

Extraction and Concentration. The same language included in LD 238, authorizing the manufacture of medical marijuana products using non-hazardous extraction and concentration processes for all persons, subject to any forthcoming state rules, is included in this Act as well. "Tier 1" processors are authorized to possess up to 40 pounds of harvested marijuana, while "tier 2" processors are authorized to possess up to 200 pounds of harvested marijuana. The same limits apply to processors utilizing hazardous substances for extraction, provided they are certified as safe by a state-licensed professional engineer and have notified the state in advance of their intent to engage in marijuana extraction using inherently hazardous substances.

Taxation

LD 1629 – An Act To Protect Homeowners Affected by Tax Lien Foreclosures. (Sponsored by Rep. Espling of New Gloucester) **Enacted: PL 2017, c. 478**

This Act creates new pre-foreclosure and post-foreclosure tax lien processes. Under the terms of the law, tax collectors will now be required to use the "demand notice" currently required under Title 36, §942 to inform a delinquent property taxpayer, who is receiving the homestead exemption, of the right to apply for a poverty tax abatement and of the ability to contact the state's Consumer Credit Protection Bureau for assistance to

avoid tax lien foreclosure. The additional information required to be included in the demand notice will be provided by the state to the Maine Municipal Association for distribution to municipal officials.

As enacted, the law also creates a new process for disposing of the tax acquired property previously owned by qualifying homeowners.

Special Process. If the municipality decides to sell the tax acquired property and the previous homeowner meets the qualifications specified below, the community is required to try to sell the property on the open market. As provided in the law, a municipality must enter into a six month contract with a real estate broker to sell the property at its fair market value or at a price at which the property is anticipated to sell within six months. If the contracted broker is unable to sell the home within six months or if after contacting three real estate brokers the municipality is unable to retain the services of a broker to sell the tax acquired home, the municipality is authorized to dispose of the property in the same manner that all other tax acquired property is sold.

Qualifications. To qualify for this new process at least one of the owners must be 65 years of age or older on the date the tax lien certificate is recorded and have received the homestead exemption. In addition, the former owner or owners must demonstrate to the municipal officers (or officers' designee) that their previous year's adjusted gross income was less than \$40,000, after medical expenses, and that the value of liquid assets is less than \$50,000 for an individual or \$75,000 for multi-person household.

Determining Eligibility. To determine eligibility for the new process, at least 90 days prior to listing the property for sale, the municipal officers (or officers' designee) must notify the former owner, by first-class mail, of the right to require the special sale process. The municipality must include in the notice an application form with instructions and submission information neces-

Meet our Attorneys Dan S. Pittman



Dan Pittman is a member of our municipal finance team. He has acted as bond counsel for towns, cities, counties, sanitary districts and other governmental entities to help them find creative and effective ways to build and maintain public infrastructure, including roads, schools, water and sewer systems, municipal buildings and capital equipment. He has also advised tax-exempt educational and charitable institutions about how to partner with their local communities to issue tax-exempt bonds. He also advises tax-exempt bond issuers regarding their ongoing compliance responsibilities, and helps them navigate the complex tax rules surrounding arbitrage and rebate.

He is a member of the National Association of Bond Lawyers and is recognized as qualified bond counsel by "The Bond Buyer's Municipal Marketplace"

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sary for the municipality to determine eligibility. The former owners must be provided at least 30 days, from the date the notice is mailed, to submit the required form and information. Within 30 days of receiving the application, the municipal officers must determine whether the applicant is eligible for the special process and, if denied, inform the applicant of the right to appeal the decision through the Maine Rule of Civil Procedure, Rule 80B process. The State Tax Assessor is directed to prepare the application forms, notices and instructions that must be used by municipalities. All applications or information submitted in support of an application, files and communications related to the application and the determination of eligibility are confidential records.

Return of Net Proceeds. If the previous homeowner meets the qualifications and the home is sold through a contracted real estate broker, all proceeds of the sale of the home, less taxes owed, the property taxes that would have been assessed if not acquired by the municipality, all accrued interest, fees and any other expenses incurred by the municipality in selling or maintaining the property, must be returned to the qualifying former owner(s).

The law also includes a fiscal note obligating the state to reimburse municipalities for 90% of the costs associated with implementing the new mandate.

Finally, the bill amends the Homestead Exemption law by providing that a person who loses their home due to a tax lien foreclosure and subsequently regains ownership of the homestead from the municipality remains eligible for the homestead tax exemption benefit.

LD 1655 – An Act To Conform to the United States Internal Revenue Code of 1986 and Provide Tax Relief to Maine Families. (Sponsored by Sen. Dow of Lincoln County) **Emergency Enacted; PL 2017, c. 474 (9/12/18)**

This emergency Act adopts changes to Maine’s income tax

codes in an effort to conform with several of the changes enacted at the federal level. Of specific municipal interest, the law increases the property tax fairness credit cap to \$750 for individuals under age 65 and to \$1,200 for filers 65 years of age or older.

Transportation

LD 1916 – Resolve, To Name a Bridge over the Saco River in the Town of Fryeburg the Nathan Desjardins Memorial Bridge. (Sponsored by Rep. Wadsworth of Hiram)

Resolves 2017, c. 58

This Resolve directs the Department of Transportation to designate Bridge 2121 on Route 5, which crosses the Saco River in the Town of Fryeburg, the Nathan Desjardins Memorial Bridge.

Veterans & Legal Affairs

LD 1204 – An Act Regarding Absentee Voting by Residents of Nursing Homes and Other Residential Care Facilities. (Sponsored by Rep. Timberlake of Turner) PL 2017, c. 433

This Act requires the municipal clerk to post notice in the town or city office of the date and time when absentee voting will be conducted at the various licensed nursing homes or assisted care facilities where on-site absentee voting opportunities are required by law. The municipal clerk must also provide the notice to each licensed facility. The Act further requires those licensed facilities to provide notice, either by email or by electronic newsletter, to the contact person or persons, if any, for each resident of the facility noting the date and time when absentee voting will be conducted at the facility.

LD 1865 – An Act To Increase Transparency in the Direct Initiative Process. (Sponsored by Rep. Luchini of Ellsworth)

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PL 2017, c. 418

This Act prohibits a notary public or other person generally authorized to administer oaths or affirmations from administering oaths or affirmations to a petition circulator if the notary public or person is also providing services to initiate that petition or promote the measure. The Act also defines a “major contributor” as an entity, other than an individual, that makes contributions aggregating more than \$100,000 to a ballot committee or political action committee for the purpose of initiating or in-

fluencing a direct initiative or people’s veto referendum. Major contributors must file campaign financing reports with the Commission on Governmental Ethics and Election Practices that: (1) disclose the name of the organization making the contribution and the amount and date of each contribution; (2) identify the five largest sources of revenue in the 18-months prior to filing the report; (3) indicate whether the organization is tax-exempt; and (4) specify if the organization has filed campaign finance reports in other jurisdictions in the past 12 months. ■

MMA Personnel Services and On-site Consulting Services

MMA Personnel Services offers a wide range of specialized on-site consulting services for our municipal and associate members. Personnel management and labor relations expertise is available for direct assistance or general inquiries through a toll-free telephone line. Direct on-site assistance is available in the following areas:

Labor Relations — Representation of the municipality in labor negotiations, mediation, arbitration and grievance processes.

Executive Search — Assistance with the recruitment of a new city or town manager, department head and/or senior management position.

Training — On-site training in a variety of topics.

Testing — Entry level police and fire testing.

For more information on all Personnel Services programs, or general personnel management information, contact David Barrett, Director of Personnel Services and Labor Relations at 1-800-452-8786.

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MMA Executive Committee backs referendum bond measures

The 12-member committee backed bond items for water/wastewater, transportation and community college financing. It took no position on Question 1.

By Kate Dufour, Director of State & Federal Relations, MMA

At its September meeting, the Maine Municipal Association's 12-member Executive Committee voted to support the four bond measures that will be on the Nov. 6, 2018 referendum ballot. The committee also voted to take no position on the citizen-initiated measure (Question 1) proposing the enactment of a household income tax surcharge and payroll tax to supplement funding for the in-home and community support services provided to seniors and disabled persons who reside in Maine and need assistance with at least one activity of daily living (e.g., dressing, eating, bathing, etc.).

The bond issues on November's ballot include:

Question 2: \$30 Million Water/Wastewater Bond. This question proposes a \$30 million bond issue designed to improve water quality, support the planning and construction of wastewater treatment facilities and assist residents whose homes are served by substandard or malfunctioning wastewater treatment systems. Some \$2 million of the bond issue is dedicated to the Small Community Grant Program, administered by the Department of Environmental Protection, which can provide funds for the municipally supervised repair of malfunctioning wastewater systems. Another \$350,000 of the issue is dedicated to the Overboard Discharge program, which is similarly designed with respect to the malfunctioning residential wastewater systems in coastal watersheds, and \$27.65 million of the issue is dedicated to wastewater treatment facility planning and construction grants.

Question 3: \$106 Million Transportation Bond. This question proposes a \$106 million bond issue for

transportation purposes. Of that, \$80 million is dedicated to the construction, reconstruction and rehabilitation of Priority #1, #2 and #3 state highways, the municipal partnership initiative, and to replace and rehabilitate bridges. Another \$20 million is dedicated to capital improvements

to ports, harbors, marine transportation, aviation, freight and passenger railroads, and bicycle and pedestrian trails. \$1 million is dedicated to improvements for the Maine Maritime Academy's waterfront pier in Castine. These bond proceeds are estimated to leverage \$137 million in federal and

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other source funds. An additional \$5 million, which does not leverage any federal funding, is dedicated to a competitive grant program matching local funding for upgrades to municipal culverts at stream crossings to improve fish and wildlife habitats and increase community safety.

Question 4: \$49 Million University System Bond. For purposes of expanding the state's workforce development capacity and to attract and retain students, this question proposes a \$49 million bond issue for the construction, reconstruction and remodel-

ing of existing or new facilities and other infrastructure within the University of Maine System as approved by the Board of Trustees. Under the terms of the bond, each borrowed dollar must be matched with public or private funding.

Question 5: \$15 Million Community College Bond. This question proposes a \$15 million bond issue to upgrade facilities at Maine's seven community colleges. Of the total bond: (1) \$4.3 million is dedicated to Southern Maine Community College for facility repairs and improvements, energy ef-

iciencies and instruction and library services; (2) \$2.5 million is dedicated to Central Maine Community College for renovation and expansion of instructional laboratories and to upgrade information technology infrastructure; (3) \$2.2 million is dedicated to Eastern Maine Community College for information technology system upgrades and to convert heating systems to natural gas; (4) \$2.2 million is dedicated to Kennebec Valley Community College for capital equipment to support a new millwrighting and industrial mechanics program; (5) \$1.7 million is dedicated to York County Community College for technology system upgrades and the development of the Industrial Trades Center in Sanford; (6) \$1.2 million is dedicated to Northern Maine Community College to expand the diesel hydraulics program laboratory; and, (7) about \$886,000 is dedicated to Washington County Community College to renovate and expand instruction laboratories. ■

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The Municipal RISK MANAGER

FALL 2018

A Publication of the Maine Municipal Association

Salt/Sand Sheds - No Trespassing!

Public access to a salt/sand shed results in injury to a town resident.

This incident took place when residents entered a salt and sand shed to get some sand for home use. The 15 foot sand pile collapsed, partially burying one of them. A lawsuit followed and the following facts were developed. While there was a separate sand pile for residents, town policy stated residents could get sand "from the town sand shed". No warning signs were present on the salt/sand shed telling residents that access was restricted to authorized personnel or that unstable sand piles were present. The only barrier to entering the salt/sand shed was a chain which could be easily removed by anyone.

Let's face it, Maine winters are tough. Many municipalities help their residents by providing a limited amount of sand/salt mix for residents to apply to their driveways and walkways. A limit of two 5 gallon pails per resident is common. While this helps residents address slip hazards at home, how the resident's sand pile is located and distributed may create serious hazards to residents trying to get sand. The key take away is municipal salt/sand sheds are hazardous areas and should not be accessed by the general public.

The following lessons were learned:

- Access to municipal salt/sand sheds should be restricted to employees and contractors authorized to be there.
- Signs should be placed on salt/sand sheds clearly stating "no trespassing" and that access is restricted to "authorized personnel only".
- When not in active use, unauthorized access to the salt/sand shed should be barred by appropriate doors or barriers.
- If a municipality wants to make salt/sand available for residents to use, this should be located in a separate pile, placed sufficiently far away from the municipal salt/sand shed so there is no risk of residents encountering dump trucks, bucket loaders or other heavy equipment. The resident's sand pile should be prominently labeled as for resident's use.
- The municipality's policy on sand for resident's use should clearly state it must be obtained from the sand pile designated for resident's use and under no circumstances should residents go inside the sand/salt shed.



These steps will help make winter safer for everyone. 🚧

New Member Tools & Resources

MMA Risk Management Services is excited to announce a new listing of available member resources and training aids. Located on the MMA Website go to Risk Management Services, Member Tools and select "[*Training & Safety Resources*](#)"

Here you will find links that will offer guidance on such topics as:

- Maine Compliance Directives
- Written Safety Programs
- Model Policies
- Training Matrix
- Verification of Workers Compensation Coverage on Independent Contractors
- Predetermination Forms

Filing a FEMA Claim Lessons Learned

Tornadoes, winter storms, fires, hurricanes, and other natural disasters can cause massive damage. Many people who live in a federally designated disaster area may qualify for Federal Emergency Management Agency (FEMA) disaster assistance funds. This money is meant to assist people and businesses whose property was damaged or destroyed and whose losses are not covered by insurance.

It's important to note that you first need to file an insurance claim with your entity's insurer *before you can file a claim through FEMA*. This is important even if you know your claim will not be covered by insurance. Insurance contracts require notice of damage as soon as practicable, even if FEMA states they will assist you with the damages. FEMA Disaster Assistance is only designed to help cover costs not covered by your insurance policy or you're deductible. You are required to show FEMA your claim was denied, denied in part, or paid less your deductible by your insurance company. Waiting to see what FEMA may do about your damage before reporting to your insurer is proceeding in the wrong order and you risk having an otherwise covered claim be denied for late notice.

When you make your claim, be sure to have the following information ready to make the process go more smoothly:

- Current and pre-disaster address.
- A telephone number where you can be contacted.
- Insurance information.
- A description of your losses that were caused by the disaster.

You will receive a FEMA claim number. Write this down and keep it! You will need it for future reference! You can make a claim at the FEMA Individual Assistance Center. After you apply for assistance, you should wait 24 hours to check the system for your claim status. This can be a long time to wait if you are in an emergency situation, so be sure to take care of yourself during

this time and attempt to mitigate your losses. FEMA will send an inspector to your entity to inspect your damage and assess your needs. Be sure to have as much information to support your claim as possible. This can include copies of your insurance policy, pictures, invoices of repairs along with any checks issued to you or the denial, partial denial by your insurance carrier and any other information you feel may be pertinent. If you have insur-

ance, you need to have a copy of your insurance decision letter (settlement or denial of claim). Remember, you must exhaust all other forms of assistance before receiving FEMA aid.

FEMA disaster assistance is not intended to restore your damaged property to its condition before the disaster, it is only meant to help people with critical expenses that cannot be covered in other ways. ■

MEWEA Convention & Announcement of our NEW Sewer Liability Resource Guide

MMA Risk Management Services is pleased to continue our support of the Maine Water Environment Association by being an exhibitor at the annual convention held September 20-22, 2018.

Risk Management Services is excited to announce the release of our newest tool created to assist our members who operate or manage sewer operations. We have developed a Sewer Liability Resource Guide which provides information on controlling sewer liability, identification of infrastructure, documentation and educational material for your staff and customers.

For more information about the Sewer Liability Resource Guide please visit our website at: <https://memun.org/Insurance-Services/Risk-Management-Services/Sewer-Liability-Resource-Guide>



When Money Goes Missing

Embezzlement is defined as the theft or misappropriation of funds placed in one's trust or belonging to one's employer. Unfortunately, some municipalities are forced to deal with the unpleasantness associated with employee embezzlement. It's important for municipalities to have policies in place to catch embezzlement when it begins or to prevent it altogether. Recognizing the red flags associated with embezzlement and having sound practices in place to lessen the likelihood of embezzlement will go a long way to prevent and mitigate issues associated with employee dishonesty.

The red flags associated with embezzlement do not always mean that money is being stolen. However, if the following red flags occur, it's time to take a closer look.

- Inability to reconcile accounts on a regular basis (Employee claims not enough time to reconcile accounts – red flag!)
- Unexplained variances (Labeling variances as “other” or “miscellaneous” – red flag!)
- Large number of “adjustments” (Such adjustments can be a mechanism designed to confuse others – red flag!)
- Unusual discrepancies between actual and budgeted results (A significant overrun in expenses that cannot be explained – red flag!)
- Disbursements to unknown or unapproved vendors or employees (Payments going to a vendor or a person



unknown to others – red flag!)

- Gaps in receipt or check numbers (Unaccounted for receipts or checks, could indicate cash pocketed or checks written – red flag!)
- Receipts not matching deposits (Receipts are higher than deposits – red flag!)
- Always reporting “cash short” (Cash does not get lost and certainly not on a recurring basis – red flag!)
- Significant changes in employee behavior patterns (Employee driving new expensive car, employee reluctant to take vacation – red flag!)

Being proactive is the best practice when it comes to dealing with embezzlement. While there is no guarantee that embezzlement won't occur, it will be much harder for an employee to embezzle if the following guidelines are implemented.

- Don't trust too much (It's a fact – people face financial difficulties.)

- Watch the behavior of others (If the behavior is unusual, check it out – it might be nothing but could be something)

- Separate duties (Have payroll prepared by human resources, entered by accounting and approved by management.)

- Have checks and balances in place (Don't let one person handle the deposits and reconcile bank accounts. Multiple checks should be in place for this.)

- Have policies and procedures (When staff members leave for good reasons or bad, lock them out of the system immediately.)

- Review financial statements (This is a concise way to look at finances that could lead to further investigation.)

- Have a third party audit the financial records (Trusted employees welcome practices that confirm their honesty.)

It's unfortunate that municipalities have to deal with the potential of embezzlement. By being aware of red flags and following up on them, municipalities can prevent embezzlement or at the very least, lessen its financial effects and the demoralization that comes with it. Having sound practices in place to prevent embezzlement altogether is an even better method of dealing with employee dishonesty. By paying attention to red flags and implementing anti-embezzlement measures, finances are protected, and honest employees don't have to go through the disappointment of having to know that their trust in a coworker was misplaced.

Welcome New Members

Property & Casualty Pool
Winthrop Utilities District

Workers Compensation Fund
Town of Clifton

We thank our dedicated members for their partnership.

Workers Compensation Renewal Reminder

It is renewal time again and we are here to help. The renewal applications for the **MMA Workers Compensation Fund** are due by October 15, 2018, and we want our Members to know that we are available to assist you. If you would like help with the completion of your application or just have questions, please contact RMS Underwriting at rmsunderwriting@memun.org or 1-(800) 590-5583.

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MMA Risk Management Services Delivers Dividends

All of us at MMA Risk Management Services (RMS) would like to recognize the extraordinary efforts and continued commitment of our membership. We are pleased to announce that the Property & Casualty Pool and Workers Compensation Fund have awarded dividends to those members who met the dividend criteria. Due to the efforts of our membership, sound management, responsible underwriting and favorable loss experience, this year the Workers Compensation Fund distributed almost **\$650,000** in dividends to participants and the Property & Casualty Pool paid dividends of nearly **\$600,000**, for total payments over \$1.2 million. Since 1997, the two programs have returned more than **\$21 million** in dividends to participating members.

For more information about any of the MMA Risk Management Services programs, including dividend distributions, online training programs, grants, scholarships and other available services, please visit our website at www.memun.org and click on the Risk Management Services link, or call 1-800-590-5583. ■



Members listed top to bottom: Freeport, West Gardiner, Whitefield, Falmouth, Wales, Old Town, Brunswick, Monroe, Jackson, Brooks, Brunswick Sewer District, Exeter, Orono, Winthrop, Eddington, Durham and Holden

FREQUENTLY ASKED QUESTIONS:

Question:

How to Prevent Sewer Liability?

Answer:

When a sewer backup occurs, homeowners often look to the municipality or sewer district for help with cleaning up the mess. It may be tempting for a municipal sewer department or a sewer district to pay small losses as a gesture of good-will, even when they know the loss is not the result of their negligence. However, it is never a good idea to pay losses for which you are not liable. Doing so only creates an expectation by the public you serve that all sewer backups they may suffer will be paid by your entity.

1. Develop regularly scheduled inspection and maintenance programs for your sewer system.
2. Performing proper maintenance can be annual inspections with a camera, periodic jetting or flushing, or visual inspections at the manhole cover. Identifying problem areas and cleaning more frequently along with keeping a written schedule or plan of these inspections and cleanings may prevent sewer backups and identify future problems.
3. Document all inspections. Record the location, amount of flow, any blockages or obstruction, cleanings, repairs, date and time.
4. In the event of a loss, document what you observed, the extent of damages, what you said, preserve evidence, take pictures, do not admit fault or make promises and report the claim to your insurer.

Please look for this new Frequently Asked Questions section of the Municipal Risk Manager each quarter. If you have a question you would like to ask please email Marcus Ballou at mballou@memun.org

Municipal heroes find courage when they need it most

Two employees in Lewiston and a police patrolman in Clinton receive awards for showing what totally unselfish public service is all about.

“Exercise caution in your... affairs; for the world is full of trickery. But let this not blind you to what virtue there is; many persons strive for high ideals; and everywhere life is full of heroism.”

From **Desiderata**,
by Max Ehrmann (1927)

By **Liz Mockler**

The young man wore a bulky jacket, his hood turned up, and a rope dangled from one hand as he walked purposefully into the woods off a dead end street near the Lewiston turnpike.

He must have downed a deer and was going to haul it out of the woods, two city water department technicians thought, as they watched him disappear into the green darkness. He left footprints in the soft snow that had fallen overnight and a thin line where the rope dragged along the ground.

It was 10 a.m. on Nov. 14 and the warm sun had started to melt the snow as the two workers, who had spied the man by chance, turned away, slid back into their utility truck and drove off to check more fire hydrants on their route for the day.

But there was no deer. No bounty to go fetch. No dead animal the young man planned to haul out with the tether drooping at his side.

He was going into the grove of trees determined to become one of the 22 war veterans who kill themselves every single day in America. But for the grace of God that filled the two city workers with feelings of deep dread and unease as they continued on their route, this 20-something man

Liz Mockler is a freelance writer from Randolph and regular contributor to *Maine Town & City*, lizmockler@hotmail.com.



Ryan O'Sullivan (left) and Thomas Freitas (right) receiving their awards from the American Red Cross.
Submitted photo.

EDITOR'S NOTE

As Maine first responders prepare for winter, arguably the most dangerous season of the year for fires, accidents and other calamities, we profile two of the most dramatic and inspiring rescues of the past year.

likely would have tragically become another soldier who ended his life at his own hands rather than by an enemy on the battlefield.

“I’m a Christian and I just thought God was sending me (back) to talk to that man,” said Tom Freitas, who had worked for the Lewiston city’s water district for 18 years, but had never witnessed such a scene as the one that unfolded that morning. “My heart was telling me that God was sending me (back) there.”

But the divine intervention took its

time – something Freitas would come to believe was also fateful.

“If we had followed him in right away, he could have told us some story to get us to leave and then proceed with his plan. And he had a very definite plan. If we had gone in two minutes later than we did, I really believe it would have been too late.”

Circling around

Freitas was working with Ryan O’Sullivan that morning. The two men agreed the lonely veteran was younger than O’Sullivan, who was 28 years old at the time.

The pair checked a couple more hydrants and talked about their shared disquiet over the man they saw entering the woods with a rope. They drove on to a nearby “pit” where water district workers can park to eat lunch, check equipment or review their schedules and routes.

City water technicians have established routes to ensure they check all 700 hydrants every week to ensure they are free-flowing. In winter, they check to be sure the water has not frozen above a certain line and make it useless to firefighters.

“We had just checked those hydrants (in the area) a few days earlier. We didn’t need to check them,” Freitas said. “But for some reason, we decided to check them again.”

Both Freitas and O’Sullivan immediately talked to some of their peers at the pit and they all agreed that “something just didn’t seem right,” O’Sullivan recalled.

“Something was telling me to go back and Tommy said he felt the same way,” O’Sullivan said. “When we first drove off, we were both thinking the same thing, we just didn’t tell each other.”

The men returned to their truck

and circled around to where they saw the man disappear into the woods. When they arrived, the first thing they did was check his car for archery equipment. If he had killed a deer, he could have used only a bow and arrow because of the municipal ordinance banning firearm use within city limits.

The car was empty, Freitas said. "We were alarmed when we didn't see any archery equipment." They didn't wait another second before returning to where the man had trudged over the snow.

Both men feared the worst. They held out hope the man was indeed a hunter going after his trophy, but for the first time they thought they might find a far darker scene.

"I told Ryan we were going to go into the woods and try to find him," Freitas said. "We still thought we would find him (alive). That's what we hoped."

The pair followed the man's now-faint footsteps for the 1,500-foot walk from the road to the tree line. His

footprints disappeared under the cover of the softwood trees, which had kept the snow from falling to the ground.

They entered the grove and looked for the man for several minutes. Then Freitas glanced up and saw him standing on a limb of a pine tree with a noose around his neck.

"I said 'Oh s___, he's up in the tree,'" Freitas recalled. Both men were about 20 feet from the tree when Freitas advised O'Sullivan to walk slowly away from the area so he would not spook or further upset the man. He told him to call police for help.

Demands, not requests

Freitas, 53, said the man looked "very emotional" and did not want to make eye contact. He stood precariously on a slick limb.

Freitas did not ask the man to come down from the tree. In a tone of voice a father might use when talking to a stubborn child, he demanded that he did. "Hey young fella, you get down from that tree right now and come talk to me. Someone told me to come talk to you."

Freitas, a devote Baptist, said he didn't tell the distraught man that the "someone" he spoke of, to him, was God. "I just knew God sent me back to find that man," Freitas said.

The veteran did not move. The hood still covered part of his dark hair, but Freitas saw the noose around his neck. He saw the young veteran look away and then look down at him. "I just kept saying 'Someone told me to come and talk to you. You get out of that tree right now.'"

Had the man jumped or even just slipped off the limb, both Freitas and O'Sullivan said they would have scaled the tree before the rope could have finished its work.

After about five minutes of hearing Freitas' continued demands, the man pulled the rope over his head and climbed down to the ground. He left the rope where it hung on the pine.

Although both city men kept their composure during the crisis, they would later admit that once the man was safe, they experienced myriad emotions.

"Tommy did such a great job. I was so impressed," O'Sullivan said.

"We were both happy," O'Sullivan said. "But I was scared, happy and anx-

ious all at the same time."

The man asked Freitas to light a cigar that he had pulled from his pocket. He sat on the truck's tailgate smoking until police arrived and moved him into a cruiser. The officers had arrived quickly. At no time did Freitas talk to the man about anything but the weather and other chit-chat.

"I didn't want to alarm him. I didn't want him to think I was judging him," Freitas said.

A few feet away from the truck, O'Sullivan considered the near-suicide in a different light.

"I lost a buddy (to suicide), only he did it in his bedroom. I said back then that I wish I was there to save him," said O'Sullivan, who grew up in the Town of Holbrook, south of Boston.

Officer takes over

Freitas went back to the tree with an officer, but told him he couldn't help him take down the rope. By the way the rope was rigged from one tree to another, in what Freitas described as a "professional job," it was obvious the man was well trained at tying things down – including, apparently, a life.

Freitas was astonished when he got an up-close look at the complex rope pattern, guessing rightly that the man had served in the military.

"I told the officer he would have to take down the rope on his own. Officers are trained for things like that. I said I was a water department technician,' I said 'This is your job. That's your rope (to take down).'"

Freitas admitted that when he returned to the woods, he was anxious to get away from the pine tree. "I didn't want to look at it," he said.

O'Sullivan, who lives in Auburn, works for a Portland construction firm now. For Freitas, one more rescue was still ahead.

Just a month before his received his bravery awards in March, Freitas happened to look on Facebook and saw a photo of his parents having lunch at a Chinese restaurant. He called his mother to rib her about not inviting him. He heard a beeping sound in the background and asked his mother if his father was taking something apart to get at the batteries – something he did often.

"Then I realized it was a smoke alarm," Freitas said. He ran to his

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truck and drove the three miles to his parents' home and rescued them.

The house was severely damaged and rendered uninhabitable. Freitas' father died of cancer and dementia in May; Freitas' mother had moved in with her son's family in Auburn.

Both men were among other "Real Heroes" honored last March by the American Red Cross at the Ramada Inn in Lewis-

ton, as well as receiving the "Lifesaving Award" from the Maine Chiefs of Police Association.

City Public Works Director David Jones said the rescued veteran had been suffering from post-traumatic stress and depression, and was having financial trouble.

"I think he was just overwhelmed," said Jones, adding he was proud and amazed at Freitas' and O'Sullivan's courage and composure in saving the man's life. Freitas and O'Sullivan, after a lunch break, had returned to their normal hydrant route, Jones said.

"The police helped hook him up with someone who could help him," Jones said of the veteran. "We hear he's doing good."

Push comes to shove

The air was slightly muggy under clear skies last June 14 when Clinton patrolman Phillip DiLuca's shift ended and he started home to Unity just two minutes after midnight.

Once on the road, he began his daily ritual – a self-debriefing of sorts – by thinking back on the day and its events and wondering if he could have done something different or better. He also thought with excitement about what might await him when he returned for his next shift after getting some shuteye.

A 911 scanner on the car dash crackled every few seconds. The only other sound was the trilling of his pick-up tires on the pavement.

He had no idea what was about to happen next.

"I heard a dispatcher report a mo-



Officer Phil DiLuca

bile home on fire in Clinton," DiLuca said. He had just crossed the town line into Benton and was only a few miles from his home in Unity.

"It was on the same road (Gold Street) as another mobile home that had gone up like a candle" and was totally destroyed just a week earlier, DiLuca said.

DiLuca, who had extensive training fighting wildfires, was certain he could make it back to the burning

trailer before other first responders. His mind raced as he immediately made a turn and retraced his route to Clinton.

"When I got into town, the whole town was full of smoke," said DiLuca, who was 24 at the time. "It raised the hair on the back of my neck. I knew how fast mobile homes go up. I felt a great sense of urgency because people are sleeping at that time."

He drove to the mobile home to find a group of neighbors banging on the single-wide trailer windows, wondering if Shawn Skehan was in the home.

Only one neighbor, a woman who lived next door, was certain that Skehan was not only in the home, but likely asleep. She and Skehan were friends and she knew his work schedule and convinced DiLuca the man was home and in peril.

The neighbors had tried opening the front door, but it was locked and too hot to push in. DiLuca looked in a window, but the smoke was so black he couldn't see inside.

He raced to the back door, which also was locked. "I held my hand against a window and my skin didn't melt and my uniform was not on fire, so I knew I had a little time," he said.

Down but not out

After he quickly kicked in the back door with his work boots, a blast of heat, smoke, hot chemicals and flying ash hit him so hard he was propelled several feet from the door and fell to his knees.

Flames were "traveling along the roof," he said, referring to the trailer

as a "hot box" when he busted through the door and released the torrent of heat and smoke.

In the 30 seconds it took him to catch his breath and regain his wits before heading into the fast-burning trailer, he thought of his parents, friends and longtime girlfriend, Kendra Raven, "knowing they might not see me (alive) again."

"I knew this is what I had to do," DiLuca recalled. "I knew if there was a man in that trailer and I didn't try to save him, it would be on me. I thought I had enough time to go in and get him."

DiLuca grew up on the North Shore of Massachusetts. During his summer breaks from Unity College in Maine he worked for his home state's conservation department as a state ranger. He also studied to become certified as a wildfire firefighter. He worked mostly at the Blue Hill Reservation in Milton.

Even with no experience fighting structure fires, nor any help or equipment, "I knew I had no choice. I had to go in."

His knowledge of fire science was invaluable as he first ran through the mobile home yelling Skehan's name. He located the kitchen sink in case he caught on fire or needed to douse an area well enough to get out.

Gulping for oxygen

DiLuca soon was crawling his way through the home, checking every room he passed. At times, he needed to move on his belly to get gulps of oxygen just above the floor while avoiding contact with the flames.

He had learned the vital skill of "tactical breathing," he said. The technique required him to breath in oxygen for four seconds, hold his breath for four seconds and then exhale for four seconds.

DiLuca said the technique helps firefighters reduce their anxiety and "bring us back to reality and focus on the task at hand."

The young officer admitted he was scared at times that he would die. He knew his blood pressure was high and he was "jacked up" with adrenaline. He thinks that without the feeling of being "high," he might not have had the strength to finish the rescue effort.

DiLuca finally came to a door, the last one in the trailer at the front end,

and saw faint light at the bottom. It was Skehan's bedroom and the TV was on, the sound muted. Because Skehan was in bed, close to the floor with the door closed, he had not been exposed to the heat and smoke and didn't hear a thing until DiLuca shook him awake.

When DiLuca pushed the door open, Skehan was covered with bedding and sleeping "snug as a bug."

'There's No Time'

By then, DiLuca knew they had only a few seconds left to get back to the open doorway at the other end of the mobile home and get out. The walls were fully engulfed – even the ceilings and the wood around the door jamb.

Skehan was disoriented as he reached for some clothes, but that's as far as he got. DiLuca, who stood 5-feet, 8 inches tall, yelled to the man who towered over him at 6 feet, 11 inches: "There's no time! We have to go now."

"I just got behind him and pushed him all the way through the trailer to the (back) door and out. I put his safety before mine, but that's what first responders do. We don't think of saving ourselves. We think about everyone else. I'm not sure the public really appreciates that reality."

DiLuca vomited once he exited the home, expelling the smoke and chemicals and heat, while Skehan was "in fantastic condition." Firefighters and EMTs had arrived shortly before the



Phil DiLuca (second from left) receives his award from the American Red Cross.
Submitted photo.

two men scrambled out the back door.

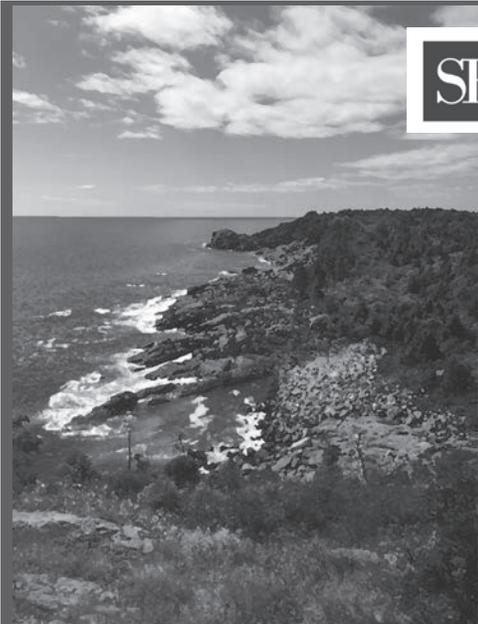
The ambulance crew gave DiLuca oxygen and water and helped him calm down – to ease the adrenaline rush that gave him the energy he needed to finally find Skehan and escape.

The mobile home burned to the ground.

For his extraordinary courage and effort, DiLuca earned both a "Lifesaving Award" from the Maine Chiefs of Police Association in February and a "Real Hero Award" from the American Red Cross.

DiLuca graduated from the Maine Criminal Justice Academy in May. He said the fire rescue was "the biggest action of my life," but he was eager to continue serving as a Clinton patrolman – only now as a certified officer.

Maine first responders often perform courageous deeds and dangerous work, but many incidents are never reported in a newspaper. Select boards and councilors, however, seldom miss a chance to recognize municipal employees who have gone "above and beyond" and publicly praise them for their heroism. ■



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How the Acton community tackled its marijuana challenge

Last year, the select board created a special committee to study what commercial marijuana would mean for the York County town of 2,400. Boy, did the group do its homework.

By Jerry Nulton and Richard Nass

In September 2017, the Acton Board of Selectmen established a Commercial Marijuana Committee to research the implications of commercial marijuana and recommend how the town might proceed. The committee included three proponents of legalization, three opponents and one undecided.

Towns around us had already enacted moratoriums and full prohibitions. Situated on the New Hampshire border, we felt pressure to complete our research and get our recommendations to the select board to ensure that Acton could choose its own course.

We began our research online, but all agreed that we needed firsthand experience. We reached out to a variety of state and municipal bodies in Colorado and Washington State, including:

- Colorado City & County Management Association
- Colorado Municipal League
- Colorado Association of Regional Organizations
- Colorado's Marijuana Enforcement Division
- Municipal Research and Services Center (MRSC) of Washington
- Washington City & County Management Association
- Washington Municipal Clerks Association
- Association of Washington Cities American Planning Association

In addition to discussing their views on the impact of recreational marijuana, we were keen to contact border towns of similar size to Acton. Over the following months, we held

over two dozen conference calls between the committee and towns to hear about their experiences with commercial retail marijuana operations, their approaches to regulation and to get their advice.

Early insights

Several themes emerged. First, the difference in the governance structures between Colorado, Washington and Maine made finding similar towns difficult. Acton is a town of approximately 2,400 people in 42 square miles. In Colorado and Washington, a town with a similar population is typically in five square miles or less and has its own police force. The counties control the surrounding areas, so we expanded our discussions to include county leaders.

Second, the approach to legalizing, regulating and taxing marijuana varied widely between the three states. In Colorado, the state permits towns to charge up to 25 percent tax on marijuana sales in addition to the state tax. This influenced the behavior of those willing to permit retail locations. However, there was no income from cultivation, manufacturing and testing.

In Washington, the state reserved the right to tax marijuana. Of the roughly \$325 million in taxes collected in 2017, the state returned only \$6 million in total to all of the towns and counties with commercial operations. Thus, there was no fiscal incentive at the local level. The approach to local control varied significantly. Colorado required local consent, while Washing-



ton state considered local wishes, but those preferences were not deciding factors.

Third, with marijuana legislation you can't deal with it once and move on. Virtually everyone decried the ever-changing legislative landscape, driven in large part by industry lobbyists. In Washington, towns felt bullied into permitting operations. In both states, towns indicated that regulating signage was frequently a problem. And everyone told us that operators consistently push the regulatory envelope, looking to see if anyone will push back.

Fourth, in speaking with counties, towns and law enforcement, it was clear that enforcement at all levels is problematic. Counties and towns expected more state enforcement, but the further they were from their state capitals, the less they saw from regulators, simply because there aren't enough resources compared to the number of commercial operations.

And when it comes to illegal operations, law enforcement had neither the financial resources nor the backing of prosecutors to do much. In

Acton Commercial Marijuana Committee members Jerry Nulton and Richard Nass can be reached at: nultonj@metrocast.net and richardnass@metrocast.net.

one relatively small Colorado county, as of January 2018, law enforcement was aware of 600 unlicensed grow operations of various sizes. However, it simply didn't have the resources to address them because it takes 10 to 15 officers two to three days, and over \$20,000, to close a typical unlicensed growing operation. And that doesn't take into account the costs to manage the evidence, assuming prosecutors want to go to court.

Finally, when it came to zoning, we found a wide range of views.

Some preferred to ban all operations as the simplest approach. Others took a highly organized approach to zoning and approval, but still had problems with operations that were out of compliance. Most towns didn't have the resources to fight for compliance in court so they live with it.

Ultimately, when you get beyond retail sales, the big issue is odor control. When looking for recommended setbacks for commercial grows, the head of the Spokane County Clean Air Agency told us there is no reasonable setback that works. She indicated that when the flower blooms, the odor can drift for miles, making enforcement of odor ordinances incredibly difficult, if not impossible. The county's answer was to ban outdoor grows entirely and require the use of carbon filtered indoor grows to minimize the problem. But that didn't address the grandfathered operations. Spokane County, along with others in Washington and Colorado, have begun to issue property tax abatements to affected homeowners.

Committee recommendations

After three months, our committee in Acton agreed that we'd heard enough, so we began to seek common ground. Given the divided opinions, we didn't expect unanimity, and yet we agreed on the content of the report and two key recommendations:

- The town should vote to prohibit commercial outdoor cultivation.
- If the town voted to permit commercial cultivation, the town should limit it to indoor only, in purpose built buildings with proper carbon-filtered ventilation.

Beyond these recommendations, agreement was elusive. As such, the committee agreed to split and provide majority and minority recommenda-

tions. Recommendations ranged from suggesting the town vote to prohibit all commercial operations to taking an aggressive approach to zoning while permitting commercial operations.

Our final report consisted of a 20-page summary of our findings and recommendations and four appendices. Appendix A contains the summaries of each of our interviews and totals 46 pages. Appendix B, 125 pages, contains the web research that the committee unanimously agreed to include. Appendix C, 294 pages, contains relevant zoning and regulations used by towns, counties and states that the committee felt we could leverage for zoning and ordinances if necessary. Finally, Appendix D contains the executive summary of the report from the Rocky Mountain High Intensity Drug Trafficking Area (RMHIDTA) comparing the impact of marijuana legalization in the State of Colorado. Our combined report totals 510 pages.

After presenting the report in late January 2018 and discussing the majority and minority recommendations, the Board of Selectmen decided to schedule a vote to ban all commercial operations. The committee wrote a draft ordinance and the town scheduled a vote coinciding with our Town Meeting.

Reacting to the revised law

In the meantime, the Maine Legislature reconvened and took a new approach. There are three important considerations to it:

- First, with respect to commercial operations, it strengthened local control, making it necessary for a town to pass an ordinance permitting commercial operations.
- Second, with respect to Adult Use, it decreased the number of plants an adult could grow from six mature plants to three mature plants, while removing the limit of 12 plants per parcel.
- A third change to adult use was more significant. The new law permits adults to grow their plants either (a) where domiciled, (b) on land they own, or (c) on land owned by someone else who has given them permission in writing.

In the opinion of the Board of Selectmen, the first change made it unnecessary to ask the town to vote on a commercial ban. In fact, the town's at-

torney suggested that all of the towns that had banned commercial operations likely referred to the original legislation, thus their bans don't apply to the new legislation.

The second change, which eliminated the limit on the number of plants grown on a parcel for personal use, when combined with the third change, opens the possibility of "community grows," which we believe every town in Maine should consider.

A warning realized

During our interviews, multiple towns in Colorado and Washington warned us that lobbyists there were pushing to permit community grows. This is where individuals band together to grow and tend their plants. The changes referenced above could provide an opening for community grows in Maine.

As we reviewed the law, it was clear that although the Legislature opened this loophole, it also outlined an approach to permit towns to close it. Several committee members suggested that the town needed to close this loophole, which can be regulated through local ordinances.

Here's why it could be a problem: Assume that I live next to the local elementary school. Under the law, I can't start a commercial operation on my property due to setback rules. However, under this community grow concept, I could solicit letters from those who would want to grow their plants on my property. And nothing in the current law prohibits me from charging for the services I provide to those growing plants on my property.

Acton wrote an ordinance that only permits adults to grow marijuana for personal use on the parcel where they're domiciled. This eliminates their ability to grow on a parcel they own but don't live on and their ability to grow on a parcel owned by someone else. On July 17, 2018, in a special election, the Town of Acton voted to approve the ordinance on a vote of 169 to 79.

Final note: The latest change to the *medical* marijuana law makes it possible for licensees to expand from cultivation into retail, manufacturing and testing. Town leaders must be ready to respond to applications for something they were previously unable to control. ■

Cranberry Isles advisory panel helps ease workload of selectmen

Here's how one town uses a special Municipal Advisory Commission – elected at town meeting each year – to consider and investigate certain issues.

By Liz Mockler

Elected officials often need a little help from their friends. In the case of the Cranberry Isles, a 30-minute ferry ride from Mount Desert Island, a special advisory committee takes on just about any issue, does the research and makes recommendations to the select board.

Although many Maine cities and towns have established advisory committees for lots of reasons, the Cranberry Isles Municipal Advisory Commission (MAC) was created in 2003 and, 15 years later, is still going strong.

Also unlike other advisory boards, it does not specialize in one topic area. Members take on issues ranging from budget reviews to road and pier projects to bond questions. The panel also fields complaints and comments, checks them out and then reports findings to the select board.

Examples of advisory boards that focus on one issue include budget, police and economic development.

The Cranberry Isles' MAC was first created to help close the crucial deal to build a mainland parking lot in the Manset village of Southwest Harbor, which includes a parking lot with 128 seasonal parking spots and three buildings, which are leased or rented to various interests.

"The Cranberries" also rent 123 year-round parking spaces in the village of Northwest Harbor in the Town of Mount Desert. The two largest islands are served by a number of seasonal and year-round ferry services, another issue the town's MAC helps track for selectmen.

Annual parking fees range from \$290 in Manset to \$335 in Northeast



Fishermen unload their day's catch at the Cranberry Isles Fishermen's Co-op adjacent to the town dock on Little Cranberry Island, better known as Islesford. (Submitted photo)

Harbor.

Commission members also act as a conduit between the select board and residents, chewing over concerns or complaints and bringing them to selectmen if necessary. Although the Cranberries includes five islands, only two are inhabited year-round – Great Cranberry and Little Cranberry, also known as Islesford.

Lots of discussion

Despite its slim year-round population of 142 (as many as 400 during the summer) residents stay involved in all aspects of goings-on and don't hesitate to approach select board members or MAC members to confirm things they've heard.

Its annual town meetings, like the one held last month, are usually all-day affairs, with a noontime break for a potluck lunch.

"You can't walk down the road without two or three people stopping you to ask about something they've heard, or to offer their opinions on something," said Christine Sandberg, co-chair of the seven-member commission.

Larry Mead, manager of Old Orchard Beach and president of the Maine Town, City and County Management Association, said advisory committees are valuable to both elected and appointed officials. Mead, whose local government includes two advisory committees, said committees that work on various issues and then advise city or town officials are "no doubt very helpful."

"They bring a different perspective and the (input) of the community," Mead said. In Old Orchard Beach, advisory committees help officials deal with issues related to its ballpark, and

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parks and open spaces.

“They are knowledgeable about particular issues or become knowledgeable,” Mead said. “Certainly in the board sense of the word, they are very helpful.”

Five isles, many issues

The Cranberry Isles is made up of five islands, but Great Cranberry and Little Cranberry are home to nearly all year-round and summer residents. A few residents live on Sutton Island, while Bear and Bakers islands are uninhabited.

In addition to public concerns and questions, the MAC is often asked by the select board to investigate and make recommendations on specific projects. Most recently, the commission was asked to bring recommendations on what to do with one of the three buildings that comprise the town’s Manset parking property in Southwest Harbor. The building often lacks a paying tenant and there was discussion about whether to convert some of the space into an apartment.

That idea was a flop, as have past ideas to use the property in different

ways. Even when selectmen and MAC members agree on a proposal, town meeting voters reject it.

Manset is a village in Southwest Harbor where Cranberry Isles residents bought and built a lot with 128 parking spaces that are available year-round, but must be reserved from May to October. The town rents another 123 spaces in the Town of Mount Desert that are used year-round and operates four docks, including one in Northeast Harbor, a village in Mount Desert.

“I think it’s been valuable” and helpful in the overall governance of the islands, Sandberg said of the advi-

sory commission.

Typically, an elected select board and/or a planning board member will attend the MAC’s monthly meetings. That helps with information sharing, continuity and joint problem-solving.

According to James Fortune, administrative assistant to the select board, MAC members do a lot of prep work for the annual town budget, among many other endeavors.

He said the two group most often agree, but not always. At times, select board members will ask them to revisit an issue and bring them new or additional information.

At other times, when both groups



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struggle with an issue, they will agree to put it on the town meeting warrant and let voters decide.

One recent example was when the select board and MAC members could not agree on what to do with one of the buildings in Manset. Some wanted to convert some of the space to an apartment, while others favored a continued effort to find a new lease and others wanted to sell the building.

They sent the question to voters, who strongly favored keeping the building as a town asset.

Getting involved

The MAC is strictly advisory and has no official authority on town matters. The seven members are elected from the town meeting floor rather than being appointed by the select board. So while MAC members don't have any official power, they do have the backing of voters.

"(Select board members) do find it to be a valuable committee," Fortune said. "MAC does a lot of research and

helps the selectmen on any number of issues."

Fortune said the Cranberries benefit from the many residents who want to be involved in local issues "and are interested in what is going on in their community."

"It is a very useful and valuable committee to town," said Fortune, who attends all MAC meetings as the selectmen's assistant.

Malcolm Fernald, who did not seek re-election in March, served on the MAC not long after it was created.

"Overall, I think it's smart to send big issues" to the commission, Fernald said, especially the parking and transportation matters that are complicated and could consume far more time than selectmen already work on behalf of the town.

According to its charter, the MAC

is comprised of property owners or registered voters of the town, which allows seasonal residents to participate. The MAC also is charged with finding outside resources or town residents with specific expertise to assist selectmen on special projects.

The MAC also must report to the select board each month on their efforts and the status of particular projects. An annual report is required to be folded into the town's annual town report.

Interim vacancies are filled by the select board, pending voters' nominations and elections at the next annual town meeting.

The Cranberry Isles also has other special committees, but they all have specific areas of interest. They include health, broadband and harbor committees. ■

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PEOPLE

Richard Davis, Laurie Smith and Kendra Amaral were honored in August at the Maine Town, City and County Management Association's Annual Institute at the Sunday River Resort and Conference Center in Newry.



Richard Davis

Davis, who serves as manager in the Town of Farmington, won MTCMA's Linc Stackpole Award, which is the organization's most prestigious annual recognition. Davis, who was nominated by several municipal manager colleagues and Farmington Selectman Stephan Bunker. Davis was cited for his humble yet strong managerial style, for helping new municipal managers settle into their roles and for civic contributions in the Farmington community and statewide.

"Quiet, unassuming, reserved, a gentleman, yet confident and caring," is how Bunker described Davis' approach to his job.

"At each year's evaluation and consideration of his continuance with (our town)," Bunker continued, "he asks nothing for himself other than to receive the support of the board and in his efforts to guide and improve the town."

Davis and his municipal team have dealt with major erosion threats, a dam removal, downtown improvements and much more, said those who nominated him.



Laurie Smith

She started as manager in Kennebunkport in 2015.

One issue facing the coastal town that Smith now serves is affordable housing. In nominating Smith for MTCMA's annual Leadership Award, colleagues said she is "a fierce proponent of providing afford-

able housing. She sees the unmet need of homes that young families and town employees can afford."

Smith was also praised for her ability to work with tourists and residents alike, and her interest in working with school students and interns.



Kendra Amaral

Amaral, manager in the Town of Kittery, was nominated for MTCMA's Rising Star Award by council Chair Kenneth Lemont and his board colleagues.

On the job for just 18 months, Amaral was recognized for – among many other things – strengthening Kittery's capital improvement program, conducting a parking and transportation study and implementing a five-year plan for the community's comprehensive plan.

"Kendra's financial acumen and diligence are giving the town benchmark improvements at every level in budgeting, expense control and fund management," wrote Lemont.



Thomas Kennie

Buxton Public Works Director **Thomas Kennie** died of cancer Aug. 23 at the age of 48. Kennie joined the department in 2001 and was named director in 2012. Kennie was involved in various groups and "had a true love for Buxton and the residents," said **Krystal Dyer**, assistant to Select Board. He is survived by his wife and daughter.

Veteran police chiefs in two of Maine's largest cities have retired and accepted jobs as assistant city managers. In Auburn, Chief **Phillip Crowell Jr.**, who joined the police department in 1993, was named chief in 2006. In announcing his retirement, Crowell was praised by city officials for his leadership both for the city and the state. An Auburn native, Crowell was named 2017 Police Chief of the Year in February. He helped the Maine Chiefs of Police Association develop its

first accreditation program for Maine departments. He also was pivotal in the creation of the state's first youth court, the Auburn Citizens Police Academy, and the first Somali Citizens Police Academy. **Jason Moen**, an Auburn deputy chief for 12 years, was named interim chief.

Meanwhile in Portland, former Police Chief **Michael Sauschuck** started his new duties as one of two deputy city managers. He retired as police chief. Sauschuck joined the department in 1997 and was named chief in 2012 after a stint as interim chief. Sauschuck served in the U.S. Marine Corps before joining the department. Sauschuck was named 2016 Police Chief of the Year. **Vern Malloch** will serve as interim chief, a job he held in 2015 while Sauschuck served as interim city manager until the city council hired **Jon Jennings**. Sauschuck will replace **Anita LaChance**, who retired this summer after 38 years with the city. She was named assistant city manager in 2015 by new manager Jennings.

Searsport Police Chief **Richard LaHaye Jr.** was elected president of the Maine Chiefs of Police Association for the 2018-2019 year. In all, LaHaye has worked in law enforcement for 42 years, the past 10 years as Searsport chief. He also has served as a marine patrol officer and adjunct instructor of marine law at Unity College. LaHaye works as a school resource officer in addition to police chief. A year ago, he had only five reserve officers, after his three full-time officers left for greener grass. Officer **Dan Owens** agreed to return as a full-time officer this month. He had left in January to pursue a position in the federal government.



Suzie Paradis

Suzie Paradis, economic and community development director for the Town of Madawaska, has been named Fort Kent town manager. She was scheduled to begin her new job this month. She was selected from a pool of 26 candidates and will replace Town Manager **Donald Guimond**, who retired in March after nearly 25 years with the town. ■

BANGOR

The U.S. Transportation Department has awarded the city \$2.9 million to replace public transportation buses, while \$2.2 million will be spent replacing buses in rural areas of Maine.

DAMARISCOTTA

In a stroke of good fortune, the town has received an anonymous \$1 million pledge to finance waterfront improvements. Selectpersons plan to use \$50,000 to finish paying for new rest rooms. The remaining \$950,000 will be used to help finance the larger waterfront projects, such as reconstructing a parking lot, replacing an old drainage system, upgrading pedestrian access and sewer system improvements. The entire project cost is \$1.8 million. The town has received \$385,000 in other donations to help finance the new restrooms, including a \$50,000 contribution. Town officials still need to seek federal or state help to reach the entire amount. A public forum on the project and funding will be scheduled within the next two months.

FARMINGDALE

Citing the increased cost of building materials, the select board announced in September that the lowest bid to construct a new fire station was \$543,000 higher than the \$1 million approved last year by voters. Four bids were received for a wood-built station. One bidder offered to build a metal-framed station for \$1.54 million. Town officials said no decision has been made on whether they want a wood or metal building. One board member liked the steel-frame bid, which nearly matched the lowest bidder on a wood-framed station.

JAY

Voters last month authorized selectpersons to borrow up to \$3.9 million to build a force-main system that could move sewage from Jay to Livermore Falls for treatment. Town leaders expect the plan will allow the town to eliminate the need for the North Jay Wastewater Treatment Plant. Users pay the majority of the costs of the existing sewer system and share the cost of operation and upkeep of the Livermore Falls plant since some Jay residents are served by their neighboring town's plant.

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2018 Convention Presentations. It's not as good as being there of course, but the Maine Municipal Association has posted many of the Power Point and written handouts that speakers used at our Annual Convention. Look for the convention logo and click on "Presentations."

Marijuana Resource Area. MMA's Legal Services and State & Federal Relations departments add valuable updates and guidance to this portion of our website. The "marijuana area" is easily visible at the bottom right of our home page.

Candidate Interviews. Election Day is almost here! MMA's Executive Committee interviewed all four candidates for Governor on June 27. Separate, hour-long videos are available for members and the public to watch.

MILLINOCKET

Our Katahdin, a nonprofit community development agency, has won a \$5.3 million federal grant to finance infrastructure upgrades at the former Great Northern Paper Mill. The group intends to use the money to create an industrial park to accommodate a wood-products manufacturer, and a high-tech data processing firm. The park will need sewer, water, road and electrical infrastructure. Our Katahdin estimates the park's first two companies will create 115 jobs and generate \$205 million in private investment. One hurdle the nonprofit faces before it can receive the money is resolving a \$1.4 million lien on the property.

MINOT

Some town homeowners have chosen their own house numbers, a nightmare for first responders and others. Selectpersons were urged to create an Addressing Ordinance. On the bright side, 90 percent of property owners have correct house numbers. But for the remaining 10 percent, police, fire and ambulance workers may not be able to find the right house in an emergency, particularly at night. Any proposed ordinance must be reviewed by the planning board, followed by a public hearing.

PORTLAND

A Boston-based renewable energy developer has established a 24/7 operation with 12 technicians who monitor 425 solar projects and six wind farms stretching from New England to the Hawaiian Islands. Longroad Energy Partners is housed in a converted mill in the downtown. The projects technicians monitor

could be retail rooftop arrays or utility-grade power generators. In total, 1,236 megawatts of power are generated by Longroad clients – enough to power 1.8 million homes if they were all running at the same time. The technicians oversee the projects using a bank of monitors and computer screens mounted on a wall.

SACO

The city's planning board has given final approval for a \$10 million processing plant that would become the largest lobster operation in Maine. The Portland company, Ready Seafood Co., was acquired in mid-September by Canadian Premium Brands Holding Corp. It planned to break ground on the plant this month. Up to 50 jobs will be created to process as much as 100,000 pounds of lobster a day. The new plant also will include space for storage and research. Premium Brands' assets total \$310 million in U.S. dollars.

YORK

In what could quickly become a trend, Hannaford supermarkets in York and Kennebunk began early this month charging customers five cents for every paper bag they use. Both municipalities – and many more statewide -- have banned one-use plastic bags. One Hannaford official said customers are using reusable bags more to avoid the per-bag charge. Hannaford's new five-cent charge only covers the cost of each bag, store officials said. While plastic bags are trucked with one vehicle, the same number of paper bags require four trucks. The bans were passed because of residents' concern for the environment. ■

MUNICIPAL BULLETIN BOARD

OCT. 30

Elected Officials Workshop: Orono

Attorneys and staff from MMA's Legal Services and Communication & Educational Services departments will lead a workshop for Elected Officials on Oct. 30 at the Black Bear Inn and Conference Center in Orono. The evening workshop begins with registration at 4 p.m. and ends at 8:30 p.m., including a light dinner. Officials who attend will receive a certificate showing they have met the state's Freedom of Access training requirement.

The workshop is designed for newly elected officials, but veteran councilors and select board members will benefit from the refresher and legal updates as well. Topics include: open meeting and records; roles and responsibilities; effective communication; media relations; and, conflicts of interest, among others. Cost for the workshop is \$55 for MMA members and \$110 for non-members.

NOV. 1

Basic Municipal Budgeting: Orono

City Manager James Bennett of Biddeford and Town Manager John Eldridge of Brunswick will co-teach a workshop on basic budgeting on Nov. 1 at the Black Bear Inn and Conference Center in Orono.

The workshop is designed for municipal officials with primary budgeting responsibility, including preparation and management. Officials who are involved simply with the budgeting process will benefit as well. The workshop begins with registration at 8:30 a.m. and will conclude at 3:30 p.m. A light lunch is provided. Cost is \$75 for MMA members and \$150 for non-members.

SPECIAL SESSION!

NOV. 8

Advanced Supervisors' Boot Camp: Portland

This new, half-day workshop is designed to help managers who have a basic understanding of human resources and employment law, but want to take their knowledge to the proverbial "next level." It will address practical, everyday dilemmas that arise in most every workplace.

The instructor is Deb Whitworth, the owner and CEO of the HR Studio Group,

who has more than 30 years of human resources and leadership experience. Cost for the session, which begins with registration at 12:30 p.m. and concludes at 5 p.m., is \$60 for MMA members and \$120 for non-members. The workshop will be held at the Fireside Inn and Suites in Portland.

NOV. 14

Municipal Law for Tax Collectors, Treasurers: Augusta

Attorneys from Maine Municipal Association's Legal Services Department will present a basic-level workshop on legal issues for tax collectors at MMA's Christopher G. Lockwood Conference Center in Augusta. The workshop is sponsored by the Maine Municipal Tax Collectors' and Treasurers' Association.

The workshop will begin with registration at 8:30 a.m. and it will end at 4 p.m. Cost is \$55 for MMTCTA members and \$85 for non-members. Attendees are encouraged to download the MMA Tax Collectors & Treasurers manual and the Municipal Liens manual and bring them to the class.

NOV. 29

Planning Boards/BOA: Northport

MMA's Legal Services Department will host a session for local Planning Board and land use Boards of Appeal members from 4 p.m. to 8:30 p.m. on Nov. 29 at the Point Lookout Resort and Conference Center in Northport.

The workshop is designed as an introduction for new or less experienced members, but veterans may find an update useful as well. Among the topics to be covered: jurisdictional issues; public notice requirements; site visits; procedure for decisions; and, variances. The cost is \$55 for MMA members and \$110 for non-members.

DEC. 6

Elected Officials Workshop: Bethel

Attorneys and staff from MMA's Legal Services and Communication & Educational Services departments will lead a workshop for Elected Officials on Dec. 6 at the Bethel Inn Resort in Bethel. The evening workshop begins with registration at 4 p.m. and ends at 8:30 p.m., including a light dinner. Officials who attend will receive a certificate showing they have met the state's Freedom of Access training requirement.

The workshop is designed for newly elected officials, but veteran councilors and select board members will benefit from the refresher and legal updates as well. Topics include: open meeting and records; roles and responsibilities; effective communication; media relations; and, conflicts of interest, among others. Cost for the workshop is \$55 for MMA members and \$110 for non-members.

DEC. 11

Managing Freedom of Access Requests: Portland

Sometimes FOA requests come in slowly. Sometimes they come from serial requesters, and they keep coming for a while. Either way, Maine law requires that all FOA requests be handled properly, fairly and in a timely manner. That's what this workshop – which will be held at the Embassy Suites by Hilton hotel in Portland – will address.

The program will be led by MMA Legal Services Attorneys Richard Flewelling and Rebecca McMahan; Falmouth Town Manager Nathan Poore; and, Eric Conrad, MMA's Director of Communication & Educational Services. The afternoon workshop begins with registration at 1:30 p.m. The program itself runs from 2 p.m. to 4:30 p.m. Cost is \$35 for MMA members and \$70 for non-members. ■

**All of the upcoming workshops can
be found on the MMA website.**

Use the following link:

<http://www.memun.org/TrainingResources/WorkshopsTraining.aspx>

LEGAL NOTES

Free Winter Sand for Residents' Personal Use

Question: Is it legal for a municipality to make sand available free of charge to residents for personal use during the winter months?

Answer: Although there's no statute or case law directly on point, we think this practice is probably lawful. In any case, it is longstanding, widespread, and not likely to be discontinued in those municipalities that do so, at least not for legal reasons.

The simple fact of the matter is that for many years, many towns and cities have made limited amounts (typically a couple of buckets' worth) of sand available to local residents at no charge and on a per-storm basis for personal use in their home driveways and dooryards. Users must supply their own buckets and must come and get the sand themselves. Commercial use is strictly forbidden.

As innocuous as all this seems, occasionally we hear objections, usually on the ground that it constitutes an illegal use of public funds for private purposes. Although Maine law does indeed prohibit the use of public funds for private purposes (see Me. Const. art. IV, pt. 3, § 1), we think providing a small amount of free sand to residents for personal use following a winter storm is distinguishable from routine public maintenance or plowing of private roads, which is illegal (see *Opinion of the Justices*, 560 A.2d 552 (Me. 1989)). This modest gesture helps keep residents safe and their homes safely accessible to public safety and emergency services during hazardous weather conditions, which is arguably a valid public purpose.

That said, municipalities have no legal obligation to provide free winter sand to anyone, nor are commercial properties or contractors entitled to the same just because they pay taxes too. Participating municipalities can (and almost always do) limit this benefit to residents for personal use only.

While we're on the subject, note that the Maine Department of Environmental Protection (DEP) allows small outside "residents only" sand-salt piles provided (1) they're located on the same site as the sand-salt building, (2) controls such as cement blocks or Jersey barriers are

MUNICIPAL CALENDAR

BY NOVEMBER 1 — Any governmental subdivision holding tangible or intangible property presumed abandoned under 33 MRSA §1953 must make report to the Administrator of Abandoned Property of the State Treasury Department, pursuant to 33 MRSA §1958.

BY NOVEMBER 1 — Or 30 days after the date of commitment, whichever is later, the municipal assessors and assessors of primary assessing areas shall make return to the State Tax Assessor all information as to the assessment of property and collection of taxes. The forms of such return shall be supplied by the State Tax Assessor (36 MRSA §383)

NOTE: Failure to file this return in a timely manner could result in loss of tree growth reimbursement (36 MRSA §578).

PRIOR TO NOVEMBER 6 — Election Day. Registrars of voters shall accept registration prior to the November 6 election according to the time schedule of their population group (21-A §122[6]).

■ The Registrar shall publish his/her time and hourly schedules in a newspaper having general circulation in the municipality at least 7 days before it becomes effective. In municipalities of 2,500 or less population, this publication is discretionary rather than compulsory (21-A MRSA §125).

■ The hourly schedule for voter registration established by 21-A MRSA §122 may be changed by the municipal officer according to the needs of the municipality (21-A MRSA §122[8]).

NOVEMBER 12 — Veteran's Day Observed. A legal holiday (4 MRSA §1051).

ON OR BEFORE NOVEMBER 15 — Monthly/Quarterly expenditure statement and claim for General Assistance reimbursement to be sent to Department of Human Services, General Assistance Unit, 11 State House Station, Augusta, ME 04333 [22 MRSA §4311].

NOVEMBER 22 — Thanksgiving Day, a legal holiday (4 MRSA §1051; 20-A §4802)

used to minimize pile movement and prevent "sprawl," and (3) the pile contains no more than one truckload of material at a time. The DEP prefers that these piles also be kept on an impervious surface, if possible, and removed to the building at the end of the winter season. (By R.P.F.)

Municipal Raffles Now OK

For many years municipalities have been legally ineligible to conduct raffles for any purpose (see "Is a Municipal Raffle OK?," *Maine Townsman*, Legal Notes, June 2012). But not anymore.

In 2017-2018 the Maine Legislature amended the laws governing games of chance to permit any "person or organization" to conduct a raffle if the total value of the prize(s) offered does not exceed \$10,000 (see 17 M.R.S. § 1837-A). This language replaced an earlier narrower category of "eligible organizations"

that included various nonprofits and other entities but not municipalities.

It's not clear whether this substitution was intended specifically to include municipalities or whether it was meant simply to broaden the range of organizations that can conduct raffles. In any case, it seems clear that a municipality is an "organization" under any common definition of the term and that a municipality, as a corporation, is also a legal "person" as defined by statute (see 1 M.R.S. § 72(15); 30-A M.R.S. § 2002). The new law thus now includes municipalities as eligible sponsors of raffles with a total prize value of \$10,000 or less. (The State's Gambling Control Unit – the Department of Public Safety office that oversees gambling – has confirmed this for us.)

A person or organization is not required to register with the Gambling

LEGAL NOTES

Control Unit if the total prize value is \$2,500 or less. But for total prize values of \$2,501 to \$10,000, registration is required. The registration must state a verifiable charitable purpose for the raffle, and the prize cannot be in the form of cash or be exchangeable for cash.

Raffles with a total prize value of more than \$10,000 but not more than \$75,000 are also permitted but may be conducted only by "eligible organizations" not including municipalities.

For the record, only certain organizations not including municipalities remain eligible to conduct beano or bingo games (see 17 M.R.S. § 313-C(1)).

For questions or more information about raffles, contact the Gambling Control Unit staff at Department of Public Safety, Gambling Control Unit, State House Station 87, Augusta, ME 04333-0087 or (207) 626-3900. (By R.P.F.)

Taking Minutes in Executive Session

Question: Is our board legally required to take minutes during an executive session?

Answer: No. In fact, as a general rule we advise against taking minutes or making a record of any kind during an executive session – to help ensure that matters discussed in private remain confidential.

There may, however, be instances where minutes or even a recording of an executive session is highly advisable. For example, in an employee termination hearing, where "cause" is required and there must be sufficient evidence in the record to support it. Or in complex union contract negotiations, where the details of offers and counter-offers could easily get lost without a detailed record. But again, in general there is no compelling reason to take minutes during an executive session, and we generally advise against it. We also discourage board members from taking notes, for the same reason.

Rest assured, though, that if minutes, notes or a record of any kind is made during an executive session, it will be a confidential record not open to public inspection (see *Blethen Maine Newspapers, Inc. v. Portland School Committee*, 2008 ME 69). As such, any minutes, notes or record of an executive session should be safeguarded accordingly against ac-

cidental disclosure.

As a reminder, Maine's Freedom of Access Act (FOAA) does require a limited "record" of all public portions of public board meetings except for boards that are purely advisory (see "FOAA Now Requires Record of Meeting," *Maine Townsman*, Legal Notes, October 2011). At a minimum, this record must include (1) the time, date and place of the meeting, (2) the members of the board present and absent, and (3) all motions and votes taken, by individual member if by roll call. An audio, video or other electronic recording of the meeting is deemed by law to satisfy this requirement. Detailed minutes or a narrative of who said what is not required.

For a comprehensive review of applicable law and common practices regarding board meeting minutes, see "All About Minutes," *Maine Townsman*, Legal Notes, July 2017. (By R.P.F.)

Vehicle Excise Taxes & Military Veterans

We've written here before about vehicle excise tax exemptions and active duty military personnel (see "New Local Option Excise Tax Exemption for Active Duty Military Personnel," *Maine Townsman*, Legal Notes, February 2012, and "Vehicle Excise Taxes & Active Duty Military 2.0," *Maine Townsman*, Legal Notes, April 2017). What about military veterans? Are they eligible for a vehicle excise tax exemption too? The short answer is no, with two limited exceptions.

Title 36 M.R.S. § 1483(12) provides that automobiles owned by veterans who have been granted free registra-

tion pursuant to 29-A M.R.S. § 523(1) are exempt from the excise tax. Title 29-A M.R.S. § 523(1) entitles blind or amputee veterans to free vehicle registration if they have received an automobile from the U.S. Government or if they receive government compensation for a service-connected disability and have a specially designed motor vehicle. Thus, only blind or amputee veterans who meet these qualifications are exempt from the vehicle excise tax.

Since the Maine Constitution expressly reserves to the Legislature alone the power of taxation (see Art. IX, § 9), there is no municipal "home rule" authority to grant a tax exemption to anyone, including veterans, except as expressly authorized by State law.

For the details on motor vehicle excise taxes, see Maine Revenue Services' "Bulletin No. 13." For details on property tax exemptions for veterans, see "Bulletin No. 7." Both are available under "Publications" on Maine Revenue Services' website at www.maine.gov/revenue/. (By R.P.F.) ■

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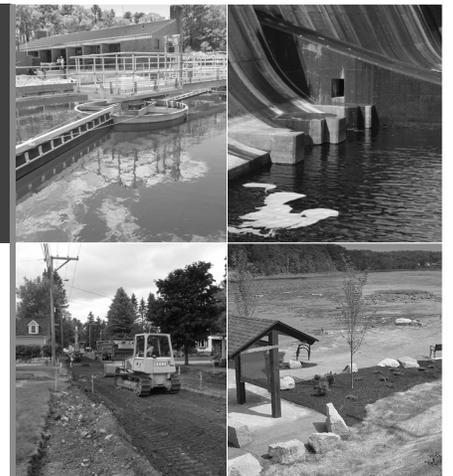
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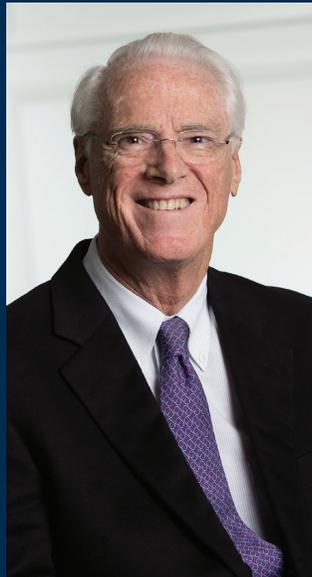
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