



Commonwealth of Massachusetts
**EXECUTIVE OFFICE OF HOUSING &
LIVABLE COMMUNITIES**

Maura T. Healey, Governor ◆ Kimberley Driscoll, Lieutenant Governor ◆ Edward M. Augustus Jr., Secretary

100 Cambridge Street, Suite 300

www.mass.gov

September 28, 2023

VIA OVERNIGHT DELIVERY

Town of Bourne Board of Health
24 Perry Avenue
Buzzards Bay, MA 02532

Re: Notice of Enforcement of Town of Bourne Board of Health Regulations
Eastern Inn, Permit No. HM-23-1 [HM-16]

Dear Board of Health:

We have received a copy of your September 20, 2023 notice to Sairam Shivan LLC, owner and licensee of Eastern Inn at 6 Bourne Bridge Approach (“Eastern Inn”). The notice alleges violations of the Town of Bourne’s Hotel, Motel, and Guest Cabin Regulations (the “Regulations”) in connection with use of part of Eastern Inn on a temporary basis to shelter homeless families. Specifically, the notice alleges that the owner of Eastern Inn is in violation of provisions of the Regulations providing that a guest may occupy a motel guest unit only for “three weeks in any year” (the “21-day requirement”) and that the hotel must maintain a guest register that includes certain information verified by a photo ID (the “register requirement”).

The notice solicits a communication from the Commonwealth of Massachusetts on the issues raised by the Board of Health. To that end, please be advised that the 21-day and register requirements cannot be enforced against Eastern Inn with respect to the state’s emergency shelter program for homeless families because any such enforcement would interfere with the statutory responsibility of the Executive Office of Housing and Livable Communities (“EOHLC”) to provide such shelter.

The Commonwealth’s Obligation to Provide Shelter and Response to the Current Humanitarian Crisis

Under General Laws Chapter 23B, Section 30, EOHLC is charged with administering a temporary emergency shelter program for homeless families. Since 2022, EOHLC has tracked an unprecedented increase in demand for family shelter.

Since January 2022, the number of families in the shelter system has more than doubled, growing from 2,937 families to 6,653 families as of September 27, 2023. Increasing demand for shelter resulting from an expensive and extremely tight housing market, coupled with rapidly rising numbers of migrant families in need of shelter arriving in Massachusetts, prompted Governor Maura Healey to issue a state of emergency declaration on August 8, 2023.

Under its temporary emergency shelter program, EOHLC does not use EOHLC-owned facilities to provide shelter directly to homeless families. To the extent feasible, EOHLC contracts with shelter providers that own or rent properties where homeless families are sheltered. When no such contracted shelter space is available, EOHLC—either directly or through another agency or a shelter provider—secures and pays for rooms in hotels and motels to use as emergency shelter. The legislature has explicitly directed the use of funds for the provision of emergency shelter through hotels when contracted shelter beds are unavailable. *See* Line item 7004-0101 of the state budget (Chapter 28 of the Acts of 2023) (“funds shall be expended for expenses incurred as a result of families being housed in hotels due to the unavailability of contracted shelter beds”). Eastern Inn is one of many hotels and motels across the Commonwealth which EOHLC is utilizing to meet its statutory obligations. While EOHLC strives to assist homeless families to exit shelter as quickly as possible, in practice most homeless families remain in shelter for a period longer than the 21-day limited period which Bourne seeks to enforce.

The Cited Portions of the Regulations Are Not Enforceable Against Hotels for Homeless Families Placed by EOHLC

The enforcement of the 21-day and registration requirements would prevent EOHLC from fulfilling its statutory mandate to administer a temporary emergency shelter program for homeless families. Municipalities may not take enforcement action against state agencies that would impede their statutory obligations.

Department of Public Health (“DPH”) guidance first issued in December 2022 explains that while G.L. c. 111, § 127A “allows municipalities to enact stricter requirements than the minimum standards under the Sanitary Code for homeless shelters, it is limited to regulations that ‘do not conflict with the laws of the commonwealth’” Department of Public Health, Guidance for Municipalities on Homeless Shelter Requirements (updated Sept. 12, 2023), <https://www.mass.gov/doc/guidance-for-municipalities-on-homeless-shelter-requirements/download>. DPH has explained that local regulations “which would have the effect of limiting the siting of homeless shelters” may conflict with the emergency shelter law. *Id.*

EOHLC is legislatively mandated to shelter homeless families in the Commonwealth and has been directed by the Legislature to utilize hotels where no other contracted shelter units are available. EOHLC’s arrangements with hotel owners to utilize hotels as emergency shelter are, during the present emergency, necessary to that function.

Where utilizing hotels has become an essential component of responding to the severe lack of availability in other contracted shelters, enforcement of the 21-day and registration requirements would prevent EOHLC from carrying out its obligations under the emergency shelter law. Notably, compliance with these requirements would fundamentally limit EOHLC’s use of hotels as shelters and frustrate the agency’s efforts to meet its statutory obligation in the current state of emergency.

More broadly, while G.L. c. 111, § 127A is sufficient to resolve the issue, note that “the doctrine of essential governmental functions prohibits municipalities from regulating entities or agencies created by the Legislature in a manner that interferes with their legislatively mandated purpose, absent statutory provisions to the contrary.” *Greater Lawrence Sanitary Dist. v. Town of North Andover*, 439 Mass. 16 (2003); *see also Teasdale v. Newell & Snowling Const. Co.*, 192 Mass. 440 (1906) (local board of health could not require state park commissioners to obtain license to maintain stable on park land). “The immunity [provided by the doctrine] extends beyond the ‘essential governmental function’ to cover

‘action reasonably related to that function’ so that the agency’s or entity’s public mission is not ‘prevented by a zoning statute applicable to one municipality or by a local zoning ordinance or by-law.’ Town of Bourne v. Plante, 429 Mass. 329, 332 (1999) (quoting Village on the Hill, Inc. v. Massachusetts Turnpike Auth., 348 Mass. 107, 118 (1964)) cert. denied, 380 U.S. 955 (1965). Although the doctrine “does not ... [confer] absolute immunity from all local regulations,” it does apply to municipal actions that in fact “interfere with [the agency’s] essential governmental purposes” and have more than “a negligible effect on its operations.” Greater Lawrence, 439 Mass. at 22.

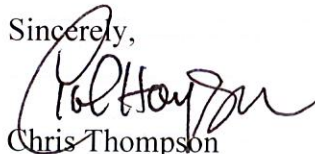
Moreover, no provision of state law requires the enforcement of a 21-day limitation in hotels being used for emergency shelter. Under the state sanitary code, 105 CMR 410, as revised on June 23, 2023, DPH explicitly exempts homeless shelter use from many provisions of the state code. DPH guidance explains that “Housing Code requirements for homeless shelters are limited to those most essential for human health and safety,” and that “there are no limits in the Housing Code on the duration of occupancy at homeless shelters.” Department of Public Health, Guidance for Municipalities on Homeless Shelter Requirements (updated Sept. 12, 2023).

Accordingly, the law is clear that the 21-day and registration requirements are not enforceable against the Eastern Inn in connection with its provision of emergency shelter to homeless families, and notices sent to enforce these requirements have no legal effect.

We also note compelling policy reasons for temporarily expanding an existing exemption under the Regulations to sheltered homeless families. The Regulations already exempt a certain population from the 21-day requirement—guests with “verifiable business travel.” Much like guests who are traveling for business, the intent is for the homeless families to remain at the hotel temporarily, where the duration of their stay is not certain. However, the homeless families in Eastern Inn, most of which include children, are a much more vulnerable population than business travelers and have a greater need for protection from displacement. Relocation of homeless families often involves coordination with their health and social service workers, medical providers, schools, immigration service providers, and other supportive services. Requiring homeless families to move after an arbitrary 21-day period would certainly disrupt those critical supportive services and counter any progress made in stabilizing their situations.

EOHLC and other state agencies are working in collaboration with municipal officials across the Commonwealth to respond to the current humanitarian crisis. We would be happy to engage with the Town to discuss any concerns the Town may have and potential ways in which the Commonwealth can support the Town in responding to the needs of homeless families.

Sincerely,



Chris Thompson

Undersecretary, Division of Housing Stabilization

Cc: Bourne Health Department, Select Board, Town Administrator, Town Counsel; Massachusetts Department of Public Health Office of Local and Regional Health; Sairam Shivan LLC