



CITY OF HAVERHILL CITY COUNCIL AGENDA

Tuesday, January 17, 2012 at 7:00 PM
City Council Chambers, Room 202

1. APPROVAL OF RECORDS OF THE PREVIOUS MEETING

2. ASSIGNMENT OF THE MINUTES REVIEW FOR THE NEXT MEETING

3. COMMUNICATIONS FROM THE MAYOR

NO SCHEDULE

4. UTILITY HEARING(S) AND RELATED ORDER(S)

NO SCHEDULE

5. APPOINTMENTS

5.1. Confirming Appointments:

NO SCHEDULE

5.2. Non-Confirming Appointments:

5.2.1. Merrimack Valley Regional Transit Authority Board
David S. Van Dam

Attachment

5.2.2. Mayor's Downtown and Waterfront Master Planning Committee
Candice Hoover

Attachment

6. PETITIONS

6.1. Petition from Elinor Curtin Cameron, Haverhill Whittier Club, requesting to hang a banner promoting their *Snowbound Weekend at Whittier's Birthplace February 11-12, 2012*; to hang on Goecke Parking Deck—Main Street & Merrimack Street between January 30th through February 13th, 2012

Attachment

7. COMMUNICATIONS AND REPORTS FROM CITY OFFICERS AND EMPLOYEES

7.1. Communications from Councilors

7.1.1. Communication from President Michitson requesting to discuss upcoming meeting with diverse stakeholders to draft marketing plan to attract startups and emerging companies to Haverhill, and to introduce Lisa Fitzpatrick of the Burgess Business Center to discuss progress on their business incubator

Attachment

7.1.2. Communication from Councillor Scatamacchia requesting to introduce Vincent Kissel to speak regarding safety issues at Kenozav and Newton rd

Attachment



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Tuesday, January 17, 2012 at 7:00 PM
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7.1.3. Communication from Councillor LePage requesting to introduce a representative from Team Haverhill to announce their Possible Dreams 2012 event

[Attachment](#)

7.1.4. Communication from Councillor McGonagle requesting removal of handicap parking space at 11 Mt Vernon st

[Attachment](#)

8. HEARING(S) AND RELATED ORDER(S)

NO SCHEDULE

9. UNFINISHED BUSINESS OF PRECEDING MEETINGS

9.1. Ordinance Relating to Public Construction Projects

9.1.1. Document 5; Ordinance re: Public Construction Projects; Delete Chapter 132 in its entirety **(filed Jan 4, 2012)**

[Attachment](#)

9.1.2. Document 5-B ; Related communication from Mayor Fiorentini, regarding local Residency Requirement for publicly funded projects

[Attachment](#)

10. MOTIONS, ORDERS AND RESOLUTIONS

10.1. Proposed Changes in Polling Locations for 2012 Elections

10.1.1. Order: Proposed Changes in Polling Locations for 2012 Elections

[Attachment](#)

10.1.2. Related communication from Michael R. LaBonte, Chair of the Board of Registrars

[Attachment](#)

10.2. Order: Transfer \$150,000 from the General Fund, *Interest on Short Term Debt* to the Expense Account, *Landfill Legal and Consulting Expense*

[Attachment](#)

11. COUNCIL COMMITTEE REPORTS

NO SCHEDULE

12. COMMITTEE STUDY LISTS

12.1. Documents referred to Committee Study

[Attachment](#)

13. ADJOURN



JAMES J. FIORENTINI
MAYOR

**CITY OF HAVERHILL
MASSACHUSETTS**

CITY HALL, ROOM 100
FOUR SUMMER STREET
HAVERHILL, MA 01830
PHONE 978-374-2300
FAX 978-373-7544
WWW.CI.HAVERHILL.MA.US

January 11, 2012

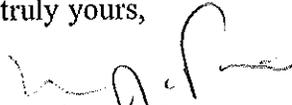
City Council President John Michitson
& Members of the City Council

RE: Appointment – MVRTA Board

Dear Council President & Members of the City Council:

I hereby appoint David S. Van Dam as the City of Haverhill's representative to the Merrimack Valley Regional Transit Authority Board.

Very truly yours,


James J. Fiorentini
Mayor

JJF/lk



JAMES J. FIORENTINI
MAYOR

**CITY OF HAVERHILL
MASSACHUSETTS**

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January 11, 2012

City Council President John Michitson
& Members of the City Council

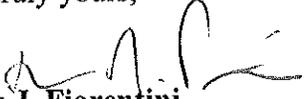
RE: Mayor's Downtown Master Committee

Dear Council President & Members of the City Council:

I hereby appoint Candice Hoover of 8 Lincolnshire Dr., to the Mayor's Downtown and Waterfront Master Planning Committee:

This is a non-confirming appointment which takes effect immediately.

Very truly yours,


James J. Fiorentini
Mayor

JJF/lk

Cc: William Pillsbury
Candice Hoover

Candice K. Hoover

8 Lincolnshire Drive, Bradford, MA 01835 • rhoover8@comcast.net • (978) 891-0944

SUMMARY

- Customer focused with strong communication, problem solving, decision making, analytical, and leadership skills.
- Highly effective in leading initiatives and facilitating change by building communication and consensus within a cross-functional team and providing people with the focus to achieve goals.
- Produced multi-million dollar revenue streams.
- Coached, mentored, and led a team of 12 A/R and Payables Specialists.
- Extensive knowledge of Medicare, Medicaid, and third party insurance benefits, regulations, and administration.

EDUCATION

NORTHEASTERN UNIVERSITY, Boston, MA
Completed 132 credits towards Bachelor of Science in English

SKILLS

Microsoft Office (Excel, Word, Outlook, PowerPoint), Genecare, Sales Vision, Net-Trac

AREAS OF EXPERTISE

- Client Relations
- Training and Development
- Account Management
- Strategic Planning
- Health Insurance Expert
- Billing and Accounts Receivable Management

Client Relations and Development

- Conducted presentations and developed strong alliances with clinical staff and management to continually build referral pipeline, piloted new benefit programs, increased service offerings and revenue.
- Successfully penetrated historically resistant accounts and increased regional sales by 50%; earned top five national ranking out of 60 Account Executives in 2003 and 2004.
- Oversaw implementation, administration, and growth of Medicare and Medicaid funded programs within 50 skilled nursing facilities.

Organizing and Coordinating

- Effectively led reorganization initiatives to turnaround unprofitable organizations by establishing collection procedures and introducing new technology to increase financial tracking and control capabilities.
- Built consultative relationships and facilitated change by building communication and consensus within cross-functional teams.
- Created and chaired users groups to identify system issues and directed IT solutions and priorities.

Billing and Administration

- Designed and executed aggressive billing and collections policy and procedures to optimize revenue collection.
- Supervised daily office operations including office administration, staffing, training, and motivating teams to be self-sufficient and regularly exceed goals.
- Analyzed and assessed statistical data and compiled weekly, monthly, and annual projection reports to improve organizational performance and lower costs.
- Reduced and maintained average days outstanding below 45 days.
- Directed billing and collection of \$22M in annual Medicare, Medicaid, and third party liability receivables.

EXPERIENCE

2010 To Present

Courtyard Nursing Care Center

Business Office Manager

- Direct and oversee billing and collection of Medicare, Medicaid, and third party liability receivables for 224 bed skilled nursing facility, including the hiring, training, mentoring, and supervision of 4 administrative support staff.
- Manage all A/R processes, including billing, cash reconciliation, processing of adjustments/refunds, review and correction of edits, and resolution of G/L variances.
- Office responsibilities include the hiring, training, mentoring, and supervision of 4 administrative support and billing/collections staff.

2009

Hospice of the North Shore

Provider Relations Coordinator

- Proactively identified, established, and nurtured positive, responsive working relationships with new and assigned accounts to generate more patient referrals and increase revenue for this non-profit hospice organization.

2002 To 2008

Evercare/United Healthcare

Account Executive

- Led initiatives to introduce, integrate, and grow Medicare and Medicaid funded programs administered by United Healthcare Insurance Company within 50 long term care facilities.
- Established strong alliances with clinical staff and management; conducted educational presentations for staff and families.
- Increased regional sales by 50%.

1996 To 2002

Lighthouse Nursing Care Center

Business Manager

- Directed reorganization to turn around this unprofitable skilled nursing facility by implementing new policy and procedures, data collection tools, and new technology to optimize clean claim submission and maximize revenue income.
- Supervised and trained staff of 8 administrative personnel.
- Reduced and maintained average days outstanding to less than 45 days.

1993 To 1996

Haverhill Manor Nursing Home

Accounts Receivable Manager

- Managed billing and collection of Medicare, Medicaid, and third party liability receivables for this 100 bed skilled nursing facility.
- Prepared all A/R and GL entries in addition to generating financial reports and documentation for Medicare cost report.

1986 To 1992

Insta-Care Pharmacy Services

Accounts Receivable Manager

- Oversaw billing and collection of \$22M in annual Medicare and Medicaid revenue.
- Hired, trained, and supervised 12 billing specialists.
- Increased profitability by streamlining and optimizing billing systems.
- Key contributor to successful implementation, customization, and testing of new operating system.

Candice Hoover's Personal References

Karen Shehade

Government Programs Director
Blue Cross Blue Shield of MA
617-246-5502

Patricia Egan

Business Development Executive
Partners Home Care
508-843-3075

Paul Mahoney

Executive Director
Rosewood Nursing and Rehab Center
978-535-8700

Julian Rich

Executive Director
Penacook Place Nursing and Rehab Center
978-374-0707

Honorable President and Members of the City Council:

Date: JANUARY 10, 2012

The undersigned respectfully asks permission to hang a **BANNER** over a sidewalk or public way.

Haverhill Whittier Club
Organization

Snowboard Weekend Whittier's Birthplace February 11 + 12
Wording on Banner

ELINOR CURTIS CAMERON Elinor Curtis Cameron
Applicant - Print Name Applicant - Signature

JANUARY 30, 2012 - FEBRUARY 17, 2012
Dates (maximum two-week period)

Location/s:

- Route 125 - at Salem Street and South Main Street
- Goecke Parking Deck - Main Street
- Goecke Parking Deck - Merrimack Street

- Certificate of Insurance Liability Naming the City of Haverhill as Additional Insured on File

See Back for Applicant's Phone Number/Date of Birth/Social Security #

Police Chief

Approved _____ Denied _____

7.1.1

CITY COUNCIL

JOHN A. MICHITSON
PRESIDENT

ROBERT H. SCATAMACCHIA
VICE PRESIDENT

MICHAEL J. HART

WILLIAM H. RYAN

SVEN A. AMIRIAN

MICHAEL S. MCGONAGLE

WILLIAM J. MACEK

COLIN F. LEPAGE

MARY ELLEN DALY O'BRIEN



CITY OF HAVERHILL

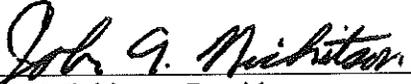
HAVERHILL, MASSACHUSETTS 01830-5843

CITY HALL, ROOM 204
4 SUMMER STREET
TELEPHONE: 978-374-2328
FACSIMILE: 978-374-2329
www.ci.haverhill.ma.us
citycncel@cityofhaverhill.com

January 12, 2012

TO: Members of the City Council

Council President John A. Michitson wishes to discuss upcoming meeting with diverse stakeholders to draft marketing plan to attract startups and emerging companies in Haverhill, and to introduce Lisa Fitzpatrick of the Burgess Business Center to discuss progress on their business incubator.



John A. Michitson, President
City Council

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PRESIDENT

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7.1.2

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January 10, 2012

TO: Mr. President and Members of the City Council

Councillor Scatamacchia would like to introduce Vincent Kissel regarding safety issues at Kenoza Avenue and Newton Road.

Robert H. Scatamacchia
City Councillor Robert H. Scatamacchia

CITY COUNCIL

JOHN A. MICHITSON
PRESIDENT

ROBERT H. SCATAMACCHIA
VICE PRESIDENT

MICHAEL J. HART
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7.1.3

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January 12, 2012

TO: Mr. President and Members of the City Council:

Councillor Colin LePage would like to introduce a representative from Team Haverhill to announce their Possible Dreams 2012 Event.

Colin LePage
City Councillor Colin LePage *bs u*

CITY COUNCIL

JOHN A. MICHITSON
PRESIDENT

ROBERT H. SCATAMACCHIA
VICE PRESIDENT

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WILLIAM H. RYAN
SVEN A. AMIRIAN
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WILLIAM J. MACEK
COLIN F. LEPAGE
MARY ELLEN DALY O'BRIEN



CITY OF HAVERHILL
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7.1.4

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citycncl@cityofhaverhill.com

January 10, 2012

TO: Mr. President and Members of the City Council

Councillor Michael McGonagle requests the removal of a handicap parking space at 11 Mt. Vernon Street as it is no longer needed.

Michael McGonagle
City Councillor Michael McGonagle *MM*



DOCUMENT 7-T

CITY OF HAVERHILL

In Municipal Council August 9 2011

~~ORDINANCE~~ MUNICIPAL ORDINANCE

CHAPTER 240

An Ordinance Relating to Parking 11 Mt. Vernon Street—Add 1 Handicap Parking Space

BE IT ORDAINED by the City Council of the City of Haverhill that Article XIII, Section 240-1302 Schedule B: Parking Restrictions and Prohibitions of the Haverhill City Code, as amended be further amended by adding the following:

LOCATION	REGULATION	HOURS/DAYS
<u>11 Mt. Vernon Street</u>		
Add one space in front of # 11 Mt. Vernon Street except for 1-24 hour handicap parking space at #11 Mt. Vernon St.	No Parking	24 Hours

APPROVED as to legality:

City Solicitor

PLACED ON FILE for at least 10 days

Attest: *Mye G. Torrey*
City Clerk

IN CITY COUNCIL: August 23 2011

PASSED
Attest: *Mye G. Torrey*
City Clerk

APPROVED: _____
Mayor



DOCUMENT 5

CITY OF HAVERHILL

In Municipal Council January 3 2012

~~ORDERED~~

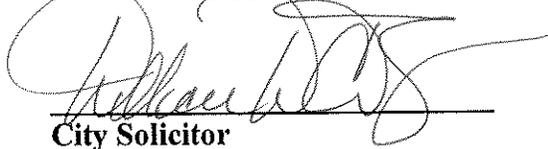
MUNICIPAL ORDINANCE

CHAPTER 132

AN ORDINANCE RELATING TO PUBLIC CONSTRUCTION PROJECTS

BE IT ORDAINED by the City Council of the City of Haverhill that Chapter 132 of the Code of the City of Haverhill be and is hereby deleted in its entirety.

APPROVED AS TO LEGALITY:



City Solicitor

PLACED ON FILE for at least 10 days

Attest:

City Clerk

CITY OF HAVERHILL

MASSACHUSETTS

CITY SOLICITOR'S OFFICE

145 South Main Street

Bradford, MA 01835

(978) 373-2360

FAX: 978/372-0688

EMAIL: billcoxlaw@aol.com

WILLIAM D. COX, JR.
CITY SOLICITOR

December 28, 2011

TO: President and Members of the Haverhill City Council

FROM: William D. Cox, Jr., Esq. 
City Solicitor

RE: Chapter 132 - Public Construction Projects

The US District Court recently issued a decision in the matter of *Utility Contractors Ass'n of New England, Inc. v. City of Fall River*, 2011 WL 4710875 (D.Mass.), which directly impacts the legality of the City's residency employment provisions of Chapter 132 of the Haverhill City Code. A copy of Chapter 132 and the Court decision are attached.

The Court found that certain Fall River residency provisions, similar to those contained in Chapter 132, violate the Privileges and Immunities Clause of the United States Constitution. This Clause is designed to prevent the discriminatory treatment of non-resident citizens from other cities and states, and, to keep states and cities from adopting highly protectionist economic policies. The Court went on to state that pursuit of a livelihood is a fundamental right within the purview of the Privileges and Immunities Clause and that the Fall River ordinance burdens this recognized protection. Without a substantial justification for such discriminatory provisions, residency requirements such as these are not valid.

The Court's determination that the mere existence of such an ordinance with discriminatory residency provisions, whether enforced or not, provides a basis for a claim against the City requires that Chapter 132 be repealed at this time without delay.

If I can be of any further assistance, please do not hesitate to call on me.

WDCjr/md

Encl.

cc: James J. Fiorentini, Mayor



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This electronic version is provided for informational purposes only. For the official version please contact the municipality.

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CHAPTER 132. CONSTRUCTION PROJECTS, PUBLIC

ARTICLE I. Employment of Residents

[§ 132-1. Purpose.](#)

[§ 132-2. Definitions.](#)

[§ 132-3. Compliance required.](#)

[§ 132-4. Administration and enforcement.](#)

[§ 132-5. Haverhill Residents Construction Employment Monitoring Committee.](#)

[§ 132-6. Compliance waiver.](#)

[§ 132-7. Violations and penalties.](#)

[§ 132-8. Severability.](#)

Chapter 132. CONSTRUCTION PROJECTS, PUBLIC

[**HISTORY:** Adopted by the City Council of the City of Haverhill as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Employment by City — See Ch. [143](#).

Public-Private Partnerships Committee — See Ch. [21](#), Art. [II](#).

Article I. Employment of Residents

[Adopted 10-15-1991 by Doc. 148 (Ch. 132, Art. I, of the 1980 Code)]

§ 132-1. Purpose.

The City Council recognizes that there is a need to ensure that Haverhill residents receive the maximum benefits from the economy of the City of Haverhill, specifically, those projects involving public buildings or public works including but not limited to residential, institutional, industrial and commercial development and construction which are funded by public funds. Therefore, it is appropriate for the City of Haverhill to make certain that each development constructed with public funds, which encompasses residential, office, institutional and/or commercial development ensures that a substantial percentage of construction employees include Haverhill residents through compliance with this Haverhill Residents Construction Employment Ordinance.

§ 132-2. Definitions.

The following phrases shall have the meanings prescribed herein for purposes of this article:

HAVERHILL RESIDENT

Any persons for whom the principal place of residence is within the City of Haverhill for at least six months prior to the award of the particular construction project.

PUBLICLY FUNDED CONSTRUCTION CONTRACT OR PROJECT

A project or a contract for construction of a project taking place within the City of Haverhill which is funded, in whole or in part, by City, state, county, federal or other public funds or by grant funds administered by the City, or which, in accordance with a federal, state or other grant, the City expends or administers, or a contract to which the City is a signatory.

§ 132-3. Compliance required.

On any publicly funded construction project taking place within the City of Haverhill, the developer, contractors and subcontractors shall comply with the following requirements:

- A. A minimum of 30% of the total employee hours by craft shall be completed by Haverhill residents.

[Amended 4-16-1996 by Doc. 58]

- B. All developers, contractors and subcontractors shall agree that any apprentices hired shall be apprentices indentured to a bona fide apprenticeship program, approved by the Commonwealth of Massachusetts.

§ 132-4. Administration and enforcement.

- A. The City of Haverhill Human Resources Office/Community Development Office shall be responsible for enforcing compliance with the provisions of this article.

[Amended 7-10-2007 by Doc. 76]

- B. Upon issuance of a building permit involving a publicly funded construction project, the developer shall submit to the Haverhill Human Resources Office/Community Development Office, in writing, the following information:

[Amended 7-10-2007 by Doc. 76]

- (1) The scope of construction.
 - (2) Construction time schedules.
 - (3) The projected number of employees and hours.
 - (4) The types of trades to be hired.
 - (5) The names, addresses and principals of contractors and subcontractors being hired.
- C. Upon request, all developers shall submit weekly workforce reports listing the following:
- (1) The name of employees.
 - (2) The residential address of each employee and length of residence.
 - (3) The craft of each employee.
 - (4) The job category of each employee.
 - (5) The hours worked of each employee.
 - (6) The hourly wage of each employee.
 - (7) The company for which each employee is employed.
- D. The Human Resources Office/Community Development Office shall review all information submitted and shall make certain that such requirements as defined in § 132-3 are complied with. If such

requirements are not complied with, the enforcement procedures of § 132-7 shall be implemented.

[Amended 7-10-2007 by Doc. 76]

§ 132-5. Haverhill Residents Construction Employment Monitoring Committee.

- A. The Haverhill Residents Construction Employment Ordinance, its enforcement and compliance with its requirements shall be monitored by the Haverhill Residents Construction Employment Monitoring Committee, as provided for herein.
- B. Such Committee shall be comprised of five individuals, including the following, and each shall serve at the discretion of his or her appointing authority:
 - (1) A designee of the Mayor.
 - (2) A designee of the City Council President.
 - (3) A designee of the Lower Merrimack Valley Private Industry Council.
 - (4) A designee of the Haverhill Chamber of Commerce.
 - (5) A designee of the local Building Trades Council.
- C. Such Committee shall meet on a biweekly basis, or as needed, and shall review and monitor all information and documentation provided by developers to establish compliance with this article. If, through such monitoring, it is determined that one or more developers are not complying with said article, the Committee shall immediately request the Building Inspector and Human Resources Office/Community Development Office to initiate procedure for enforcement, as provided in § 132-7 of this article. The sole exception to the implementation of such enforcement procedures is the determination and approval of the Committee, as defined in § 132-6, that compliance cannot be obtained because of high local construction employment levels of Haverhill and Haverhill residents being technically unavailable persons and that therefore, a waiver from compliance should be allowed.

[Amended 7-10-2007 by Doc. 76]

§ 132-6. Compliance waiver.

In the event of high local construction employment levels of qualified Haverhill residents and documented inability of developers, contractors and subcontractors to hire local employees because of such high local construction employment levels, compliance with the provisions of this article may be waived, in whole or in part, on a case-by-case basis, through a determination made by the Haverhill Residents Construction Employment Monitoring Committee, as defined in § 132-5, that high local employment levels prohibit the developer, contractors and subcontractors from hiring local area employees as required. Such documentation shall include evidence of efforts conducted by the developer, contractor and subcontractor which shows a high level of effort in attempting to obtain local employees. Such effort shall include local advertising to seek local employees and solicitations of local companies for contracting purposes.

§ 132-7. Violations and penalties.

[Amended 7-10-2007 by Doc. 76]

- A. In the event of violation of this article, upon three days' written notice to the violator, the City, through its Community Development Office/Human Resources Office, shall take the following actions:
 - (1) Assessment of a fine of \$300 per day of violation, or the maximum amount allowed by law, whichever is less, against the developer who violates this article to be paid within 30 days of such assessment.
 - (2) Revocation of all building permits pertaining to such development until violations have been

eliminated.

- B. This article shall be enforced in the manner provided in MGL c. 40, § 21D, and in § 1-16 of this Code. All inspectional personnel, inspectors, Community Development Director/Human Resources Officer and police personnel shall be deemed to be enforcement personnel for the purpose of this chapter.

§ 132-8. Severability.

In the event that any section of this article is deemed illegal, unenforceable or unconstitutional, then the remaining sections shall remain in full force and effect.

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Slip Copy, 2011 WL 4710875 (D.Mass.)
(Cite as: 2011 WL 4710875 (D.Mass.))

Only the Westlaw citation is currently available.

United States District Court,
D. Massachusetts.
**UTILITY CONTRACTORS ASSOCIATION OF
NEW ENGLAND, INC., W. Walsh Company, Inc.,
and Rodney Elderkin**

v.

CITY OF FALL RIVER.

Civil Action No. 10-10994-RWZ.
Oct. 4, 2011.

Christina L. Lewis, Hinckley Allen & Snyder, LLP,
Boston, MA, for **Utility Contractors Association of
New England, Inc., W. Walsh Company, Inc., and
Rodney Elderkin.**

Richard D. Wayne Hinckley, Allen and Snyder,
LLP Boston, MA, for **Utility Contractors Associ-
ation of New England, Inc., W. Walsh Company,
Inc., and Rodney Elderkin/City of Fall River.**

Elizabeth Sousa Pereira City of **Fall River** Law De-
partment **Fall River, MA, for City of Fall River.**

ORDER

ZOBEL, District Judge.

* **Utility Contractors Association of New Eng-
land, Inc. ("UCANE"), W. Walsh Co., Inc.,
("Walsh") and Rodney Elderkin brought suit
against the City of Fall River ("Fall River" or "the
City") for a declaratory judgment that certain provi-
sions of the Fall River Responsible Employer Or-
dinance ("2010 REO") violate the Constitutions of
the United States and the Commonwealth of Mas-
sachusetts, as well as federal and state statutes.
Plaintiffs invoke 42 U.S.C. §§ 1983 and 1988 and
Mass. Gen. Laws c. 231A.**

The matter is before me on plaintiffs' motion
for summary judgment.

I. Introduction

According to the complaint, UCANE is a non-
profit corporation that represents hundreds of con-
tractors, materialmen, suppliers and associate mem-
bers who are principally engaged in public con-
struction projects in the Commonwealth of Mas-
sachusetts and other New England states. Walsh is
a construction contractor and member of UCANE;
Rodney Elderkin is a citizen of Rhode Island and is
employed by Walsh as a construction worker. The
members of UCANE perform construction worth
hundreds of millions of dollars annually.

Defendant City of **Fall River** ("Fall River") is
a municipality within the Commonwealth of Mas-
sachusetts.

On April 15, 2010, **Fall River** passed the 2010
REO. That ordinance established certain mandates
that contractors must meet to bid on construction
projects funded by **Fall River** or federal grants or
loans. Among the relevant provisions of the 2010
REO are the residency, apprenticeship, and health
and welfare and pension plan provisions.

The residency provisions, Sections 2a(iv) and
2-945(a), require that 100% of the apprentices and
50% of all other workers for any construction
project be Fall River residents.

The apprenticeship provisions, Sections 2a(iii)
and (iv), require all contractors to maintain and par-
ticipate in an active apprentice program that must
have operated without suspension for at least three
years prior to the bid date and which must have
graduated at least two apprentices per year per trade
for the same period.

Finally, Section 2a(v) requires contractors to
furnish a pension/annuity plan for all employees on
the project, and bidders and subcontractors to fur-
nish, at their expense, hospitalization and medical
benefits for all their employees employed on the
project.

Slip Copy, 2011 WL 4710875 (D.Mass.)
(Cite as: 2011 WL 4710875 (D.Mass.))

Plaintiffs assert that:

- (1) the residency provisions violate the Privileges and Immunities clause of the United States Constitution and the due process and equal protection clauses of the Massachusetts Constitution;
- (2) the apprenticeship, health and pension provisions are preempted by ERISA;
- (3) the residency, apprenticeship, health and pension provisions violate the Home Rule Article of the Massachusetts Constitution which prohibits regulation of the private employer-employee relationship without statutory authority;
- (4) the apprenticeship provisions of the 2010 REO violate Massachusetts public bidding laws; and
- *2 (5) the health care provisions of the 2010 REO violate Massachusetts prevailing wage laws.

The complaint alleges UCANE members bid on public works projects throughout Massachusetts including Fall River. Some UCANE members do not meet the residency requirements, do not have qualifying apprenticeship programs, or do not provide medical or pension benefits as required by the 2010 REO. Walsh bids on projects subject to the 2010 REO. Mr. Elderkin is an employee of Walsh but is not a resident of Fall River. The complaint alleges that as a result of the 2010 REO, Walsh, despite being ready and able, is disqualified from working on publicly-funded Fall River construction projects and did not bid on a certain dam project thus harming Elderkin by denying him the opportunity to perform work on this project and others.

II. Mootness

Defendant has included in its opposition papers the affidavit of Assistant City Clerk Ines Leite which states the Fall River city council, on October 12, 2010, repealed the 2010 REO and reverted back to an earlier provision (the "Reenacted REO"), which had been approved in May 2000. This

change, defendant suggests, moots plaintiffs' attack on the residency and pension/annuity provisions of the 2010 REO.

In *Northeastern Florida Chapter of Associated General Contractors of America v. City of Jacksonville, Fla.*, 508 U.S. 656, 113 S.Ct. 2297, 124 L.Ed.2d 586 (1993), an association of general contractors brought action against the City of Jacksonville, Florida (and others), challenging, as unconstitutional, an ordinance that provided additional funding to minority contractors. *Id.* at 658-659. While the case was on appeal, Jacksonville repealed the challenged ordinance and replaced it with a similar ordinance. *Id.* at 660. Respondents then moved to dismiss the case on mootness grounds arguing that a live controversy no longer existed. In denying respondents' mootness argument, the Court cited to its holding in *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 289, 102 S.Ct. 1070, 71 L.Ed.2d 152 (1982), noting it is a "well settled rule that a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice." *Id.* at 662. The Court found that "[t]here is no mere risk that Jacksonville will repeat its allegedly wrongful conduct; it has already done so," and rejected the notion that defendants should be permitted to "moot a case by repealing the challenged statute and replacing it with one that differs only in some insignificant respect." *Id.*

Here, as in *City of Jacksonville*, a municipality is arguing mootness after repealing a challenged contractor ordinance and replacing it with a similar one. Defendant's arguments are the same as those advanced by defendant in *City of Jacksonville*, and they fail for the same reason. Fall River's voluntary cessation of potentially unconstitutional conduct does not deprive this court of the power to determine the legality of the practice. Further, there is strong reason to believe that the 2010 REO will re-emerge in substantially similar form and therefore an imminent harm exists to plaintiffs. Plaintiffs submit several DVDs (and an affidavit summariz-

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ing their contents) of city council meetings where several council members discussed the repeal of the 2010 REO and suggested a redrafted version was a priority and in the works. ^{FN1} (Docket14, 15 Exs. L–N.) See *Oriental Health Spa v. City of Fort Wayne*, 864 F.2d 486, 491 (7th Cir.1988) (videotape of city council proceedings properly considered in deciding motion for summary judgment under public record exception to the hearsay rule (Federal Rule of Evidence 803(8))).

FN1. The meeting recordings reflect (1) comments from Jim Pomento, a local union member who stated that the Office of the Corporation Counsel was in the process of drafting a new 2010 REO; (2) discussion where Councilman Poulin referenced a document that stated the Mayor's administration intended to redraft the 2010 REO; and (3) comments from Councilman Ray Mitchell expressing his concern that the 2010 REO did not need to be repealed as it was "throwing the baby out with the dirty water." (Docket # 24.)

*3 The challenge to 2010 REO is not moot.

III. Standard

Summary judgment will be granted if there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Fed.R.Civ.P. 56. "Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986) (quotation marks omitted).

Fall River opposes summary judgment for lack of standing and on the merits.

IV. Analysis

A. Standing

1. Privileges and Immunity Standing

The parties agree that Walsh did not bid on the dam project in Fall River after the 2010 REO was repealed, and that pursuant to a stipulation in this court, the 2010 REO has not been enforced. Defendant asserts plaintiffs lack standing as a result.

The fact that Walsh did not actually bid on the Dam Project is irrelevant. In the bidding context, "[i]njury in fact" is the inability to compete on an equal footing in the bidding process, not the loss of a contract." *City of Jacksonville*, 508 U.S. at 657 (1993). Here, Walsh and Elderkin assert that because of the 2010 REO requirements, they were not able to compete fairly in the Fall River bidding process.

One June 23, 2010, shortly after the 2010 REO was implemented, the plaintiffs filed the complaint together with a request for an injunction. Defendant stipulated not to enforce it pending further order of the court (Docket # 6). This voluntary action on the part of defendant does not defeat plaintiffs' standing. A party "who must comply with a law or face sanctions has standing to challenge its application and therefore a party need not show that the law is being enforced or will be enforced." *Hays v. City of Urbana, Ill.*, 104 F.3d 102, 103 (1997).

Accordingly, plaintiffs have standing.

2. ERISA Standing

Defendant also argues that plaintiffs may not challenge the health plan requirement ^{FN2} of the 2010 REO because plaintiffs are not ERISA plan "participants" or "beneficiaries" as required by the civil enforcement section of ERISA (29 U.S.C. § 1132). However, plaintiffs do not bring an action or request relief under the civil enforcement section of ERISA. Importantly, they are not participants or beneficiaries requesting relief "under" ERISA. Plaintiffs simply claim that certain provisions of a municipal ordinance are unconstitutional and invalid because the provisions harm them and are preempted by federal law (in this case, ERISA). The fact that plaintiffs invoke the explicit preemption language of Section 514 of ERISA does nothing to

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negatively impact their standing, as plaintiffs are requesting injunctive and declaratory relief based on principals of federal supremacy and preemption law.

FN2. The ruling in this section also applies to the 2010 REO pension and apprentice provisions.

Because Walsh and Elderkin would have to comply with the 2010 REO if they wished to bid and work on Fall River construction projects, they have standing to challenge its application. Because at least one of its members has standing (i.e. Walsh) to bring suit, UCANE has associational standing to bring suit (for all claims) since the present action also raises issues germane to UCANE's function as a construction trade association, and participation from the members is not necessary for the court to issue relief. *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 343, 97 S.Ct. 2434, 53 L.Ed.2d 383 (1977) (trade group has associational standing to sue when (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit).

*4 Since plaintiffs have standing, I now turn to the merits, the alleged constitutional violations and preemption.

B. Violations of the Privileges and Immunity Clause of the United States Constitution

1. The Residency Provisions (§§ 2-945(a) and 2a(iv) of the REO)

Section 2-945 of the 2010 REO requires in relevant part:

on any construction project funded in whole or in part by city funds, or funds from a federal grant or loan ... residents of the city ... shall be given preference in hiring on a one-of-every-two ratio,

after the employer's foreman...

Section 2(iv) of the 2010 REO requires in relevant part:

any bidders or subcontractors ... awarded a contract ... shall hire qualified residents of the City of Fall River in filling the apprentice to journeyman ratio for each trade prescribed therein

The Privileges and Immunities Clause of the United States Constitution states: "The citizens of each state shall be entitled to all privileges and immunities of citizens in several states." (U.S. Const. art. IV, § 2, cl.1.) "The Clause is designed to prevent the discriminatory treatment of citizens from other states ... [to avoid] economic Balkanization ... [by keeping] states from adopting highly protectionist economic policies. The Constitution protects nonresidents from economic discrimination so that the nation may function as a single economic union." *A.L. Blades & Sons, Inc. v. Yerusalem*, 121 F.3d 865, 869-870 (3rd Cir.1997) (internal citations omitted). The word "states" in the Clause is construed broadly and its protections extend equally to municipal residents. *United Bldg. and Construction Trades Council of Camden County v. Mayor and Council of City of Camden*, 465 U.S. 208, 104 S.Ct. 1020, 79 L.Ed.2d 249 (1984) (fact that "ordinance is a municipal, rather than a state, law does not place it outside the [] scope [of the Privileges and Immunities Clause] ... a municipality is merely a political subdivision of the State, and what would be unconstitutional if done directly by the State can no more readily be accomplished by a city deriving its authority from the State.").

The Privileges and Immunities Clause only prohibits discriminatory acts that satisfy a two-step test: (1) first, the discriminatory act must be shown to impair one of the privileges protected under the Clause; (2) next, the burden shifts to the government, here Fall River, to establish that it had a substantial reason for the difference in treatment and that the discrimination bore a substantial relationship to its objectives. *Toomer v. Witsell*, 334 U.S.

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385, 396, 68 S.Ct. 1156, 92 L.Ed. 1460 (1948); *Supreme Court of Virginia v. Friedman*, 487 U.S. 59, 64–65 108 S.Ct. 2260, 101 L.Ed.2d 56 (1988).

Fall River, apparently in reliance on mootness, does not advance any substantial justification for the discriminatory ordinance. Therefore, I need only address the first part of the inquiry, namely, whether the municipal residency requirements in the 2010 REO burdened a recognized protection under the Privileges and Immunities Clause.

*5 Sections 2–945 and 2(iv) of the 2010 REO requires any prospective bidder on **Fall River** construction projects to staff its team so that 100% of the apprentices and 50% of all other workers are **Fall River** residents. This essentially requires that the majority of all workers on every **Fall River** job be residents. Such a scheme puts UCANE members that do not employ extensive quantities of **Fall River** residents at a competitive disadvantage—they will have to expend time, effort and resources recruiting **Fall River** employees prior to bidding on a **Fall River** construction project. Therefore, any contractor who already enjoys a high margin of **Fall River** employees will have an unfair economic advantage since it will not have to engage in further recruitment efforts.

Such municipal residency requirements implicate the right of workers, such as Elderkin, to be productive and find suitable work. There is a “fundamental right to employment, where the employee is hired by a private employer who receives a government contract to work on a public project.” *A.L. Blades*, 121 F.3d at 871; *Connecticut ex rel. Blumenthal v. Crotty*, 346 F.3d 84, 97 (2d Cir.2003) (“pursuit of a livelihood, [is] a fundamental right within the purview of the Privileges and Immunities Clause”); *O’Reilly v. Board of Appeals for Montgomery County, Md.*, citing *Camden*, 942 F.2d 281, 284 (4th Cir.1991) (“the pursuit of a common calling is one of the most fundamental of those privileges protected by the Clause.”).

Because the 2010 REO residency requirements

impede a fundamental right under the Privileges and Immunities Clause and Fall River does not offer any justification, the *Toomer* test is satisfied, and as a matter of law the residency requirement is invalid. See *O’Reilly*, 942 F.2d at 284 (invalidating county regulation requiring taxi cab drivers to be familiar “with the geographical area to be served” before they could receive a passenger license).

C. ERISA Preemption

ERISA preempts “any and all State laws insofar as they may now or hereafter “relate to” any “employee benefit plan” that is not otherwise exempt. 29 U.S.C. § 1144(a). An “employee benefit plan” is a plan that is “established or maintained by an employer ... for the purpose of providing for its participants or their beneficiaries (29 U.S.C. § 1002(1)), medical ... disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services.” 29 U.S.C. § 1002(1)(a). An “employee benefit plan” also means “any plan, fund, or program ... established or maintained by an employer ... that by its express terms ... (i) provides retirement income to employees or (ii) results in a deferral of income ... for periods extending to the termination of covered employment or beyond.” 29 U.S.C. § 1002(2).

“[E]xplanation for the broad preemption provision is clear: By preventing states from imposing divergent obligations, ERISA allows each employer to create its own uniform plan, complying with only one set of rules (those of ERISA) and capable of applying uniformly in all jurisdictions where the employer might operate.” *Simas v. Quaker Fabric Corp. of Fall River*, 6 F.3d 849, 852 (1st Cir.1993)

*6 Historically, the Supreme Court has interpreted the ERISA preemption clause broadly. See, e.g., *FMC Corp. v. Holliday*, 498 U.S. 52, 58, 111 S.Ct. 403, 112 L.Ed.2d 356 (1990) (“The preemption clause is conspicuous for its breadth.”) However, beginning in the mid-to late-1990s the Supreme Court began to rein-back its broad ERISA preemption jurisprudence, suggesting heightened

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scrutiny is appropriate when construing the statutory phrase “relates to” in determining whether a plan is an “employee benefit plan” under ERISA. *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 655–56, 115 S.Ct. 1671, 131 L.Ed.2d 695 (1995) (finding “governing text of ERISA is clearly expansive ... [i]f ‘relate to’ were taken to extend to the furthest stretch of its indeterminacy, then for all practical purposes pre-emption would never run its course ... [instead, one must look to] Congress’s intent to establish the regulation of employee welfare benefit plans as exclusively a federal concern.”); *California Div. of Labor Standards Enforcement v. Dillingham Construction*, 519 U.S. 316, 117 S.Ct. 832, 136 L.Ed.2d 791 (1997) (the Court stated “to determine whether a state law has the forbidden connection, we look both to the objectives of the ERISA statute as a guide to the scope of the state law that Congress understood would survive [...] as well as to the nature of the effect of the state law on ERISA plans”) (citations omitted).

Here however, the court need not engage in a prolonged “relate[s] to” analysis because the pension, healthcare and apprenticeship provisions of the 2010 REO are all mandatory requirement provisions.^{FN3} The contested provisions all specifically mandate that Fall River contractors provide various employee benefits or operate employee benefit programs. There is little doubt that an explicit decree to put into existence a benefit program “relate[s] to” an “employee benefit plan” for ERISA preemption purposes. *Travelers* itself recognized as much. *Travelers*, 514 U.S. at 658 (citing with approval Supreme Court precedent where “ERISA pre-empted state laws that mandated employee benefit structures or their administration.”) Other cases are in accord. *Simas*, 6 F.3d at 852 (1st Cir.1993) (“a state statute that obligates an employer to establish an employee benefit plan is itself preempted even though ERISA itself neither mandates nor forbids the creation of plans.”); *Arizona State Carpenters Pension Trust Fund v. Citibank*, citing *Travelers*, 125 F.3d 715, 723 (9th Cir.1997) (there are “three

areas in which ERISA was intended to preempt state law;” the first includes “state laws that mandate employee benefit structures or their administration”) (internal citations omitted); *Coyne & Delany Co. v. Selman*, 98 F.3d 1457, 1469 (4th Cir.1996) (same) (all emphasis added).

FN3. *Cf. Turner v. Fallon Community Health Plan, Inc.*, 127 F.3d 196, 199 (1st Cir.1997) (recognizing the Supreme Court has “set some new limits on preemption” but declining to conduct “relate to” analysis; finding “[i]t would be difficult to think of a state law that ‘relates’ more closely to an employee benefit plan than one that affords remedies for the breach of obligations under that plan.”).

1. Health and Pension Provisions of the 2010 REO (§ 2a(v))^{FN4}

FN4. Section 1(A)(4) of the Reenacted REO is substantially the same provision.

Section 2a(v) of the 2010 REO requires in relevant part that:

The bidder and all subcontractors under the bidder must furnish at their expense, hospitalization, pension/annuity and medical benefits for all their employees employed on the project

*7 Section 20a(v) of the 2010 REO is clearly a requirement that is “maintained for the purpose of providing [] its participants” with “medical, surgical, or hospital care,” and therefore is an “employee benefit program” under ERISA. Mandatory medical benefits programs are preempted by ERISA. *Standard Oil Co. of California v. Agsalud*, 442 F.Supp. 695, 711 (N.D.Cal.1977), *aff’d*, 633 F.2d 760 (9th Cir.1980) *aff’d mem.*, 454 U.S. 801, 102 S.Ct. 79, 70 L.Ed.2d 75 (1981) (finding Hawaii state law mandating employers provide comprehensive prepaid health care to employees preempted by ERISA); *Catholic Charities of Maine, Inc. v. City of Portland*, 304 F.Supp.2d 77, 92

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(D.Me.2004) (holding Maine ordinance requiring city funded employers to provide health and employment benefits to domestic partners preempted under ERISA); *District of Columbia v. Greater Washington Bd. of Trade*, 506 U.S. 125, 127–129, 113 S.Ct. 580, 121 L.Ed.2d 513 (1992) (finding D.C. law requiring employers to provide health insurance to worker compensation recipients preempted by ERISA).

2. Apprenticeship Provision ^{FN5} of the 2010 REO (§ 2a(iii))^{FN6}

FN5. Although plaintiffs label Section 2(IV) as an apprenticeship provision—the court considers it a residency provision because, although the text does mention “apprentices,” the provision’s purpose is to impose residency requirements on the hiring of apprentices.

FN6. Section 1(A)(3) of the Reenacted REO is substantially the same provision.

Section 2a(iii) of the 2010 REO requires in relevant part that:

bidder and all subcontractors ... must maintain or participate in a bona fide active apprentice training program [under Massachusetts law] ... for each apprenticeable trade or occupation represented in their work ... that is approved by ... the department of labor ... and must abide by the apprentice to journeymen ratio for each trade prescribed therein ... [the] apprentice training program [must have] operated without suspension for at least 3 years prior to the bid date ... and [must have] completed or graduated at least 2 apprentices per year per trade for the same period....

Here, Section 2a(iii) of the 2010 REO improperly mandates the use of an apprenticeship program for all bidders and subcontractors. Defendant argues that the Supreme Court’s holding in *Dillingham*, *supra*, is controlling and teaches against a finding of preemption. In *Dillingham*, the Supreme

Court declined to preempt a California state law that allowed contractors to pay lower wages to participants of state-approved apprenticeship programs.

However, the law construed in *Dillingham* was an alteration of a “prevailing wage” law that had only a tangential affect on actually regulating apprenticeship programs. *Id.* at 332. As defendant partially quotes in its opposition, *Dillingham* expressly recognized that “[n]o apprenticeship program is required by California law to meet California’s standards ... apprenticeship programs that have not gained [] approval may still supply public works contractors with apprentices ... [the statute at issue] alters incentives but does not dictate the choices facing ERISA plans.” *Id.* at 332. (Docket # 20 at 10).

By contrast, Fall River is mandating an apprenticeship program that not only requires bidders and contractors to operate such a program, but also requires approval by the state, and that the program existed for at least three years prior to any bidding. Such an apprenticeship program mandate is preempted by ERISA. See *Minnesota Chapter of Associated Builders and Contractors, Inc. v. Minnesota Dept. of Public Safety*, 267 F.3d 807, 814–815 (8th Cir.2001), *cert. denied*, 535 U.S. 1096, 122 S.Ct. 2292, 152 L.Ed.2d 1051 (2002) (finding law allowing “only licensed journeymen and registered apprentices [to] perform fire protection work” preempted by ERISA and unaffected by *Dillingham*, where purpose of apprenticeship program was not related to merely providing “economic incentive[s]”).

3. Preemption Is Not Saved By the Fitzgerald Act

*8 Defendant argues that even if the court finds that the apprentice program mandate relates to an ERISA plan, it is saved by Section 514(D) because ERISA saves laws to the extent that preemption would modify or impair another federal statute. Here, it argues the “Fitzgerald Act,” 29 U.S.C. § 50 , which generally promotes the welfare of appren-

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tices, would be substantially impaired. This precise argument was raised and rejected in *Hydrostorage, Inc. v. Northern California Boilermakers Local Joint Apprenticeship Committee*, 685 F.Supp. 718, 721 (9th Cir.1989). In *Hydrostorage*, the court found that neither the Fitzgerald Act nor the statute at issue in the case contained any mechanisms of federal enforcement and therefore were not in contradiction. The court further found that the core objective of the Fitzgerald Act was merely to implement standards for the registration of apprenticeship programs, and as such really had no bearing on the statute at issue.

The issue in this case is identical. Defendant's Fitzgerald Act argument fails.

4. Fall River Was Not Acting As a Market Participant

Next, defendant argues that even if the court finds that the apprentice and health mandates "relate to" an ERISA plan, and would otherwise be preempted, the City's activities fall under the "market participant" exception. **Fall River** urges the court to apply Fifth Circuit precedent holding that the market participant doctrine applies to ERISA preemption either when the activity is (1) essentially proprietary; or (2) when its scope is so narrow that it defeats any inference that the challenged action was aimed at policy, not proprietary, goals. *Cardinal Towing & Auto Repair Inc. v. City of Bedford*, 180 F.3d 686, 693 (5th Cir.1999).

The Supreme Court has stated "[t]he 'market participant' doctrine reflects the particular concerns underlying the Commerce Clause, not any general notion regarding the necessary extent of state power in areas where Congress has acted" (i.e.ERISA). *Wisconsin Dep't of Industry, Labor and Human Relations v. Gould, Inc.*, 475 U.S. 282, 289, 106 S.Ct. 1057, 89 L.Ed.2d 223 (1986). It has also not yet addressed whether the market participant exception can be raised as a bar to preemption in the context of ERISA, *Council of City of New York v. Bloomberg*, 6 N.Y.3d 380, 394, 813 N.Y.S.2d 3, 846 N.E.2d 433 (2006), nor has the First Circuit. As

such, it is not clear that defendant can avail itself to this exception.

However, when the exception is applied (e.g., dormant commerce clause cases), the state entity must directly participate in the market by purchasing goods or services. *Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist.*, 498 F.3d 1031 (9th Cir.2007). "If the state's direct participation in the market is 'tantamount to regulation' the market participant doctrine will not exempt the state's action from preemption." *Gould*, 475 U.S. at 289. Defendant's assertion that Fall River's imposition of "apprenticeship" and "healthcare" programs is akin to purchasing goods and services in the marketplace is unconvincing. Broad and varied municipal mandates, such as these, are tantamount to regulations.

*9 Further, even if the *Cardinal Towing* analysis is applied, defendant has not sufficiently established that it was acting as a market participant and not a regulator. First, defendant does not advance any factual support for its market participant theory—it fails to adduce evidence (affidavits, city council transcripts, etc.) describing the City's true purpose of these regulations—their relationship, if any, to market economics, and/or any pecuniary interests motivating their passage. Second, the sweeping nature of the multiple and independent requirements of the mandates is strong evidence that they are not narrow in scope or motivated by a specific proprietary interest. Thus, even if the *Cardinal Towing* analysis is applicable here, Fall River has not satisfied either prong.

V. Conclusion

For the preceding reasons, plaintiffs' summary judgment motion (Docket # 11) is ALLOWED. Judgment may be entered declaring invalid Sections 1(A)(4) and 1(A)(3) of the Reenacted REO, and Sections 2a(iii), 2a(iv), 2a(v) and 2-945(a) of the 2010 REO, or any provisions substantially identical, and enjoining enforcement thereof. The parties shall jointly submit a proposed form of judgment within 20 days of this order.

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D.Mass.,2011.
Utility Contractors Ass'n of New England, Inc. v.
City of Fall River
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**CITY OF HAVERHILL
MASSACHUSETTS**

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5-B
JAMES J. FIORENTINI
MAYOR
December 29, 2011

City Council President Michael J. Hart
& Members of the City Council

RE: Local Residency Requirement

Dear Mr. President and City Council Members:

As you can see from the memo and materials from City Solicitor William Cox, the constitutionality or of our local residency requirement for publicly funded projects is in question. A case in the United States District Court decided on October 4, the case of Utility Contractors Association of New England et al. v. City of Fall River struck down as unconstitutional a similarly worded ordinance.

In order to avoid potential liability to our city it is my recommendation, that we repeal our local ordinance.

Despite this setback, I stand by our efforts to have local people hired for local jobs, and I stand by our efforts to work to ensure that local projects benefit local residents. There are voluntary measures that we can take so that on the many good projects throughout our city local residents are hired. I'm going to ask that City Solicitor Cox to work with us to put together some voluntary measures that will not leave the city or its taxpayers open to liability.

I remain committed, as in the past, to having local projects benefit local residents, and I stand by our efforts to reduce Haverhill's unemployment rate and provide local jobs for our citizens.

The ordinance which is before you, to repeal our existing residency requirement, needs to be placed on file for two weeks after which I recommend approval. We will continue to work on voluntary measures and measures within the law to find jobs for our citizens.

Respectfully submitted,

James J Fiorentini, Mayor

IN CITY COUNCIL: January 3 2012
CONTINUE TO JANUARY 17 2012

Attest:

City Clerk



DOCUMENT

CITY OF HAVERHILL

In Municipal Council

ORDERED:

That the following locations are hereby established as Polling Places for all Elections to be held during the year 2012, in accordance with Chapter 54, Section 24 of Massachusetts General Laws:

Ward 1	Precinct 1	Consentino School
	Precinct 2	Washington Square Elderly Housing
	Precinct 3	Haverhill High School - Gymnasium
Ward 2	Precinct 1	Zion Bible College
	Precinct 2	Hunking School – Art Room
	Precinct 3	Moody School
Ward 3	Precinct 1	Citizen Center
	Precinct 2	Haverhill Public Library
	Precinct 3	Universalist Unitarian Church
Ward 4	Precinct 1	Nettle School
	Precinct 2	Northern Essex Community College
	Precinct 3	Kennedy Circle Elderly Housing
Ward 5	Precinct 1	Julian Steele Elderly Housing
	Precinct 2	First Presbyterian Church
	Precinct 3	West Congregational Church
Ward 6	Precinct 1	Haverhill High School
	Precinct 2	John Greenleaf Whittier School
	Precinct 3	Pentucket Lake School - Music Room
Ward 7	Precinct 1	Elderly Housing Community Room- Greystone Ave
	Precinct 2	Hunking School - Library
	Precinct 3	Bradford Elementary School



Haverhill

BOARD OF REGISTRARS OF VOTERS

Margaret A. Toomey, City Clerk
 Michael R. LaBonte, Chair
 Robert E. Des Marais
 Sam S. Meas

January 12, 2012

City Council President John A. Michitson
 & Members of the City Council

RE: Proposed Changes in Polling Locations for 2012 Elections

Dear Mr. President and City Council Members:

The Board of Registrars is proposing that the locations on the attached list be designated as polling places in Haverhill for all elections beginning in 2012. As you know last year the City was required by State law to redraw its wards and precincts in order to reflect population changes reported in the 2010 Federal Census. After the plan was approved by the State, the Registrars reviewed Haverhill's current polling places to determine if any changes should be made in the location of polls because of the Ward/Precinct revisions.

We are therefore making the following recommendations:

- **Ward 2, Precinct 01** – Move the polling place from the First Church of Christ to Zion Bible College to provide voters with easier accessibility and more parking..
- **Ward 4, Precinct 02** – Move the polling place from the Second Baptist Church to Northern Essex Community College. The Church is located on Amesbury Line Road, and many voters have complained of the distance that they have to travel to vote. We believe that a polling place at Northern Essex would be more convenient to the majority of voters.
- **Ward 6, Precinct 01** – Move the polling place from St. James School to Haverhill High School. 6-01 has been redrawn so that the precinct is now located completely on the west side of the Little River. However, voters in 6-01 currently vote at the St. James School, which is on the east side of the river. Since 6-01 is now much closer to Haverhill High School than St. James School, we believe that it would be more convenient for voters.

- **Ward 5, Precinct 03** – Move the polling place from Haverhill High School to the West Congregational Church. The High School currently hosts polling places for Ward 1, Precinct 03 and Ward 5, Precinct 03. If the 6-01 change is approved, there would be three polls at the High School. To alleviate this, the Board proposes moving 5-03 to the West Congregational Church, which is physically located in 5-03 and would be more convenient for voters in that precinct.
- **Ward 3, Precinct 01A** - the subprecinct at 25 Washington Square - was eliminated in the reprecincting plan. The residents have now been included in Ward 1, Precinct 02, which votes at 25 Washington Square.

Please note that any voter whose polling place has been changed will be notified by mail of the change prior to the March 6th Presidential Primary.

Thank you for your consideration of our recommendations. If you have any questions, please do not hesitate to contact the Board.

Very truly yours,

Michael R. LaBonte
Chair



DOCUMENT

CITY OF HAVERHILL

In Municipal Council

ORDERED:

That the sum of **\$150,000** be transferred from the General Fund, *Interest on Short Term Debt* to the Expense Account, *Landfill Legal and Consulting Expense*



JAMES J. FIORENTINI
MAYOR

CITY OF HAVERHILL
MASSACHUSETTS

CITY HALL, ROOM 100
FOUR SUMMER STREET
HAVERHILL, MA 01830
PHONE 978-374-2300
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WWW.CI.HAVERHILL.MA.US

January 12, 2012

City Council President John Michitson
& Members of the City Council

RE: Transfer order - Landfill

Dear Mr. President and City Council Members:

Enclosed please find a transfer order to transfer \$150,000 from the account "*Interest on short-term debt*" to the expense account "*Landfill -legal and consulting expense*".

As indicated in the memo from Bob Ward dated December 21, 2011, these funds are needed to pay for additional engineering costs associated with the closure of the southern and northern mounds.

As indicated in the memo from Mr. Benevento, the money to pay for this comes from interest on short-term debt. That money was originally set aside to pay the borrowing costs and FY 2012 for closing the landfill. The project got started a little bit later than we anticipated so those interest costs are not needed for this fiscal year and would be better applied to this expense.

Mr. Ward is available for any questions you might have about the landfill. Mr. Benevento is available to answer any questions concerning the interest on the transfer.

Very truly yours,

James J Fiorentini, Mayor

JJF/lk
Encl.



Haverhill

Office of the City Auditor, Room 106
Phone: 978-374-2306 Fax: 978-373-8476
cbenevento@cityofhaverhill.com

MEMO

TO: James Fiorentini, Mayor
FROM: Charles Benevento
SUBJECT: Interest for Landfill
DATE: January 12, 2012
CC:

As you recall the landfill is an ongoing project within the city and when the FY12 budget was put together a request was made to place funds into the short term interest account totaling \$150,000 (see page 98 of budget book) for this phase of the project.

In response to your question concerning the request to transfer short term interest to landfill expenses I have confirmed with Bob Ward that there are no scheduled debt payment expenses relating to this phase of the project that need to be funded in the FY12 budget. Therefore the funds are available for transfer by the Council.



Haverhill

Robert E. Ward, Deputy DPW Director
Water/Wastewater Division
Phone: 978-374-2382 Fax: 978-521-4083
rward@haverhillwater.com

December 21, 2011

To: The Honorable James J. Fiorentini
Mayor of Haverhill

From: Robert E. Ward *REW*
Deputy DPW Director

Subject: Transfer of Funds for Landfill Closure Activities

It is hereby requested that the amount of one hundred and fifty thousand dollars (\$150,000.00) be transferred to Landfill Legal and Consulting Expense (account #1010010.1.0430.5818) from General Fund debt service. These funds will not be needed for landfill debt service in FY2012 because the SRF loan will not be permanently borrowed until next year.

The additional funds are needed to pay for engineering and legal costs associated with the closure of the southern and northern mounds and legal costs related to potential responsible parties (PRPs). These costs are not eligible for State Revolving Fund (SRF) loan money.

If you need additional information, do not hesitate to call me at extension 2328 or via email at rward@haverhillwater.com.

cc: Charles Benevento, Auditor
Mike Stankovich, DPW Director

CITY COUNCIL

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DOCUMENTS REFERRED TO COMMITTEE STUDY

#5-L/10	Communication from Councillor Macek requesting to propose the enactment of a Safe Building Ordinance.	NRPP	2/23/10
74-P/11	Communication from Councillor Amirian requesting a discussion about possible revenue stream by supplying water/wastewater services to Plaistow NH and other communities	Planning & Dev.	9/6/11
74-W/11	Communication from Councillor Daly O'Brien requesting a discussion about lights at Kenoza Avenue and Webster Street	Public Safety	9/27/11
74-X/11	Communication from Co. Amirian requesting a discussion about proposed pig farm at Boxford Road	Planning & Dev.	9/27/11
97-C/11	Communication from Councillor Hall requesting a discussion about the odor from the Covanta plant in Ward Hill	Public Safety	10/18/11
97-Q/11	Communication from Councillor Amirian requesting a discussion regarding Santa Parade's 2012 route and the possible impact of construction	Planning & Dev.	11/29/11
4	Communication from Councillor Macek requesting a discussion regarding the proposed Monument Square traffic divider/island.	Planning & Dev.	1/3/12
97-T/11	Communication from Councillor Scatamacchia requesting a discussion Regarding parking on River Street	Pubic Safety	1/3/12
119/11	Ordinance regarding Parks and Recreation: Amend Ch.11, Article II, Sections 4 through 8 of the City Code	Administration & Finance	1/3/12