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# **Turning Off the Tap: Massachusetts' Looming Water Affordability Crisis**

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**Massachusetts Advisory Committee  
to the U.S. Commission on Civil Rights**

**December 2020**

## **The United States Commission on Civil Rights**

The U.S. Commission on Civil Rights is an independent, bipartisan agency established by Congress in 1957, reconstituted in 1983, and reauthorized in 1994. It is directed to investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, disability, or national origin, or by reason of fraudulent practices; to study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice; to appraise federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice; to serve as a national clearinghouse for information with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin; to submit reports, findings, and recommendations to the President and Congress; and to issue public service announcements to discourage discrimination or denial of equal protection of the laws.

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By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. More specifically, they are authorized to advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; to receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; to forward advice and recommendations to the Commission, as requested; and to observe any open hearing or conference conducted by the Commission in their states.

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This report is the work of the Massachusetts State Advisory Committee to the U.S. Commission on Civil Rights. The views expressed in this report and the findings and recommendations contained herein are those of the State Advisory Committee members and do not necessarily represent the views of the Commission or its individual members, nor do they represent the policies of the U.S. Government.

## Letter of Transmittal

### Members of the Commission

Catherine E. Lhamon, *Chairperson*

J. Christian Adams

Debo P. Adegbile

Stephen Gilchrist

Gail Heriot

Peter N. Kirsanow

Davie Kladney

Michael Yaki

Mauro Morales, *Staff Director*

The Massachusetts Advisory Committee, as part of its responsibility to advise the Commission on civil rights issues within the state, submits this report, “Water Affordability in Massachusetts.” The report was unanimously approved by the Advisory Committee on December 16, 2020.

Sincerely,

David Harris, *Chairperson*

**Massachusetts Advisory Committee  
to the U.S. Commission on Civil Rights**

**David Harris**, chair  
Medford

**Daniel W. Hartman**  
Boston

**Nazia Ashraful**  
Malden

**Wendy Kaminer**  
Boston

**Christina Bain**  
Manchester

**S. Atyia Martin**  
Boston

**Emilio Cruz**  
Webster

**Eva A. Millona**  
Worcester

**Thomas Cushman**  
Norfolk

**John J. Sivoella**  
Wellesley

**Martha F. Davis**  
Brookline

**Siobhan M. Sweeney**  
Arlington

**Neenah Estrella-Luna**  
Boston

**Jessica Tang**  
Boston

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## **Acknowledgments**

The Massachusetts Advisory Committee thanks all of the briefing participants, listed in Appendix A, for sharing their expertise. The Committee extends a special recognition for the assistance and work of Committee members Martha Davis, Neenah Estrella-Luna, and Wendy Kaminer for their leadership and work on this project. The Committee appreciates the support provided by Northeastern law students assisting with the project: Nilo Asgari, Linnea Brandt, Samantha Cardwell, and Liam O'Leary. Staff thanks David Harris for his continued unparalleled leadership of the Massachusetts Advisory Committee.

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## Executive Summary

Access to clean affordable water is a fundamental human right and obviously essential to life, as the U.N. General Assembly recognized in 2010. But it is not guaranteed in the Commonwealth of Massachusetts or by federal law. Innumerable Massachusetts residents lacked adequate water access before COVID-19 struck. The pandemic both revealed and exacerbated a pre-existing emergency.

Water and sewage costs were rising pre-pandemic. Post-pandemic, rates are predicted to rise even more, perhaps unsustainably, given decreased local and state revenues. Shut-offs may increase while infrastructure maintenance declines. Lower income communities and communities of color will be hardest hit.

Despite these looming crises, Massachusetts has no uniform, statewide standards or programs governing water access and affordability. Some communities offer no assistance to low income residents, some offer discounts to low income seniors and disabled people but any discounts are available only to owner-occupants. No state law or program mandates or provides assistance to all residents in need of water assistance, whether they own or rent their homes.

In part, the variable, patchwork array of water assistance programs reflects the Commonwealth's patchwork, localized system of providing water and setting rates and discounts through an assortment of private, public, or private/public entities. Local rates can and do vary wildly as do local policies regarding water shut-offs. The emergency moratorium on shut-offs declared by Governor Charlie Baker in March 2020 does little to protect the majority of Massachusetts residents. It applies only to investor owned water distribution companies, which represent only 3 percent of water authorities in the Commonwealth.

This disorganized, highly localized system governing water distribution and costs, combined with the absence of an enforceable state constitutional or statutory right to affordable water, practically guarantees inconsistencies and inequalities. So does the virtually exclusive focus on owner-occupants in allocating water discounts. Landlords are not, for example, required to pass on any discounted water rates to tenants, who have little recourse if their water is shut off because the landlord failed to pay water bills. While tenants enjoy a right to potable water and a warranty of habitability, and while they may enforce water rights against their landlord, these enforcement actions are unlikely to provide essential, immediate relief. Tenants have no ability to enjoin water shut-offs, lacking causes of action against the water authority or state and local officials.

Racial disparities in home ownership suggest that denials of adequate water rights and remedies to tenants disadvantage the Commonwealth's minority residents. Massachusetts has one of the nation's highest racial home ownership gaps: In some communities, the percentage of White home ownership is more than double the percentage of Black and Hispanic homeownership. Only about 33 percent of White households in the Commonwealth rent their homes, compared to 73 percent

of Hispanic households, 65 percent of Black households, and 45 percent of Asian households. Black and Hispanic homeowners are also more likely to lose their homes; they experienced much higher foreclosure rates during the 2007-2008 recession than White homeowners.

Massachusetts law provides no cause of action for disparate impacts in housing and water service, which, in any case, are difficult to quantify. A recent study found significant racial disparities in water shut-offs in the City of Boston. But generally, local governing bodies don't collect data on shut-offs, liens, and payment plans. Without adequate data, policy makers can't document and remedy any suspected bias in the implementation of water plans.

We can, however, sadly and confidently assert that the pandemic has worsened inequalities that existed before it hit – inequalities that will continue to widen when it finally passes. Water utilities nationwide are expected to lose billions of dollars as a result of shut-off moratoria. Residential delinquencies and water rates are expected to increase. Low income workers and communities of color, disproportionately sickened and financially devastated by the pandemic, will face bills they cannot pay and increased vulnerabilities to water shut-offs.

Massachusetts should declare that access to clean, affordable water is a basic human right, establishing minimum standards for costs as a percentage of income and should standardize and rationalize its fragmented system of water distribution, costs, and assistance for low income residents. We realize that standardization is complicated. There is a long history of local control and a lack of data from local authorities. In addition, different communities derive their water from different sources and through different infrastructure, affecting water quality and costs. But none of this can excuse life threatening inequalities.

## Introduction

The Massachusetts State Advisory Committee to the U.S. Commission on Civil Rights is concerned about rising water prices in the Commonwealth and their impact on access to household water. Water is a fundamental human need, recognized by the U.N as a human right.<sup>1</sup> The access to clean, safe, and affordable water is essential for human health and economic survival. In the midst of a pandemic, access to water for handwashing and hygiene are especially critical in curbing the spread of disease. The pandemic's disproportionate effects on vulnerable communities have also underscored the urgency of providing equal access to water. The Committee explored the disparate impacts of the Commonwealth's highly localized water policies and rates on members of protected classes.

## National Context

Across the United States, the cost of water has increased at three times the rate of inflation over the past decade, faster than increases in income.<sup>2</sup> As a result, water is becoming increasingly unaffordable for US residents.<sup>3</sup> Non-payment of water bills results in water services being disconnected from people's homes or the imposition of a tax liens on their properties. There is little data tracking the number of disconnections and liens on residential properties, but one national study by Food and Water Watch found that in 2016, at least 15 million U.S. residents had their water shut off due to non-payment of bills.<sup>4</sup>

Increased water costs are generally attributable to rising infrastructure improvement costs for utility companies, a significant decrease in federal investment, and increasing frequency of extreme weather events that contribute to flooding and infrastructure stress.<sup>5</sup> Because of the high costs of repairs, water companies have put off replacing degrading infrastructure for many years – a decision that may have kept water costs for consumers artificially low.<sup>6</sup>

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<sup>1</sup> The Human Right to Water and Sanitation, Media Brief, [https://www.un.org/waterforlifedecade/pdf/human\\_right\\_to\\_water\\_and\\_sanitation\\_media\\_brief.pdf](https://www.un.org/waterforlifedecade/pdf/human_right_to_water_and_sanitation_media_brief.pdf).

<sup>2</sup> David Harrison, *Why Your Water Bill is Rising Much Faster than Inflation*, WALL ST. J. (Mar. 15, 2018), <https://www.wsj.com/articles/who-is-paying-to-fix-outdated-water-and-sewer-systems-you-are-1521106201>.

<sup>3</sup> See ROGER COLTON, THE AFFORDABILITY OF WATER AND WASTEWATER SERVICE IN TWELVE U.S. CITIES: A SOCIAL, BUSINESS AND ENVIRONMENTAL CONCERN, May 2020, [https://www.scribd.com/document/465846248/Water-Report?secret\\_password=T6F6aUH8JqAPtTg5J1aW#fullscreen&from\\_embed](https://www.scribd.com/document/465846248/Water-Report?secret_password=T6F6aUH8JqAPtTg5J1aW#fullscreen&from_embed).

<sup>4</sup> Food and Water Watch, AMERICA'S SECRET WATER CRISIS (2018), [https://www.foodandwaterwatch.org/sites/default/files/rpt\\_1810\\_watershutoffs-web2.pdf](https://www.foodandwaterwatch.org/sites/default/files/rpt_1810_watershutoffs-web2.pdf).

<sup>5</sup> See American Water Works Association, BURIED NO LONGER: CONFRONTING AMERICA'S WATER INFRASTRUCTURE CHALLENGE (2020), <http://www.climateneeds.umd.edu/reports/American-Water-Works.pdf>; see also KAVITA HEYN & WHITNEY WINSOR, PORTLAND WATER BUREAU, CLIMATE RISKS TO WATER UTILITY BUILT ASSETS AND INFRASTRUCTURE, Sept. 30, 2015, <https://www.wucaonline.org/assets/pdf/pubs-asset-infrastructure.pdf>.

<sup>6</sup> Meron Yohannes, *Providing Critical Water Services Through the COVID-19 Crisis*, BIPARTISAN POL'Y CTR. INFRASTRUCTURE BLOG (Apr. 17, 2020), <https://bipartisanpolicy.org/blog/providing-critical-water-services-through-the-covid-19-crisis/>; Maria Zamudo and Will Craft, *A Water Crisis is Growing in a Place You'd Least Expect It*,

In an earlier era, the federal government provided significant grants to water utilities to help maintain or repair water infrastructure.<sup>7</sup> But, between 1977 and 2017, federal funding for water infrastructure fell by 77 percent,<sup>8</sup> while the need for infrastructure investment grew.<sup>9</sup> The Environmental Protection Agency (EPA) estimates that meeting the national water sector's capital improvement needs over the next 20 years will cost \$472.6 billion.<sup>10</sup>

Because of decreased federal support, local water utilities now shoulder a greater share of infrastructure maintenance, repair, and replacement costs. These costs are passed on to consumers, leading to higher household water rates.<sup>11</sup> The EPA offers general guidelines for affordable water pricing, but utility adherence is voluntary.<sup>12</sup> There are no federal assistance programs subsidizing water bills for low-income households when water becomes unaffordable.<sup>13</sup> For gas and electric utility bills, households with an incomes below 150 percent of the federal poverty level qualify for assistance through the Low Income Home Energy Assistance program.<sup>14</sup>

## Constitutional Protections and Statutory Rights

The United States Constitution does not explicitly recognize a right to affordable water access for all. Some have argued that water has a near-constitutional status, and there may be legal protections to ensure continued access to water services.<sup>15</sup> Denial of water for inability to pay infringes other fundamental rights, such as the right to life and the right to family.<sup>16</sup> The United

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February 8, 2019 <https://www.npr.org/2019/02/08/691409795/a-water-crisis-is-growing-in-a-place-you-d-least-expect-it>.

<sup>7</sup> Georgetown Law Human Rights Institute; Amirhadji, Jason; Burcat, Leah; Halpert, Samuel; Lam, Natalie; McAleer, David; Schur, Catherine; Smith, Daniel; and Sperling, Erik, "TAPPED OUT: THREATS TO THE HUMAN RIGHT TO WATER IN THE URBAN UNITED STATES" (2013). HRI Papers & Reports. 7, at 21. [https://scholarship.law.georgetown.edu/hri\\_papers/7](https://scholarship.law.georgetown.edu/hri_papers/7)

<sup>8</sup> Yohannes, *supra* n. 6.

<sup>9</sup> American Society of Civil Engineers, THE ECONOMIC BENEFITS OF INVESTING IN WATER INFRASTRUCTURE, at 10 (2020),

[https://www.asce.org/uploadedFiles/Issues\\_and\\_Advocacy/Infrastructure/Content\\_Pieces/Failure%20to%20Act%20Water%20Wastewater%202020%20Final.pdf](https://www.asce.org/uploadedFiles/Issues_and_Advocacy/Infrastructure/Content_Pieces/Failure%20to%20Act%20Water%20Wastewater%202020%20Final.pdf).

<sup>10</sup> Environmental Protection Agency, *Drinking Water Infrastructure Needs Survey and Assessment, Sixth Report to Congress*, March 2018, [https://www.epa.gov/sites/production/files/2018-10/documents/corrected\\_sixth\\_drinking\\_water\\_infrastructure\\_needs\\_survey\\_and\\_assessment.pdf](https://www.epa.gov/sites/production/files/2018-10/documents/corrected_sixth_drinking_water_infrastructure_needs_survey_and_assessment.pdf)

<sup>11</sup> Georgetown Law, *supra* note 7.

<sup>12</sup> Environmental Protection Agency, *Affordability Considerations*, <https://www.epa.gov/sustainable-water-infrastructure/pricing-and-affordability-water-services#affordability>.

<sup>13</sup> PATRICIA A. JONES & AMBER MOULTON, THE INVISIBLE CRISIS: WATER UNAFFORDABILITY IN THE UNITED STATES, at 11, Unitarian Universalist Service Committee (May 2016), <http://uswateralliance.org/sites/uswateralliance.org/files/Invisible%20Crisis%20-%20Water%20Affordability%20in%20the%20US.pdf>.

<sup>14</sup> U.S. Department of Health and Human Services, Office of Community Services, *Low Income Home Energy Assistance Program Fact Sheet*, <https://www.acf.hhs.gov/ocs/resource/liheap-fact-sheet-0>.

<sup>15</sup> See Sharmila Murthy, *A New Constitutive Commitment to Water*, 36 BOSTON C. J. OF LAW & SOC. JUST. 151 (2016). <http://lawdigitalcommons.bc.edu/jlsj/vol36/iss2/2>.

<sup>16</sup> *Id.*

Nations explicitly recognized a human right to water and sanitation.<sup>17</sup>

Civil rights and anti-discrimination laws may protect against water deprivation in some instances. If African American and Hispanic populations are more likely to be poor, poor people more likely to fall behind on water bills, and people who do not pay their water bills are more likely to suffer water shutoffs, then it is likely that facially neutral policies impact households differently depending on race.<sup>18</sup> One study in 2014 suggested that water shutoffs in Boston may have a disproportionate impact on communities of color, even when controlling for income and other variables.<sup>19</sup> Although many constitutional provisions and civil rights laws require the hurdle of proving intentional discrimination,<sup>20</sup> claims under the Fair Housing Act (FHA) – which encompasses household water – do not.<sup>21</sup> If the administration of water affordability policies such as water shutoffs, liens, or payment plans disparately impacts members of any protected class, there may be actionable claims under the FHA.<sup>22</sup>

## Water Discount Programs in Other States

The regulation of water services is highly localized in the United States. With no mandatory federal or state guidelines regarding affordability,<sup>23</sup> municipalities establish their own systems to provide water and determine its costs.<sup>24</sup>

Some municipalities in other states offer affordability programs, basing eligibility for discounted water rates on household income. Philadelphia has a comprehensive affordability program, the Tiered Assistance Program, which provides assistance to customers whose income is below 150

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<sup>17</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)*, 20 January 2003, E/C.12/2002/11, available at: <https://www.refworld.org/docid/4538838d11.html> [accessed 15 January 2021]

<sup>18</sup> Davis, Martha F., *Let Justice Roll Down: A Case Study of the Infrastructure for Water Equality and Affordability* (2016). Georgetown Journal on Poverty Law & Policy, Vol. 23, pp. 355 - 393 (2016), Northeastern University School of Law Research Paper No. 270-2016, Available at SSRN: <https://ssrn.com/abstract=2814666>

<sup>19</sup> Massachusetts Global Action. *The Color of Water: A Report on the Human Right to Water in the City of Boston*. (2014). Retrieved from [http://massglobalaction.org/projects/colorofwater/primary\\_report\\_shutoffs\\_pre-pub.pdf](http://massglobalaction.org/projects/colorofwater/primary_report_shutoffs_pre-pub.pdf).

<sup>20</sup> See, e.g., Title VII of the Civil Rights Act of 1964, U.S.C. §§ 2000e et seq.

<sup>21</sup> See *Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project*, 576 U.S. 519 (2015) (holding the FHA recognizes disparate impact claims); See also *Kennedy v. City of Zanesville*, 505 F.Supp.2d 456 (S.D. Ohio, Eastern Division 2007) (holding that government denial of water access in housing units was a violation of FHA).

<sup>22</sup> The federal district court in Massachusetts recently enjoined implementation of federal regulations that would have cut back on the availability of disparate impact claims under the FHA. *Massachusetts Fair Housing Center v. United States Department of Housing and Urban Development*, No. 3:20-CV-11765 (D. Mass Oct. 25, 2020).

<sup>23</sup> Federal legislation concerning matters of quality include the 1972 Clean Water Act and the 1974 Safe Drinking Water Act; see also Kevin Murray and Sara Kominers, *The Human Right to Water in the United States*, <https://www.northeastern.edu/law/pdfs/academics/phrge/water-primer.pdf>

<sup>24</sup> See Food and Water Watch. *THE STATE OF PUBLIC WATER IN THE UNITED STATES* at 6, [https://www.foodandwaterwatch.org/sites/default/files/report\\_state\\_of\\_public\\_water.pdf](https://www.foodandwaterwatch.org/sites/default/files/report_state_of_public_water.pdf)

percent of the Federal Poverty Level or who have special hardships.<sup>25</sup> Program participants may also receive forgiveness of arrears, so long as they continue paying current charges.<sup>26</sup> This initiative was implemented in 2017 in an effort to increase bill collections while also preventing low-income residents from losing their homes to foreclosures because of unpaid water bills.<sup>27</sup>

Some municipalities offer low-income tenants discounts on water bills. Eligibility criteria for such discounts vary, as some cities like Baltimore and Detroit require that the tenant be responsible for paying the water bill.<sup>28</sup> In Seattle, water utilities partner with other utilities to implement discounts for income-eligible tenants even if their landlords pay water bills,<sup>29</sup> reasoning that the landlord's water costs are reflected in rents.<sup>30</sup> Baltimore recently passed a new water affordability plan, "Water-For-All" that allows tenants whose annual income is below 200 percent of the federal poverty level to receive rate assistance if they pay their landlord for their water bill separately from rent.<sup>31</sup>

## The Massachusetts Context

In Massachusetts, a water company is defined as "every person, partnership, association or corporation, other than a municipal corporation, and other than a landlord supplying his tenant, engaged in the distribution and sale of water in the commonwealth through its pipes and mains."<sup>32</sup> This classification deals directly with provision of water for consumption and applies to a broad range of entities involved in the distribution of water. Investor-owned water companies are regulated by the Massachusetts Department of Public Utilities (Mass DPU). Non-investor owned water companies include city-owned water systems, water districts, fire districts, and homeowners' associations that provide water services. There are, for example, 70 water and

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<sup>25</sup> Press Release, Office of the Mayor, *Philadelphia Launches New, Income-Based Tiered Assistance Program*, June 20, 2017, <https://www.phila.gov/press-releases/mayor/philadelphia-launches-new-income-based-tiered-assistance-program/>.

<sup>26</sup> Rejane Frederick, *Water as a Human Right: How Philadelphia Is Preventing Shut-Offs and Ensuring Affordability*, Center for American Progress, November 8, 2017, <https://www.americanprogress.org/issues/poverty/news/2017/11/08/441834/water-human-right-philadelphia-preventing-shut-offs-ensuring-affordability/>.

<sup>27</sup> Martha F. Davis, *A Drop in the Bucket: Water Affordability Policies in Twelve Massachusetts Communities* (Northeastern University School of Law: Program on Human Rights and the Global Economy, Boston 2019), at 12.

<sup>28</sup> Baltimore, Md. Code art. 24, §§ 2-6(b)(1), 1-11(n), 2-7(b)(3)(iii); *Water Residential Assistance Program*, City of Detroit (2019), <https://detroitmi.gov/sites/detroitmi.localhost/files/2019-05/WRAP%20Detroit%20-%20English.pdf>.

<sup>29</sup> *Utility Discount Program*, City of Seattle, <https://www.seattle.gov/humanservices/services-and-programs/supporting-affordability-and-livability/utility-discount-program>.

<sup>30</sup> Stacey Berahzer, *Four Factors that Allow One Utility to Provide Financial Assistance to People Who Don't Even Have a Water Account*, *Envtl. Fin. Blog* (Sept. 15, 2016), <http://efc.web.unc.edu/2016/09/15/financial-assistance-people-without-water-account/>.

<sup>31</sup> Baltimore, Md. Code art. 24, §2-6(b)(1).

<sup>32</sup> MASS. GEN. LAWS ch.165 § 1 (2007).

sewer districts in Massachusetts.<sup>33</sup> The Massachusetts Department of Public Utilities (Mass DPU) does not regulate these companies except in specific circumstances. Some entities operate their own treatment plants and some purchase treated water.

Massachusetts has no uniform, statewide standards or programs governing water access and affordability.<sup>34</sup> Some communities offer no assistance to low income residents, some offer discounts to low income seniors and disabled people; but any discounts are available only to owner-occupants.<sup>35</sup> No state law or program mandates or provides assistance to all residents in need of water assistance, whether they own or rent their homes.

In part, the variable, patchwork array of water assistance programs reflects the Commonwealth's patchwork, localized system of providing water and setting rates and discounts through an assortment of private, public, or private/public entities. Local rates can and do vary wildly as do local policies regarding water shut-offs. The emergency moratorium on shut-offs declared by Governor Charlie Baker in March 2020 does little to protect the majority of Massachusetts residents. It applies only to investor owned water distribution companies, which represent only 3 percent of water authorities in the Commonwealth.

This disorganized, highly localized system governing water distribution and costs, combined with the absence of an enforceable state constitutional or statutory right to affordable water, practically guarantees inconsistencies and inequalities. So does the virtually exclusive focus on owner-occupants in allocating water discounts. Landlords are not, for example, required to pass on any discounted water rates to tenants, who have little recourse if their water is shut off because the landlord failed to pay water bills.<sup>36</sup> While tenants enjoy a right to potable water and a warranty of habitability, and while they may enforce water rights against their landlord, these enforcement actions are unlikely to provide essential, immediate relief.<sup>37</sup> Tenants have no ability to enjoin water shut-offs, lacking causes of action against the water authority or state and local officials.<sup>38</sup>

## COVID Response

During the pandemic, lack of access to household water is a threat to personal and public

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<sup>33</sup> David LeBoeuf, Massachusetts State Representative for the 17th Worcester District, testimony, *Web Briefing Before the Massachusetts Advisory Committee to the U.S. Commission on Civil Rights*, June 23, 2020, transcript, p.17. (hereafter cited as *Web Briefing*).

<sup>34</sup> See Appendix C, Analysis of Municipal Water Access and Affordability Policies in Massachusetts, Neenah Estrella-Luna, Oct. 27, 2020, at p. 4.

<sup>35</sup> See Davis *supra* n. 27; see also COMMUNITY ADVISORY BOARD TO THE MASSACHUSETTS WATER RESOURCES AUTHORITY, ANNUAL WATER AND RETAIL RATE SURVEY at 9 (Feb. 3, 2020) <https://mwraadvisoryboard.com/2019ratesurvey/#:~:text=For%20the%202019%20calendar%20year,year's%20combined%20bill%20of%20%241%2C602>.

<sup>36</sup> Lauren Sampson, Race and Climate Justice Attorney, Lawyers for Civil Rights and Impact Litigation, testimony, *Web Briefing*, June 23, 2020, pp. 3, 4.

<sup>37</sup> *Id.* at 4.

<sup>38</sup> *Id.*

health.<sup>39</sup> Communities with the highest water shutoff rates are the same communities most vulnerable to coronavirus infections.<sup>40</sup> On March 24, 2020, Massachusetts Governor Baker issued an emergency order preventing investor-owned water distribution companies from shutting off water due to non-payment during the state of emergency.<sup>41</sup> Approximately ninety-seven percent of residential water customers in Massachusetts are served by municipal corporations, which are not bound by this order.<sup>42</sup> Many municipal corporations voluntarily suspended shutoffs for non-payment during a few months of the pandemic, but many of those policies have already expired.<sup>43</sup> The moratorium does not relieve any consumer obligation to pay, and all balances will be due once the state of emergency expires.<sup>44</sup>

## Findings of the Massachusetts Advisory Committee

Reforming the Commonwealth's systems of water distribution and costs requires understanding its complex assortment of local water authorities. There are six different types of water companies providing water in Massachusetts, with varying sizes, structures, and operations. The majority of these entities providing essential water services appear to be subject little or no state oversight.<sup>45</sup>

Given this complex and fragmented system, it is difficult to compile an in-depth, comprehensive report on conditions throughout the Commonwealth. The dearth of data on the demographics of homeowners who receive discounts or suffer shut-offs also greatly hampers investigators. But advocates testified to a range of urgent problems, including the civil rights implications of tenants' relative powerlessness.

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<sup>39</sup> See Food and Water Watch, *supra* n. 4.

<sup>40</sup> Nina Lakhani, *Millions in U.S. at Risk of 'Water Shutoffs' Amid Layoffs Triggered by Pandemic*, THE GUARDIAN (Apr. 6, 2020, 7:00 AM), <https://www.theguardian.com/environment/2020/apr/06/millions-us-at-risk-losing-running-water-amid-layoffs-triggered-coronavirus-pandemic>.

<sup>41</sup> The Commonwealth of Massachusetts, Department of Public Utilities, Baker Emergency Order, March 24, 2020, <https://www.mass.gov/doc/chairs-1st-set-of-orders-under-c-25-s-4b-re-covid-19/download>. (hereafter "Baker Emergency Order")

<sup>42</sup> Press Release, U.S. Senate Committee on Environment and Public Works, Carper Releases Staff Analysis of State Efforts to Ensure Continued Utility Services for Americans Facing Economic Hardship (Apr. 29, 2020) <https://www.epw.senate.gov/public/index.cfm/press-releases-democratic?ID=F588E20E-7EE3-4075-AFEA-6076155688FC>.

<sup>43</sup> Boston Water and Sewer Commission, *BWSC Remains Flexible with Assisting Customers Experiencing Financial Difficulties*, <https://www.bwsc.org/residential-customers/billing-info-and-assistance>. Boston Water and Sewer Commission suspended its usual bill collections procedures through August 2020, but delinquency charges and overtures for payment recommenced in August 2020.

<sup>44</sup> Erik D. Olson, *COVID 4 Stimulus Bill Must Recognize: Water Is Life*, NAT. RES. DEF. COUNCIL: EXPERT BLOG (Apr. 8, 2020), <https://www.nrdc.org/experts/erik-d-olson/covid-4-stimulus-bill-must-recognize-water-life> (last updated May 11, 2020).

<sup>45</sup> A Fragmented System with Little Available Data. See Appendix B, Memorandum by Martha Davis and Samantha Cardwell, Aug. 8, 2020.

## Civil Rights Implications of Current Water Policies

Tenants “are in a vulnerable position with respect to access to safe, affordable water.”<sup>46</sup> They have no right to benefit from water affordability programs and must cover whatever water costs are included in their rents. Their only remedies for “inefficient or ineffective water fixtures, leaks, or other damage” are legal actions against their landlords.<sup>47</sup> They appear to have no right to maintain water service if a landlord fails to pay water bills. A survey of state court decisions found no cases in which a tenant successfully enjoined a water shut-off.<sup>48</sup>

A comparison of municipalities with high percentages of renters of color (“high renter of color communities”) to municipalities with low percentages of renters of color (“low renter of color communities”) by Committee member Neenah Estrella-Luna found strong suggestions of racial disparities in water shut-offs and access to affordability programs.<sup>49</sup> Estrella-Luna’s findings underscore the need for better data and additional impact studies. Of particular note, Estrella-Luna found high renter of color communities were much more likely to have active water shut off policies than low renter of color communities. In short, the risk of water shut offs is higher for property owners, and by extension renters, in high renter of color communities. These communities are more likely to have water discount programs, and more likely to need them, given their lower average median household incomes. But too many residents are less likely to receive them, given racial disparities in homeownership, suggesting that discount programs are not structured to reach people of color.

None of the 40 municipalities studied offered any financial support for renters, although discounts are funded by tax revenues to which renters contribute.<sup>50</sup> This likely results in disproportionate benefits to White residents, given racial disparities in homeownership.<sup>51</sup> Such disparities are not fully explained by current statistics reflecting disparate poverty or merely unaffordable homes.<sup>52</sup> Historically, redlining practices in Massachusetts made it difficult for Black residents to obtain home mortgages or loans to maintain and keep property once acquired. There is evidence that these race-based practices continue today. A 2017 study of non-FHA loans in Greater Boston found denial rates for borrowers in the same income category were 10.2

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<sup>46</sup> Sampson Testimony, *Web Briefing*, June 23, 2020, p. 4.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> See Estrella-Luna, *supra* n. 34.

<sup>50</sup> *Id.* at p. 4.

<sup>51</sup> *Id.* at p. 2.

<sup>52</sup> See David Harris and Nancy McArdle. *More than Money: The Spatial Mismatch Between Where Homeowners of Color in Metro Boston Can Afford to Live and Where They Actually Reside*. Metro Boston Equity Initiative of the Harvard Civil Rights Project (Jan. 2004), <https://civilrightsproject.ucla.edu/research/metro-and-regional-inequalities/metro-boston-equity-initiative-1/more-than-money-the-spatial-mismatch-between-where-homeowners-of-color-in-metro-boston-can-afford-to-live-and-where-they-actually-reside/harris-spatial-mismatch-boston-one-2004.pdf>

percent for Blacks, 7.4 percent for Latinos, and 3.7 percent for Whites.<sup>53</sup> A significant racial homeownership gap persists in the Commonwealth, the inequities of which are reinforced through water discount programs focusing exclusively on homeowners.

Finally, there are no consistent standards governing any of the policies or programs studied. The thresholds that trigger a water shutoff vary considerably and water discount eligibility policies vary even more so.<sup>54</sup> Conversations with municipal staff suggested that water-shut-offs are partly discretionary, and several staff members indicated that they try to work with the property owner before shutting off the water. Discretion, fairly exercised, can protect homeowners from unnecessary or irreparable harm. Exercised unwisely, discretion is often a source of bias.

### Impacts on Local Residents

Some municipalities in Massachusetts offer limited discount programs or payment plans to reduce the costs for eligible residents.<sup>55</sup> Reduced rates are typically offered to senior owner-occupants or fully disabled residents. We have not found any Massachusetts water system that offers financial assistance to tenants of rental properties.<sup>56</sup> Further, of the twelve Massachusetts communities surveyed by Northeastern University School of Law, none have implemented water affordability programs that tie water rates to household income.<sup>57</sup>

Massachusetts formerly offered a state-wide water affordability program called the Low-Income Sewer and Water Assistance Program. The program has not been formally repealed but it has not received appropriated funding since 2003.<sup>58</sup> When active, it was administered in coordination with the Low Income Home Energy Assistance Program.<sup>59</sup>

The committee heard from officials serving Lawrence, Newton, and the neighboring communities of Worcester and Leicester as well as from legal, consumer protection, and clean water advocates. Their testimonies provided multiple examples of the Commonwealth's differing water authorities and their disparate policies and problems. These included significant variability in water rates, shut-off and delinquent payment policies, infrastructure quality, deferred

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<sup>53</sup> See Jim Campen, *Changing Patterns XXV: Mortgage Lending to Traditionally Underserved Borrowers & Neighbors in Boston, Greater Boston, and Massachusetts, 2017*. Massachusetts Community & Banking Council (Nov. 2018), <http://mcbc.info/wp-content/uploads/2018/11/CP25-Final-Report-Nov2018.pdf>

<sup>54</sup> For example, to qualify for water discounts in Boston, customers must be: (1) 65 years or older or fully disabled, (2) Owner-occupied, (3) 1-4 family residential dwelling. In Worcester, water and sewer discounts are available for customers who (1) are 65 years or older (2) fall into variable income limits, (3) own a residential dwelling that has been owner-occupied for 5 years, and (4) Massachusetts has been their primary residence for 10 years. In Cambridge, customers must (1) be 65 years or older, (2) owner-occupied 2-3 family home, and (3) there is no income limit to receive the 30% discount on water and sewer. For more variations, see Davis, *supra* note 27.

<sup>55</sup> See Davis *supra* n. 27.

<sup>56</sup> *Id.* at 14.

<sup>57</sup> *Id.* at 5.

<sup>58</sup> MASS. GEN. LAWS ch. 23B, § 24B.

<sup>59</sup> An Act to Provide Sewer and Water Rate Relief, Bill S.807, 191<sup>st</sup> Cong. (Ma. 2019-2020) <https://malegislature.gov/Bills/191/S807>

maintenance and resources for repair, and language barriers, as well as funding challenges.

Residents of Leicester, for example, have “paid monthly what Worcester residents paid quarterly for water and sewer services.”<sup>60</sup> Water service in Leicester is complicated. This town of fewer than 11,000 people is “serviced by four quasi-public subscriber owned sewer districts and three quasi-public subscriber owned water districts. Each of these districts is governed by an elected board of commissioners.”<sup>61</sup> All were created by legislation. “One district was created in 1888 and still has a wooden pipe in their system.”<sup>62</sup> It “charges 297 percent above the statewide median for water.”<sup>63</sup> The Department of Utilities has no jurisdiction over districts so “commissioners can set their own water shutoff period and schedule.”<sup>64</sup> In 2019, water district commissioners voted to start shutting off water to delinquent customers, but agreed to halt shut-offs if residents set up payment plans after State Representative LeBoeuf intervened. The plans, however, are not always manageable for the district’s aging, relatively poor residents on fixed incomes. The “enigmatic legal status of districts” means that “they don’t fall under the jurisdiction of state agencies that could offer paths forward for privately or municipally owned utility.”<sup>65</sup>

The City of Lawrence has a population of 80,000 people, most of whom live below the poverty line, 80 percent of whom are Hispanic or Latino, and 70 percent are renters.<sup>66</sup> Homeowners or property owners are responsible for water bills and the city currently has 12,000 active accounts.<sup>67</sup> The city may terminate service or impose liens for non-payment and works with consumers to set up payment plans, typically requiring payment of half the overdue amount.<sup>68</sup> Service may also be terminated for illegal connections.<sup>69</sup> In response to the pandemic, the Mayor extended payment periods and issued a moratorium on shut-offs, though he had no obligation to do so under the Governor’s order which was limited to private water providers.<sup>70</sup> Lawrence does not collect demographic information about shut-offs and payment plans and does not offer targeted water discounts or a water affordability program, although it does offer some discounts for other municipal services.<sup>71</sup>

The City of Newton purchases water from the Massachusetts Water Resources Authority.<sup>72</sup> Its

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<sup>60</sup> LeBoeuf Testimony, *Web Briefing*, June 23, 2020, p. 16.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at 17.

<sup>66</sup> Milagros Puello, Acting Water and Sewer Commissioner, City of Lawrence, testimony, *Web Briefing*, May 19, 2020, transcript, p. 9.

<sup>67</sup> *Id.* at 9.

<sup>68</sup> *Id.* at 10.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*; see also Baker Emergency Order *supra* n. 41.

<sup>71</sup> *Id.* at 9-11, 19, 27.

<sup>72</sup> Louis Taverna, Chairman, Massachusetts Water Resources Authority Advisory Board and City Engineer, City of Newton, testimony, *Web Briefing*, May 19, 2020, p. 13.

water and sewage programs are funded entirely by residential consumers, without any subsidies from city taxes.<sup>73</sup> Newton offers a low income elderly discount of 30 percent on water and sewer bills, effectively subsidized by other residents.<sup>74</sup> Because water and sewage service receive no local tax revenues, the city would need state or federal assistance to lower rates.<sup>75</sup>

The wide variety of service and billing practices across the Commonwealth presents a significant challenge to regulation and standardization by state agencies. The Department of Public Utilities, for example, declined to consider water service in establishing best practices for post-pandemic shut-off resumptions, focusing instead on establishing best practices for gas and electric companies only.<sup>76</sup>

Water quality and affordability depend, in large part on infrastructure. In many municipalities, infrastructure improvement entails replacing lead service lines, which requires significant investment by property owners and/or municipalities. When municipalities can't or won't shoulder the costs, the risks of aging infrastructure fall on low income renters and communities of color.<sup>77</sup> When municipalities do shoulder the costs, they result in increased rates for consumers.<sup>78</sup>

Leakage is also a problem for aging infrastructure, reducing water pressure, and eventually increasing water bills because of the time and difficulty of getting water out of the tap. Reconnecting water service and flushing pipes can be dangerous if not done properly. Effective outreach and notice of best practices to immigrant populations is often inadequate because of inattention to language barriers and inadequate translations.<sup>79</sup> These problems exist largely because of the lack of enforcement of or inattention to existing federal and state laws requiring language access.

Several witnesses spoke about the need for additional funding or additional access to funding in order to maintain infrastructure and water affordability programs without unduly burdening customers.<sup>80</sup> These pre-existing challenges have been exacerbated by COVID. Community action programs that assist homeowners in accessing financial support for utilities report that, prior to the pandemic, very little of their funding came out of the state budget directly. Nevertheless, they're concerned about additional state budget cuts and their potential impacts on

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<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at 13-14.

<sup>76</sup> Maureo Fernandez Y Mora, Drinking Water Advocate, Clean Water Action, testimony, *Web Briefing*, May 19, 2020, p. 14.

<sup>77</sup> Fernandez Y Mora testimony, *Web Briefing*, May 19, 2020, p. 15.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 15-16.

<sup>80</sup> See James Guidod, Policy Analyst, Massachusetts Water Resources Authority Advisory Board, testimony, *Web Briefing*, May 19, 2020, p. 12; see also Taverna Testimony, *Web Briefing*, May 19, 2020, p. 14.; see also Fernandez Y Mora testimony, *Web Briefing*, May 19, 2020, p. 15.

needy residents.<sup>81</sup> The Commonwealth's existing financing options for infrastructure maintenance are based on financial risk rather than need, which negatively impacts subscriber owned districts.<sup>82</sup> Controlling water rates or expanding water affordability programs would require funding from the state or federal government.<sup>83</sup>

## Recommendations of the Massachusetts Advisory Committee

1. Local water authorities should be required to collect demographic and tenure data on households experiencing water shut-offs or liens.
2. Landlords should be required to pass on to tenants at least a percentage of savings occasioned by any water rate discounts.
3. Low income tenants should be eligible for direct subsidies to offset the costs of basic household water reflected in rent payments.
4. Tenants should be empowered to temporarily enjoin water shut-offs resulting from a landlord's delinquency.
5. Water authorities should establish arrearage management programs for consumers similar to programs established by all regulated gas and electric utilities.
6. Local water authorities should collect data on payment plans offered to water consumers, to ensure that favorable plans are not offered on a discriminatory basis. Vulnerable water consumers should be afforded the same termination protections extended by the Commonwealth to vulnerable customers of regulated gas and electricity utilities.<sup>84</sup>
7. The Commonwealth should encourage and directly subsidize cost-lowering water conservation efforts, like the installation of water efficient toilets, leak repairs, and general infrastructure repair.<sup>85</sup>
8. The Massachusetts Department of Public Utilities should oversee water rates and increases in water rates as it oversees regulated gas and electricity rates

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<sup>81</sup> Josh Amaral, Assistant Executive Director, People Acting in Community Endeavors, testimony, *Web Briefing*, August 26, 2020, p.18.

<sup>82</sup> LeBoeuf testimony, *Web Briefing*, June 23, 2020, p. 16.

<sup>83</sup> Taverna testimony, *Web Briefing*, May 19, 2020, p. 14.

<sup>84</sup> Olivia Wein, Staff Attorney, National Consumer Law Center, Written Statement, May 19, 2020, p. 4, 6.

<sup>85</sup> *Id.* at pp. 6-7

## **Appendix A - Briefing Panelists**

**Josh Amaral**

Assistant Executive Director, People Acting in Community Endeavors

**Maureo Fernández y Mora**

Drinking Water Advocate, Clean Water Action

**Lawrence Friedman,**

Professor, New England Law, Boston

**James Guiod,**

Director of Finance, MWRA Advisory Board

**Christopher Larue**

Legislative Aide, Senator Montigny

**David H. A. LeBoeuf**

State Representative, 17<sup>th</sup> Worcester District

**Milagros Puello**

Acting Commissioner of Water & Sewer, City of Lawrence

**Lauren Sampson**

Staff Attorney, Lawyers for Civil Rights

**Lou Taverna**

MWRA Advisory Board member

**Olivia Wein**

Staff Attorney, National Consumer Law Center

## Appendix B – Taxonomy of Water Authorities in Massachusetts

**To:** Massachusetts Advisory Committee to the U.S. Commission on Civil Rights

**From:** Martha Davis/Samantha Cardwell

**Date:** 11 August 2020

**Re:** Taxonomy of Water Authorities in MA

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A water company is defined as “...every person, partnership, association or corporation, other than a municipal corporation, and other than a landlord supplying his tenant, engaged in the distribution and sale of water in the commonwealth through its pipes and mains.”<sup>1</sup> This classification deals directly with provision of water for consumption. As such, it serves as a useful entry point of further analysis of legal entities involved in water distribution in Massachusetts. Note that the definition above applies to a broad range of entities involved in the distribution of water. Investor-owned water companies are regulated by the Massachusetts Department of Public Utilities (Mass DPU). An example of such a water company is the Housatonic Water Company.<sup>2</sup> Non-investor owned water companies include city-owned water systems, water districts, fire districts, and homeowners’ associations that provide water services. The Mass DPU does not regulate these water companies except under specific circumstances.

**City Owned Water Systems** are municipal corporations and are therefore not regulated by the Massachusetts Department of Public Utilities (Mass DPU).<sup>3</sup> Examples of such systems include municipal water departments that purchase treated water from a supplier utility and distribute, as well as municipalities that operate such a utility. Examples include the Saugus Water Department, which purchase treated water from the MWRA, and the Lowell Regional Utility, which treats and distributes water to Lowell residents, as well as residents of surrounding communities.<sup>4 5</sup> Rate setting for these systems is dependent on the municipality’s form of government and local laws regulating provision of water.

**Water districts** are self-governing and operate independently of municipalities.<sup>6</sup> Some water districts cross municipal boundaries, some are contained within municipal boundaries and/or cover only a subsection of a municipality. Water districts are created by a special act of the General Court. The Mass DPU is not involved in their regulation unless specified by the district’s enabling act. One such example is Chelmsford, which has three water districts – the Chelmsford Water District, the North Chelmsford Water District, and the East Chelmsford Water District – that operate independently of the town.<sup>7</sup> Furthermore, some residents of Chelmsford

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<sup>1</sup> G.L. c.165 Section 1

<sup>2</sup> <https://housatonicwater.com/about-us/>

<sup>3</sup> G.L. c.165 Section 1

<sup>4</sup> <https://www.saugus-ma.gov/water-department>

<sup>5</sup> <https://www.lowellma.gov/645/Water-Utility>

<sup>6</sup> M.G.L.A. 40 § 61

<sup>7</sup> <https://www.townofchelmsford.us/467/Water-Districts>

receive their water from the Lowell Regional Utility.<sup>8</sup> Water districts are governed by a Board of Commissioners, and the scope of the Commissioners' authority is defined in the district's enabling legislation/by-laws. Rate setting is undertaken by the Board of Commissioners. For example, in the Chelmsford Water District, one of three water districts serving the municipality of Chelmsford, the water districts by-laws as enumerated in the district's enabling legislation state "...the Said commissioners shall fix just and equitable prices and rates for the use of water, and shall prescribe the time and manner of payment."<sup>9</sup> The by-laws go on to enumerate that, "The income of the water works shall be applied to defraying all operating expenses, interest charges and payments on the principal as they accrue upon any bonds or notes issued under authority of this act." Any surplus may be used to improve or expand infrastructure as determined by the Board of Commissioners, and any remaining surplus will be used to reduce water rates.<sup>10</sup>

**Fire districts** are also self-governing and are created by a special act of the General Court. The Mass DPU is not involved in the regulation of fire districts that provide water services unless specified by the district's enabling act.<sup>11</sup> However, they do file their rates with the Mass DPU.<sup>12</sup> One fire district that provides water services is the Barnstable Fire District, which "...provides fire protection, emergency medical service, public water supply and street lighting for the residents and businesses of Barnstable Village and Cummaquid."<sup>13</sup> The fire district's water services are overseen by an elected Board of Water Commissioners.<sup>14</sup> The Board of Water Commissioners "...oversee the operation and budget of the Water Department," of the fire district.<sup>15</sup>

**Homeowners associations** that provide water services are considered a water company due to their provision of water services. They are not regulated by the Mass DPU unless they provide water services to non-members, in which case only the provision of services to non-members is regulated by the Mass DPU.<sup>16</sup>

Other Entities:

**Massachusetts Water Resource Authority.** The MWRA is a public authority established by legislation to provide "wholesale water and sewer services to 3.1 million people and more than 5,500 large industrial users in 61 communities in eastern and central Massachusetts."<sup>17</sup>

**Independent Water and Sewer Commissions.** Municipalities can create independent water and sewer commissions within the boundaries of a municipality through a special act of the

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<sup>8</sup> <https://www.lowellma.gov/645/Water-Utility>

<sup>9</sup> [https://www.chelmsfordwater.com/sites/g/files/vyhlf2931/f/uploads/water\\_district\\_by-laws\\_rules\\_regulations.pdf](https://www.chelmsfordwater.com/sites/g/files/vyhlf2931/f/uploads/water_district_by-laws_rules_regulations.pdf)

<sup>10</sup> [https://www.chelmsfordwater.com/sites/g/files/vyhlf2931/f/uploads/water\\_district\\_by-laws\\_rules\\_regulations.pdf](https://www.chelmsfordwater.com/sites/g/files/vyhlf2931/f/uploads/water_district_by-laws_rules_regulations.pdf)

<sup>11</sup> <https://www.mass.gov/info-details/water-distribution-companies#dpu-jurisdiction-over-water-companies->

<sup>12</sup> G.L. c.165 Section 2A

<sup>13</sup> <https://www.barnstablefiredistrict.com/>

<sup>14</sup> <https://www.barnstablefiredistrict.com/>

<sup>15</sup> <https://www.barnstablefiredistrict.com/commissioners/>

<sup>16</sup> <https://www.mass.gov/info-details/water-distribution-companies#dpu-jurisdiction-over-water-companies->

<sup>17</sup> <http://www.mwra.com/02org/profile-r02018-06.pdf>

legislature.<sup>18</sup> These water and sewer commissions integrate management of water and sewer systems within their jurisdiction. As municipalities can enter into intermunicipal agreements that allow them to offer joint services, or for one municipality to provide services for another, the jurisdiction of a water and sewer commission may extend beyond municipal boundaries. These commissions are also independent governing units.<sup>19</sup> One example of such an independent water and sewer commission is the Boston Water and Sewer Commission.<sup>20</sup> Pursuant to BWSC's enabling act – Chapter 436 of the Acts of 1977 – the commission independently sets rates for water and sewer services.<sup>21</sup> Furthermore, the enabling act requires that... “[T]he Commission is required to establish fees, rates, rents, assessments and other charges at a level and amount at least sufficient to pay the principal, premium and interest on bonds issued by the Commission, to maintain its reserve funds as stipulated by its General Bond Resolution, to provide funds for paying the cost of all necessary repairs, replacements and renewals of the water and sewer systems and to pay any and all other amounts which the Commission, by law or by contract, is obligated to pay.”<sup>22</sup> BWSC purchases treated water for distribution from the MWRA.

#### Conclusory Note:

There is some variation in the point at which the above entities enter the supply chain. For example, some water districts operate their own treatment plants. Other water districts purchase a treated water supply from another entity. For example, the Lynnfield Water District receives its water supply from the MWRA, as does the South Hadley Fire District #1. Significant geographic variations in the jurisdictions of different entities contributes to the variety of ways that communities, or subsets of communities, receive their water.

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<sup>18</sup> <https://www.mass.gov/files/documents/2016/08/wy/mgtdists.pdf>

<sup>19</sup> M.G.L.A. 40 § 61

<sup>20</sup> <https://www.bwsc.org/environment-education/water-sewer-and-stormwater/water-system>

<sup>21</sup> <http://www.bwsc.org/sites/default/files/2019-02/2019%20Rate%20Doc.pdf>

<sup>22</sup> <http://www.bwsc.org/sites/default/files/2019-02/2019%20Rate%20Doc.pdf>

## Appendix C – Analysis of Municipal Water Access and Affordability Policies in Massachusetts

**To:** Massachusetts Advisory Committee to the US Commission on Civil Rights  
**From:** Neenah Estrella-Luna, MPH, PhD (Committee Member)  
**Date:** October 27, 2020  
**Subject:** Analysis of municipal water access and affordability policies in Massachusetts

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### Background

The Advisory Committee’s project on water affordability focuses on the civil rights issues that may be raised by the increasing costs of household water across the Massachusetts. We are specifically interested in local water authorities’ uses of liens and/or water shutoffs to enforce payment for services. The increase cost of water and the risk of water shutoff affects property owners directly. Renters are also affected insofar as the cost of water is incorporated into rents and shutoffs may result in displacement. The COVID pandemic has strengthened our concerns as handwashing is a critical preventive practice.

Previous research focusing on the City of Boston found significant racial disparities in water shutoffs.<sup>1</sup> A more recent study by Northeastern University School of Law found that municipal water affordability programs exclude renters.<sup>2</sup> Given the very low rates of homeownership among people of color in Massachusetts, the exclusion of renters from water affordability programs may have a disparate impact on people of color.

Unfortunately, neither municipalities nor water authorities collect data on the demographic characteristics of ratepayers or on the households that have been subject to shutoffs or liens. In order to better understand the potential for disparate treatment or discriminatory effects, we conducted an exploratory descriptive study of the municipal policies related to water access and affordability.

### Method

This investigation was guided by four questions:

- Does the municipality have a policy of shutting off water for non-payment?
- Does the municipality have a policy of placing liens on property for non-payment of water bills?

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<sup>1</sup> Massachusetts Global Action. "The Color of Water: A Report on the Human Right to Water in the City of Boston." (2014). Retrieved from [http://massglobalaction.org/projects/colorofwater/primary\\_report\\_shutoffs\\_pre-pub.pdf](http://massglobalaction.org/projects/colorofwater/primary_report_shutoffs_pre-pub.pdf)

<sup>2</sup> Martha F. Davis. "A Drop in the Bucket: Water Affordability Policies in Twelve Massachusetts Communities," (Northeastern University School of Law: Program on Human Rights and the Global Economy, Boston 2019). Retrieved from <https://www.northeastern.edu/law/pdfs/academics/phrge/water-report-2019.pdf>

- Does the municipality have any water discount programs, and if so, how do those programs operate?
- Did the municipality put in place a water shutoff moratorium in response to the COVID pandemic and if so, did they reinstate water to properties whose water had been shut off?

There are two facts that underscore the design of this investigation. First, Massachusetts is a racially hyper-segregated state. According to a 2015 Federal Reserve Bank of Boston report, Black and Latinx segregation in the Boston metropolitan area is higher than the national average, especially for the Latinx community.<sup>3</sup> There are 11 municipalities where people of color comprise more than 50% of the population. The people of color in these 11 municipalities account for more than half of the people of color who live in Massachusetts. In contrast, non-Hispanic Whites account for more than half of the population in 96% of municipalities in Massachusetts. Indeed, in 44% of municipalities, non-Hispanic Whites comprise 90% or more of the population.<sup>4</sup> Second, there are large racial disparities in homeownership rates on Massachusetts. According to the 2018 5-Year American Community Survey, 87% of owner occupied housing in Massachusetts are owned by non-Hispanic Whites.<sup>5</sup>

Given this context, for this analysis I assume that comparing the policies of municipalities with high rates of non-Hispanic White renters (hereafter, high renter of color communities) with low rates of non-Hispanic White renters (hereafter, low renter of color communities) would provide us with information on the possibility of disparities in access to affordable and safe water in Massachusetts.

Using the 2010 Decennial Census,<sup>6</sup> I identified those municipalities where more than 50% of the renter population was non-Hispanic White and selected the top 10 municipalities in order of population size. I then identified municipalities where less than 25% of the population were non-Hispanic White and chose the top 10 in order of population size. In order to ensure an adequate sample size, I chose seven additional municipalities where more than 25% of renters were renters of color and matched those with 14 municipalities where renters were less than 25% renters of color. Matching was based on median household income.<sup>7</sup> Municipalities were considered matched if their median household incomes were within 25% of each other. The reason for adding additional low renter of color communities was to address anticipated non-response to our inquiries.<sup>8</sup> In matching municipalities, care was taken to ensure geographic distribution of the sample across Massachusetts. In addition, two very high median income

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<sup>3</sup> John Logan. "Separate and Unequal: Residential Segregation," Communities & Banking (Federal Reserve Bank of Boston, December 1, 2015). Retrieved from <https://www.bostonfed.org/publications/communities-and-banking/2016/winter/separate-and-unequal-residential-segregation.aspx>

<sup>4</sup> US Census Bureau, 2014-2018 American Community Survey 5-Year Estimates, Table B03002

<sup>5</sup> US Census Bureau, 2014-2018 American Community Survey 5-Year Estimates, Table S2502

<sup>6</sup> US Census Bureau, 2010 Decennial Census, Table HCT1

<sup>7</sup> US Census Bureau, 2014-2018 American Community Survey 5-Year Estimates, Table S1903

<sup>8</sup> Three low renter of color municipalities did not respond to our requests for information.

communities were added explore the role of income in this phenomenon.

The final sample includes 40 municipalities. People of color comprise an average of 55% of the population and 48% of renters in high renter of color communities. People of color comprise an average of 17% of the population and 18% of renters in low renter of color communities. The median household incomes in lower renter of color communities is 24% higher, on average, than in high renter of color communities. The list and description of sampled communities is found in Table 1.

Information was obtained primarily by two co-op students from the Northeastern University School of Law and myself. We obtained data about water shutoff policies, lien policies, water discount programs, and COVID response from the websites of the sampled municipalities as well as regional water authorities supplying water to those municipalities. We also called municipalities to confirm information or to obtain information not provided on their websites. Whenever we spoke with a person, we recorded any information about the water policies or discount programs in memos. Data was gathered between April 2020 and October 2020.

### **Findings**

**Water shutoff policies.** A greater proportion of high renter of color communities have active water shutoff policies when compared to low renter of color communities. The overwhelming majority (83%) of low renter of color communities have no policy or practice of shutting off water for non-payment. Very few have active water shutoff policies. While a majority (65%) of high renter of color communities similarly have no water shutoff policy or practice, 35% of these communities do. In fact, almost three times as many high renter of color communities have active water shutoff policies as low renter of color communities. There is wide variation in the length of time of non-payment that would trigger a shutoff, although 3 billing cycles was a common threshold for municipalities that bill monthly.

**Lien policies.** An equal proportion of municipalities have lien policies related to non-payment of water bills. There is wide variation in when a lien would be placed on a property due to non-payment.

**Discounts.** The overwhelming majority of low renter of color communities have no water discount program at all. Over 60% of high renter of color communities did have a program. Across all municipalities (with one exception), these programs were targeted primarily at the elderly and secondarily at the disabled. One high renter of color community limited its program to low income elderly and a couple of others had income limits. The definition of elderly also varies considerably. Age thresholds included over 55, over 62, and over 65. One low renter of color community provides discounts only to

those homeowners who also qualified for LIHEAP.<sup>9</sup>

There is wide variation in the discount provided to the homeowner. Some municipalities provide an actual dollar discount ranging from \$20 per month to a max of \$170 per year. Others reduce the water bill proportionally, with reductions ranging from 8.33% to 30%. Some municipalities reduce the property owner's real estate tax bill and others provide a 50% discount on the first 50 units of water used.

None of the municipalities incorporated renters into their water discount program in any way. Where water discounts are offered, they only apply to owner occupied housing.

**COVID response.** All but one of the municipalities studied that have active water shut off policies put in place a shutoff moratorium at the start of COVID pandemic in March 2020. Most reported that they had not put in place water reinstatement policies. This may be because many municipalities do not shut off water during the winter either in policy or practice. Among the municipalities we spoke with, none had households that had been shutoff at the start of the COVID crisis.

## **Conclusion**

This analysis suggests that there may be disparities in access to affordable and safe water in Massachusetts. High renter of color communities were much more likely to have active water shut off policies than low renter of color communities. In short, the risk of water shut offs is higher for homeowners, and by extension renters, in high renter of color communities. These communities are more likely to have water discount programs. And given the lower average median household incomes, high renter of color communities are more likely to need access to financial supports. However, given the racial disparities in homeownership, even in communities with large populations of people of color, these programs are not structured to reach people of color.

Consistent with previous research by Northeastern School of Law, none of the 40 municipalities studied offered any financial supports that would benefit renters. Given the racial disparities in homeownership, these policies have the effect of disproportionately benefitting White homeowners. For most communities, water discounts are funded primarily by ratepayers, property taxes, or other local taxes. These are sources of revenue that renters contribute to as part of their rent as well as through local shopping and dining. Despite contributing to the local tax base, renters are not able to benefit from these supports even if they meet general program eligibility criteria.

Finally, there is no consistency in the structure or operation in any of the policies or programs studied. The thresholds that trigger a water shutoff vary considerably. Water discount eligibility policies

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<sup>9</sup> The Low Income Home Energy Assistance Program (LIHEAP) provides eligible households with assistance in paying a portion of their winter heating bills.

vary even more so. Conversations with municipal staff suggest that there may also be some level of discretion around if and when a household's water is shut off. Several staff members indicated that they try to work with or negotiate with the property owner before shutting off the water. Discretion can be a good practice to avoid causing unnecessary or irreparable harm. But it also raises the possibility of bias.<sup>10</sup>

Since no municipality or water authority collects data on the individual characteristics of the homeowners who receive water discounts or whose water is shutoff, it is difficult to determine with any certainty whether there are disparities in access to affordable and safe water for protected categories. This analysis supports existing research that suggests the distinct possibility of racial disparities in the experience of water shutoffs or in access to water affordability programs in Massachusetts.

**Table 1: List of sampled municipalities**

High Rates of Renters of Color				Low Rates of Renters of Color			
	% Total POC	% Renters of Color	Median HH Income		% Total POC	% Renters of Color	Median HH Income
Boston	55%	52%	\$65,883	Amherst	28%	23%	\$43,319
Brockton	66%	61%	\$55,140	Andover	18%	18%	\$95,640
Cambridge	39%	37%	\$95,404	Arlington	23%	19%	\$107,085
Chelsea	79%	70%	\$53,280	Attleboro	17%	18%	\$74,255
Everett	55%	42%	\$60,482	Barnstable	14%	20%	\$68,919
Fitchburg	36%	35%	\$55,277	Belmont	26%	20%	\$120,208
Framingham	35%	47%	\$79,136	Beverly	10%	12%	\$79,483
Holyoke	58%	64%	\$40,656	Braintree	20%	20%	\$94,945
Lawrence	86%	80%	\$41,583	Bridgewater	22%	13%	\$64,929
Lowell	51%	48%	\$51,987	Buzzards Bay	8%	5%	\$72,500
Lynn	64%	53%	\$54,598	Clinton	25%	22%	\$54,076
Malden	53%	44%	\$64,178	Dedham	22%	22%	\$96,992
New Bedford	38%	35%	\$43,989	Fall River	23%	17%	\$41,585
Quincy	42%	30%	\$74,180	Holbrook	23%	21%	\$70,364
Randolph	66%	60%	\$73,697	Huntington	6%	4%	\$51,667
Springfield	68%	75%	\$36,730	Lenox	10%	6%	\$53,871
Worcester	44%	45%	\$46,407	Newton	26%	20%	\$139,696
				North Adams	11%	8%	\$39,411
				Peabody	16%	19%	\$68,387
				Pittsfield	16%	17%	\$48,555
				Taunton	22%	21%	\$62,185
				Westfield	15%	17%	\$60,162
				Weymouth	16%	18%	\$79,034

<sup>10</sup> Lipsky, Michael. *Street-level bureaucracy: Dilemmas of the individual in public service*. Russell Sage Foundation, 2010.