

March 26, 2021

Jonathan F. Mitchell, Mayor  
133 William St.  
New Bedford, MA 02740  
Mayor.Mitchell@newbedford-ma.gov

**Via Email**

**Re: New Bedford Church Occupancy Cap**

Dear Mayor Mitchell:

First Liberty Institute is the largest legal organization dedicated exclusively to protecting religious liberty for all Americans. Massachusetts Family Institute is a non-partisan public policy organization dedicated to strengthening families in Massachusetts. We represent a church in your city, New Life South Coast (the “Church”), who is operating in full accordance with the Governor’s COVID-19 Order No. 66 (“Order 66”). Please direct all communications regarding this issue to me.

You will recall that on November 20, 2020, we wrote to you concerning New Bedford Health Department memorandum, dated May 22, 2020, that purported to limit the occupancy of houses of worship to the lower of 40% of maximum occupancy or 100 persons. We understand that the memorandum is no longer being enforced. However, we now understand that the New Bedford Health Department is purporting to place a 10-person per 1,000 square-foot limitation on each room of the Church, including the sanctuary—something that conflicts with the relevant state-wide standards and that in any event has resulted in even more egregious discriminatory treatment of the Church than the 50% capacity limitation that the state-law standards actually require.

On March 18, 2021, Governor Charlie Baker issued Order 66, which advanced the Commonwealth to Phase IV, Step 1 of reopening protocols effective March 22, 2021. Like previously issued orders, Order 66 provides that churches and other places of worship “may open [their] premises to workers . . . and the public” so long as such places of worship follow the Director of Labor Standards’ Sector Specific Workplace Standards for Places of Worship and Religious Services to Address COVID-19 (the “DLS Standards”) and Order 66’s General Workplace Safety Rules.

The DLS Standards, most recently updated on March 19, 2021, apply to “all Places of Worship and Religious Services, and all services and activities including regular and holiday services, weddings, funerals, wakes, support group meetings, and other related gatherings.” They provide that, for indoor services at places of worship, the

occupancy limit is the “greater of . . . 50% of the building’s maximum permitted occupancy as documented in its occupancy permit on record with the municipal building department or other municipal record holder” or, if there is no permitted occupancy limitation on record, “10 persons per 1,000 square feet of accessible space.” The DLS Standards do state that “[i]n any case, no enclosed space (e.g. a single room, basement) within the building may exceed occupancy of 10 persons per 1,000 square feet.” But as explained above, the DLS Standards also clearly provide that occupancy is limited to “the greater of” the applicable capacity limitations outlined in the Standards, and it is the 50% capacity limitation—not a 10 per 1,000 square feet limitation—that applies to churches with a permitted occupancy limitation on record.

New Life South Coast has carefully and prudently adhered to the DLS Standards and all General Workplace Safety Rules established by the Governor’s orders. During the summer of 2020, New Life South Coast went so far as to invite New Bedford Health Director Damon Chaplin to review all of the Church’s COVID-19 preparation and response procedures. In ensuing health inspections of the Church, New Bedford officials found that the Church exceeded their expectations for COVID-19 preparedness and safety, with some stating that the Church’s preparation were “above and beyond” what was expected.

While New Life South Coast has worked hard to abide by the requirements of the Governor’s orders, the General Workplace Safety Rules, and the DLS Standards, the New Bedford Health Department has now purported to limit the Church’s capacity below the Governor’s 50% capacity cap by requiring the Church to limit occupancy to 10 persons per 1,000 square feet in each room of the church—a limitation that results in a sanctuary capacity limit of just 90 worshippers. Imposing this stringent restriction is a violation of Governor Baker’s Order 33, which states that the order is intended to create a “uniform” set of COVID-19 rules across the Commonwealth and that:

[n]o municipal or other local authority should adopt or enforce any workplace health or safety rule to address COVID-19 that is in addition to, stricter than, or otherwise in conflict with any COVID-19 workplace safety rule adopted in [Order 33] or under the implementing directives, regulations, and guidance issued by DLS or DPH under the authority granted by [Order 33].

By purporting to impose a 10 person per 1,000 square feet cap on each room of the Church—which has a permitted occupancy limitation on record—the New Bedford Health Department effectively has purported to subject the Church to the 10 person per 1,000 square feet limitation that the DLS Standards apply only to churches without permitted occupancy limitations on record. This is inconsistent with the statewide uniformity that the Governor’s order requires.

We also note that the City's extremely restrictive capacity limitation singles out the Church for disfavored treatment vis-à-vis certain nonreligious buildings, organizations, and businesses—such as restaurants—that operate under mere social-distancing guidelines without a capacity restriction. Indeed, even putting aside the City's mistaken interpretation of the DLS Standards, we are concerned that even the applicable 50% capacity limitation subjects the Church to such unequal treatment. But the City's mistaken approach has made the disparity all the more egregious.

New Life South Coast is operating in full compliance with the DLS Standards and Order 66's General Workplace Safety Rules for places of worship, and it will continue to do so unless and until they are rescinded or enjoined. New Life South Coast is committed to ensuring that its services are safe.

Please respond by the end of the day on Saturday, March 27, 2021, that compliance with the Governor's order and associated DLS Standard imposing a 50% capacity limitation is deemed sufficient and no further compliance is necessary. If you cannot do that, please explain why not and by what authority the City has imposed restrictions that are more restrictive than the Governor's and DLS's.

Sincerely,



David Hacker  
First Liberty Institute



Andrew Beckwith  
Massachusetts Family Institute