

November 20, 2020

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. 33 (“Order 33”). Please direct all communications regarding this issue to me.

On May 18, 2020, Governor Charlie Baker issued Order 33, which modified the Governor’s earlier COVID-19 Order No. 13 to provide 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 33’s General Workplace Safety Rules.

The DLS Standards, most recently updated on October 29, 2020, 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 (including staff) per 1,000 square feet of accessible space.” The DLS Standards apply to “all Places of Worship and Religious Services, and all services and activities including regular and holiday services, weddings, funerals, and wakes.”

New Life South Coast has carefully and prudently adhered to the DLS Standards and Order 33’s General Workplace Safety Rules. During the summer, 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 Order 33, the General Workplace Safety Rules, and the DLS Standards, Director Chaplin is now threatening to fine or close New Life South Coast on the basis of a memorandum, dated May 22, 2020, from the New Bedford Health Department, purporting to limit the occupancy of houses of worship to the lower of 40% of maximum occupancy or 100 persons. Not only does this 100-person occupancy limit lack any rational basis in its application to a church like New Life South Coast that meets in a 48,000 square foot building—indeed, Director Chaplin himself noted that New Life South Coast's large building made it easy for attendees to social distance—but imposing such a restriction is itself 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].

New Life South Coast is operating in full compliance with the DLS Standards and Order 33's General Workplace Safety Rules for places of worship. New Life South Coast is committed to ensuring that its services are safe and would welcome any suggestions from the City of New Bedford that would further increase that safety and that are in accordance with Governor Baker's Executive Order 33 and the DLS Standards.

Please provide any requested feedback to me before the end of the day on Saturday, November 21, 2020.

Sincerely,



Justin Butterfield
First Liberty Institute

Andrew Beckwith
Massachusetts Family Institute