Your View: City's approach to religious freedom strikes right tone

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The case of purported animal slaughter or cruelty at a New Bedford barber shop raises some complicated legal and cultural issues ("City: Health at Stake," Aug, 18, and "Our View: Religious practice and city rules clash," Aug. 21). The barber shop was closed after animal control officers found live and deceased poultry in the basement of the barber shop, as the city cited possible health violations. Presumable religious paraphernalia was also discovered (candles, incense, statues of the Virgin Mary and Caribbean gods, etc.)

The owner of the shop, William Camacho, admits that he is a practitioner of Palo Mayombe, a Caribbean religion that permits ritualistic animal slaughter, and the question of how both the city and the commonwealth should proceed in addressing this issue has been raised.

One of our nation's first, and most celebrated, Supreme Court chief justices, John Marshall, famously said, "The power to tax is the power to destroy." If that's the case, then the power to regulate is the power to slowly strangle. Sometimes we must tax for the betterment of our society, and, as the Wall Street meltdown of 2008 clearly demonstrated, sometimes we must regulate to save ourselves from our own short-sighted avarice, but state regulation can be employed as a tool for the nurturing and advancement of an important national interest as quickly as it can be summoned as an instrument of suppression.

Surely, the city is legally entitled to regulate for the health and safety of its citizens, but of some greater concern is the blanket regulation of animal slaughter in conjunction with the legitimate, free exercise of one's religion. A central legal issue here involves balancing government's "rational interest" in regulating or prohibiting a practice, versus an individual's right to follow a religious belief, within the limits of a government's obligation of "reasonable accommodation."

Most of these reasonable accommodations have been relevant primarily to employment circumstances — such as whether an employee might wear religious regalia or clothing, display religious paraphernalia in the workplace, be given particular consideration for prayer time, be granted certain days off without penalty, and so on.

In 1990, the Supreme Court declared that the state of Oregon was within its bounds in forbidding the use of peyote, even by members of a Native American religion that declares such ritual use a religious sacrament — in other words, that the state had a sufficient "compelling interest" in restricting the use of potentially dangerous drugs regardless of an individual's otherwise bona fide claim for religious practice.

Conversely, in 1993, the Supreme Court declared unconstitutional a Florida ordinance that specifically targeted the Santeria religion, ruling that the practitioners' claim to religious freedom prevails over government's purpose in prohibition.

Yet the surface similarities to the local case end there. Before the Oregon peyote case, the court had held that government employ the "least restrictive" (of religious liberties) means to achieve its goals — so that exceptions for religious practice be made to otherwise valid laws where reasonably possible. And, in the 1993 case, the Supreme Court threw out the Florida law criminalizing ritual animal slaughter precisely because the ordinance specifically singled out religious-oriented animal killing. Hence that ruling wouldn't easily apply to the New Bedford case, as nobody is claiming the state's or city's animal cruelty or public health statutes were remotely written with prohibition of religious practice in mind.

But a page may be taken from the 1990 Supreme Court ruling and applied to our local case. The court held that a state could not be required to exempt religious practice from its criminal statutes — such as animal cruelty laws — but that it may. And perhaps religious tolerance should lead us in this direction.

Nothing would prohibit for example, the city of New Bedford or the Commonwealth of Massachusetts from maintaining its interest in public health or animal cruelty regulations while writing in exempting conditions for unorthodox religious practices, which reasonably preserve the public's interest in safety, hygiene, etc.

While many may find ritual animal killing distasteful or worse (ourselves very much included), one cannot question how sharp the double-edged sword of governmental regulation can be. Whether you're a fan or not, in 1973 the U.S. Supreme Court granted every woman in the land the right to terminate a pregnancy under certain circumstances. Since then, state legislatures throughout this country have employed regulatory schemes intended to marginalize, or outright extinguish, that constitutional right. And they have found some success in that endeavor regardless of judicial oversight.

Yet if there's room for tolerance on that contentious issue, possibly there might be room for a kind of pluralism on the ritual animal issue. Mayor Lang's position, as stated to The Standard-Times, strikes us as reasonable and tempered. Let us hope that our state legislators find that same temperance.