



CITY OF CAMBRIDGE

Office of the City Solicitor
City Hall

795 Massachusetts Avenue
Cambridge, Massachusetts 02139

(617) 498-9020

Russell B. Higley
City Solicitor

Donald A. Drisdell
Deputy City Solicitor

Michael C. Costello
Assistant City Solicitor

Birge Albright
Legal Counsel


Gail S. Gabriel
Legal Counsel

Joseph M. Kaigler
Legal Counsel

Diane Wynshaw-Boris
Legal Counsel

Edward J. O'Connell
Legal Counsel

MEMORANDUM

TO: ROBERT W. HEALY, City Manager 

FROM: RUSSELL B. HIGLEY, City Solicitor

RE: Council Order #1 - 10/24/88 -Development of a proposed fee structure through a General Ordinance amendment to assess a penalty against repeat offenders of the Health and Building Code.

DATE: December 20, 1990

All erection, construction, alteration, reconstruction, reparation, removal, demolition, and use and occupancy of any structure is governed by the State Building Code. Enforcement of same is also governed by the State Building Code. 780 CMR §121 is the violations section of the State Building Code. It provides the method of notice of violation, the prosecution of violations, violation penalties and abatement of violation. Currently, §121.4, violation penalties, provides as follows:

Anyone who shall violate a provision of this code shall be punishable by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than one year, or both, for each violation. Each day during which any portion of a violation continues shall constitute a separate offense.

The Building Code gives considerable latitude in the assessment of a fine. Inasmuch as a violation is criminal in nature, a court is charged with the imposition of a fine. However, the City could certainly, through counsel, make an argument that since the violator is a repeat offender, a fine at the higher end of the scale would be warranted.

The State Sanitary Code which is embodied in 105 CMR also prescribes its own penalties for violations of its provisions. For example, in 105 CMR 590, Minimum Sanitation

Page Two
Robert W. Healy
December 20, 1990

Standards for Food Establishments, §590.062, Criminal Penalties, provides as follows:

(A) Any person who violates any provision of these regulations shall, upon conviction, be fined not more than One Hundred Dollars (\$100) for the first offense and not more than Five Hundred Dollars (\$500) for a subsequent offense unless a different penalty is set by statute.

(B) Any person who fails to comply with any order issued pursuant to the provisions of these regulations shall, upon conviction, be fined not more than One Hundred Dollars (\$100) for the first offense and not more than Five Hundred Dollars (\$500) for a subsequent offense. Each day's failure to comply with an order shall constitute a separate offense.

From this provision it is clear that penalties can only be set by statute. Also clear is the fact that the Code provides harsher penalties for repeat offenders.

In conclusion, the State has provided for criminal penalties for violations of the Building and Health Codes which would address the concerns of this Council, i.e., the assessment of penalties for repeat offenders.

RBH\me

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CITY OF CAMBRIDGE
CAMBRIDGE, MASSACHUSETTS 02139

TEL 349-4300
FAX 349-4307

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

RICHARD C. ROSSI
Deputy City Manager

January 7, 1991

To The Honorable, The City Council:

With reference to Awaiting Report Item No. 2, regarding the development of a proposed fee structure through a General Ordinance amendment to assess a penalty against repeat offenders of the Health and Building Code, please find attached a response from Russell B. Higley, City Solicitor.

Very truly yours,

Robert W. Healy
City Manager

RWH/mev
attachment

Agenda # 23

04

Awaiting Report Item Number 2 regarding development of a proposed fee structure through a General Ordinance amendment to assess a penalty against repeat offenders of the Health and Building Code.

In City Council,

January 7, 1991

Placed on file