



## **Massachusetts Municipal Lawyers Association**

***"Dedicated to Effective Local Government Through the Advancement of Municipal Law"***

February 6, 2024

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To: The Honorable Senator Jake Oliveira, Chair, Joint Committee on  
Municipalities and Regional Government

The Honorable Representative Carole Fiola, Chair, Joint Committee  
on Municipalities and Regional Government

Re: HB 2043, An Act relative to the effective enforcement of municipal  
ordinances and by-laws

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Dear Chairs Oliveira and Fiola:

I am writing to you in my capacity as the President of the Massachusetts Municipal Lawyers Association ("MMLA"), the Commonwealth's municipal bar association to communicate our comments regarding HB 2043, An Act relative to the effective enforcement of municipal ordinances and by-laws.

HB 2043 seeks to amend Massachusetts General Law Chapter 40, Section 21D, relative to non-criminal enforcement of local ordinances, by-laws and regulations, by increasing the maximum fine amount and adding a new section, allowing the Court to assess a civil penalty and reasonable attorney fees against a defendant found in violation.

We heartily endorse these amendments to the statute because they will help our communities' ability to enforce the ordinances and by-laws. However, there are a number of provisions in the Bill that would benefit from revision prior to adoption of HB 2043, if same can be amended.

Recommended revisions are discussed below and correspond to the marked copy of the Bill attached hereto as Exhibit A. Suggested revisions of Section 21D in tracked changes are also attached hereto as Exhibit B for reference. Note that the changes highlighted in yellow in Exhibit B are the changes recommended by the MMLA for the reasons discussed below, and the "unhighlighted" changes in Exhibit B show the changes proposed by the Bill.

### Comment A

We respectfully recommend the insertion of a new Section 2 to the Bill (set forth below) to reflect changes in paragraph six of Section 21D as shown on the attached Exhibit B. We believe the amendment of the language in paragraph six will improve the appeal process. Section 21D allows an appeal to be heard by a district court judge, clerk, or assistant clerk. In most cases, these appeals are heard by a clerk or assistant clerk, rather than by a district court judge. Currently the statute's literal reading often results in a clerk or assistant clerk exercising unappealable discretion. Although this is commenced as a civil matter, the process often operates to frustrate local enforcement of local regulations as clerks and assistant clerks (acting with the discretion normally accorded them in criminal matters), use their discretion to reduce or dismiss fines even when the violation has been substantiated by the municipality that has issued the citation to the point there is little or no disincentive for a malefactor to disregard the law in the first place. Also, the current statute appears to preclude any appeal. We suggest that occasionally an appeal is necessary and to include a right of appeal serves the purpose of Section 21D for the enforcement of municipal ordinances and bylaws and the general interest of justice.

*SECTION 2. Said Section 21D of said chapter 40, as so appearing is hereby further amended by replacing the sixth paragraph thereof in its entirety with the following paragraph:*

*If any person so notified to appear desires to contest the violation alleged in the notice to appear and also to avail himself of the procedure established pursuant to this section, he may, within twenty-one days after the date of the notice, request a hearing in writing. Such hearing shall be held before a district court judge, clerk, or assistant clerk, as the court shall direct, and if the judge, clerk, or assistant clerk shall, after hearing, find that the violation occurred and that it was committed by the person so notified to appear, the person so notified shall be permitted to dispose of the case by paying the specific sum of money fixed as a penalty as aforesaid, which payment shall operate as a final disposition of the case. If the judge, clerk, or assistant clerk shall, after hearing, find that violation alleged did not occur or was not committed by the person notified to appear, or find that the violation occurred and that it was committed by the person so notified to appear but impose a lesser amount as the penalty, that finding shall be entered in the docket. Any finding of the judge, clerk, or assistant clerk hereunder may be appealed and such appeal shall be governed by the Massachusetts District/Municipal Court Rules for Appellate Division Appeal. Proceedings held pursuant to this paragraph shall not be deemed to be criminal proceedings. No person disposing of a case by payment of such a penalty shall be required to report to any probation office as a result of such violation, nor shall any record of the case be entered in the probation records.*

## Comment B

We also respectfully recommend insertion of a new Section 3 to the Bill (set forth below) to reflect a new paragraph after the seventh paragraph of Section 21D as shown on the attached Exhibit A. This new section would allow any fine imposed relating to real property owned or occupied by the violator to be added as a lien on said property, in addition to the right to pursue collection by filing a further complaint in Court as provided in paragraph seven of Section 21D. This amendment is needed to afford municipalities of a more practical enforcement mechanism than filing another complaint. Right now, if the fine goes unpaid, the municipality's only option is to apply for a criminal complaint. In cases where the violation involves real property (e.g. a zoning violation), our proposed second change would give the municipality the alternative of certifying the fine to the tax collector and having it become a municipal lien (using language similar to c. 40, s. 58).

*SECTION 3. Said Section 21D of said chapter 40, as so appearing is hereby amended by adding after the seventh paragraph thereof the following paragraph:*

*If the fine resulted from the violation of any ordinance or by-law or any rule or regulation relating to real property owned or occupied by the person who committed the violation, then, in lieu of applying for the issuance of a complaint pursuant to the preceding paragraph, the enforcing person, or the town collector of taxes, if applicable under section thirty-eight A of chapter forty-one, may certify such fine to the assessors, who shall forthwith add such fine to the tax on the property to which it relates and commit it with their warrant to the collector of taxes as part of such tax.*

## Comment C

Although the Bill increases the maximum fine a municipality may impose under c.40, Sec. 21D, there are multiple general statutes which municipalities are called upon to enforce, each with their own separate fine structure, most notably c. 40, Section 21D, c. 40A, Section 7, and c. 40, Section 15C. As many municipal fines fall under these statutory provisions, we recommend that the Bill be further amended by inserting new sections 5, 6 and 7 as follows:

*5) Section 21 of Chapter 40 of the General Laws, as appearing in the 2020 Official Edition is hereby amended by striking out in line the word "Three" and inserting in place thereof the following word "Five".*

*6) Section 15C of Chapter 40 of the General Laws, as appearing in the 2020 Official Edition, is hereby amended by striking out in line the word "Three" and inserting in place thereof the following word "Five".*

*7) Section 7 of Chapter 40A of the General Laws, as appearing in the 2020 Official Edition, is hereby amended by striking out in line the word "Three" and inserting in place thereof the following word "Five".*

We believe that amending the bill to add these additional provisions will clarify the statute and make it a more effective tool for the enforcement of local bylaws and ordinances.

Thank you for your time and attention to these comments. We are available to discuss the above, and the attachments hereto in greater detail.

Sincerely,

*/s/ Karis L. North*

Karis L. North President, MMLA

cc: The Honorable Senator Edward Kennedy, Vice Chair, Chair, Joint Committee on Municipalities and Regional Government  
The Honorable Representative Lindsay Sabadosa, Vice Chair, Chair, Joint Committee on Municipalities and Regional Government

# EXHIBIT A

HOUSE DOCKET, NO. 954      FILED ON: 1/17/2023

## HOUSE . . . . . No. 2043

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### The Commonwealth of Massachusetts

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PRESENTED BY:

***Kate Donaghue***

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*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the effective enforcement of municipal ordinances and by-laws.

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PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Kate Donaghue</i>	<i>19th Worcester</i>	<i>1/12/2023</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>	<i>1/18/2023</i>
<i>Josh S. Cutler</i>	<i>6th Plymouth</i>	<i>4/5/2023</i>
<i>Tommy Vitolo</i>	<i>15th Norfolk</i>	<i>9/7/2023</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>10/5/2023</i>

# HOUSE . . . . . No. 2043

By Representative Donaghue of Westborough, a petition (accompanied by bill, House, No. 2043) of Kate Donaghue and Michelle M. DuBois relative to the enforcement of municipal ordinances and by-laws. Municipalities and Regional Government.

## The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court  
(2023-2024)

An Act relative to the effective enforcement of municipal ordinances and by-laws.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. Section 21D of chapter 40 of the General Laws, as appearing in the 2020  
Official Edition, is hereby amended by striking out, in line 46, the word “three” and inserting in  
place thereof the following word:- five.

See Comment C

See proposed new Section 2 and Section 3

Comments A & B  
and Exhibit B

SECTION 2. Said section 21D of said chapter 40, as so appearing, is hereby further  
amended by adding the following paragraph:-

Notwithstanding this section or any other general or special law to the contrary, in any  
suit in equity brought in the superior court, district court or the land court by a city or town, or a  
municipal agency, officer, board or commission having enforcement powers on behalf of the city  
or town, to enforce an ordinance or by-law, or a rule, regulation or order described in this  
section, the court, upon a finding that the violation occurred, may assess a civil penalty in  
accordance with this section and section 21, and reasonable attorneys fees and costs. Civil  
penalties assessed under this paragraph shall be in addition to any equitable relief ordered by the

13 court and shall be paid to the city or town for use as the city or town may determine. In assessing  
14 a penalty under this paragraph, the court shall consider: (1) whether the violation was willful or  
15 negligent; (2) the harm to the public health, safety or environment resulting from the violation;  
16 (3) the economic benefit gained by the defendant as a result of the violation; (4) the cost to the  
17 city or town resulting from the violation; (5) the history of noncompliance by the defendant; and  
18 (6) whether the defendant made good faith efforts to cure or cease the violation of the ordinance  
19 or by-law after the first notice by the city or town of such violation.

See proposed new Sections 5, 6 & 7

Comment C  
and Exhibit B

## EXHIBIT B

Mark-up of Section 21D of Chapter 40, to show amendments proposed in pending House Bill 2043 and to show (highlighted in yellow) the MMLA's suggested further amendments to the pending Bill.

### **Section 21D:** Noncriminal disposition of ordinance, by-law, rule or regulation violations

Section 21D. Any city or town may by ordinance or by-law not inconsistent with this section provide for non-criminal disposition of violations of any ordinance or by-law or any rule or regulation of any municipal officer, board or department the violation of which is subject to a specific penalty.

Any such ordinance or by-law shall provide that any person taking cognizance of a violation of a specific ordinance, by-law, rule or regulation which he is empowered to enforce, hereinafter referred to as the enforcing person, as an alternative to initiating criminal proceedings shall, or, if so provided in such ordinance or by-law, may, give to the offender a written notice to appear before the clerk of the district court having jurisdiction thereof at any time during office hours, not later than twenty-one days after the date of such notice. Such notice shall be in triplicate and shall contain the name and address, if known, of the offender, the specific offense charged, and the time and place for his required appearance. Such notice shall be signed by the enforcing person, and shall be signed by the offender whenever practicable in acknowledgment that such notice has been received.

The enforcing person shall, if possible, deliver to the offender a copy of said notice at the time and place of the violation. If it is not possible to deliver a copy of said notice to the offender at the time and place of the violation, said copy shall be mailed or delivered by the enforcing person, or by his commanding officer or the head of his department or by any person authorized by such commanding officer, department or head to the offender's last known address, within fifteen days after said violation. Such notice as so mailed shall be deemed a sufficient notice, and a certificate of the person so mailing such notice that it has been mailed in accordance with this section shall be prima facie evidence thereof.

At or before the completion of each tour of duty, or at the beginning of the first subsequent tour of duty, the enforcing person shall give to his commanding officer or department head those copies of each notice of such a violation he has taken cognizance of during such tour which have not already been delivered or mailed by him as aforesaid. Said commanding officer or department head shall retain and safely preserve one copy and shall, at a time not later than the next court day after such delivery or mailing, deliver the other copy to the clerk of the court before which the offender has been notified to appear. The clerk of each district court and of the Boston municipal court shall maintain a separate docket of such notices to appear.

Any person notified to appear before the clerk of a district court as hereinbefore provided may so appear and confess the offense charged, either personally or through a duly authorized agent or by mailing to the city or town clerk of the municipality within which the violation occurred together with the notice such specific sum of money not exceeding ~~three~~-five hundred dollars as the town shall fix as penalty for violation of the ordinance, by-law, rule or regulation. Such payment shall if mailed be made only by postal note, money order or check. Upon receipt of such notice, the city or town clerk shall forthwith notify the district court clerk of such payment



and the receipt by the district court clerk of such notification shall operate as a final disposition of the case. An appearance under this paragraph shall not be deemed to be a criminal proceeding. No person so notified to appear before the clerk of a district court shall be required to report to any probation officer, and no record of the case shall be entered in any probation records.

If any person so notified to appear desires to contest the violation alleged in the notice to appear and also to avail himself of the procedure established pursuant to this section, he may, within twenty-one days after the date of the notice, request a hearing in writing. Such hearing shall be held before a district court judge, clerk, or assistant clerk, as the court shall direct, and if the judge, clerk, or assistant clerk shall, after hearing, find that the violation occurred and that it was committed by the person so notified to appear, the person so notified shall be permitted to dispose of the case by paying the specific sum of money fixed as a penalty as aforesaid, ~~or such lesser amount as the judge, clerk or assistant clerk shall order,~~ which payment shall operate as a final disposition of the case. If the judge, clerk, or assistant clerk shall, after hearing, find that violation alleged did not occur or was not committed by the person notified to appear, ~~or find that the violation occurred and that it was committed by the person so notified to appear but impose a lesser amount as the penalty,~~ that finding shall be entered in the docket, ~~which shall operate as a final disposition of the case.~~ Any finding of the judge, clerk, or assistant clerk hereunder may be appealed and such appeal shall be governed by the Massachusetts District/Municipal Court Rules for Appellate Division Appeal. Proceedings held pursuant to this paragraph shall not be deemed to be criminal proceedings. No person disposing of a case by payment of such a penalty shall be required to report to any probation office as a result of such violation, nor shall any record of the case be entered in the probation records.

If any person so notified to appear before the clerk of a district court fails to pay the fine provided hereunder within the time specified or, having appeared, does not confess the offense before the clerk or pay the sum of money fixed as a penalty after a hearing and finding as provided in the preceding paragraph, the clerk shall notify the enforcing person who issued the original notice, who shall determine whether to apply for the issuance of a complaint for the violation of the appropriate ordinance, by-law, rule or regulation.

If the fine resulted from the violation of any ordinance or by-law or any rule or regulation relating to real property owned or occupied by the person who committed the violation, then, in lieu of applying for the issuance of a complaint pursuant to the preceding paragraph, the enforcing person, or the town collector of taxes, if applicable under section thirty-eight A of chapter forty-one, may certify such fine to the assessors, who shall forthwith add such fine to the tax on the property to which it relates and commit it with their warrant to the collector of taxes as part of such tax.

As used in this section the term "district court" shall include, within the limits of their jurisdiction, the municipal court of the city of Boston and the divisions of the housing court department of the trial court.

The notice to appear provided for herein shall be printed in such form as the chief justice of the municipal court of the city of Boston shall prescribe for said court, and as the chief justice of the district courts shall prescribe for the district courts. Said notice may also include notice of violations pursuant to section eleven C of chapter eighty-five, section eighteen A of chapter ninety, section one hundred and seventy-three A of chapter one hundred and forty and section sixteen A of chapter two hundred and seventy. Any fines imposed under the provisions of this

section shall enure to the city or town for such use as said city or town may direct. This procedure shall not be used for the enforcement of municipal traffic rules and regulations. Chapter ninety C shall be the exclusive method of enforcement of municipal traffic rules and regulations.

Notwithstanding this section or any other general or special law to the contrary, in any suit in equity brought in the superior court, district court or the land court by a city or town, or a municipal agency, officer, board or commission having enforcement powers on behalf of the city or town, to enforce an ordinance or by-law, or a rule, regulation or order described in this section, the court, upon a finding that the violation occurred, may assess a civil penalty in accordance with this section and section 21, reasonable attorneys fees and costs. Civil penalties assessed under this paragraph shall be in addition to any equitable relief ordered by the court and shall be paid to the city or town for use as the city or town may determine. In assessing a penalty under this paragraph, the court shall consider: (1) whether the violation was willful or negligent; (2) the harm to the public health, safety or environment resulting from the violation; (3) the economic benefit gained by the defendant as a result of the violation; (4) the cost to the city or town resulting from the violation; (5) the history of noncompliance by the defendant; and (6) whether the defendant made good faith efforts to cure or cease the violation of the ordinance or by-law after the first notice by the city or town of such violation.