

City of Marlborough Public Meeting Posting

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CITY OF MARLBOROUGH
2023 JAN 30 PM 5:56

Meeting Name: City Council Legislative & Legal Affairs Committee
Date: February 9, 2023
Time: 7:00 PM
Location: City Council Chamber, 2nd Floor, City Hall, 140 Main Street

This meeting will be held in the City Council Chamber. Public attendance is permitted. The meeting will be televised on WMCT-TV (Comcast Channel 8 or Verizon/Fios Channel 34) or you can view the meeting using the link under the Meeting Videos tab on the city's website, home page (www.marlborough-ma.gov).

01-23-23 – Order No.23-1008796: Communication from Mayor Vigeant and the Board of Health with Proposed amendment to City Code, Ch. 315 Enforcement, s.2 “Non-criminal Disposition” to ensure consistency with state law.

REFER TO LEGISLATIVE AND LEGAL AFFAIRS

PUBLIC HEARING: FEBRUARY 13, 2023

THE LISTING OF TOPICS THAT THE CHAIR REASONABLY ANTICIPATES WILL BE DISCUSSED AT THE MEETING IS NOT INTENDED AS A GUARANTEE OF THE TOPICS THAT WILL HAVE BEEN DISCUSSED. NOT ALL TOPICS LISTED MAY IN FACT BE DISCUSSED, AND OTHER TOPICS NOT LISTED MAY ALSO BE BROUGHT UP FOR DISCUSSION TO THE EXTENT PERMITTED BY LAW.

The public should take due notice that the Marlborough City Council may have a quorum in attendance due to Standing Committees of the City Council consisting of both voting and non-voting members. However, members attending this duly posted meeting are participating and deliberating only in conjunction with the business of the Standing Committee.

Electronic devices, including laptops, cell phones, pagers, and PDAs must be turned off or put in silent mode upon entering the City Council Chamber, and any person violating this rule shall be asked to leave the chamber. Express authorization to utilize such devices may be granted by the President for recordkeeping purposes.

City Council

From: City Council
Sent: Monday, February 6, 2023 4:36 PM
To: Samantha Perlman
Cc: Karen Boule
Subject: From Solicitor Grossfield: Summary of Order No. 23-1008796 - Ordinance Amendments re Non-Criminal Enforcement

From: Jason Grossfield <jgrossfield@marlborough-ma.gov>
Date: February 6, 2023 at 4:26:35 PM EST
To: City Council <citycouncil@marlborough-ma.gov>
Subject: Summary of Order No. 23-1008796 - Ordinance Amendments re Non-Criminal Enforcement

Hello Karen – As requested, in advance of the Legal & Legislative Affairs Committee meeting scheduled regarding this item, I am providing the below summary of the proposed ordinance amendments. Please feel free to give me a call with any questions.

- As background, City authorized non-criminal enforcement of various city ordinances and regulations by enacting Ord. 315-2 back in 1991. State law (MGL c. 40, s. 21D) allows the City to use noncriminal enforcement (‘ticketing’) as an alternative to criminal prosecution.
- State law requires that City Ord. 315-2 identify the ordinances and regulations that can be enforced by ticketing, the specific penalty (max \$300), and the enforcing city officials. These changes ensure our ordinances are current and meet these requirements.
- **Part I:** Adds the City position of Code Enforcement Officer to the list of all enforcing agents. (In practice, the Code Enforcement Officer is already working with other city enforcing agents from time to time).
- **Part II:** Clarifies two aspects (each commonly found in this type of ordinance):
 - Creates a catch-all specific penalty amount in the event that the table in Ord. 315-2 or the ordinance/regulation to be enforced does not list a specific penalty.
 - Avoids ambiguity by establishing that the fine amount for a 2nd, 3rd, 4th, etc. offense is calculated based on repeated offense by the same offender within 12 months of the first offense.
- **Part III:** Updates to the table in Ord. 315-2
 - **Rows 20, 21, 22:** Deletes references to health codes which were out of date, and updates them with the Board of Health’s recently adopted new regulations. Penalty amounts and title of the Director are updated.
 - **Row 23:** Table never contained a penalty amount. Adds the specific penalty amounts by reference to the Wetland Regulations in City Code Ch. 627.
 - **Rows 25, 27, 28.1:** Deletes penalty amounts that are ranges (“no less than \$ / no more than \$”) and replaces them with specific dollar amounts as proposed by the Building Dept.

- **Row 29:** Adds into the table, Article I of Ch. 485 (Antiblight; Nuisances). Ch. 485, Article I already references non-criminal disposition.
- **Row 31:** Table never contained a penalty amount. Adds the specific penalty amounts listed as proposed by the City Engineer.

- **Part IV:** Updates **Row 24** of the table re: references to Board of Health tobacco regulations. Three of four regulations were deleted as being out of date. New Row 24 keeps the regulation re: school grounds, and adds a catch-all specific to all other Board of Health regulations not listed in the table as proposed by Director of Public Health.

- **Part V and Part VI:** Updates other city ordinances which contained a \$ range for noncriminal penalties, and changes text so it will refer to the amounts set forth in the table in Ord. 315-2.

Thanks,
-Jason

Jason D. Grossfield
City Solicitor
City of Marlborough
City Hall, 4th Floor
140 Main Street
Marlborough, MA 01752
T: (508) 460-3771
F: (508) 460-3698
jgrossfield@marlborough-ma.gov

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8796

IN CITY COUNCIL

Marlborough, Mass., JANUARY 23, 2023

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ORDERED:

That there being no objection thereto set **MONDAY FEBRUARY 13, 2023**, as the **DATE FOR PUBLIC HEARING**, on the: Proposed Ordinance Amendment to Chapter 315 "Enforcement", §2 "Non-criminal Disposition" to ensure consistency with state law as submitted by the Mayor and Board of Health, be and is herewith referred to the **LEGISLATIVE & LEGAL AFFAIRS COMMITTEE & ORDERED ADVERTISED**.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT THE CITY CODE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED AS FOLLOWS:

- I. Chapter 315 (entitled "Enforcement"), Section 315-2 (entitled "Noncriminal disposition"), Subsection (A), is hereby amended by inserting the following sentence at the end of the existing paragraph:

In addition to any other enforcing municipal personnel, the code enforcement officer(s) may also be a designee of any enforcing agent for all such ordinances, rules or regulations.

- II. Chapter 315, Section 315-2, Subsection (B), is hereby amended by inserting the following sentences after the existing second sentence:

Where no specific penalty amount is stated in an ordinance, rule, or regulation, the specific penalty amount shall be: \$100 for First Offense, \$200 for Second Offense, and \$300 for Third and Any Subsequent Offense. Unless otherwise specified, second and any subsequent offenses shall mean additional offenses after a first offense which are committed by the same offender within a twelve-month period.

- III. Chapter 315, Section 315-2, Subsection (B), Table Row numbers "20", "21", "22", "23", "25", "27", "28.1", "29", and "31", are hereby amended as follows: (new text shown as underlined, deleted text shown as strikethrough):

	Ordinance Violation (Chapter/Section)	Penalty	Enforcing Agent
20)	Human Habitation, City Health Code <u>Board of Health: Regulations for Minimum Standards for Human Habitation</u>	\$50 <u>1st offense: \$100</u> <u>2nd offense: \$200</u> <u>3rd and subsequent offense: \$300</u>	Board of Health, Director of Public Health, agent, sanitarian and assistant sanitarian <u>(hereinafter, Board of Health)</u>



IN CITY COUNCIL

Marlborough, Mass., JANUARY 23, 2023

ORDERED:

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21)	<u>Subsurface Disposal of Sanitary Sewage, City Health Code Board of Health: Regulations for Minimum Standards for Onsite Sewage Treatment & Disposal Systems</u>	<u>\$50</u> <u>1st offense: \$100</u> <u>2nd offense: \$200</u> <u>3rd and subsequent offense: \$300</u>	Board of Health
22)	<u>Food Establishments, City Health Code Board of Health: Regulations for Minimum Standards for Food Establishments</u>	<u>\$50</u> <u>1st offense: \$100</u> <u>2nd offense: \$200</u> <u>3rd and subsequent offense: \$300</u>	Board of Health
23)	City Wetland Regulations (Ch. 627)	<u>Penalty amounts set forth in Ch. 627.</u>	Conservation Officer
25)	Plumbing	For violation of any provisions of Ch. 270, Art. II, § 270-7.1 or any provision of the State Plumbing Code (248 CMR): no less than \$50 nor more than \$100 <u>\$100</u> for 1st offense; <u>\$200</u> for 2 nd offense; no less than \$200 not more than \$300 <u>\$300</u> for each succeeding offense; each day or part thereof, whether continuous or intermittent, construed as separate and succeeding offense	Plumbing Inspector or Assistant Plumbing inspector (in his absence)



IN CITY COUNCIL

Marlborough, Mass., JANUARY 23, 2023

ORDERED:

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27)	Building Regulations Building Permits, etc., Ch. 270, § 270-8	For violation of § 270-8 or any provision of State Building Code (780 CMR): <u>\$100 for 1st offense; \$200 for 2nd offense; \$300 for each succeeding offense no less than \$100 nor more than \$300 \$X for each offense</u> ; each day or part thereof, whether continuous or intermittent, construed as separate and succeeding offense	Building Commissioner or his or her designee, in his absence
	Certificate of legal multifamily dwelling units, Ch. 420	Not less than \$100 nor more than \$300 <u>\$100 for 1st offense; \$200 for 2nd offense; \$300 for 3rd and subsequent offense</u>	Building Commissioner or his or her designee
28.1)	Motorized Scooters, Ch. 503	First offense: not more than \$25 ; second: not less than \$25 nor more than \$50 ; subsequent offenses: not less than \$50 nor more than \$100	Police Department
29)	<u>Antiblitz; Nuisances (Ch. 485, Art. I)</u> Registration and Maintenance of Abandoned and/or Foreclosing Residential Properties, Ch. 485, Art. II	<u>\$200</u> \$300	<u>Building Commissioner or his or her designee; Board of Health</u> Building Commissioner
31)	Stormwater Management, Ch. 271	<u>1st offense: \$100</u> <u>2nd offense: \$200</u> <u>3rd and subsequent offense: \$300</u>	City Engineer



IN CITY COUNCIL

Marlborough, Mass., JANUARY 23, 2023

ORDERED:

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IV. Chapter 315, Section 315-2, Subsection (B), Table Row number "24", is hereby deleted in its entirety and replaced with the following:

	Ordinance Violation (Chapter/Section)	Penalty	Enforcing Agent
24)	Board of Health: Regulation XII, Smoking and other use of tobacco products in school buildings, upon school grounds or in pupil transport vehicles	\$25 per offense	Superintendent of Marlborough School District; all district principals, assistant principals, directors of athletics; Superintendent-Director and Principal of Assabet Valley Regional Vocational High School, as well as police officers
24.1)	Board of Health Regulations: All other Board of Health regulations not listed in Section 315-2.	Amount as set forth in the Board of Health Regulation. If no specific penalty is listed in the regulation, then: 1 st offense: \$100 2 nd offense: \$200 3 rd and subsequent offense: \$300	Board of Health

V. Chapter 420 (entitled "Multifamily Dwellings"), Section 420-3 (entitled "Violations and Penalties") is hereby amended as follows: (new text shown as underlined, deleted text shown as ~~strikethrough~~):

Every day that a person violates § 420-2 shall constitute a separate offense. Each offense shall be subject to a noncriminal fine of not less than \$100 and not more than \$300 as set forth in the Code of the City of Marlborough §315-2B, as enforced by the Building Commissioner or his/her designee.



IN CITY COUNCIL

Marlborough, Mass., JANUARY 23, 2023

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ORDERED:

- VI. Chapter 485 (entitled "Property Maintenance"), Section 485-3 (entitled "Administration"), Subsection (A)(3), is hereby amended as follows: (new text shown as underlined, deleted text shown as ~~strikethrough~~):

In addition to the foregoing remedy, whoever violates any provision of this article or fails to obey any lawful order issued by the enforcing authority in enforcing this article shall be liable to a noncriminal fine ~~of not more than \$200 for each violation~~ as set forth in the Code of the City of Marlborough §315-2B. Each violation of this article shall constitute a separate offense. Each day that any such violation continues shall constitute a separate violation. The enforcing authority may also issue a cease-and-desist order for any hazardous situation.

- VII. Effective Date. These amendments shall take effect upon passage.

ADOPTED

ORDER NO. 23-1008796



City of Marlborough

Office of the Mayor

140 Main Street
Marlborough, Massachusetts 01752
Tel. (508) 460-3770 Fax (508) 460-3698 TDD (508) 460-3610
www.marlborough-ma.gov

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH
9
Arthur G. Vigeant
MAYOR

JAN 19 AM 11:47
Patricia M. Bernard
CHIEF OF STAFF

Candace McGrath
EXECUTIVE ADMINISTRATOR

January 19, 2023

City Council President Michael Ossing
Marlborough City Council
140 Main Street
Marlborough, MA 01752

Re: Proposed Amendment to Ordinance for non-criminal enforcement

Honorable President Ossing and Councilors:

I am recommending an update to the City Ordinance 315-2 and related ordinances referencing non-criminal disposition to ensure consistency with state law as described in City Solicitor Jason Grossfield's enclosed letter.

Upon the Board of Health's recommendation, I believe these changes are in the best interest of public safety and will allow appropriate departments to enforce regulations in place for non-criminal violations.

If you have any questions, please feel free to contact my office.

Sincerely,

Arthur G. Vigeant
Mayor

Enclosures



City of Marlborough

Legal Department

140 MAIN STREET
MARLBOROUGH, MASSACHUSETTS 01752
TEL (508) 460-3771 FAX (508) 460-3698 TDD (508) 460-3610
LEGAL@MARLBOROUGH-MA.GOV

JASON D. GROSSFIELD
CITY SOLICITOR

JEREMY P. MCMANUS
ASSISTANT CITY SOLICITOR

BEATRIZ R. ALVES
PARALEGAL

January 17, 2023

Arthur G. Vigeant, Mayor
City Hall
140 Main Street
Marlborough, MA 01752

Re: Amendment to City Ordinances re: Non-Criminal Enforcement

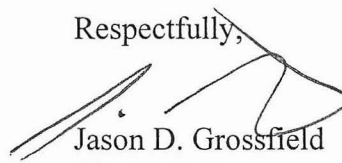
Dear Honorable Mayor Vigeant:

I write to recommend amendments to City Ordinance 315-2 and related ordinances referencing non-criminal disposition to ensure consistency with state law, Massachusetts General Laws c. 40, s. 21D and update certain provisions relating to the use of this procedure.

MGL c. 40, s. 21D sets forth the process for a city to authorize noncriminal disposition for violations of municipal ordinances, rules, or regulations. As an alternative to criminal enforcement, the non-criminal procedure allows city personnel to write a "ticket" to be paid as a penalty for a violation. Section 21D is implemented by a local non-criminal disposition ordinance, which is set forth in City Ord. 315-2. In conjunction with various city departments, I reviewed our ordinances, and recommend several updates in order to: (1) state a specific penalty amount as required by state law (rather than a range); (2) clarify how penalties are applied to repeat violations; and (3) update the table of enforcing city personnel and ordinances or regulations which can be enforced by the non-criminal process.

Enclosed is a copy of the proposed ordinance amendments. I certify that it is in proper legal form. Please contact me if you have any questions or concerns.

Respectfully,



Jason D. Grossfield
City Solicitor

Enclosure

cc: Thomas DiPersio, City Engineer
John Garside, Director of Public Health
Tin Htway, Building Commissioner
Priscilla Ryder, Conservation/Sustainability Officer

ORDERED:

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21)	Subsurface Disposal of Sanitary Sewage, City Health Code <u>Board of Health: Regulations for Minimum Standards for Onsite Sewage Treatment & Disposal Systems</u>	\$50 <u>1st offense: \$100 2nd offense: \$200 3rd and subsequent offense: \$300</u>	Board of Health

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27)	Building Regulations Building Permits, etc., Ch. 270, § 270-8	For violation of § 270-8 or any provision of State Building Code (780 CMR): <u>\$100 for 1st offense;</u> <u>\$200 for 2nd offense; \$300 for each</u> <u>succeeding offense</u> no less than \$100 nor more than \$300 \$X <u>for</u> <u>each offense; each day or part</u> <u>thereof, whether continuous or</u> <u>intermittent, construed as separate</u> <u>and succeeding offense</u>	Building Commissioner or his or her designee, in his absence
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29)	<u>Antiblign; Nuisances</u> <u>(Ch. 485, Art. I)</u>	\$200	<u>Building</u> <u>Commissioner or his</u> <u>or her designee;</u> <u>Board of Health</u>
	Registration and Maintenance of Abandoned and/or Foreclosing Residential Properties, Ch. 485, Art. II	\$300	Building Commissioner
31)	Stormwater Management, Ch. 271	<u>1st offense: \$100</u> <u>2nd offense: \$200</u> <u>3rd and subsequent offense: \$300</u>	City Engineer

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Every day that a person violates § 420-2 shall constitute a separate offense. Each offense shall be subject to a noncriminal fine of ~~not less than \$100 and not more than \$300~~ as set forth in the Code of the City of Marlborough §315-2B, as enforced by the Building Commissioner or his/her designee.

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In addition to the foregoing remedy, whoever violates any provision of this article or fails to obey any lawful order issued by the enforcing authority in enforcing this article shall be liable to a noncriminal fine of ~~not more than \$200 for each violation~~ as set forth in the Code of the City of Marlborough §315-2B. Each violation of this article shall constitute a separate offense. Each day that any such violation continues shall constitute a separate violation. The enforcing authority may also issue a cease-and-desist order for any hazardous situation.

VII. Effective Date. These amendments shall take effect upon passage.

ADOPTED
In City Council
Order No. 23-
Adopted

Approved by Mayor
Arthur G. Vigeant
Date:

A TRUE COPY
ATTEST: