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STAFF REPORT

NEW BEDFORD HISTORICAL COMMISSION MEETING

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REVISED

Ordinance Amending Chapter 2, Article XI of the City Code Adding Section 2-156.1 Same – Enforcement and Section 2-156.2 Same – Penalty

OVERVIEW. In an effort to provide clarity to New Bedford's Historic District Ordinance as it relates to District violations and subsequent penalties, the New Bedford Historical Commission (NBHC) asked staff to review New Bedford's current ordinance addressing the city's Local Historic District in the context of such violations.

In so doing, staff undertook a review of the regulations governing existing enforcement actions, the penalty provisions within the New Bedford Code of Ordinances and an analysis of what other Massachusetts communities which have Local Historic Districts are doing with respect to the establish the assessment of fines and other penalties for individual violations. This review concludes with a staff recommendation for the NBHC's consideration.

REGULATIONS GOVERNING EXISTING ENFORCEMENT. The New Bedford Historical Commission (NBHC) was established under the Commonwealth's "Historic Districts Act," MGLA c. 40C, in 1971. Although typically preservation ordinances created under MGL 40c often establish a process for appeal and enforcement, New Bedford's Historic District Ordinance does not contain any such provisions. This means the city has no enforcement or penalty provisions specific to its Historic District Ordinance and in many cases, violators face no consequences for failing to meet City ordinances.

- ❏ **Mass General Law** (MGL c.40C §13) allows for penalties related to violations of ordinances derived from the Historic Districts Act of, *"not less than ten dollars nor more than five hundred dollars. Each day during any portion of which a violation continues to exist shall constitute a separate offense."*
- ❏ **New Bedford's Historic District Ordinance** (Article 11 §2-151) allows for the NBHC to adopt rules and regulations for the conduct of its business, not inconsistent with the provisions of the Historic Districts Act.
- ❏ **The NBHC adopted its own Rules and Regulations** in 1976. Those Rules and Regulations included language mirroring the MGL enabling language: penalties for violations to be *"no less than ten (\$10.00) dollars nor more than five hundred (\$500.00) dollars. Each day during any portion of which a violation continues to exist shall constitute a separate offense."*

PENALTY PROVISIONS WITHIN THE NEW BEDFORD CODE OF ORDINANCES. Although there is no penalty provision specific to the city's Historic District Ordinanceⁱ, New Bedford's Code of Ordinances does contain a General Penalty:

Sec. 1-9. - General penalty.

Whoever violates any provision of this Code, any ordinance, any of the conditions under which a permit is issued, or any decision rendered by the board of appeals, shall, unless otherwise provided by law or ordinance, be liable to a penalty of not less than five dollars (\$5.00) nor more than three hundred dollars (\$300.00) for each offense. Each day that such violation continues shall constitute a separate offense.

Although this is considered a penalty with general applicability, it does specifically cite the city’s board of appeals suggesting although noted as “general” it is intended for violations arising from actions taken by the ZBA—not other boards such as the Historical Commission. As such its applicability and value in undergirding the city’s Historic District Ordinance may be easily challenged.

Section 17-18 of New Bedford’s Code of Ordinances also provides specific penalties for violations of certain ordinances, rules and regulations of certain municipal officers, boards or departments, of which the Historic District Ordinance is not included. No penalty within this section or any other section of the City Code of Ordinances exceeds \$300.

Once again, this section of the city’s code similarly does not include the Historical Commission and therefore negates its use as the legal means by which violations/penalties may be assessed within the city’s Historic District.

OTHER COMMUNITIES. A review of Massachusetts communities which have established their own Local Historic Districts revealed a mix of methods and approaches for which Historic Commissions establish the assessment of fines and other penalties for individual violations.

While several communities, like New Bedford, cite penalties within their Commission’s adopted Rules and Regulations which stand outside of the community’s ordinances, a majority of the communities surveyed cite the penalties related to violations within the provisions of their historic district Ordinance.

Of the ten communities reviewed having such provisions directly in their historic district ordinances, only two communities—Arlington and Quincy—set a fixed amount for a fine per day (one at \$50 per day and one at \$100 per day). The remaining eight communities reviewed all provided for a range of penalties largely extending from \$50/day to \$300 (or even \$500 in some cases) per day.

COMMUNITY	PENALTY	ESTABLISHMENT
AMHERST	Up to \$300 per day	Code of Ordinance
ARLINGTON	\$50 per day	Code of Ordinance
BOSTON	Not less than \$50 nor more than \$500 per day	Code of Ordinance
CAMBRIDGE	To extent provided in §13 of C. 40C	Code of Ordinance
CONCORD	Not less than \$10 nor more than \$500 per day	Code of Ordinance
NANTUCKET	Not less than \$10 nor more than \$500 per day	Code of Ordinance
NEWBURYPORT	Up to \$300 per day	Code of Ordinance
NEWTON	Not to exceed \$300 per day	Code of Ordinance
QUINCY	\$100 per day	Code of Ordinance
SOMERVILLE	Not less than \$10 nor more than \$500 per day	Code of Ordinance

PROPOSAL. In light of its interest in developing language to enhance a more appropriate enforcement of the city's historic ordinance from what currently exists, the NBHC requested staff to review the existing code and develop proposed language to remedy this concern. In so doing, staff reviewed existing laws governing such enforcement and penalty provisions, the existing city ordinance and what other 40c communities have employed in their cities/towns. Based on this comprehensive review and analysis, a draft amendment to the ordinance was generated and forwarded to the City Solicitor's Office for legal review.

The result of that effort is a proposal for three distinct amendments to the city ordinance:

- An Amendment to Chapter 2, Article XI which inserts language into the ordinance addressing three items:
 1. The circumstances and need for a Certificate of Appropriateness or Certificate of Non-Applicability.
 2. The requirement articulating the need for consistency with Certificates of Appropriateness.
 3. The penalties that may be enforced for violations (including civil action for injunctive relief, criminal enforcement up to \$100 per violation per day or the issuance of non-criminal citations up to \$100 of \$100 per day per violation).
- An amendment to Chapter 17 Section 17-18 that addresses noncriminal disposition of violations of certain ordinances, rules and regulations.
- A final amendment to Chapter 17 Section 17-28, also addressing noncriminal disposition of violations of certain ordinances, rules and regulations.

The "Proposed Ordinance Amendments" is attached as the final two pages of this report for the NBHC's consideration.

PROCESS: Now that the City Solicitor's Office has produced this recommended language based on staff's representation of the NBHC's interest, this proposal will be provided to the Mayor's Office who will submit it to the City Council for its consideration.

It is anticipated that the City Council would then review the ordinance amendment at their Committee on Ordinances. If the Committee is in favor of the Ordinance, that body will vote to recommend adoption of the ordinance to the entire City Council. (Ordinance amendments require two public hearings of the City Council for approval.)

In the course of its public hearing and review process, it would be appropriate for the NBHC to provide a recommendation to the City Council for its consideration. To this end, staff offers the following:

STAFF RECOMMENDATION: Provided the Commission approves of the proposed language presented on the following pages, staff recommends formally voting to recommend the proposed amendments in a letter to the Council. Staff further recommends that the NBHC consider, as part of its vote, to include its rationale for encouraging such Council action.

PROPOSED ORDINANCE AMENDMENTS

REVISION NOTE: This revised report changed some proposed language in Section 2-156.1 (a) and (b) from that which was originally provided. The revisions do not revise intent or applicability.

Amending Chapter 2, Article XI New Bedford Historical Commission; Historical Districts

Chapter 2, Article XI is hereby is amended by inserting the following after Sec. 2-156:

Section 2-156.1 Same – Enforcement

- (a) No person shall cause or permit said building or structure within an historic district to be constructed or altered in any way that is visible from a public way, whether requiring a building permit or not, without first obtaining a Certificate of Appropriateness, a Certificate of Non-Applicability or a Certificate of Hardship with respect to such construction or alteration from the Commission, pursuant to M.G.L. c. 40C, §6, as amended.
- (b) No person shall cause or permit said building or structure within the historic district to be constructed or altered in any way to its exterior such that it is inconsistent with a previously-granted Certificate of Appropriateness, Certificate of Non-Applicability or a Certificate of Hardship relevant to the project, whether requiring a building permit or not.

Section 2-156.2 Same – Penalty

Pursuant to the provisions of Massachusetts General Law c.40C §13, the Commission and its designees are specifically authorized to institute any and all actions, proceedings in law and in equity, as they deem necessary and appropriate to obtain compliance with the requirements of this section or to prevent a threatened violation thereof, including instituting a civil action seeking injunctive relief, criminal enforcement up to One Hundred (\$100.00) Dollars per violation per day, or the issuance of non-criminal citations, up to One Hundred (\$100.00) Dollars per violation per day pursuant to G.L. c. 40, § 21D and G.L. c. 40U.

Section 2. This ordinance shall take effect in accordance with the provisions of Chapter 43 of the General Laws.

**Amending Chapter 17, Section 17-18, Noncriminal disposition of violations
of certain ordinances, rules and regulations.**

Chapter 17, Section 17-18, Noncriminal disposition of violations of certain ordinances, rules and regulations (j) is hereby amended by adding the following as offenses:

<u>Section</u>	<u>Subject</u>	<u>Fine</u>
2-156.1	Bedford landing historic district established – Certificate of Appropriateness	\$100.00

Section 2.

This ordinance shall take effect in accordance with the provisions of Chapter 43 of the General Laws.

Amending Chapter 17, Section 17-28, Chapter 40U of the Massachusetts General Laws

Chapter 17, Section 17-28(b), is hereby amended by adding the following as offenses:

<u>Section</u>	<u>Subject</u>	<u>Fine</u>
2-156.1	Bedford landing historic district established – Certificate of Appropriateness	\$100.00

Section 2.

This ordinance shall take effect in accordance with the provisions of Chapter 43 of the General Laws.