City of Revere
City Council

City Council Order No. 15-37

Date: March 16, 2015

Offered by City Council

AN ORDINANCE FURTHER AMENDING TITLE 1, Chapter 1.12 OF THE ORDINANCES OF THE CITY OF REVERE

WHEREAS, Title 1, Chapter 1.12 of the Ordinances of the City of Revere presently controls the municipal code violation process for the City;

WHEREAS, the City's municipal code violation process was created to comply with M.G.L. c. 40 § 21D;

WHEREAS, on May 11, 2010, the Governor of the Commonwealth of Massachusetts signed into law as part of the 2010 Massachusetts Relief Bill, the statute captioned: M.G.L. c. 40U;

WHEREAS, M.G.L. c. 40U modernized the municipal code enforcement process providing municipalities, *inter alia*, additional authority to combat ongoing code violations and the problem of blighted properties and neighborhoods;

WHEREAS, the City of Revere seeks to update its Ordinances and its internal municipal code violation process to accept, comply with and fully implement the contemporary M.G.L. c. 40U process;

WHEREAS, the City of Revere seeks to amend Title 1, Chapter 1.12 of the Ordinances to adopt M.G.L. c. 40U and to identify the processes and procedures that the City and its citizenry must follow when issuing and responding to M.G.L. c. 40U code violations;

WHEREAS, the City of Revere additionally seeks to maintain the M.G.L. c. 40 § 21D process for certain code violations not covered by the new M.G.L. c. 40U system;

WHEREAS, this Amendment and Ordinance is offered to support the City's modernization and improvement of its overall code enforcement process in support of the public interest;

WHEREAS, an amendment to Title 1, Chapter 1.12, Article I is offered to include M.G.L. c. 40U within the definition of the violation notices that certain officers are authorized to issue violation notices in the City of Revere, and to include definitions of certain terms relevant to the M.G.L c. 40U process;

WHEREAS, an amendment to Title 1, Chapter 1.12, Article II is offered to clearly isolate the M.G.L. c. 40 § 21D process from the M.G.L. c. 40U process within Article III;

WHEREAS, an amendment to Title 1, Chapter 1.12 is offered to add an Article III to clearly isolate the M.G.L. c. 40U process from the M.G.L. c. 40 § 21D process within Article II;

WHEREAS, Title 1, Chapter 1.12, Article III is offered to state the City's contemporary code violation process in accordance with M.G.L. c. 40U;

WHEREAS, the below amendments are in harmony with the general purposes and intent of the Revised Ordinances of the City of Revere.

AN ORDINANCE AMENDING TITLE 1, CHAPTER 1.12 OF THE ORDINANCES OF THE CITY OF REVERE AND ACCEPTING MASSACHUSETTS GENERAL LAW CHAPTER 40U IN ITS ENTIRETY

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF REVERE AS FOLLOWS:

Amendment to Title 1, Chapter 1.12, Article I

Section I. Title 1, Chapter 1.12, Article I, Section 1.12.010(D) is hereby amended by deleting Section 1.12.010(D) in its entirety, and replacing the definition of "Enforcing officer" with the following:

> "Enforcing officer" means any municipal officer of the City government, or police officer, or firefighter, or code enforcement officer, or municipal building supervisor, or the Superintendent of Public Works and her/his designee, or the Chair of the Conservation Commission and her/his designee, who takes notice of a violation of a specific rule or regulation as set forth in this chapter. An "Enforcing Officer" as defined herein is hereby authorized to enforce the provisions of this chapter in accordance with M.G.L. c. 40, Section 21D and M.G.L. c. 40U, Sections 1-18.

Section II. Title 1, Chapter 1.12, Article I, Section 1.12.010(E) is hereby amended by deleting Section 1.12.010(E) in its entirety, and replacing the definition of "Municipal officer" with the following:

> "Municipal officer" shall mean any official of the City government empowered with the responsibility to take notice of specific rules or regulations set forth in this chapter.

Section III. Title 1, Chapter 1.12, Article I, Section 1.12.010 is hereby amended by adding Section 1.12.010(H), which shall read as follows:

> "Person Responsible" shall be the owner of the property where the violation occurred. The owner is a person responsible under this ordinance, because property owners have a legal duty to maintain, correct the condition of the property, and ensure the property complies with the minimum standards prescribed by the housing and sanitary codes, and these ordinances.

Section IV. Title 1, Chapter 1.12, Article I, Section 1.12.010 is hereby amended by adding Section 1.12.010(I), which shall read as follows:

> "Violation" shall mean any non-compliance with any rule, order, ordinance, or by-law regulating the housing, sanitary, or snow and ice removal requirement as provided by this chapter, by the City ordinances, and/or by the State sanitary and housing codes. Violations shall be deemed to be committed by the person responsible.

No other amendments are made as to Title 1, Chapter 1.12, Article I.

<u>Amendment to Title 1, Chapter 1.12, Article II</u>

Section V. Title 1, Chapter 1.12, Article II. Noncriminal Dispositions of Violations is hereby amended to be named the following:

> Article II. – Noncriminal Dispositions of Violations – M.G.L. c. 40 § 21D

Section VI. Title 1, Chapter 1.12, Article II is hereby amended to include a preamble to be placed before Section 1.12.040, which shall read as follows:

> Preamble: Title 1, Chapter 1.12, Article II addresses the noncriminal disposition of violations issued pursuant to M.G.L. c. 40 § 21D. The ordinances contained in Title 1, Chapter 1.12, Article II are separate and distinct from those contained in Title 1, Chapter 1.12, Article III, which address the noncriminal disposition of violations issued pursuant to M.G.L. c. 40U §§ 1-18.

Amendment to Title 1, Chapter 1.12 by Addition of a New Article III

Section VII. Title 1, Chapter 1.12 is hereby amended to add Article III and the subsequent Sections, as follows:

Article III – Noncriminal Dispositions of Violations – M.G.L. c. 40U §§ 1-18

Preamble: Title 1, Chapter 1.12, Article III addresses the noncriminal disposition of violations issued pursuant to M.G.L. c. 40U §§ 1-18. The ordinances contained in Title 1, Chapter 1.12, Article III are separate and distinct from those contained in Title 1, Chapter 1.12, Article II, which address the noncriminal disposition of violations issued pursuant to M.G.L. c. 40 § 21D.

1.12.100 Citation for Violation; Form and Contents, Notice

A. Every enforcing officer who takes notice of a violation of a rule, regulation, order, ordinance or by-law regulating the housing code, sanitary code or snow and ice removal requirement, including officers falling within Section 1.12.110 below, shall provide the person responsible with a citation forthwith.

B. The citation shall be in tag form. The citation shall be pre-numbered, and contain: the date, time and place of the violation; the specific violation charged; the name and badge number of the enforcing officer, municipal officer, or inspector and his or her division; the information related to timeframe and amount to be paid; and instructions for return of the citation and the alternative options to resolve the citation.

C. Service of this citation shall be deemed effectuated as to the Person Responsible when:

    i. the citation is affixed securely to the building where said violation occurred; or

    ii. the citation is delivered to an onsite professionally-managed property office during normal business hours by mail or in-hand.

D. For properties subject to M.G.L. c. 144 §§ 95A-95C, delivery of a violation notice shall be deemed effected when provided to the office of the City Clerk.

1.12.110 Enforcing officers

Without intending to limit the generality of the foregoing, it is the intention of this provision that the following titles and sections of these Revised Ordinances are to be included within the scope of this chapter on noncriminal disposition, and that, the municipal personnel listed below for each title shall also be enforcing persons:

Title 6 – Animals.
Enforcing officers: Animal control officers or other duly authorized officer and the DPW municipal building supervisor;

Title 8 – Health and Safety Code.
Enforcing officers: Health agent and code enforcement officers or other duly authorized officer and the superintendent of public works and the assistant superintendent of public works and city of Revere firefighters and building inspectors and local inspectors;

Title 9 – Public Peace, Safety and Welfare.
Enforcing officers: Health agent and code enforcement officers or other duly authorized officer;

Title 12 – Streets and Sidewalks.
Enforcing officers: Superintendent of public works or other duly authorized officer;

Title 13 – Public Services.
Enforcing officers: Superintendent of public works or director of municipal inspections or other duly authorized officer;

Title 15 – Buildings and Construction.
Enforcing officers: Building inspector and local inspectors or other duly authorized officer and the city of Revere firefighters limited to six firefighters;

Title 16 – Environment.
Enforcing officers: Building inspector, local inspectors and chairperson of conservation commission or other duly authorized officer;

Title 17 – Zoning.
Enforcing officers: Building inspector and local inspectors or other duly authorized officer.

1.12.120 Payment of Fine
All fines may be paid in person at, or by mailing to, the City of Revere Office of Inspectional Services during normal business hours, by check or money order listing the address of the violation, and the violation number.

1.12.130 General Fund
All fines, penalties, or assessments shall be deposited into the general fund, unless otherwise duly authorized.

1.12.140 Rights and Obligations of Person Responsible
Within twenty-one days of the issuance of a citation, the person responsible may:

A. pay in full the scheduled fine;
B. make a written request to the Municipal Hearing Officer for an in-person hearing; or
C. request disposition by mail by sending a copy of the citation to the Municipal Hearing Officer along with a signed statement of objections to the citation. The person responsible may also include any signed statements from witnesses, police officers, government officials and other relevant persons or parties, or any photographs, diagrams, maps and other documents, all of which must contain the name of the person responsible, complete address, the citation number and the date and address of the citation.

1.12.150 Effect of Failure to Pay, Respond to a Violation or Appear for Scheduled Hearing

Failure to respond to a violation as provided above or to appear for a scheduled hearing shall be prima facie evidence of the existence of the violation cited and may be used in any subsequent or related proceeding. Failing to appear at the scheduled hearing without good cause shall result in a dismissal of the matter and a waiver of any further right to a hearing or appeal. If the condition which caused the citation continues to exist, the finding of responsibility may also be used by the City as prima facie evidence of the existence of a violation in any proceeding to suspend or revoke any license, permit or certificate issued by the City relative to that building, structure or premises pending the correction of the condition. Additional and monetary penalties will apply in accordance with Section 1.12.190 of this ordinance.

1.12.160 Demand Letter to Person Responsible Regarding Unpaid Fines

If a fine stemming from a violation remains unpaid for twenty-one days from the date of the issuance of the violation, and no hearing has been timely requested, a demand letter shall be sent to the mailing address of the owner of record and, if appropriate to the local individual or property management company responsible for the maintenance of the property, notifying him or her that the fine shall be paid within thirty days after receipt of the demand letter. Person responsible noticed may request a hearing before the Municipal Hearing Officer within fourteen days of receiving the demand letter only if he or she swears in writing under the pains and penalties of perjury that he or she did not receive the original citation. In the event of such a request, the Municipal Hearing Officer may make a preliminary determination whether to allow the request for hearing.

1.12.170 Fines Remaining Unpaid After Demand Letter, No Hearing Requested:

If the fine remains unpaid for thirty days after the demand letter and no hearing has been requested, additional penalties and interest may be attached, and such amount shall become an additional assessment on the property owner's tax bill, and shall also be a lien upon such real estate as provided in M.G.L. Chapter 40, Section 42B. This action, without more, will constitute a lien on the property.

1.12.180 Fines Remaining Unpaid After Determination of Responsibility by Municipal Hearing Officer, No Timely Appeal: If a fine remains unpaid for twenty-one days after determination of responsibility by the Municipal Hearing Officer and no appeal has been taken, additional penalties and interest may be attached, and such amount shall become an additional assessment on the property owner's tax bill, and shall also be a lien upon such real estate as provided in M.G.L. Chapter 40, Section 42B. This action, without more, will constitute a lien on the property.

1.12.190 Penalties

A. Notwithstanding the language in Title 1, Chapter 1.16, Section 1.16.010, and unless otherwise provided by specific law or ordinance, the penalty to apply in the event of a violation of any ordinance enforced by the noncriminal disposition procedure in this chapter shall be as follows: not less than twenty-five dollars and not more than five hundred dollars per offense. A separate violation may be cited for each day the violation exists.

B. Any person or entity who both fails to provide payment to the Offices of Inspectional Services as provided by Section 1.12.120 and fails to make written request for a hearing within twenty-one days to the Municipal Hearings Officer shall be assessed a processing fee of ten dollars as a part of the demand letter pursuant to Section 1.12.160. The original penalty plus the processing fee shall be due and payable to the Offices of Inspectional Services within thirty days of the date of the receipt of the demand letter.

C. If the original penalty and the processing fee are not paid in full within thirty days from the demand letter described in subsection (B) above and in Section 1.12.160, or, in the event a hearing is held either by in-person hearing pursuant to Section 1.12.140 (B) or by written adjudication pursuant to Section 1.12.140 (C) and the violation is upheld and not paid in full within twenty-one days from the date of the decision of the Municipal Hearings Officer, then the amount due to the city shall be five hundred dollars, unless the violation relates to snow and ice removal, in which case the maximum principal fine shall be two hundred dollars.

D. Statutory interest shall accrue in accordance with M.G.L. c. 59 §§ 57, 57C, following the respective deadlines contained in subsection C and in accordance with Section 1.12.170 and Section 1.12.180.

1.12.200 Duties of the Municipal Hearing Officer

A. In general: The Municipal Hearing Officer shall have access to and maintain a system relative to all violations issued and the disposition of each.

B. In-Person Hearings

i. Notice and Scheduling: Upon receipt of a request for hearing, the Municipal Hearing Officer or the officer's designee shall schedule a hearing not later than forty-five days from the receipt of the request and shall notify the alleged person responsible of the date, time and location of the hearing. The alleged person responsible shall be given an opportunity to request a rescheduled hearing date. Hearings shall be held on at least two evenings each month. The hearings shall be held at the discretion of the Municipal Hearing Officer, with no requirement that they be heard in any particular order. The Municipal Hearing Officer shall have the broad authority to schedule hearings, even in the case of untimely requests, and may also deny such requests on procedural grounds.

ii. Hearings Process: The Municipal Hearing Officer shall have broad discretion in conducting the hearings. Hearings shall be conducted in a manner fair to all parties. The rules of evidence shall not apply, however, the Municipal Hearing Officer, in his or her discretion, may take any documents, evidence, and/or testimony that he or she deems reliable, relevant, and/or trustworthy, and may draw any reasonable inferences therefrom. The Municipal Hearing Officer, in his or her discretion, may reject any documents, evidence, and/or testimony that he or she deems unreliable, irrelevant, and/or untrustworthy. The Municipal Hearing Officer shall determine by a preponderance of the evidence, whether the violation occurred, and whether the person noticed was the person responsible for the violation. The Municipal Hearing Officer shall notify the person responsible of the disposition within twenty-one days of the hearing. If the violation is upheld, the person responsible may file a judicial appeal within ten days of receiving the notice of decision.

C. Adjudication by Mail:

Upon receipt of request for adjudication by mail, the Municipal Hearing Officer shall review the submitted materials and dismiss or uphold the violation. Within twenty-one days of receipt of said materials, the Municipal Hearing Officer shall notify the person responsible by mail of the disposition and, if the violation is upheld, shall provide an explanation of the reasons therefor. The person responsible may file a judicial appeal within ten days of receiving the notice of decision pursuant to M.G.L. Chapter 40U, Section 15, or to an appropriate court within thirty days pursuant to M.G.L. Chapter 30A, Section 14.

D. Decisions and Appeals:
Decisions of the Municipal Hearing Officer shall be final, subject only to judicial appeal as provided by statute. Every final decision of the Municipal Hearing Officer shall be accompanied by a notice to the person responsible that he or she may, within ten days of receipt of notice of decision, file a judicial appeal, and shall provide a form for that purpose.

1.12.210 Full Scope of M.G.L. c. 40U Applicable
In addition to all other Sections of Title 1, Chapter 1.12, Article III, the full scope of M.G.L. c. 40U §§ 1-18 shall apply. This ordinance also confirms that the city has contemporaneously, pursuant to M.G.L. c. 40U § 2, voted to accept M.G.L. c. 40U in its entirety.

1.12.220 Alternative Lien Process
Notwithstanding the provisions of Title 1, Chapter, 1.12, Article III, as an alternative, the City may lien any and all penalties, fines, assessments or other charges related to the heath and sanitary code as provided for in Chapter 497 of the Acts of 1991, that special act remaining unaffected by this ordinance.

March 9, 2015	Ordered to a first reading.
March 16, 2015	Ordered on a second, third and final reading.
March 16, 2015	Ordered Engrossed and Ordained on a Roll Call: Councillors Arrigo, Giannino, Guinasso, Haas, Morabito, Novoselsky, Patch, Reardon, Zambuto and Council President Powers voting "YES". Attest: Ashley Melnik, City Clerk

Approved by:

Mayor Daniel Rizzo

3/23/2015
Date

Attest:

Ashley E. Melnik

City Clerk