

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE REPORT

WEDNESDAY, MAY 29, 2013

Present: Ald. Johnson (Chairman), Danberg, Kalis, Lennon, Yates and Sangiolo

Absent: Ald. Baker and Swiston

Also Present: Ald. Gentile, Hess-Mahan and Blazar

Others Present: Marie Lawlor (Assistant City Solicitor), Maura O'Keefe (Assistant City Solicitor), James Freas (Chief Long Range Planner), Alice Walkup (Senior Community Development Planner), Karyn Dean (Committee Clerk)

Planning and Development Board: Joyce Moss (Chairman), Candace Havens, Roger Wyner. Doug Sweet, Scott Wolf

A Public Hearing was held on the following item:

#77-13 ALD. GENTILE & HARNEY requesting that the Board of Aldermen amend the **City of Newton Zoning Ordinances** so that any properties that have been built and purchased that may now be considered non-compliant due to the recent court decision in the Mauri/Chansky case be considered valid non-conforming properties. [02/27/13 @3:06 PM]

ACTION: **APPROVED 6-0**

NOTE: Ald. Gentile explained that this docket item is an attempt to protect a small number of houses that had been issued building permits, were constructed and purchased and have now been found non-compliant due to the Mauri/Chansky court decision. After several discussions in Committee, draft language for an **ordinance has been proposed and is attached to this report.**

James Freas, Chief Long Range Planner summarized the issue. He explained that a building permit for a lot on Bradford Road was issued by the City's Inspectional Services Department. The building permit was appealed to the Zoning Board of Appeals and the permit was upheld. The issue was then brought to the Massachusetts Land Court and on December 22, 2011 the Court issued an opinion finding the City's interpretation of Section 30-15(c)(3)(b) erroneous in allowing construction of a single- or two-family home on a vacant under-sized lot adjoining another lot, both in common ownership. This finding was also upheld by the Massachusetts Appeals Court.

In the interim, a number of other lots were also issued building permits under the City's interpretation and homes were built, sold and then occupied in reliance on that interpretation. With the court decision, these homes are now considered noncompliant with the potential for the City to require demolition of any homes constructed within the last six years. It would also not allow any form of future building permits to be issued for these homes, interfering with the homeowner's ability to maintain or renovate, and would also make the future sale of these

homes extremely difficult. The proposed ordinance would define this small group of 6 or so homes as legally non-conforming instead of noncompliant, remedying these hardships.

The dates in the proposed ordinance that define the start and stop date of the period of protection are significant. The start date (July 7, 2001) refers to the date that Section 30-15(c)(3)(b) of the zoning ordinance was amended; and the stop date (December 22, 2011) refers to the date of the Massachusetts Land Court decision.

Ald. Johnson opened the Public Hearing:

Public Comment

Ronald Mauri, 35 Bradford Road, said that he wholeheartedly endorsed and supported the proposed ordinance in order to eliminate the problem for this small group of homeowners, who purchased homes in good faith, with no knowledge that there was any problem with their properties. Many other people throughout the City have been affected by the interpretation from ISD as well. He mentioned homeowners on Beacon St., Pine Ridge Rd., Goddard St., and Chasky Rd. Three of these have involved Land Court actions and substantial cost in time, money and anxiety that they had to expend to protect the character of their neighborhoods and their property values. They have created a group called Residents for Responsible Development. He thanked the Committee for their diligent work to mitigate this problem. He asked that they work to avoid future problems.

He went on to say that he delivered a letter in 2009 that was signed by Ouida Young to the Inspectional Services, Law and Planning Departments that stated that on a merger situation with undersized lots, the vacant lot cannot be built. In spite of that, Mr. Lojek issued a building permit for Bradford Rd. January 7, 2010 was the day he filed his appeal to the Land Court after the ZBA upheld the building permit in October of 2009.

Deepak Bhatt, 1682 Commonwealth Ave, thanked Ald. Gentile and the others for bringing this issue forward. He fully supported the proposed ordinance. He and his wife bought their home in 2008 fully believing it was a legal home and they fall into this category. He is pleased that the City is working to keep his property a legal lot and home.

John Cote, 430 Winchester St., said he was a party to the Goddard Street suit. He said it is frustrating that the homeowners read the regulations and saw what the interpretation should have been but developers were issued building permits nonetheless. The residents had to go to court and spend thousands of dollars to get the city do what they should have done. He wants Newton to honor and enforce its laws so that homeowners and developers are using the same rule book and are on a level playing field.

Srjdan Nedeljokovic, 5 Bellingham St, said he was in favor of the proposed ordinance to support this class of homeowners. He would like a clear demarcation made for the couple of other properties that were built after this process came to intense public scrutiny and significant discussions took place. He felt they should be considered separately and outside the realm of this proposed ordinance.

George Mansfield, 312 Lake Ave., explained he was on the ZAP Committee in 2001 and was involved in crafting the amendment to Section 30-15. In 2009 it was brought to his attention that perhaps ISD had misinterpreted the ordinance and issued building permits on undersized side lots. The intent of the amendment was to protect the buildings that already existed on undersized lots. He is in favor of the proposed ordinance.

Comments On Properties Not Protected By This Ordinance

Stephen Petrowski, South Boston, said he is an owner of the Goddard Street properties. He said he was issued building permits that he believed to be valid. The permit was brought to the ZBA and the ZBA revoked it but he felt they were forced to by the Mauri appeal decision. He would like to be included in the class of people who would be protected by the proposed ordinance. Ald. Yates asked if he received a letter from Inspectional Services informing him that a court case was under way and that he would be building at his own risk. Mr. Petrowski said he received the building permit in December, 2011 but did not receive that letter until June, 2012, at which point construction was 95% completed. He said the Mauri case was not advertised and nobody knew it was underway and there were any issues. He felt the December 22, 2011 date is arbitrary. He noted that lots that are in common ownership cannot be built upon by right, but if they are owned by two different people then they can be built upon by right. He didn't think that was logical.

Steve Vona, 77 Old Ham Rd. said he was an owner of Pine Ridge Rd. He said he did extensive due diligence before buying the property and received every indication from the City that the lot was buildable from the Law, Planning and Inspectional Services Departments. They received all the necessary building permits, spend many thousands of dollars and proceeded in good faith. He received a letter in June 2012 from ISD that there was a problem but at that point the construction was 95% completed. He said he received no information from ISD or any other department in the City that there was a pending suit that could affect his property until he received the June 2012 letter. At that point he was going for his Certificate of Occupancy. He did not understand why properties in this kind of position would not be protected under this ordinance as well. He did not feel that was fair at all. He also believes there are more than 6 properties that fall in the category they are trying to protect. He said he understood mistakes were made all around and all they can do is admit that and try to make things right. Ald. Hess-Mahan asked if there was anything at all in the chain of title that would have indicated this lot was not developable. Mr. Vona said no.

Hugh Starkey, 50 Congress St., Boston. Mr. Starkey stated that he is the attorney that represented the Mauri's in the case under discussion. He also represents Mr. Cote and his neighbors on Goddard Street. He said he has identical letters from Commissioner Lojek dated June 12, 2012 addressed to Mr. Vona and Mr. Petrowski. He read from the letter and it said "At the time I issued building permits to you, I advised you that this office's interpretation of Section 30-15(c)(3)(b) had been challenged in the case Mauri vs. Newton Zoning Board of Appeals and that the validity of those permits could be affected by the outcome of that case. Subsequent to the issuance of your building permits, the Mauri case was decided on December 22, 2011....If that challenge to the Mauri case is successful, I would be required to revoke your building permit

and issue a stop work order. I believe you should consider that it may be prudent to limit your financial exposure and cease your building efforts until the issue is settled in the courts.” Mr. Starkey said Mr. Vona did not get his framing permit until January, 2012 which is after the Mauri decision had been issued. In the case of Goddard St., they put in foundations in February of 2012 and then stopped construction. They resumed construction on one lot on June 14, 2012. Notices of the appeal to the ZBA of the Bradford Rd. building permit were published in The Tab twice in October of 2009. That is legal notice to the public at large. The public is expected to know what the state of the law is. They did have ample warning and opportunity not to pursue the construction, but they did. The developer in the Bradford Rd. property had a building permit, but did not begin construction. Therefore, he feels the Pine Ridge Rd. and Goddard St. properties do not fall within this protected category.

Ald. Gentile said it was not his intention to re-open the decision of the court. He said he has spoken to Mr. Petrowski and Mr. Vona and he did not feel their cases should be involved in this proposed ordinance. He said he knows both of these developers and they are good people, but they are not in this category of the homeowners they are attempting to protect.

Hearing no further requests for comment, Ald. Johnson closed the public hearing. The Committee adjourned to the meeting room for a working session. The Planning and Development Board voted to close their public hearing as well. They will deliberate and report back shortly to the Zoning & Planning Committee on their recommendation.

Working Session Notes:

The Planning & Development Board rejoined the Committee. Joyce Moss, Chair of the P&D Board reported that they voted 4-0 to endorse the Planning Department’s recommendation to adopt the proposed ordinance. The only suggestion they had was to perhaps look into the second class of properties as were described by the owners of Goddard Street and Pine Ridge Road.

There was mention that any of the property owners can go to the Zoning Board of Appeals to seek a variance for relief. Marie Lawlor reminded the Committee that even if the ordinance is approved, it is subject to challenge and there is no way to know if that would happen at all or how that may go. The Law Department advised the Committee previously that it could be subject to a uniformity challenge. People with similarly situated double lots could argue they should receive the same treatment and whether the distinctions being made in this ordinance could be held up in court remain to be seen.

Ald. Sangiolo moved approval of this item and the Committee voted in favor.

#146-13 THE ZONING & PLANNING COMMITTEE requesting information from the Planning Department concerning the nature and character of vacant lots that were confirmed as unbuildable by the Mauri Appeals Court decision.
[04/01/13 @ 9:44 AM]

ACTION: **NO ACTION NECESSARY 6-0**

NOTE: James Freas said that there is not much more to add to this discussion. The lots have been identified and the addresses were provided with the agenda. The Rossmere Ave. lot has been deleted from the list as it was determined a variance had been given to that property.

Hearing no request for further information or discussion, the Committee voted No Action Necessary on this item.

#214-12 ALD. DANBERG, BLAZAR, SCHWARTZ proposing an ordinance which would enable the city to respond to properties which are so inadequately cared for, often by absentee owners, as to constitute a nuisance, not only to properties nearby but also to the public at large, with the understanding that timely intervention may help prevent the loss of such properties to severe neglect, excess accumulation of trash or unsightly collectables, inside or out, or even eventual abandonment.
[07-09-12]

ACTION: **HELD 6-0**

NOTE: Ald. Danberg addressed the Committee. She explained that this is not an attempt in any way to address aesthetics. This was designed to address the small number of properties that are truly overrun with trash and debris. It happens infrequently, but when there are cases, they tend to be quite egregious. When neighbors have gone to the City for help, they have been told that there is really nothing in place to help mitigate the effects of this on neighborhoods. Ald. Blazar said the City needs to address this problem but there seems to be reticence because the Inspectional Services Department has said it will be difficult to enforce. He spoke to the head of ISD in Wellesley and they have had a similar ordinance in place for about ten years and it has been working. There have been no challenges in court.

Marie Lawlor, Assistant City Solicitor said the draft ordinance is based on ordinances in Wellesley and Needham. (The draft ordinance is attached to this report.) The issue is this cannot be a tool to legislate for aesthetics or give a neighbor a tool to torment a neighbor because there is a difference of opinion on what is “trash” and what is “treasure”. There was also some debate about whether to include “overgrown vegetation” and that may be something to consider eliminating from the ordinance.

The concept of this type of ordinance can be subjective and can put a burden on the enforcement agency. There is a significant effort to make this ordinance as objective as possible with as many guidelines as possible. It will still be an issue of enforcement. When there are issues of a public health hazard, the Health Department is able to step in at that point.

Ms. Lawlor pointed out that this is not a zoning ordinance, but is in front of the Zoning & Planning Committee because the enforcement piece of this would be through the Inspectional Services Department.

Ald. Johnson opened the meeting to public comment:

Jerry Reilly, Upper Falls said that even though there is a property in his neighborhood that could be addressed by this ordinance, he is against it. He felt that it was a disincentive to neighborly discussion. Also, as mentioned earlier, aesthetics are extremely subjective and half the neighborhood loves this property, and half think it is a blight on the landscape. He also feels the ordinance is ambiguous and too broad. He would like to see issues of health and safety addressed only, not how things “look” from someone’s window or backyard or the public view.

Liz Scott, Ridge Avenue said there can often be issues of mental health involved, such as hoarding. Neighborly discussion may be preferable, but is often not possible when dealing with that sort of situation. She has witnessed debris and trash in the worst degree on a property. She said she has contacted the City many times over a few years. There was a small improvement several years ago when the City got involved, but things have returned to their original bad state. She and neighbors have been in touch with aldermen and there seems to be very little or nothing being done.

Hal Green, Burr Road said he has been dealing with this issue for five years. They have spoken to many people in the City including the Mayor. The property is a problem for health and safety and is against everything Newton stands for. It should be tackled very vigorously.

Resident, Burr Road added that it is a disgusting situation and encouraged the Committee to make a site visit. There is trash, debris, tarps and food that is left out. She is afraid someone will get hurt.

Ald. Johnson closed the meeting to public comment.

Ald. Johnson said she would like to find out if they could conduct an Executive Session to discuss some specifics. Ald. Blazar said he has been hearing about these issues for a few years and has been told that without an enforcement tool like an ordinance, nothing can be done. On the other hand, ISD has said they don’t want the ordinance because of the difficulty with enforcement. Ald. Johnson said she has knowledge of a couple of cases that ISD was able to resolve by working with the homeowners. She would like Commissioner Lojek to talk to ISD in Needham and Wellesley and report back to the Committee on their experiences. She would also like Commissioner Zaleznik from Health and Human Services join the discussion. Ald. Sangiolo would like follow up on the number of cases that have come to their attention and what the course of action has been to address them.

Ald. Danberg moved to hold this item and the Committee voted in favor.

Respectfully Submitted,

Marcia T. Johnson, Chairman



Setti D. Warren
Mayor

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459


#77-13
Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

Candace Havens
Director

PUBLIC HEARING MEMORANDUM

DATE: May 24, 2013

TO: Alderman Marcia T. Johnson, Chairman
Members of the Zoning and Planning Committee

FROM: Candace Havens, Director of Planning and Development 
James Freas, Chief Planner, Long-Range Planning

RE: #77-13: ALD. GENTILE & HARNEY requesting that the Board of Aldermen amend the City of Newton Zoning Ordinances so that any properties that have been built and purchased that may now be considered non-compliant due to the recent court decision in the Mauri/Chansky case, be considered valid non-conforming properties.

MEETING DATE: May 29, 2013

CC: Board of Aldermen
Planning and Development Board
Donnalyn Kahn, City Solicitor

The purpose of this memorandum is to provide the Board of Aldermen, Planning and Development Board, and the public with technical information and planning analysis which may be useful in the decision making process of the Board. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Zoning and Planning Committee of the Board of Aldermen will consider in its discussion at a subsequent Working Session.

EXECUTIVE SUMMARY

On December 22, 2011 the Massachusetts Land Court issued an opinion on the case *Mauri v. Zoning Board of the City of Newton, et. al.*, 19 LCR 626 finding erroneous the City's interpretation of the City of Newton Zoning Ordinance, section 30-15(c)(3)(b), allowing the construction of a single-family or two-family home on a vacant under-sized lot adjoining another lot, both in common ownership. This finding was upheld by the Massachusetts Appeals Court. Prior to the *Mauri* decision, a number of homes were built and were sold and occupied in reliance on the City's previous interpretation. As a result, these

homes are now considered noncompliant with the potential for the City to require demolition of the homes. The proposed amendment is intended to rectify this situation by narrowly defining this group of homes within the zoning ordinance as a new class of exemption from the current dimensional standards, effectively making them legally nonconforming lots.

BACKGROUND

Section 30-15(c) of the City of Newton Zoning Ordinance identifies exemptions to the dimensional requirements of the ordinance, particularly those of lot size and frontage requirements. The section largely mirrors a similar section in the Massachusetts General Laws Chapter 40A, Section 6 and is intended primarily to protect existing homes and legally -created vacant lots from becoming noncompliant as the ordinance was amended over time to require larger lots. This provision protects a property owner's existing investment in a lot where a lot might otherwise be deprived of value if it were subject to the new dimensional requirements of the ordinance, rendering it unbuildable. Two or more adjoining lots in common ownership (owned by the same people) fronting the same street, where one or more of the lots is vacant, represent a special case in this exemption clause because, taken together the lots form a larger property that might meet the current dimensional requirements of the ordinance and would therefore be buildable without requiring the exemption. In this situation, the lots are considered merged under the law.

Section 30-15(c)(3)(b) was adopted in 2001 to create a new, narrowly-defined exemption. The intent of this 2001 amendment was to allow the owner of two or more such commonly-owned lots where one or more of the lots is vacant, to sell the vacant lot or lots without rendering the lot on which their home is located noncompliant. The sold vacant lot would not be buildable, but could be separately sold to someone else. Following the 2001 amendment creating the current version of section 30-15(c)(3)(b), the City interpreted this section of the ordinance to mean that the vacant lot of a commonly-held and adjacent pair was also exempted and therefore buildable. In the time since, several lots were issued building permits and a number of homes were built on such lots.

On March 8, 2007 the Commissioner of ISD issued a determination that the lot adjacent to 25 Bradford Road was a buildable lot under the provisions of Section 30-15(c). The resulting building permit was appealed, first to the ZBA, which upheld the Commissioner's determination, and then to the Land Court, where the judge overturned the decision, finding the City's interpretation to have been erroneous. The Appeals Court later upheld the Land Court decision in February, 2013. With the Court decision, those lots that had been built on under the contested section of the ordinance in the intervening years since the 2001 amendment became noncompliant. Noncompliant lots are potentially subject to enforcement action; for those built within the last six years, the City could require demolition of the house. For those older than six years, the homeowner would be unable to receive any form of building permit, interfering with the homeowner's ability to maintain or renovate the home and severely limiting its salability. The proposed amendment is intended to create a new,

narrowly-defined class of exemption for the purpose of protecting these noncompliant homes so that they may be considered legally nonconforming under the Zoning Ordinance.

PROPOSED AMENDMENT

The proposed amendment creates a new section 30-15(c)(3)(c) as shown below:

c) If the lot:

i) did not have on it a single-family or two-family dwelling as of July 7, 2001; and

ii) was held in common ownership at any time after January 1, 1995 with an adjoining lot that had continuous frontage on the same street and the adjoining lot was the site of a single-family or two family dwelling; and

iii) has on it a single-family or two-family dwelling that was constructed in compliance with a building permit and received a certificate of occupancy on or before December 22, 2011.

The amended text is shown in the context of the entire section 30-15(c) in the attachment.

NEXT STEPS

A working session will follow the public hearing and at that time the Zoning and Planning Committee will have an opportunity to discuss the proposed amendment to the Newton Zoning Ordinance. Staff will provide additional analysis as requested to respond to public comments or questions. Staff recommends adoption of the proposed amendment to the Newton Zoning Ordinance.

Attachment

This attachment contains the proposed language for the zoning ordinance amendment to section 30-15(c)(3)(b) of the Newton Zoning Ordinance. The first part below contains a statement of purpose, which is **not** intended to be included as language in the zoning ordinance but is instead meant to accompany the zoning amendment text through the legislative process as a clear statement of legislative intent for the proposed amendment. Part 2 below contains the actual proposed zoning amendment text presented in the context of the complete section 30-15(c). New zoning text is underlined; zoning text to be removed is ~~struck through~~.

Part 1

Purpose Statement

The purposes of the following amendment are:

(1) to memorialize the interpretation of an existing provision of the Newton zoning ordinances by the courts of the Commonwealth, specifically Section 30-15(c)(3)(b). Subsection b was intended to protect certain existing single-family and two-family dwellings on lots that did not conform with applicable zoning density and dimensional requirements, and were in common ownership with an adjoining lot at some time after January 1, 1995. Subsection b, however, was not intended to authorize the construction of a new dwelling on the adjoining lot held in common ownership where the adjoining lot was nonconforming to applicable zoning density and dimensional requirements; and

(2) to avoid a hardship of being found to be legally noncompliant with Newton zoning ordinances for a small number of properties within the City that were constructed on such common ownership adjoining lots incident to building permits issued by the City pursuant to an erroneous interpretation of 30-15(c)(3)(b) during a period of time after the effective date of Section 30-15(c)(3)(b) until the date of the Land Court decision in *Mauri v. Zoning Board of the City of Newton, et. al.*, 19 LCR 626 (Dec. 22, 2011), which presented a legal challenge to the City's erroneous interpretation that such adjoining lots were entitled to a building permit.

Part 2

Proposed text for 30-15(c)

(c) Exceptions Applicable in Residential Districts.

Any increase in area, frontage, or setback requirements prescribed in Table 1 of this section shall apply to any lot in a residential zoning district except to the extent that either the provisions of Massachusetts General Laws, Chapter 40A, Section 6, as in effect on January 1, 2001, or the following provisions, provide otherwise.

Any increase in area, frontage, or setback requirements prescribed in Table 1 of this section shall not apply to any lot in a residential district if all of the following requirements are met:

- (1) At the time of recording or endorsement, whichever occurred sooner, or on October 11, 1940 if the recording or endorsement occurred before October 11, 1940, the lot
 - a) conformed to the requirements in effect at the time of recording or endorsement, whichever occurred sooner, but did not conform to the increased requirements, and

- b) had at least five thousand (5,000) square feet of area, and
- c) had at least fifty (50) feet of frontage.

(2) The size or shape of the lot has not changed since the lot was created unless such change complied with the provisions of section 30-26.

(3) Either

- a) The lot was not held in common ownership at any time after January 1, 1995 with an adjoining lot or lots that had continuous frontage on the same street with the lot in question,

or

- b) If the lot was held in common ownership at any time after January 1, 1995 with an adjoining lot or lots that had continuous frontage on the same street with the lot in question, such lot had on it a single-family or two-family dwelling;

or

c) If the lot:

i) did not have on it a single-family or two-family dwelling as of July 7, 2001; and

ii) was held in common ownership at any time after January 1, 1995 with an adjoining lot that had continuous frontage on the same street and the adjoining lot was the site of a single-family or two family dwelling; and

iii) has on it a single-family or two-family dwelling that was constructed in compliance with a building permit and received a certificate of occupancy on or before December 22, 2011.

Item # 214-12 DRAFT FOR DISCUSSION PURPOSES 5/21/13:

Add the following new section:

Sec. 5 - 22 Keeping of junk, debris, or overgrown vegetation in public view.

(a) *Purpose:* The purpose of this ordinance is to help protect the health, safety and welfare of the citizens by preventing blight, protecting property values and neighborhood integrity, and protecting the City's resources by avoiding the creation and maintenance of nuisances on property which are detrimental to neighboring residents, properties or property values.

(b) *Definitions:*

Junk or debris. Any materials or combination of materials including but not limited to scrap, metal, scrap construction materials, rags, plastics, batteries, paper trash, inoperable appliances, inoperable machinery, mattresses, tires, and dilapidated or decayed furniture unusable for its intended purpose.

Overgrown vegetation. Weeds, grass, bushes, or other shrubbery which are untrimmed or unkempt and which may harbor or attract rats and vermin, conceal pools of stagnant water, or are otherwise detrimental to neighboring properties.

Substantial amount. A quantity of junk or debris which occupies more than 375 cubic feet in the aggregate on any one lot in a residential district.

Reasonable amount of time. Sixty (60) days.

Public view. Junk, debris, or overgrown vegetation which may be viewed from public property or ways, or from any location within a direct abutter's residence or property.

Commissioner. The commissioner of inspectional services or his designee.

(c) No owner or occupant of any lot in any residential district shall keep in the public view any substantial amount of junk and debris or a condition of overgrown vegetation for more than a reasonable amount of time. Such keeping of junk and debris or overgrown vegetation is declared a public nuisance.

(d) *Regulatory authority.* The commissioner has the authority to promulgate rules and regulations necessary to implement and enforce this section.

(e) *Enforcement.* The commissioner shall enforce the provisions of this section and shall institute all necessary administrative or legal action to assure compliance.

(f) *Notice of violation.* The commissioner shall issue a written notice of any violation of this section to the owner or occupant of the lot. Said notice shall describe the condition and order that it be remedied within thirty (30) days. If such condition is not remedied within that time, the commissioner may take action to impose the fines described in sec. 5-22 (g) by

criminal disposition or by civil disposition pursuant to authority granted by G.L. c. 40, sec. 21D and by sections 20-20 and 20-21 of these ordinances.

(g) *Penalty.* Any violation of this section, including any rules and regulations promulgated by the commissioner, shall be penalized by a fine of ~~three-one~~ hundred dollars (\$100.00) per day for days one through seven that the violation continues; two hundred dollars per day (\$200.00) for days eight through fourteen that the violation continues; and three hundred dollars (\$300.00) per day for each subsequent day the violation continues. Each day a violation continues shall constitute a separate offense.

(h) Action under this section shall not bar any separate regulation by or action by any other City department for health, fire safety, building code or any other violations.

(i) If any provision of this section is held to be invalid by a court of competent jurisdiction then such provision shall be considered severable from the remaining provisions, which shall remain in full force and effect.