

May 18 2022 3:15 pm



**City of Fitchburg
Massachusetts 01420**

CITY COUNCIL

Councillors at Large

**Sally H. Cragin
Marcus L. DiNatale
Amy Green
Samantha M. Squailia
Anthony M. Zarrella**

**President
Anthony M. Zarrella**

**Vice President
Andrew J. Van Hazinga**

Ward Councillors

**Ward 1 – Bernard J. Schultz III
Ward 2 – Paul R. Beauchemin
Ward 3 – Andrew J. Couture
Ward 4 – Andrew J. Van Hazinga
Ward 5 – Marisa R. Fleming
Ward 6 – Derrick J. Cruz**

The meeting of the Council as a Whole Committee was held in the Legislative Building, 700 Main Street, Fitchburg, on April 13, 2022. The meeting was called to order by President Anthony Zarrella at 7:17 P.M. The meeting opened with a salute to the Flag led by Councilor Squailia. The Clerk called the roll and 8 members were present. Councilors Cragin, Green, and Schultz were absent.

The agenda consisted of the following:

015-22. Liz Murphy, chair, NICE TASK FORCE, Director of Housing and Development, to approve the enclosed petition to accept M.G.L. Chapter 40U in its entirety. <https://ma-fitchburg.civicplus.com/DocumentCenter/View/9409/legislation-to-adopt-40U>

Tom Swierawski, Executive Director of Community Development and Planning, Liz Murphy, Director of Housing and Development, and Steve Curry, Director of the Board of Health, were present at the meeting.

Fitchburg resident Jacquelyn Wehtje spoke in opposition of this petition.

Fitchburg Chief of Police, Ernest Martineau, spoke in support of this petition.

Ms. Murphy explained that 40U is legislation that allows cities and towns that adopt the law to designate a local municipal hearing officer to hear appeals of City-issued fines, including code violations, where currently owners have to appeal fines at court. She noted that adopting the law allows the City to create a system for fines and appeals and creates a process for collecting unpaid fines. Ms. Murphy outlined the current inspection process and explained why this process discourages fining and the overall time it takes for resolution due to the appeals process through the court. Mr. Swierawski stated that the city receives a lot of complaints from neighbors in and around problem properties and that within the current system it can take 4-8

months for a complaint to actually get rectified. This makes it prohibitively difficult to actually obtain results and requires our inspectors, Assistant City Solicitor and other staff to spend a lot more time in court than on the ground doing this inspection work with these problem properties.

Ms. Murphy outlined how the system under 40U would create a new internal structure for the ticketing process and explained how the fines and appeal hearing would happen much earlier as follows:

- If any property owner fails to make repairs/correct violations within the required time frame and hasn't made significant progress, and inspector can issue a ticket (and would be more likely to issue such a ticket).
 - The owner (alleged violator) either pays the fine within 21 days, or
 - Request a hearing before the municipal hearing officer – these hearings would be twice a month.
 - This would be a quicker process because it would be in-house instead of waiting to get a court date.
 - The owner may also, without waiving rights to a hearing, request a desk review of the validity of the violation notice.

Mr. Swierawski noted that this process doesn't create any new enforcement actions, but that it is simply an improved process by which appeals can be heard and can work in the benefit of the property owner.

Ms. Murphy outlined the requirements and responsibilities for the position of the municipal hearing officer, the basic administrative process of issuing tickets, what funds will receive the fines collected depending the type of violation, and the anticipated cost(s) the city will incur with both hiring and training a municipal hearing officer and the administrative requirements with regards to ticket books, etc. She noted that in their research of other communities that have adopted 40U the cost has been neutral or better than neutral. She described a typical outcome with the new process and explained that unpaid fines/fees could be placed on the tax bill for payment after the 51 days has elapsed and continued violations after findings can result in license/permit/certificate suspensions. In addition, liens could be placed for unpaid fines which would put lenders or potential buyers on notice.

Councilors asked what other cities or towns have adopted 40U and how has it been working for these communities. Ms. Murphy noted that they based their research on the 26 gateway cities 13 have adopted 40U. Ms. Murphy stated that it is her understanding that it has been working well for these communities, for instance, she was able to locate Chelsea's budget from 2015 to 2019 and they have anticipated revenue of \$180,000 in fines, \$10,000 in interest and penalties and \$250,000 in real estate liens. Mr. Swierawski noted that this would allow the municipal hearing officer to be a self-sustaining position and adoption of this law would be a useful tool in tackling the blighted properties in the city.

Some Councilors noted that this is a way to streamline the process and attempts to find a fair way to resolve issues as quickly as possible in an unbiased approach in contrast to the current system which fails to be able to enforce violations efficiently. Other Councilors expressed their concern that this approach would be heavy handed towards private property owners and their rights within the city.

Councilors asked if this would create any new fines. Ms. Murphy stated that it would not create any new fines and that one of the requirements of the legislation is to list all of the fines that we currently have in the ordinance so that in the future a resident can look at the ordinance to find what is applicable to 40U and what is not.

Councilors asked about how the municipal hearing officer would be appointed and expressed concern with the amount of administrative support that would be required of current staff and the fact that it is currently responsibility of the Commonwealth. Ms. Murphy noted that the municipal hearing officer would be appointed by the Mayor and confirmed by the City Council. She stated there needs to be some internal discussion about how to structure this role but that there were two directions they could consider: 1) there could be a stipend where the municipal hearing officer would handle all aspects of the administrative process, or 2) it could be split between someone internal that has the capacity to handle the administrative part of the process. The hope is to automate much of the process through OpenGov.

Councilors questioned how this process would change anything when it relates to the property owners that haven't been compliant in the past and how the fine/lien structure would work. Ms. Murphy explained that if the owner failed to pay the fines, they will be converted to the property tax bill. If the owner appeals the decision of the municipal hearing officer to court, the fines would be pending until a decision has been rendered from the court. She stated that with regards to placing a lien on the property it would be discretionary and not prescriptive, for example, the Board of Health may decide they are only going to lien a property if accrued fines reach a certain limit. Ms. Murphy noted that she doesn't see this being used as the primary tool to gain compliance due to the cost and administrative aspect with recording the lien.

Councilors expressed concern with enforcement on our elderly community that may not physically be able to comply with the ordinance. Ms. Murphy explained that this does not obligate the inspectors to fine and that they have discretion depending on the situation.

Board of Health Director, Steve Curry, provided an overview of the current code enforcement process. He stated that if an inspector visited a property and found a trash violation, they would order the appropriate party at the property to correct the violation. Depending on the seriousness of the violation, the inspector may give somewhere between a 3 to 7 days to correct. If the issue is not taken care of the inspector has an opportunity to issue a ticket and the owner has 21 days to appeal. If the ticket has been paid within the 21 days the case is dismissed regardless of whether the violation has been corrected even if court is filed. He noted that he doesn't believe this is a cure all but another tool for his department to utilize and if they can prove in housing court that a particular owner is a repeat offender by the number of tickets issued, he thinks it will get the judge's attention. He noted that he has to utilize our Assistant City Solicitor to file and ultimately handle all the code enforcement cases.

A question was asked of Police Chief, Ernest Martineau, about how this law would help his department's efforts. Chief Martineau explained that there are three areas that directly impact his department in 40U proposal: 1) cleaning of snow and ice from the sidewalks, 2) public nuisance under Chapter 138, and 3) Security Alarms under Chapter 140. He provided an example of how enforcement of Chapter 138 would improve with the passing of the ordinance when it relates to loud parties off-campus near the college. He noted that he sends out notification directly to the homeowners upon the third occurrence and by the time he can present the case in front of a district court, the students have already moved out. The process under 40U would allow for an independent review of the case in a much shorter time frame. He noted that

as a NICE team member, this tool would be extremely beneficial to them for code enforcement and having the authority to enforce city ordinance.

Councilors requested to see research from the other communities that have adopted 40U with regards to how they structured the position of the municipal hearing officer and gleaning information regarding how the process has been working in general for these communities.

[Link to PowerPoint Presentation](#)

The Council as a Whole Committee recommended the Petition be granted 6/2 (Beauchemin, Couture). 8 members present. Board consists of 11 members.

016-22. Liz Murphy, chair, NICE TASK FORCE, Director of Housing and Development, To accept the enclosed petition to establish a residential and commercial Vacant Property Registry Ordinance with minimum requirements.
<https://ma-fitchburg.civicplus.com/DocumentCenter/View/9408/Vacant-Property-Registry-Ordinance-with-maintenance-requirements-01262>

Tom Swierawski, Executive Director of Community Development and Planning, Liz Murphy, Director of Housing and Development, and Steve Curry, Director of the Board of Health, were present at the meeting.

Ms. Murphy stated that they had been working with a consultant through some assistance from MassHousing on addressing some of our vacant property problems. One of the outcomes was drafting the Vacant Property Registration Ordinance (VPRO). Ms. Murphy explained that vacant properties problems in the city are more complicated today than during the foreclosure crisis. She noted this ordinance would replace the current Board of Health Vacant Property Registry regulation, and although similar to the current regulation, as an ordinance it would allow for:

- More flexibility to allow some policy exemptions;
- Provides an escalating annual registration fee based on duration of vacancy;
- More specific property maintenance standards; and
- Administration and enforcement that would extend beyond public health.

She provided background on the project scope and outlined what they learned through the process. She stated there were three models identified for vacant property registration and enforcement and provided an overview of each: 1) the vacant and abandoned model, 2) the foreclosure model, and 3) the hybrid model. She noted that part of the process included community consultation in which input was collected from staff, City Council, residents and other stakeholders and advocates through focus groups and online surveys. The results of the survey found that 87% were in support for a VPRO.

Ms. Murphy provided an overview of each section of the VPRO. She stated that the definitions in most cases are similar to defined terms in the Board of Health regulation and that the ordinance provides for a Municipal Hearing Officer which she noted will work well together with the proposed adoption of 40U. She then provided an overview of the proposed exemptions

to the ordinance and the basic steps involved with identifying vacant properties, notification to owner, and ultimate property registration. The area she noted does have significant change is the annual registration and the graduated cost structure outlined below:

- \$250 for properties vacant for one year or more but less than two years;
- \$2,500 for properties vacant for two years or more but less than three years; and
- \$3,500 for properties vacant for three years or more.

Ms. Murphy stated that the ordinance includes limited waiver of registration fee which include properties that are vacant due to owner's illness or infirmity, fire or natural disaster and noted the Board of Health Director has ultimate discretion for any other circumstances. She stated there is an appeal process for owners and provided an overview of the requirements and process itself. She stated that with regards to enforcement, there has been a significant overhaul where now penalties for violations would be increased to \$300/day with an overall maximum of \$18,000 for failure to register the property as vacant. The ordinance provides for a revolving with the intention of using this fund for further enforcement of vacant properties, e.g., boarding and securing, and in extreme cases, demolition.

Ms. Murphy, Mr. Swierawski and Mr. Curry answered questions from Councilors regarding the proposed ordinance. Councilors asked about the fee structure with regards to the \$300/day fine and asked for clarification if the \$18,000 was a lifetime cap or per year. Ms. Murphy stated that she believes the intent was for this to be a yearly enforcement.

Councilors also asked how to handle partially vacant properties and whether they were considered vacant. Ms. Murphy stated that they attempted to add a section to the ordinance but it was strongly discouraged by their consultant as they felt it was not the appropriate way to address this particular issue. In turn, they plan to have a minimum maintenance ordinance as well and this would be the correct tool to handle enforcement for these properties. Mr. Swierawski noted the other concern would be the administrative burden with attempting to address partially vacant properties within this ordinance due to the complexity that it may create.

Mr. Curry was asked whether his department would be able to handle the administrative burden this ordinance would place on his office or whether this will require additional personnel. Mr. Curry explained that on average they have been registering between 200 – 250 properties annually since they adopted the regulation in 2012. He noted this ordinance will expand upon this but that he doesn't anticipate it being to the extent they experienced during the foreclosure crisis. He mentioned that they have seen improvement in the residential sector of the city but noted that Main Street is going to be a challenge but one they are willing to take it on. He stated that one of the incentives is to get more funds into the revolving account to take measures for code enforcement and if it is determined that they need to expand the workforce, that presentation will be made to the Council but that he hopes OpenGov will be able to automate much of the process.

Councilors suggested the following amendments to the proposed ordinance:

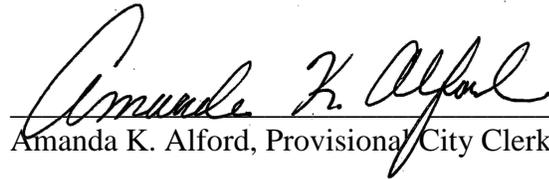
- Add the following exemptions Section 1.7 – Limited Waiver of Registration Fees:
 - Active duty serving in the military
 - Properties that are temporarily unoccupied by the owner occupant
- Adding “and exterior property” to Section 1.13D.

- Adding definition of “monitored fire alarm system” as noted in Section 1.13J.
- Definitions to include: Single family home, single family & two family, three family and up, commercial possibly by a square footage or occupancy use requirement.
- Remove “and” from the end of Section 1.13R.
- Place a timeframe on the exemption of a single family home that is for sale.
- Possibly create a graduated fee structure for the annual registration based on square footage.
- Instead of exempting redevelopment properties, provide discretion on waiving the annual registration fee so that we maintain a record of these properties.
- In Section 1.10, include the ability to appeal based Section 1.7 and add language that if the appeal is sustained, the filing fee will be returned to the owner.

[Link to PowerPoint Presentation](#)

The Council as a Whole Committee recommended the Petition be granted 8/0. 8 members present. Board consists of 11 members.

The meeting adjourned at 10:17 P.M.


Amanda K. Alford, Provisional City Clerk