HOUSE DOCKET, NO. 2846 FILED ON: 1/21/2011

HOUSE . . . . . No. 2319

The Commonwealth of Massachusetts

PRESENTED BY:

William C. Galvin

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act relative to the effective enforcement of municipal ordinances and by-laws.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
William C. Galvin	*6th Norfolk*

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HOUSE . . . . . No. 2319

By Mr. Galvin of Canton, a petition (accompanied by bill, House, No. 2319) of William C. Galvin relative to the effective enforcement of municipal ordinances and by-laws. Municipalities and Regional Government.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *3699* OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to the effective enforcement of municipal ordinances and by-laws.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section twenty-one of chapter forty of the General Laws, as appearing in the Official Edition, is hereby amended by striking out the first paragraph and inserting the following:—

Any municipal government may, by the adoption, amendment or repeal of local ordinances and by-laws, exercise any power or function which the general court has power to confer on it and which is not inconsistent with the constitution or laws enacted by the general court in conformity with powers reserved to the general court by section eight of article eighty-nine of the amendments to the state constitution, or, denied to the city, town, or other municipal government by its own charter.

Ordinances and by-laws adopted by municipal governments shall be binding upon their own inhabitants and all persons within their limits and shall prevail over any contrary or inconsistent provision of any other local rule or regulation. Unless some other provision is made by statute in a particular case, municipal governments may affix penalties for breaches of local ordinances and by-laws not exceeding one thousand dollars for each offense, which penalty shall inure to the municipal governments or to such uses as the ordinance or by-law may direct. Notwithstanding the provisions of any special law to the contrary, fines shall be recovered by

17 indictment or on complaint before a district court, or by non-criminal disposition in accordance
18 with section twenty-one D.

19 The clauses which follow in this section, listing specific purposes for which ordinances
20 and by-laws may be adopted, are intended to be for illustration only and, unless it is specifically
21 stated to the contrary in any clause which follows, are not to be construed as limiting the powers
22 of municipal governments with respect to the particular subjects.

23 SECTION 2. The fifth paragraph of section 21D of chapter 40 of the General Laws,
24 appearing in the 2004 official edition, is hereby amended by striking out the words "three
25 hundred dollars" in lines 44-45, and inserting in place thereof the words "one thousand dollars".

26 SECTION 3. Section 21D of chapter 40 of the General Laws is hereby amended by
27 inserting after the end of said section the following new tenth paragraph:--

28 Notwithstanding the foregoing provisions and any general or special law to the contrary,
29 in any suit in equity brought in the superior court or the land court by any city or town, or any
30 municipal agency, officer, board or commission having enforcement powers on behalf of such
31 city or town, to enforce the provisions of any lawfully enacted ordinance or bylaw, or any rule,
32 regulation or order described in this section, the court, upon a finding that such violation
33 occurred, may assess a civil penalty not to exceed one thousand dollars for each violation
34 thereof. Civil penalties assessed under this paragraph shall be in addition to any equitable relief
35 ordered by the Court, and shall be paid to such city or town for such use as the city or town may
36 direct. In considering any penalty to be assessed under this paragraph, the court shall consider
37 (a) whether the violation was willful or negligent, (b) any harm to the public health, safety or
38 environment resulting the violation, (c) any economic benefit gained by the defendant as a result
39 of the violation, (d) the cost to the city or town resulting from the violation, including its
40 enforcement costs and reasonable attorneys fees, (e) any history of noncompliance by the
41 defendant, and (f) whether the defendant made good faith efforts to cure or cease the violation of
42 such ordinance or bylaw after the first notice thereof by such city or town.

43 SECTION 4. The second paragraph of section 7 of chapter 40A of the General Laws, as
44 appearing in the 2004 official edition, is hereby amended by striking out the words "three
45 hundred dollars" in lines 16-17, and inserting in place thereof the words "one thousand dollars".

46 SECTION 5. The third paragraph of section 7 of chapter 40A of the General Laws, as
47 appearing in the 2004 official edition, is hereby amended by inserting after the word "thereof" in
48 line 49 the phrase "and, upon a determination that such violations have occurred, may assess
49 civil penalties therefore in accordance with the provisions of the tenth paragraph of section 21D
50 of chapter 40 of the General Laws.