

12/12/05 - (10)

TOWN OF ACTON

Building Department

INTERDEPARTMENTAL COMMUNICATION

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**To:** Don P. Johnson, Town Manager **Date:** December 9, 2005  
**From:** Garry A. Rhodes, Building Commissioner   
**Subject:** 2006 License Renewals

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I have reviewed the list of License renewals and have the following comments and recommendations. This year the Legislature passed Chapter 304 of the Acts of 2004 (304 inspections). I have included a copy of the package that has been sent to all affected businesses. 304 inspections are directed at places that serve alcoholic beverages for consumption on the premises. As you are aware, having participated in the hearing process, the law was created as a result of the nightclub fire in Warwick RI that impacted many lives. Tragedy of this nature can happen wherever building and fire inspectors are not properly trained or are understaffed.

304 inspections have increased workload of the department. There are 18 businesses located in Acton that have to be inspected yearly by both the Fire Department and the Building Department. Not only do places that serve alcoholic beverages have to be inspected, follow-up inspections are required to see that noted violations are corrected. The strength in the law comes in the ability and requirement to withhold the liquor license as a "club" to get recognized hazards corrected. Following up has not always been the case in the past.

We have been working for the last year to do the inspections. The 304 inspections are completed except as noted;

**1 Concord Acton Squash Club**

- Old Building Permit never closed out.
- Closer between glass backed courts
- Door handles not twisting/turning on all doors
- Rear emergency exit-closer
- Rear emergency exit –exit light bulb
- Rear exit –Affidavit-Structural letter fire escape
- Front entrance accessible for lift access

**2 Makaha**

- All set with Building Department waiting for Fire Department sign off

**3 Acton Jazz Cafe**

- Wait station – Exit/Emergency light battery back-up
- Kitchen – exit emergency light combo not working
- Maximum occupancy load by Architect (stamped & posted)

**4 Scupperjack's**

- Battery back-up at kitchen
- Extinguishers expire November 2005
- Post occupancy

**4 O'Nautral's**

- Clear storage area
- Emergency light backup @ ice machine
- Due for re-inspection on Monday, December 12. Issues have been addressed.

**5 Daniela's Tacorita**

- Post Occupancy load
- Exit sign @ main entrance not working
- Need "Street" # 4 inches in height

**6 Savoury Lane**

- Letter of recertification for 304 inspection due-mailed on November 1, 2005

**7 Not Your Average Joe's**

- Waiting for final building inspection sign-off then certificate will be issued.

I would recommend the liquor license for the above businesses be denied until all violations have been corrected as noted here and as directed by the Fire Department.

I have for several months been taking an aggressive enforcement action on illegal a-frame and banner signs. The following businesses have received warnings and tickets but, have not paid them. I would recommend they are not issued their licenses until they are paid;  
Wine Cask Cellars D/B/A Acton Liquors, (three \$25. tickets issued 12/05)  
Ichabod's Coffee House, (one \$25. ticket issued 12/05)

Superior Trading does not appear to be in business. I have requested Town Counsel provide a status report on pending litigation that may answer the question. It is my understanding the property may be sold. I would recommend the license be held until this is determined.

The Autoplex is up for renewal of a class II license for 60 Powdermill Road. The Board also has a request for a new Class I license for the same property for Acton Suzuki. I have provided comments to the Board under a separate letter. I do not recommend the Board issue either license until the hearing has been held for the new Class I license and the Site Plan Special Permit has been revised.



**TOWN OF ACTON**  
472 Main Street  
Acton, Massachusetts, 01720  
Telephone (978) 264-9632  
Fax (978) 264-9630

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## **Building Department**

«current\_date»

«Name\_of\_Restaurant»  
«Mailing\_street\_address»  
«mailing\_town\_state\_zip»

Re; Periodic Inspection «location»

Dear «owner\_manager»

As a result of the Warwick RI nightclub fire the State of Massachusetts created a task force to consider fire and building safety. The result of the task force work was the creation of Chapter 304 of the Acts of 2004. I have attached a copy of Chapter 304 for you.

The new law impacts every establishment that serves alcoholic beverages that are consumed on premises. Each establishment regardless of the amount of seats is now required to have a valid Certificate of Inspection issued by the Building Department and the Fire Department. Failure to have and maintain the Certificate of Inspection may result in the Alcoholic Beverages Control Commission revoking or not issuing a renewal of your liquor license.

The Board of Selectmen operating as the local licensing authority for the Alcoholic Beverage Control Commission issues renewals in December. To avoid a last minute problem we may change your current expiration date or establish a new date if you currently do not have Periodic Inspections.

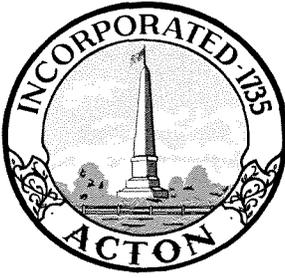
Attached please find a request form for a Periodic Inspection. Please fill out the form and return to the Building Department along with an inspection fee of \$40. Every attempt will be made to have a joint inspection by both the Fire Department and Building Department. If a joint inspection can not be coordinated you shall also contact the Fire Department at (978) 264-9645 to make arrangements for their inspection.

Once both inspections have been completed a Certificate of Inspection will be provided to you from the Building Department signed by both the Building Commissioner and Fire Chief. A copy of the signed Certificate will be forwarded to the Board of Selectmen. Notice will also be provided to the Board of Selectmen if the establishment does not have a valid Inspection

Sincerely,

Garry A. Rhodes  
Building Commissioner

Cc. Robert Craig, Fire Chief



**TOWN OF ACTON**  
 472 Main Street  
 Acton, Massachusetts, 01720  
 Telephone (508) 264-9632  
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**Building Department**

**REQUEST FOR PERIODIC INSPECTION**

Date: «current\_date»

Business Name: «Name\_of\_Restaurant»

Address: «location»

Owner: «owner\_manager» Phone: \_\_\_\_\_

Address: «Mailing\_street\_address» «mailing\_town\_state\_zip» \_\_\_\_\_

Name of Person in Charge (if other than owner): \_\_\_\_\_

\_\_\_\_\_ Phone: \_\_\_\_\_

Type of Business: \_\_\_\_\_

Size of Building (space): \_\_\_\_\_

Number of Seats «M\_of\_seats»

<p>Official Use Only          Use Group «Use_groub»          Sq. Ftg. «square_feet»          Capacity «total_capacity»</p>
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I hereby request that a building inspection be made of the premises indicated above as required by Chapter 304 of the Acts of 2004 and Section 106.5 of the Massachusetts State Building Code.

Signature of Owner: \_\_\_\_\_

**OFFICIAL USE ONLY**

Date of Inspection: \_\_\_\_\_ Fee: \_\_\_\_\_

// Premises do not comply with applicable requirements of the Massachusetts State Building Code but \_\_\_\_\_ days are allowed for corrections.

// Premises comply with applicable requirements of the Massachusetts State Building Code.

Date of reinspection: \_\_\_\_\_

// All corrections have been made, premises comply with applicable requirements of the State Building Code.

Signature of Inspector: \_\_\_\_\_

## Chapter 304 of the Acts of 2004

### AN ACT RELATIVE TO FIRE SAFETY IN THE COMMONWEALTH.

*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 201 of chapter 6 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after the words "twenty-six A 1/2", in lines 6, 50, 54, 57, 60 and 68, the following words:- and twenty-six G 1/2.

**SECTION 2.** Chapter 10 of the General Laws is hereby amended by adding the following section:-

→ Section 74. The commission shall require all applicants for alcoholic beverages licenses to submit a valid certificate of inspection, as provided in the state building code, issued by a local inspector, as defined in chapter 143, and signed by the head of the fire department, as defined in chapter 148, for the city, town or district in which the applicant intends to sell alcoholic beverages to be consumed on the premises. The certificate of inspection shall attest to the safety of the building or structure in which the applicant intends to sell alcoholic beverages to be consumed on the premises and that the building or structure meets or exceeds the requirements of the state building code.

→ The commission shall require that every license holder submit, annually, a valid certificate of inspection, as provided in the state building code, issued by a local inspector and signed by the head of the fire department for the city, town or district in which the premises is located and from which alcoholic beverages intended to be consumed on the premises are to be sold. The issuance of such certificate shall be a precondition for the issuance or renewal of such a license and the commission may summarily revoke any license upon notice of noncompliance or expiration of such certificate, by operation of law and without a hearing. The commission may presume that such premises conform with the inspectional safety requirements for the premises as provided for in the state building code based upon such certificate, however such presumption may be rebutted.

Failure by the inspector to issue an annual certificate of inspection, signed by the head of the fire department, may be appealed in accordance with the inspectional safety requirement procedures for appeal as provided in the state building code.

The commission may authorize the issuance of a temporary license to any applicant or license holder who has been issued a temporary certificate of inspection by a local inspector and signed by the head of the fire department, as provided in the state building code, if the applicant or license holder has complied with the terms therein and the temporary certificate of inspection has not expired. Such temporary license may be revoked by the commission, without a hearing, if the licensee has failed to comply with the terms of such temporary certificate.

Failure by the inspector to issue an annual certificate of inspection signed by the head of the fire department, may be appealed in accordance with the inspectional safety requirement procedures for appeal as provided for in the state building code.

The commission shall promulgate rules and regulations to effectuate the purposes of this section.

**SECTION 2A.** To provide for certain unanticipated obligations of the commonwealth, to provide for an alteration of purpose for current appropriations, and to meet certain requirements of law, the sums set

forth herein are hereby appropriated from the General Fund unless specifically designated otherwise herein, for the several purposes and subject to the conditions specified herein, and subject to the provisions of law regulating the disbursement of public funds for the fiscal year ending June 30, 2004, provided that said sums shall be in addition to any amounts previously appropriated and made available for the purposes of said items.

**EXECUTIVE OFFICE OF PUBLIC SAFETY**  
*Fire and Building Inspector Education and Training*

8000-0018

For the administration of a Fire and Building Inspector Education and Training Program to educate and certify all municipal fire and building inspectors in the commonwealth ..... \$450,000

*Firefighting Equipment Grant Program*

8000-0050

For the firefighting equipment grant program for fire departments of every city, town, fire district and authority of the commonwealth to be administered by the executive office of public safety, provided that grants shall be distributed to municipalities according to a formula giving equal weight to each municipality's population; provided further that a municipality shall not receive less than \$15,000; provided further, that eligible fire safety equipment under this program shall include, but shall not be limited to, turnout gear, hand-held power lights, communication devices, telephones, personal alert safety systems, air packs, tanks, compressors, thermal imaging devices and computerized personnel accountability systems, but shall exclude firefighter apparatus and vehicles; provided further that grants awarded by said executive office to a municipality under the program shall not be utilized for the purpose of personnel costs unless such costs constitute 50 per cent or less of the total grant award; provided further that no grant shall be awarded to the department of fire services; provided further that not later than February 1, 2005, the executive office of public safety shall submit a report to the house and senate committees on ways and means and to the secretary for administration and finance detailing the amount of grants awarded to such grant recipients and descriptions of the grants and each municipality shall provide the executive office of public safety with a comprehensive list of the best-practices that have been instituted as a result of these grants..... \$10,000,000

*SAFE Program*

8000-0619

For the distribution of grants for city and town student awareness of fire education programs, to be known as S.A.F.E programs, which shall include information about the fire risks caused by smoking; and provided further that grants awarded by the executive office of public safety to a municipality under the program shall, when applicable, be in an amount not less than the amount of the grant or grants each such municipality received in fiscal year 2000.....\$1,078,666

**SECTION 3.** Subsection (d) of section 2 of chapter 62 of the General Laws is hereby amended by adding the following paragraph:-

(3)(a) For purposes of the depreciation deduction allowed under sections 62(a)(1) and 168 of the Federal Internal Revenue Code, as amended and in effect for the taxable year, a taxpayer that is required to comply with section 26G 1/2 of chapter 148 of the General Laws and that has so complied, may classify an automatic sprinkler system having a situs in the commonwealth, and used exclusively in the trade or

business of such taxpayer, as 5-year property as defined under section 168(e)(3) of the Federal Internal Revenue Code. The term "automatic sprinkler system" means the system installed pursuant to the provisions of said section 26G 1/2 and in accordance with the state building code.

(b) Such depreciation deduction for the automatic sprinkler system shall be allowed only upon the condition that the net income for the taxable year and all succeeding taxable years be computed without any depreciation deduction upon the property other than the deduction allowed by this section.

**SECTION 4.** Chapter 63 of the General Laws is hereby amended by inserting after section 38R the following section:-

Section 38S. (a) In determining the net income subject to tax under this chapter, a domestic or foreign business corporation required to comply with section 26G 1/2 of chapter 148 and that has so complied, may, for the purposes of the depreciation deduction allowed under section 168 of the Federal Internal Revenue Code, classify an automatic sprinkler system having a situs in the commonwealth, and used exclusively in the trade or business of such corporation, as 5-year property as defined under 168(e)(3) of the Federal Internal Revenue Code. The term "automatic sprinkler system" means the system installed pursuant to section 26G 1/2 of said chapter 148 and in accordance with the state building code.

(b) Such depreciation deduction for the automatic sprinkler system shall be allowed only upon the condition that the net income for the taxable year and all succeeding taxable years be computed without any depreciation deduction upon the property other than the deduction allowed by this section.

**SECTION 4A.** Chapter 143 of the General Laws is hereby amended by inserting after section 97 the following section:-

Section 97A. (a) The board of building regulations and standards shall require the owner of any building or structure or portion thereof, that includes a place of business designed or used for occupancy as a nightclub, dance hall, discotheque, bar, or for similar entertainment purposes, with a capacity of 100 persons or more, and which includes 1 or more residential dwellings, to install an adequate system of automatic sprinklers throughout the building including, but not limited to, residential dwellings and in any common areas connected thereto, in accordance with the state building code. This section shall apply to the construction or substantial alteration of buildings or structures, approved by building permit on or after December 1, 2004. This paragraph shall not preclude the board of building regulations and standards from prescribing more stringent sprinkler requirements.

(b) Whoever is aggrieved by an interpretation, order, requirement, or direction of the building official under this section, or whoever is aggrieved by a failure of the building official to take action under this section, may, within 45 days after the service of notice of such interpretation, order, requirement, or direction, or after 45 days of such failure to act, appeal from such interpretation, order, requirement, direction, or failure to act to the building code appeals board as provided in section 100 of chapter 143.

**SECTION 5.** Chapter 148 of the General Laws is hereby amended by inserting after section 26G the following section:-

Section 26G 1/2. For the purpose of this section the term "adequate system of automatic sprinklers" shall include: (1) a working automatic sprinkler system; (2) fire alarm system control equipment which provides notice of an emergency within a place of assembly; and (3) adequate monitoring of and reporting of any activation of the automatic sprinkler system and fire alarm equipment, in accordance with the state building code in effect at the time of the installation of such system and equipment.

Every building or structure, or portions thereof, of public assembly, with a capacity of 100 persons or more, that is designed or used for occupancy as a nightclub, dance hall, discotheque, bar, or for similar entertainment purposes, including all rooms, lobbies, and other spaces connected thereto and all means of egress and entrances, including any such public assembly located within a mixed use building or structure, including a building or structure owned or controlled by the commonwealth or a political subdivision thereof, (a) which is existing, or (b) for which an approved building permit was issued before December 1, 2004, shall be protected throughout with an adequate system of automatic sprinklers, in accordance with the state building code.

Any owner of a business designed or used for occupancy as a nightclub, dance hall, discotheque, bar or for similar entertainment purposes to which the second paragraph does not apply shall install a system of automatic sprinklers within the building or structure in accordance with the state building code if the business: (1) violates the maximum capacity for such building or structure, as established by a duly recognized inspector of buildings, building commissioner or local inspector of a city, town or district or other duly recognized local inspector or inspector, as provided in chapter 143, 2 or more times during a 12-month period; or (2) violates the maximum capacity of such building or structure by a number greater than 1/2 of such maximum capacity as established by a duly recognized inspector of buildings, building commissioner or local inspector of a city, town or district or other duly recognized local inspector or inspector, as provided in chapter 143. Any owner of a building or structure required to install automatic sprinklers as a result of a violation of this paragraph shall do so within 1 year of being cited for such violation, and shall be responsible for the full costs of installation. Notwithstanding any general or special law to the contrary, any business owner cited for violating the maximum capacity for his place of business shall be subject to a \$10,000 fine for a first or second offense. A third such offense shall result in the business owner losing his license to operate in the commonwealth, and all food, entertainment and other licenses associated with his business. This paragraph shall be enforced by a duly recognized inspector of buildings, building commissioner or local inspector of a city, town or district or other duly recognized local inspector as provided in chapter 143, or any state official with concurrent jurisdiction.

This section shall not apply to a place of assembly within a building, structure or portions thereof used principally as a house of worship, restaurant, lecture hall, auditorium, state or local government building, educational function facility, or other similar place of assembly. Temporary use of such a building or structure or portions thereof as a nightclub, dance hall, discotheque, bar or for similar entertainment purposes, may be allowed if a permit is issued for such use by the head of the fire department in consultation with the local building inspector or inspector who may set the terms and conditions to protect against fire and preserve public safety.

Whoever is aggrieved by an interpretation, order, requirement or direction of the head of the fire department under this section, or, whoever is aggrieved by a failure of the head of the fire department to take action under this section, may, within 45 days after the service of notice of such interpretation, order, requirement or direction, or, after 45 days of such failure to act, appeal from such interpretation, order, requirement, direction or failure to act to the automatic sprinkler appeals board as provided in section 201 of chapter 6.

The cost of installing an adequate system of automatic sprinklers pursuant to this section shall be borne in its entirety by the owner of the building or structure.

Except as provided in the third paragraph, the head of the fire department shall enforce this section.

**SECTION 6.** Said chapter 148 is hereby further amended by inserting after section 34 the following 4 sections:-

Section 34A. (a) Any owner, occupant, lessee or other person having control or supervision of any assembly use group building, as defined by the state building code, and who causes or permits a dangerous condition to exist on the premises at anytime shall be punished by a fine of not more than \$5,000 or by imprisonment in the house of correction for not more than 2 1/2 years, or both.

For the purposes of this section, "dangerous condition" shall mean:-

- (1) any blocked or impeded ingress or egress;
- (2) the failure to maintain or the shutting off of any fire protection or fire warning system required by law;
- (3) the storage of any flammable or explosive without a properly issued permit in quantities in excess of allowable limits of any permit to store;
- (4) the use of any firework or pyrotechnic device, as defined by the board of fire prevention regulations, without a properly issued permit; or
- (5) exceeding the occupancy limit established by the local building inspector pursuant to chapter 143.

Nothing in this section shall preclude the issuance of a citation for a code violation, as provided for by chapter 148A.

(b) Whoever is convicted of a second or subsequent violation of paragraph (a) shall be punished by a fine of not more than \$25,000 or by imprisonment in the state prison for not more than 5 years or in a house of correction for not more than 2 1/2 years, or both such fine and imprisonment.

Section 34B. Any person who wantonly or recklessly violates the state building code or state fire code and thereby causes serious bodily injury or death to any person shall be punished by a fine of not more than \$25,000 or by imprisonment in the state prison for not more than 5 years or in a house of correction for not more than 2 1/2 years, or both.

For purposes of this section, "serious bodily injury" shall mean bodily injury that results in a permanent disfigurement, loss or impairment of a bodily function, limb or organ, or a substantial risk of death.

Section 34C. Whoever (1) commits a second or subsequent violation of the state building code or state fire code, including any incorporated specialized codes, or any lawful order of the marshal, the head of the fire department or a state or local building inspector or (2) continues to violate any such code or order after receipt of actual notice of such violation or order, shall be punished by a fine of not more than \$1,000 or by imprisonment for 1 year in the house of correction or by both such fine and imprisonment. Notice may be provided by in-hand service, by posting the same in a conspicuous place on the premises in violation, or by the lawful issuance of a citation pursuant to chapter 148A. This section shall not apply to such violations which are under appeal pursuant to section 100 of chapter 143, if such appeal was timely filed.

Section 34D. Notwithstanding any other general or special law to the contrary, the housing court, the district court or the superior court shall have jurisdiction and equitable powers to enforce the lawful orders of the marshal or head of the fire department pursuant to this chapter.

SECTION 7. The General Laws are hereby further amended by inserting after chapter 148 the following chapter:-

Section 1. As used in this chapter the following words shall, unless the context otherwise requires, have the following meanings:-

"Code violation", a violation of the state building code, 780 CMR or the State Fire Code, 527 CMR.

"Housing court", the housing court within the county in which an alleged code violation has occurred, or, if there is no housing court in the county, the district court with jurisdiction of the location in which the alleged code violation occurred.

"Local code enforcement officer", the head of the fire department as defined in section 1 of chapter 148, or a designee of the head of the fire department who is empowered to enforce the state fire code, or the local building inspector empowered to enforce the building code pursuant to section 3A of chapter 143.

"Municipal hearing officer", a person appointed by the appointing authority of a municipality to conduct requested hearings of code violations pursuant to this chapter.

"Scheduled assessment", the amount of the civil assessment for a particular code violation as determined jointly by the state fire marshal, commissioner of public safety, and the chief justices of the district and housing court departments, respectively. A scheduled assessment shall not exceed the maximum assessment or fine established by law for each such violation.

"State code enforcement officer", in cases involving the state fire code, the marshal as defined in section 1 of chapter 148, or in the case of state building code violations, the state building inspector empowered to enforce the building code pursuant to section 3A of chapter 143.

Section 2. (a) Notwithstanding any general or special law to the contrary, any local code enforcement officer, empowered to enforce violations of the state building code or the state fire code may, as an alternative to initiating criminal proceedings, give to the offender a written notice of a code violation. Such notice shall contain the name and address, if known, of the offender, the specific offense charged and the time and place of the violation. The notice shall be signed by the local code enforcement officer and shall be signed by the offender whenever practicable in acknowledgement that such notice has been received. The local code enforcement officer shall, if possible, deliver to the offender a copy of the notice at the time and place of the violation. If it is not possible to deliver a copy of the notice to the offender at the time and place of the violation, the copy shall be mailed or delivered by the local code enforcement officer, or by the head of his department or by any person authorized by such department head, to the offender's last known address, within 15 days after the violation or discovery thereof. Such notice as so mailed shall be deemed a sufficient notice. A certificate of the person so mailing such notice that it has been mailed in accordance with this section shall be *prima facie* evidence thereof. The notice shall be executed in triplicate.

Whoever, upon request of any local code enforcement officer, refuses to state his name and address, or if he states a false name and address or a name and address which is not his name and address in ordinary use, shall be punished by a fine of not more than \$200.

(b) The local code enforcement officer shall indicate on the notice of violation that the violation is either: (1) a written warning; or (2) a code violation. If the notice is for 1 or more code violations, the code enforcement officer shall indicate on the notice the scheduled assessment for each violation alleged. If the notice of violation is for a continuing condition, the code enforcement officer shall indicate that the condition must be corrected within 24 hours of receipt of such notice. Failure to correct the condition within 24 hours may serve as grounds for criminal prosecution pursuant to section 34C of

chapter 148.

(c) If the notice is for 1 or more code violations, the alleged violator shall return the notice of violation by mail, personally or by authorized person to the municipal hearing officer and shall, within 21 days, either: (1) pay in full the scheduled assessment; or (2) request a hearing before the municipal hearing officer. Any amounts paid shall be payable to the city or town, as the case may be. If the alleged violator requests, in a timely manner, a hearing before the municipal hearing officer, the municipal hearing officer shall schedule a hearing not later than 45 days after receiving such hearing request. The municipal hearing officer shall duly notify the alleged violator of the date, time and location of the hearing. In no case shall the hearing officer, so designated, be an employee or officer of the fire department or building department associated with the code enforcement officer who issued the notice of violation. The hearing by the municipal hearing officer shall be informal and the formal rules of evidence shall not apply.

(d) Any person aggrieved by a decision of the municipal hearing officer, after a hearing, may appeal to the housing court within the county in which the violation occurred and shall be entitled to a hearing before a clerk magistrate of the court. The appeal shall be filed by the aggrieved person within 10 days after receiving notice of the decision from the municipal hearing officer who conducted the hearing.

(e) Any person who has received a notice of violation issued in accordance with this section who, within the prescribed time, fails to pay the scheduled assessment or fails to exercise his right to request a hearing before the municipal hearing officer or who fails to appear at the time and place of the hearing, shall be deemed responsible for the code violations as stated in the notice of violation and such finding of responsibility shall be considered *prima facie* evidence of a finding of responsibility for the code violation in any civil proceeding regarding said violation and shall be admissible as evidence in a subsequent criminal proceeding. If the condition which caused the notice of violation to issue continues to exist, the finding of responsibility may also be used by the city or town as *prima facie* evidence of the existence of a code violation in any proceeding to suspend or revoke any license, permit or certificate issued by such municipality, the state fire marshal or commissioner of public safety relative to said building, structure or premises pending the correction of the condition.

Section 3. (a) Notwithstanding the provisions of any general or special law to the contrary, any state code enforcement officer empowered to enforce violations of the state building code or state fire code may, as an alternative to initiating criminal proceedings, give to the offender a written notice of a code violation. The notice shall contain the name and address, if known, of the offender, the specific offense charged, and the time and place of the violation. The notice shall be signed by the state code enforcement officer and shall be signed by the offender whenever practicable in acknowledgement that such notice has been received. The state code enforcement officer shall, if possible, deliver to the offender a copy of the notice at the time and place of the violation. If it is not possible to deliver a copy of the notice to the offender at the time and place of the violation, the copy shall be mailed or delivered by the state code enforcement officer, or by the head of his department or by any person authorized by such department head, to the offender's last known address, within 15 days after the violation. The notice as so mailed shall be deemed sufficient notice, and a certificate of the person so mailing such notice that it has been mailed in accordance with this section shall be *prima facie* evidence thereof. The notice shall be executed in triplicate. Whoever, upon request of any state code enforcement officer, refuses to state his name and address, or if he states a false name and address, or a name and address which is not his name and address in ordinary use, shall be punished by a fine of not more than \$200.

(b) The state code enforcement officer shall indicate on the notice of violation that the violation is either: (1) a written warning; or (2) a code violation. If the notice is for 1 or more code violations, the state code enforcement officer shall indicate on the notice the scheduled assessment for each violation alleged. If

the notice of violation is for a continuing condition, the state code enforcement officer shall indicate that the condition must be corrected within 24 hours of receipt of such notice. Failure to correct the condition within 24 hours may serve as grounds for criminal prosecution pursuant to section 34C of chapter 148.

(c) If the notice is for 1 or more code violations, the alleged violator shall, within 21 days of the receipt of the notice either: (1) pay in full the scheduled assessment in accordance with the instructions on the notice of violation; or (2) request a hearing before a clerk magistrate of the housing court within the county in which the alleged violation occurred, by submitting the notice by mail, personally or by authorized person to the housing court. If the alleged violator requests a hearing before the clerk magistrate as prescribed, the clerk magistrate shall schedule a hearing not later than 45 days after receiving such hearing request. The clerk magistrate shall duly notify the alleged violator and the state code enforcement officer of the date, time and location of the hearing. The code enforcement officer who issued the notice of violation may appear personally at said hearing or may designate another person from his department or district to prosecute the case who is also empowered to enforce such building or fire code, as the case may be. Such hearing by the clerk magistrate shall be informal and the formal rules of evidence shall not apply.

(d) Any person aggrieved by a decision of the clerk magistrate, after a hearing, may appeal to a single justice of the housing court and shall be entitled to a hearing before a single justice of the court. The aggrieved person shall file such appeal within 10 days after receiving notice of the decision from the clerk magistrate who conducted the hearing. The decision of the single justice shall be final.

(e) Any person who has received a notice of violation issued in accordance with this section who, within the prescribed time fails to pay the scheduled assessment or fails to exercise his right to request a hearing before the clerk magistrate or who fails to appear at the time and place of the hearing, shall be deemed responsible for the code violations, as stated in the notice of violation and such finding of responsibility shall be considered *prima facie* evidence of a finding of responsibility for such code violation in any civil proceeding regarding the violation and shall be admissible as evidence in a subsequent criminal proceeding. If the condition which caused the notice of violation to issue continues, the finding of responsibility, accompanied by a sworn affidavit of the issuing state code enforcement officer relating the relevant details of the violation, may be used as *prima facie* evidence in any proceeding to suspend or revoke any license, permit or certificate issued by the city, town or the commonwealth, including the state fire marshal or the commissioner of public safety relative to the building, structure or premises pending the correction of the condition.

Section 4. The state fire marshal, commissioner of public safety, the chief administrative justices of the district and housing court departments, respectively, and the president of the Massachusetts Municipal Association board of directors shall jointly prescribe standardized notice of violation forms provided for in sections 2 and 3 of this chapter which shall be uniform throughout the commonwealth. The forms, which may be modified periodically, shall clearly state the procedures, rights and obligations of alleged violators who receive such notices. The commissioner of public safety shall provide such forms to be used by local code enforcement officers to each municipality throughout the commonwealth. The charge for each such form shall be no greater than the actual cost incurred by the commissioner to produce such form.

Section 5. All fines, penalties or assessments in actions under this chapter, brought by a local code enforcement officer, shall be paid to the general fund of the city or town in which the violation occurred. Such city or town shall earmark such fines, penalties or assessments collected for enforcement, training and education of fire prevention officers, building inspectors, and the stipend for municipal hearing officers, which shall be not less than \$2,500 a year. All fines, penalties or assessments in actions brought under this chapter by a state code enforcement officers shall be paid to the commonwealth and shall be

forwarded to the department of fire services as revenue to the General Fund and shall be assigned to the department's retained revenue account for the purposes of enforcement, training and education of state code enforcement officers.

**SECTION 8.** Notwithstanding any general or special law to the contrary, there is hereby established a special committee for the purposes of making an investigation and study of the feasibility of creating a mandatory municipal fire inspector certification program. The committee shall consist of the members of the Massachusetts Fire Training Council, established under the provisions of section 165 of chapter 6 of the General Laws, the Massachusetts Fire Service commission, established under the provision of section 165B of said chapter 6 and the state fire marshal or his designee.

**SECTION 9.** The secretary of public safety, or, as directed by the secretary, the head of a department, division or agency within the executive office of public safety, shall promulgate rules and regulations to effectuate the following:-

(1) establishing a nightclub fire safety training program and training materials for employees of every building or structure, or portions thereof, of public assembly with a capacity of 100 persons or more, designed or used for occupancy as a nightclub, dance hall, discotheque, bar or for similar entertainment purposes;

(2) establishing and promoting education relative to the proper use and storage of all forms of fire extinguishers and other similar fire suppressant apparatus for the owners, lessees or mortgagees of all buildings certified under the state building code;

(3) establishing methods for the proper tracking and certification of pyrotechnic displays, usage of fog, hazing or other fog producing apparatus in all places of public assembly, improving luminescence of egress routes and the widening or upgrading of main exit doors in places of public assembly, establishing requirements that "balanced design" be employed in future construction of larger entertainment venues, such as theatres, convention centers and arenas and establishing standards, based on current technology and science, on the proper use of fire resistant acoustic materials in all places of public assembly.

(4) establishing an advisory council on fire safety building materials for the purpose of incorporating comprehensive flame-retardant material standards into state building codes and to recommend to the state board of building regulations and standards flame-retardant material standards to be incorporated as emergency amendments into the state building code. Such standards may incorporate the use of fire resistant coating. For the purposes of this section, "fire resistant coating" is defined as a coating that has attained both the room corner test FM 4880 or UL1715 or NFPA 286 on plywood and ASTM E-119 on numerous substrates found in general building construction.

The secretary of public safety shall establish, in conjunction with the executive office of economic affairs, methods for owners, lessees, or mortgagees in possession of a building or structure, or portions thereof of public assembly with a capacity of 100 persons or more, designed or used for occupancy as a nightclub, dance hall, discotheque, bar or for similar entertainment purposes to install automatic sprinklers at discounted rates including, but not limited to, no-interest or low-interest loans and insurance cost containment measures.

**SECTION 10.** On or before June 1, 2005, the secretary of the executive office of economic affairs shall file with the house and senate committees on ways and means and with the clerks of the house of representatives and the senate a plan to reduce for owners the costs associated with implementing

section 5 including, but not limited to, programs utilized by the Title V program and low-interest loans and tax credits.

**SECTION 11.** Any owner of a building, structure or portions thereof subject to the provisions of the second paragraph of section 26G 1/2 of chapter 148 of the General Laws shall submit plans and specifications for the installation of an adequate system of automatic sprinklers to the head of the fire department and the local building inspector or inspector within 18 months of the effective date of this act and shall install an adequate system of automatic sprinklers within 3 years of such effective date. The head of the fire department may allow a reasonable extension of time, not to exceed 1 year, to comply with said section 5 if the owner has timely submitted the required plans and specifications, has entered into an existing contract for the installation and clearly documents or shows that he did not cause the delay of installation.

For the purpose of this section the words "adequate system of automatic sprinklers" shall include: (i) a working automatic sprinkler system; (ii) fire alarm system control equipment which provides notice of an emergency within a place of assembly; and (iii) adequate monitoring of and reporting of any activation of the automatic sprinkler system and fire alarm equipment, in accordance with the state building code in effect at the time of the installation of such system and equipment.

**SECTION 12.** Section 7 of this act shall take effect on March 1, 2005.

*Approved August 17, 2004.*

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