



City of Cambridge

Executive Department

YI-AN HUANG
City Manager

CMA 2025 #241
IN CITY COUNCIL
September 29, 2025

To the Honorable, the City Council:

Please find attached response to Awaiting Report Item Number 25-05 from City Solicitor Megan Bayer, regarding a report on the use of M.G.L Ch. 40U to determine which local statutes can be enforced by the Local-Option Procedure in order to better collect fines in violation of Cambridge Ordinances.

Very truly yours,

Yi-An Huang
City Manager



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CITY OF CAMBRIDGE

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September 29, 2025

Yi-An Huang
City Manager
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Re: Response to Awaiting Report No. 25-5 Re: Report on the Use of M.G.L. Ch. 40U to Determine Which Local Statutes can be Enforced by the Local-Option Procedure in Order to Better Collect Fines in Violation of Cambridge Ordinances and Provides a Recommendation to the City Council for Implementation of Ch. 40U Procedures.

Dear Mr. Huang:

We are writing in response to the above-referenced Awaiting Report, No. 25-5 of February 3, 2025 (“Council Order”). The Council Order requests the City Manager “to work with relevant City departments to prepare a report on the use of M.G.L. Ch. 40U to determine which local statutes can be enforced by the local-option procedure in order to better collect fines in violation of Cambridge ordinances and provide a recommendation to the City Council for implementation of Ch. 40U procedures.”¹ Briefly, G.L. c. 40U (hereinafter “Chapter 40U”) gives a municipality, at local option, the power to establish an administrative process to collect fines for the violation of any rule, regulation, order, ordinance or bylaw related to the use of property for short-term rental use or regulating a housing, sanitary or municipal snow and ice removal requirement. 18 Mass. Prac., Mun. Law and Practice § 15.11.50 (5th ed.).

As discussed below, this response provides a summary of Chapter 40U. It also identifies what City ordinances and regulations are within the scope of Chapter 40U. Additionally, this response outlines current enforcement processes under G.L. c. 40, § 21D. This response also outlines logistical impacts that the City would face in implementing Chapter 40U if the City were to adopt the statute, and provides recommendations on how to develop enforcement mechanisms and practices. Further, this response identifies ongoing actions by ISD and DPW, in conjunction with the Law Department and the City Manager’s Office, to improve current enforcement procedures.

¹ The Law Department, Inspectional Services Department (“ISD”), Department of Public Works (“DPW”), Finance Department and City Manager’s Office collectively crafted this response.

DISCUSSION

A. Summary of Chapter 40U.

i. Types of Code Violations Within the Scope of Chapter 40U.

No provision in Chapter 40U specifically delineates what types of code violations are covered by the statute. The types of code violations covered by Chapter 40U can reasonably be inferred, however, from the statute's provisions.

The statute defines "unpaid charge" as an "unpaid fine incurred as a result of a violation of a rule, regulation, order, ordinance or by-law related to the use of property for short-term rental use or regulating a housing, sanitary or municipal snow and ice removal requirement." G.L. c. 40U, § 1. Other provisions of Chapter 40U reference the enforcement of ordinances and by-laws related to snow and ice removal from sidewalks, G.L. c. 40U, § 5, as well as the "violation of a rule, regulation, order, ordinance or by-law regulating the housing, sanitary or snow and ice removal requirement." G.L. c. 40U, § 8.² Thus, there are three types of code violations that can be enforced through Chapter 40U: (1) short-term rental use; (2) housing and sanitary; and (3) snow and ice removal from sidewalks.

As to sidewalk snow and ice removal, G.L. c. 40U, § 5 requires municipalities, by either ordinance or by-law, to require the removal of snow and ice "from sidewalks within such portions of the municipalities as they consider expedient by the owner of land abutting such sidewalks." The statute requires such ordinance or by-law to: (1) determine the time and manner of removal; (2) affix penalties, not exceeding \$200, for each such violation; and (3) be specific as to the width of the area to be cleared and the standards for clearance. *Id.* Though a provision of the Municipal Code of the City of Cambridge ("Municipal Code") already governs the removal of snow and ice from sidewalks, Mun. Code, Sec. 12.16.110, that provision arguably does not comply with G.L. c. 40U, § 5. Namely, Section 12.16.110 is not specific as to the width of the area to be cleared. Accordingly, if the City Council were to adopt Chapter 40U, Section 12.16.110 would also need to be amended.

ii. General Provisions of Chapter 40U.

Chapter 40U takes effect upon acceptance by a municipality. G.L. c. 40U, § 2. Accordingly, to be effective, the City Council needs to vote to accept the statute, and if the Council were to adopt Chapter 40U, it would automatically take effect. Additionally, in a municipality that accepts Chapter 40U, the statute supersedes any local contrary ordinances or by-laws. G.L. c. 40U, § 18.

A municipality that adopts Chapter 40U is required to appoint a municipal hearing officer who hears appeals of violation notices issued within that municipality. G.L. c. 40U, § 6. "Municipal hearing officer" is defined as "a person appointed by the appointing authority of a municipality to conduct hearings of alleged code violations pursuant to this chapter." G.L. c. 40U,

² The "snow and ice removal requirement" in G.L. c. 40U, § 8 is a reference to the requirement of removing snow and ice from sidewalks contained in G.L. c. 40U, § 5, which is discussed below.

§ 1. “Appointing authority of a municipality” is not defined by the statute. It is reasonable to conclude, however, that the “appointing authority” for the City would be the City Manager. G.L. c. 43, §§ 95, 105.

Also, all fines, penalties or assessments in actions under Chapter 40U are paid to the municipality’s general fund. G.L. c. 40U, § 17. Further, Chapter 40U provides that a fine established thereunder “shall not exceed the maximum allowable amount under the relevant sections of the housing or sanitary code or municipal snow and ice removal requirement, excluding late fees.” G.L. c. 40U, § 11. “Housing or sanitary code” appears to be a reference to the Massachusetts Sanitation Code, 105 CMR 410.

A municipality that adopts Chapter 40U is required, by ordinance or by-law, to establish a schedule of fines for violations subject to the statute committed within the municipality. *Id.* The Municipal Code does not currently have such a schedule. Accordingly, if the City adopts Chapter 40U, it would need to adopt an ordinance that establishes a schedule of applicable fines.

In addition to providing enforcement mechanisms (which are discussed below), Chapter 40U also includes the following provision: “A municipality may implement a system for the administrative disposition of noncriminal violations pursuant to [G.L. c. 40, § 21D].” G.L. c. 40U, § 7. That statute allows municipalities to enforce local ordinances through a non-criminal ticketing procedure (several City ordinances and regulations are currently enforced under this procedure). This provision appears to be an implicit acknowledgement that a municipality, even if it adopts Chapter 40U, may continue to use the procedure provided in G.L. c. 40, § 21D to enforce the types of violations covered by Chapter 40U if so desired.

iii. Enforcement Mechanisms of and Payment of Fines Under Chapter 40U.

An officer or inspector who takes notice of a violation of a rule, regulation order, ordinance or by-law within the scope of Chapter 40U shall provide the offender with a notice, “in tag form”, to pay the fine or request a hearing before the municipal hearing officer (or their designee) within 21 days after the date of the violation. G.L. c. 40U, § 8. The statute does not define “tag form.” As such, a municipality likely has discretion in the form of “tag” it uses (*e.g.*, hanging tag, parking-ticket style ticket, etc.). Additionally, all such notice tags must be prepared in triplicate or by the use of an automated ticketing device and shall be pre-numbered. *Id.*

The notice tag is required to be affixed securely to a building, or where a building is professionally managed with an onsite office. G.L. c. 40U, § 9. Additionally, the tag is required to include, “but shall not be limited to,” the following: (1) the date, time and place of the violation; (2) the specific violation charged; (3) the name and badge number of the officer or inspector and his division; (4) a schedule of payment for established fines; and (5) instructions for return of the tag. *Id.*

Within 21 days of the issuance of a notice of violation, the alleged violator is required to return the notice (by mail, personally or by an authorized person) to the municipal hearing officer and either: (1) pay the full fine by check, postal note, money order or other legal tender; or (2) request a hearing before the municipal hearing officer. G.L. c. 40U, § 12. Though G.L. c. 40U, §

12 specifies how fines may be paid, G.L. c. 40U, § 4 states: “The adoption of procedures for the payment of certain municipal fines under [Chapter 40U] shall be by majority vote of the city council or town meeting.” Based on this provision, if the City desires, it can (with City Council approval) adopt methods for the payment of fines that are not explicitly referenced by the statute (e.g., credit card payments and online payments).

If a fine remains unpaid for 21 days and no hearing has been requested, a letter shall be sent to the property owner of record’s mailing address, with a processing fee of not more than \$10. G.L. c. 40U, § 12. That letter is required to state that the fine shall be paid within 30 days unless within 14 days of receiving that notice the property owner requests a hearing before the municipal hearing officer and swears in writing under the pains and penalties of perjury that the property owner did not receive the notice of violation. Id. Thus, the statute provides a violator a second opportunity to challenge a violation if they allegedly did not receive a notice of violation.

If the fine remains unpaid after that 30-day period, additional penalties and interest “may” be attached. Id. Further, any fine and additional penalties and interest that “may” be attached and remain unpaid “shall become an additional assessment on the property owner’s tax bill.” Id. That amount and cost “may” also be a lien upon such real estate as provided in G.L. c. 40, § 42B. Id. The statute also provides that a municipality’s determination of whether to place a lien on the property may involve the number of and dollar amount of the violations on the property. Id.

Courts generally interpret the words “may” and “shall” in statutes as permissive and mandatory, respectively. Matter of M.C., 481 Mass. 336, 350 (2019); Rosnov v. Molloy, 460 Mass. 474, 479 (2011). As such, though any fines and additional penalties that have been attached and remain unpaid must become an additional assessment on a property owner, it is permissive (i.e., discretionary) on whether a municipality attaches additional penalties and interest following unpaid fines. Similarly, it is permissive on whether a municipality determines to place a lien on real estate for unpaid fines and whether additional penalties and interest become attached.

A person who desires to contest a violation of any ordinance or by-law of a municipality alleged in a notice to appear, shall request in writing a hearing before a municipal hearing officer. G.L. c. 40U, § 14. If the alleged violator timely requests a hearing, the municipal hearing officer shall schedule a hearing not later than 45 days after receiving the hearing request. Id. The hearing and disposition shall be informal and follow the rules set forth in G.L. c. 30A. Id.

A person aggrieved by a decision of the municipal hearing officer may appeal to the district court, housing court or other court of competent jurisdiction pursuant to G.L. c. 40, § 21D on a form provided by the municipality and is entitled to a de novo hearing before the clerk magistrate. G.L. c. 40U, § 15. Such an appeal must be filed within 10 days of receiving the notice of decision from the municipal hearing officer who conducted the hearing. Id.

Alternatively, any person notified to appear before the municipal hearing officer (without waiving the right to a hearing or judicial review) may also challenge the validity of the violation notice and receive a review and disposition of the violation from the municipal hearing officer by mail. G.L. c. 40U, § 13. The alleged violator may, upon receipt of the notice to appear, send a signed statement of objections to the violation notice, as well as signed statements from witnesses,

police officers, government officials and other relevant parties. Id. Photographs, diagrams, maps and other documents may be sent. Id. The municipal hearing officer has 21 days from receipt of the materials to either uphold or dismiss the violation. Id. The review is informal and the rules of evidence do not apply. Id. A municipal hearing officer's decision by mail is final, subject to the hearing provisions provided by Chapter 40U (as set forth above) or by judicial review pursuant to G.L. c. 30A, § 14. Id.

Any person who has received a notice of violation who, within the prescribed time, fails to pay the same or fails to request a hearing before the municipal hearing officer or who fails to appear at the time and place of the hearing, is deemed responsible for the alleged violation. G.L. c. 40U, § 16. That violation is considered prima facie evidence of the violation in a civil proceeding regarding that violation and is admissible in a subsequent criminal proceeding. Id. If the person fails to appear at the scheduled hearing without good cause, the appeal is dismissed and the violator waives any further right of appeal. Id. Additionally, if the condition which caused the notice of violation to issue continues to exist, the finding of responsibility may also be used by a municipality as prima facie evidence of a violation in any proceeding to suspend or revoke any license, permit or certificate issued by the municipality relative to that building, structure or premises pending the correction of the condition. Id.

B. City Ordinances and Regulations Within the Scope of Chapter 40U.

Below is a list of current City ordinances and regulations that appear to be within the scope of Chapter 40U and the enforcing City department:

- 1) Recycling, Refuse and Litter, Municipal Code, Chapter 8.24 – DPW
- 2) Dumpster License, Municipal Code, Chapter 8.25 – ISD
- 3) Bring Your Own Bag, Municipal Code, Chapter 8.68 – DPW, ISD, License Commission, Health Commission
- 4) Prohibition on the Use of Polystyrene Based Disposable Food Containers, Municipal Code, Chapter 8.70 – DPW, ISD, License Commission, Health Commission
- 5) Tenants' Rights and Resources Notification, Municipal Code, Chapter 8.71 – ISD
- 6) Short-Term Rentals, Cambridge Zoning Ordinance, Chapter 4.60 – ISD
- 7) Enforcement of State Sanitary Code, Municipal Code, Chapter 8.60 – ISD
- 8) Sidewalks – Snow and Ice Removal, Municipal Code, Chapter 12.16.110 – DPW

C. Recommended Actions the City Should Take with Respect to the Implementation of Chapter 40U.

Adopting Chapter 40U could provide the City with new tools for collecting municipal fines. As explained below, however, implementing certain requirements of Chapter 40U following its adoption would involve a significant amount of work and logistical challenges for the City. There is also the potential for negative consequences on property owners. Regardless of whether the City Council decides to adopt Chapter 40U, ISD and DPW will continue working to improve current enforcement procedures.

i. Overview of Current Enforcement Processes.

DPW and ISD use similar processes to notify residents of violations and issue fines under the ordinances identified as falling under G.L. c. 40U. While there is some variation between departments and/or particular enforcement areas, all the ordinances provide for non-criminal disposition under G.L. c. 40, § 21D and a maximum fine of \$300. DPW and ISD generally use the following process in issuing and enforcing fines:

1. Staff inspect **potential violations**, as learned about through SeeClickFix submissions, online platforms, phone calls, emails, in-person complaints and/or observations in the field. Staff use inspections as an opportunity for education, engagement and focus on compliance or eliminating the violation rather than issuing fines.
2. Inspector/staff uses OpenGov to generate any violation record that will include a fine. Record may also include photos, relevant code sections violated and corrective actions required.
3. Inspector/staff gives **notice of the violation** and **any applicable fine** to the property owner. Notice of a violation and fine may be provided by:
 - a. Onsite sticker or tag and mail to property owner on record (Recycling/Refuse, Snow and Ice Removal).
 - b. Mail and email (if available) to property owner on record (Bring Your Own Bag, Polystyrene, Tenants' Rights & Resources, Short-Term Rentals, Sanitary Code, Dumpster Licenses).
4. **Violation/fine** can be paid **only** by check or cash in person or by mail at the City Clerk's Office.
5. To contest a violation, a property owner must submit within 21 days of the date of the notice, a signed copy of the violation including the reason the violation is being contested. Contested violations get mailed to the Clerk Magistrate of Cambridge District Court.
6. Staff regularly pick up contested violations at the courthouse for review.

7. Contested violations are reviewed by the Commissioner of the relevant department or their designee.
8. Regardless of whether a violation is contested or simply remains unpaid, in order to enforce the fine, staff must apply to the court for the **issuance of a complaint** for the violation. If granted, that complaint results in a court hearing and litigation against a resident property owner.

The collection of fines under G.L. c. 40, § 20D has historically been limited by paper-heavy processes, requiring payments by check or cash and onerous enforcement mechanisms. There are also notification challenges. For example, property owners change without notice to the City, violation notices are inadvertently provided to renters rather than owners or other issues result in property owners not receiving violation notices as intended.

ii. Anticipated Impacts of Adopting Chapter 40U.

The goal of adopting Chapter 40U is to improve municipal fine collections in multiple ways. Potential improvements include making the collection process more transparent, fair and equitable through a published schedule of fines, as well as increasing the number of fines paid and, as a result, increasing revenue. However, if the City Council adopted G.L. c. 40U, significant logistical work would be necessary. At a minimum, the following ordinance and operational changes would be required:

1. Ordinance changes to establish schedules of fines and payment procedures.
2. Ordinance changes to specify snow and ice removal requirements consistent with G.L. c. 40U.
3. Operational changes to implement uniform tag forms and/or automated ticketing devices for enforcement.

But the core distinctions between the process established in Chapter 40U and the process currently used for the non-criminal disposition of fines pursuant to G.L. c. 40, § 21D are the intermediary step of a localized appeal process in front of a municipal hearing officer, *prior* to a property owner's right to contest a violation directly to a court, and enhanced enforcement mechanisms for unpaid fines. The hearing officer position would be a significant but not prohibitive change. A hearing officer cannot be employed by the department(s) issuing fines. This means a hearing officer role must be a new or modified position outside of DPW and/or ISD.

More importantly, though, there is concern about the effect that financial penalties could have on property owners as the enforcement mechanisms of G.L. c. 40U could be onerous. As noted above, a municipality may attach additional penalties and interest if a fine remains unpaid after a violator first fails to respond to a notice of violation within 21 days and then subsequently to respond within 30 days after receiving a second required notice. Further, once those additional penalties and interest are attached, they are required to become an additional assessment on the

owner's real estate tax bill. Further, as stated above, a municipality may also place a lien on the property in the amount of the additional assessment.

However, as also explained above, the enforcement provisions of G.L. c. 40, § 12 give municipalities discretion in deciding when to attach additional penalties and interest to a property owner's tax bill and whether to place a lien on a property. Further, we have spoken with officials from the City of Chelsea and City of Boston, which have each adopted Chapter 40U, and both utilize the permissive nature of G.L. c. 40, § 12.

The City of Chelsea utilizes the fine provisions in G.L. c. 40, § 12 as a means to encourage violators to remedy violations. Specifically, once a violation is issued and if before the initial 21-day period expires the violator contacts Chelsea and explains that they are working on resolving the violation (*e.g.*, sanitation code violation), Chelsea will inform the violator to submit an appeal. Then in their computer system, Chelsea will mark the violation as a "hearing," so that the violator can remedy the issue. Eventually, a hearing will be scheduled and the violator will appear and the fines will be paid. According to the official from the City of Chelsea we spoke with, this process is used to put violations on hold so that violators can remedy issues for which violations are issued. Additionally, this is purely a function of the computer system Chelsea uses and that if they used a different system, they may not necessarily need to schedule hearings to put violations on hold.

The City of Boston, as a practice, does not attach additional penalties to property tax bills unless the penalties/fines total at least \$1500 (*e.g.*, this may occur when a violation includes a low fine amount but also permits for daily, successive fines if a violation continues). Additionally, Boston's Treasury Department has been very reluctant to place liens on properties and it, at least in practice, has to provide the final sign off before a lien is placed on a property when the City of Boston is enforcing violations under Chapter 40U.

These are only two examples of how municipalities have determined how to implement the financial enforcement mechanisms of G.L. c. 40, § 12. The City of Cambridge, if it were to adopt Chapter 40U, would not necessarily be required to follow Chelsea or Boston as models and could develop its own method based on the discretionary nature of the language contained in G.L. c. 40, § 12. However, we recommend that Boston's practice of requiring a minimum threshold before attaching additional penalties to property tax bills (or something similar) be part of any enforcement practice that is developed by the City if the City Council adopts Chapter 40U. We also recommend that the threshold amount of accrued penalties to trigger attachment be higher than \$1500.

The fines for Chapter 40U violations are generally low. If no minimum threshold is required before additional penalties are attached as a result of unpaid fines, that could result in assessments being added to property owners' real estate tax bills and thus becoming a further burden on owners at a quick rate. Additionally, many property owners in Cambridge pay their real estate taxes through escrow accounts, and the payment of fines attached to tax bills must follow a hierarchical order through which the fine is paid first. If the payment is insufficient to cover the full bill as a result of additional penalties and interest that were attached, a portion of the property tax itself remains unpaid. That unpaid property tax triggers further ramifications that may result in the City placing a property into tax title. Accordingly, by imposing a minimum threshold,

property owners will have more notice and opportunity to pay fines before amounts are attached to a tax bill.

Also, though the municipality has discretion in placing a lien on property after additional penalties and interest are attached to a tax bill, it would be very labor intensive for City staff to review the files of a property with unpaid balances that the City intended to move through the tax title process in order to remove ones that were identified for unpaid fines. Once the City commits to attaching additional penalties and interest to a real estate tax bill, it should intend to use the full collection process to collect those amounts, including placing a property in tax title. Otherwise, there will be no actual threat of enforcement by the City.

iii. Improvements to Enforcement Process Regardless of Whether the City Adopts Chapter 40U.

Regardless of whether the City Council decides to adopt Chapter 40U, ISD and DPW, in collaboration with our office and the City Manager's Office, will be continuing to make improvements to their enforcement procedures in FY26, including:

- Ensuring all violation types are tracked consistently through the OpenGov platform.
- Establishing a set schedule of fines for violations, including those for repeat offenses.
- Consider requesting approval from the Chief Administrative Judge of the District Court to allow credit card and online payment of fines issued under G.L. c. 40, s. 21D. If such approval is not granted, consider filing a Home Rule Petition requesting permission to do so.
- Utilize the new Project Manager/Business Analyst position at ISD to work closely with enforcement staff on business process improvements and data analytics.
- Generate an initial report of violations/fines issued, collected and unpaid during FY26, to inform future policy discussions.

We understand these changes will not prompt payment in every instance, and there may still be violators who refuse to pay a fine. But these are important improvements to make regardless of their impact on collections, and it is reasonable to believe that simplified processes will improve compliance and, as a result, the collection of unpaid fines.

CONCLUSION

For the reasons explained above, adopting Chapter 40U would likely benefit the City by making the fine collection process more transparent, fair and equitable as well as increasing the number of fines paid and, as a result, increasing revenue. Implementing the statute would likely be a significant undertaking for the City. Further, the enforcement mechanisms may expose property owners to new financial risks. If the City Council were to adopt Chapter 40U, the City can work to implement practices to limit those risks, but such risks ultimately cannot be eliminated.

Also, regardless of whether the City Council decides to adopt Chapter 40U, ISD and DPW, in collaboration with the Law Department and the City Manager's Office, are working to improve the City's current enforcement procedures.

Very truly yours,



Megan B. Bayer
City Solicitor