

972 CMR: OLD KING'S HIGHWAY REGIONAL
HISTORIC DISTRICT COMMISSION

972 CMR 4.00: VIOLATIONS AND COURT JURISDICTIONS

Section

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4.01: General

While violations of St. 1973, c. 470, the Historic District Act, are usually minor in nature and few in number, the law provides the fullest opportunity for complete judicial redress against any violator. Violations should be prosecuted in the local District Court and may be brought either by civil action or criminal complaint. Often times the violation of St. 1973, c. 470 will also include violations of other statutes and by-laws which may provide for more severe penalties.

4.02: Enforcement

The Town Building Inspector is responsible for enforcing St. 1973, c. 470. The law states that “no permit shall be issued by the local building inspector for any building or structure to be erected, removed or demolished within the District unless the application for said permit shall be accompanied by a Certificate of Appropriateness, Certificate for Removal or Demolition, or Certificate of Exemption.” (See St. 1973, c. 470, § 6). The law further states that the building inspector of the affected town shall have the “power and duty” to enforce the provisions of this law. For these reasons all violations should be promptly reported to the local building inspector’s office for proper enforcement action. While the local building inspectors are specifically charged with the responsibility for enforcing the Act, any person who observes a violation may seek a criminal complaint against the violator(s). Any person who violates any provision of the Historic District Act is guilty of a misdemeanor and in 1974 the Massachusetts Supreme Judicial Court ruled that even though the Legislature may have imposed the duty to prosecute violations on a particular public official--in that case a health agent--anyone who is competent to give oath may seek a criminal complaint in the local District Court. (See: Commonwealth v. Haddad, 364 Mass. 795, 308 NE2d 899 (1974)). Therefore, if a citizen feels strongly about a violation, he may seek direct action against the violator(s) by going to the Magistrate’s office of the local District Court. The Commission recommends that all violations be brought to the local building inspector’s office for enforcement. If criminal action is to be initiated, the complainant should obtain competent legal advice and discuss the matter with members of the local District Attorney’s office.

4.03: Proof of Violations

Any person suspecting a violation of St. 1973, c. 470 should take steps to properly document the violation and be prepared to testify as a witness. The following information and material will be helpful in supporting any enforcement action:

- (1) Statement of Facts. A brief written statement outlining the alleged violation should be submitted to the local building inspector’s office and a copy retained by the complainant. The statement should include the following information:
 - (a) Location of the violation including street address and assessors’ map number.
 - (b) Type of violation—describing the specific section of St. 1973, c. 470 that is being violated and indicating whether the violation involves construction or demolition.
 - (c) The name(s) and address(es) of the violators. This should include the owner, builder, machinery operators and other persons participating in the work.
 - (d) Name and address of the person reporting the violation.
 - (e) List of possible witnesses and names and addresses of any persons observing the violation.

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(2) Photographs. Photographs of the work in progress with sufficient detail so as to identify the extent of the violation and the person doing the work. The date, time and location of the photograph should be written on the back of each photograph along with the name(s) and address(es) of the photographers.

4.04: Court Jurisdiction and Penalties

(1) The local District Court has jurisdiction over civil actions, criminal complaints and appeals. Matters involving the Towns of Sandwich, Barnstable and Yarmouth should be brought to the Barnstable District Court located off Route 6A in Barnstable Village. Matters involving Dennis, Brewster and Orleans should be brought to the Orleans District Court located just off Route 6 at the Orleans/Eastham rotary circle.

(2) Violators of St. 1973, c. 470 are guilty of a misdemeanor and may be fined from a minimum of \$100 to a maximum of \$500, with each day constituting a separate violation. The penalty of contempt is available for any violation of a judicial order issued by the local District Court.

REGULATORY AUTHORITY

972 CMR 4.00: St. 1973, c. 470, § 4.