

HOUSE No. 608

By Mr. Alicea of Charlton, a petition (accompanied by bill, House, No. 608) of Geraldo Alicea (by vote of the town) relative to establishing the position of municipal hearing officer in the town of Southbridge. Municipalities and Regional Government.

The Commonwealth of Massachusetts

PRESENTED BY:

Geraldo Alicea

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 bill:

An Act establishing the position of municipal hearing officer in the town of Southbridge.

PETITION OF:

NAME:

Geraldo Alicea

DISTRICT/ADDRESS:

6th Worcester

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT ESTABLISHING THE POSITION OF MUNICIPAL HEARING OFFICER IN THE TOWN OF SOUTHBRIDGE.

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

1 SECTION 1. Notwithstanding section 21D of chapter 40 of the General Laws, a person who
2 desires to contest a violation of any ordinance of the town of Southbridge alleged in a notice to appear,
3 pursuant to violations issued by the town in accordance with said section 21D of said chapter 40 shall
4 request, in writing, a hearing before a municipal hearing officer, who shall be appointed by the town
5 manager, with the approval of the town council, to conduct requested hearings pursuant to this act. The
6 notice to appear shall be in the format required under said section 21D of said chapter 40, except that the
7 third copy of the notice shall be submitted to the municipal hearing officer. The municipal hearing officer
8 may be the same person appointed as municipal hearing officer pursuant to chapter 148A of the General
9 Laws.

10 SECTION 2. Where a notice to appear is for 1 or more code violations, the person notified to
11 appear shall return the notice of violation by mail, personally or by an authorized person to the municipal
12 hearing officer and shall, within 21 days, either: (a) pay, in full, the scheduled assessment by check, postal
13 note or money order; or (b) request a hearing before the municipal hearing officer. Any amounts paid
14 shall be payable to the town of Southbridge. If the person notified to appear requests, in a timely manner,
15 a hearing before the municipal hearing officer, the municipal hearing officer shall schedule a hearing not
16 later than 45 days after receiving the hearing request. The municipal hearing officer shall send a hearing
17 notice to duly notify the person notified to appear of the date, time and location of the hearing. Hearings
18 shall be held at least twice each month, in the evening. When a hearing notice is sent, the person notified
19 to appear shall be given an opportunity to request a rescheduled hearing date. The municipal hearing
20 officer, so designated, shall not be an employee or officer of the department associated with the issuance
21 of the notice of violation. The municipal hearing officer shall receive annual training in the conduct of
22 administrative hearing procedure. The hearings and dispositions by the municipal hearing officer shall be
23 informal and the formal rules of evidence shall not apply. In conducting the hearings, the municipal
24 hearing officer shall find whether the violation occurred and whether it was committed by the person so
25 notified to appear.

26 SECTION 3. Any person aggrieved by a decision of the municipal hearing officer, after a hearing,

27 may appeal to the district court pursuant to section 21D of chapter 40 of the General Laws, on a form
28 provided by the town, and shall be entitled to a de novo hearing before a clerk magistrate of the court. The
29 district court shall consider such appeals under a civil, as opposed to a criminal, standard. The aggrieved
30 person shall file the appeal within 10 days after receiving notice of the decision from the municipal
31 hearing officer who conducted the hearing.

32 SECTION 4. Any person who has received a notice to appear issued in accordance with this
33 procedure who, within the prescribed time: fails to pay the scheduled assessment; fails to request a
34 hearing before the municipal hearing officer; or fails to appear at the time and place of the hearing shall
35 be found responsible for the violations as stated in the notice to appear and such finding of responsibility
36 shall be considered prima facie evidence of a finding of responsibility for the violation in any civil
37 proceeding regarding said violation and shall be admissible as evidence in a subsequent criminal
38 proceeding. A person who fails to appear at the scheduled hearing without good cause shall have the
39 appeal dismissed and shall waive any further right to appeal. If the condition which caused the notice to
40 appear to issue continues to exist, the finding of responsibility may also be used by the town of
41 Southbridge as prima facie evidence of the existence of a violation in any proceeding to suspend or
42 revoke any license, permit or certificate issued by the town relative to the building, structure or premises
43 pending the correction of the condition.

44 SECTION 5. All fines, penalties or assessments in actions under this act, shall be paid to the general
45 fund of the town of Southbridge.

46 SECTION 6. This act shall take effect upon its passage.