

HOUSE No. 3588

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to unpaid municipal fines..

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

1 The General Laws are hereby amended by inserting after chapter 40S the following
2 chapter:-

3 CHAPTER 40T

4 MUNICIPAL FINES

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

7 “Municipal hearings officer”, a person appointed by the appointing authority of a
8 municipality to conduct hearings of alleged code violations pursuant to this chapter.

9 “Unpaid charges”, shall be an unpaid fine incurred as a result of a violation of any rule,
10 regulation, order, ordinance, or by-law regulating the housing, sanitary, or municipal snow and
11 ice removal requirement.

12 Section 2. This chapter shall take effect in a municipality upon its acceptance.

Section 3. Every municipality shall, in the manner provided in this chapter, adopt the procedures for the payment of certain municipal fines provided in this chapter, and may revoke or rescind any such acceptance.

Section 4. The adoption of the procedure for the payment of certain municipal fines under this chapter shall be by majority vote of the city council or town meeting.

Section 5. A municipality may by ordinances and by-laws provide for the removal of snow and ice from sidewalks within such portions of the municipality as they consider expedient by the owner of land abutting upon such sidewalks. Such ordinances and by-laws shall determine the time and manner of removal and shall affix penalties, not exceeding \$200 for each violation thereof. Such ordinances and by-laws shall be specific as to the width of the area to be cleared and the standards for clearance.

Section 6. A municipality shall appoint a municipal hearings officer. The officer shall hear appeals of violation notices issued within the municipality. The municipal hearing officer may be the same person appointed as a municipal hearing officer pursuant to chapter 148A.

Section 7. A municipality may implement a system for the administrative disposition of noncriminal violations pursuant to section 21D of chapter 40.

Section 8. Every officer and inspector who takes notice of a violation of any provision of any rule, regulation, order, ordinance, or by-law regulating snow and ice removal, the housing, or sanitary codes shall provide the offender with a notice forthwith, which shall be in tag form to appear before the municipal hearing officer or the hearings officer's designee during regular office hours, not later than 21 days after the date of such violation. All tags shall be prepared in triplicate or by the use of an automated ticketing device and shall be pre-numbered.

35 Section 9. The tag shall be affixed securely to the building or, for buildings with an
36 onsite professionally-managed property office, delivered to the office during normal business
37 hours and shall contain, but shall not be limited, to, the following information: the date, time and
38 place of the violation, the specific violation charged, the name and badge number of the officer
39 or inspector and his division, a schedule of payment for established fines and instructions for
40 return of the tag.

41 Section 10. Within 3 business days after completion of each shift, the officer or inspector
42 shall give to his superior those copies of each notice of a violation issued during such shift. The
43 superior shall retain and preserve 1 copy and shall at a time not later than the beginning of the
44 next business day after receipt of the notice deliver another copy to the municipal hearing officer
45 before whom the offender has been notified to appear, unless the ticket was produced by an
46 automated ticketing device, in which case no duplicate copies need be retained. The municipal
47 hearing officer shall maintain a docket of all such notices to appear.

48 Section 11. The municipality shall, by ordinance or by-law, establish a schedule of fines
49 for violations subject to this chapter committed within the municipality provided, however, that
50 all such fines shall be uniform for the same offense committed in the same zone or district, if
51 any. A fine established under this chapter shall not exceed the maximum allowable amount
52 under the relevant sections of the housing or sanitary code or municipal snow and ice removal
53 requirement, excluding late fees.

54 Section 12. Where a notice of violation is issued for a code violation, the alleged
55 violation, within 21 days, shall return the notice of violation by mail, personally, or by authorized
56 person to the municipal hearings officer and shall either: (1) pay in full the scheduled assessment

by check, postal note, money order or any legal tender; or (2) request a hearing before the municipal hearing officer. Each violation issued shall contain a statement explaining the procedure to adjudicate the violation by mail. Any amounts paid shall be payable to the municipality. 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 and, if appropriate to the local individual or property management company responsible for the maintenance of the property, with a processing fee of not more than \$10, notifying him that the fine shall be paid within 30 days after receipt of that notice unless within 14 days of receiving said 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. If the fine remains unpaid after said 30 days, additional penalties and interest may be attached. Thereafter any fine and additional penalties and interest that may be attached and which remain unpaid shall become an additional assessment on the property owner's tax bill. Such amount and cost relative thereto may also be a lien upon such real estate as provided in section 42B of chapter 40. A municipality's determination of whether to place a lien on the property may involve the number of and the dollar amount of the violations on the property. The property owner of record shall be notified by certified mail of the lien on the property. No lien shall be removed until after notice from the tax collector that all such matters have been disposed of in accordance with law. Additional charges equal to the amount required to file the lien and the amount required to remove the lien shall be assessed against the owner of record for the purpose of ensuring that all costs associated with filing and releasing are recovered.

Section 13. Any person notified to appear before the municipal hearing officer, as provided herein may, without waiving the right to a hearing provided by this chapter and without

waiving judicial review as provided in section 14 of chapter 30A, challenge the validity of the violation notice and receive a review and disposition of the violation from the municipal hearing officer by mail. 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. Photographs, diagrams, maps and other documents may also be sent with the statements. Any statements or materials sent to the municipal hearing officer for review shall have attached the person's name and complete address as well as the ticket number and the date of the violation. The municipal hearing officer shall, within 21 days after receipt of such material, review the material and dismiss or uphold the violation and notify the alleged violator by mail of the disposition of the hearing. If the outcome of the hearing is against the alleged violator, the municipal hearing officer shall explain the reasons for the outcome on the notice. Such review and disposition conducted by mail shall be informal, the rules of evidence shall not apply and the decision of the municipal hearing officer shall be final subject to any hearing provisions provided by this chapter or to judicial review as provided in said section 14 of said chapter 30A.

Section 14. Notwithstanding section 21D of chapter 40, a person who desires to contest a violation of any ordinance or by-law of a municipality alleged in a notice to appear, pursuant to violations issued by a municipality in accordance with said section 21D of said chapter 40, shall request in writing a hearing before a municipal hearing officer. The notice to appear shall be in the format specified in said section 21D of said chapter 40, except that the third copy of the notice shall be submitted to the municipal hearings officer unless the ticket was produced by an automated ticketing device.

102 If the alleged violator requests, in a timely manner, a hearing before the municipal
103 hearing officer, the municipal hearing officer shall schedule a hearing not later than 45 days after
104 receiving the hearing request. The municipal hearing officer shall duly notify the alleged
105 violator of the date, time and location of the hearing. Hearings shall be held on at least
106 2 evenings each month. When a hearing notice is sent, the alleged violator shall be given an
107 opportunity to request a rescheduled hearing date. In no case shall the municipal hearing officer,
108 so designated, be an employee or officer of the department associated with the issuance of the
109 notice of violation.

110 The municipal hearing officer shall receive annual training in the conduct of
111 administrative hearings. The hearing and disposition shall be informal and shall follow the rules
112 set forth in chapter 30A. Rules for judicial proceedings shall not apply. In conducting the
113 hearing, the municipal hearing officer shall determine whether the violation occurred and
114 whether it was committed by the person notified to appear.

115 Section 15. Any person aggrieved by a decision of the municipal hearing officer may
116 appeal to the district court, housing court, or other court of competent jurisdiction pursuant to
117 section 21D of chapter 40, on a form provided by the municipality, and shall be entitled to a de
118 novo hearing before a clerk magistrate of the court. The court shall consider such appeals under
119 a civil standard. The aggrieved person shall file the appeal within 10 days after receiving notice
120 of the decision from the municipal hearing officer who conducted the hearing.

121 Section 16. Any person who has received a notice of violation issued in accordance with
122 this chapter who, within the prescribed time, fails to pay the scheduled assessment or fails to
123 exercise his right to request a hearing before the municipal hearing officer or who fails to appear

124 at the time and place of the hearing, shall be deemed responsible for the violations as stated in
125 the notice of violation. Such finding of responsibility shall be considered prima facie evidence
126 of the violation in any civil proceeding regarding that violation and shall be admissible as
127 evidence in a subsequent criminal proceeding. If a person fails to appear at the scheduled
128 hearing without good cause, the appeal shall be dismissed and the violator shall waive any
129 further right to appeal. If the condition which caused the notice of violation to issue continues to
130 exist, the finding of responsibility may also be used by a municipality as prima facie evidence of
131 the existence of a violation in any proceeding to suspend or revoke any license, permit or
132 certificate issued by such municipality relative to that building, structure or premises pending the
133 correction of the condition.

134 Section 17. All fines, penalties or assessments in actions under this chapter shall be paid
135 to the general fund of the municipality.

136 Section 18. In any municipality that has accepted this chapter, this chapter shall
137 supersede only local ordinances or by-laws to the contrary.