

HOUSE No. 608

The Commonwealth of Massachusetts

In the Year Two Thousand 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
2 who desires to contest a violation of any ordinance of the town of Southbridge alleged in a notice
3 to appear, pursuant to violations issued by the town in accordance with said section 21D of said
4 chapter 40 shall request, in writing, a hearing before a municipal hearing officer, who shall be
5 appointed by the town manager, with the approval of the town council, to conduct requested
6 hearings pursuant to this act. The notice to appear shall be in the format required under said
7 section 21D of said chapter 40, except that the third copy of the notice shall be submitted to the
8 municipal hearing officer. The municipal hearing officer may be the same person appointed as
9 municipal hearing officer pursuant to chapter 148A of the General 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
12 municipal hearing officer and shall, within 21 days, either: (a) pay, in full, the scheduled
13 assessment by check, postal note or money order; or (b) request a hearing before the municipal
14 hearing officer. Any amounts paid shall be payable to the town of Southbridge. If the person

15 notified to appear requests, in a timely manner, a hearing before the municipal hearing officer,
16 the municipal hearing officer shall schedule a hearing not later than 45 days after receiving the
17 hearing request. The municipal hearing officer shall send a hearing notice to duly notify the
18 person notified to appear of the date, time and location of the hearing. Hearings shall be held at
19 least twice each month, in the evening. When a hearing notice is sent, the person notified to
20 appear shall be given an opportunity to request a rescheduled hearing date. The municipal
21 hearing officer, so designated, shall not be an employee or officer of the department associated
22 with the issuance of the notice of violation. The municipal hearing officer shall receive annual
23 training in the conduct of administrative hearing procedure. The hearings and dispositions by the
24 municipal hearing officer shall be informal and the formal rules of evidence shall not apply. In
25 conducting the hearings, the municipal hearing officer shall find whether the violation occurred
26 and whether it was committed by the person so notified to appear. SECTION 3. Any person
27 aggrieved by a decision of the municipal hearing officer, after a hearing, may appeal to the
28 district court pursuant to section 21D of chapter 40 of the General Laws, on a form provided by
29 the town, and shall be entitled to a de novo hearing before a clerk magistrate of the court. The
30 district court shall consider such appeals under a civil, as opposed to a criminal, standard. The
31 aggrieved person shall file the appeal within 10 days after receiving notice of the decision from
32 the municipal hearing officer who conducted the hearing. SECTION 4. Any person who has
33 received a notice to appear issued in accordance with this procedure who, within the prescribed
34 time: fails to pay the scheduled assessment; fails to request a hearing before the municipal
35 hearing officer; or fails to appear at the time and place of the hearing shall be found responsible
36 for the violations as stated in the notice to appear and such finding of responsibility shall be
37 considered prima facie evidence of a finding of responsibility for the violation in any civil

38 proceeding regarding said violation and shall be admissible as evidence in a subsequent criminal
39 proceeding. A person who fails to appear at the scheduled hearing without good cause shall have
40 the appeal dismissed and shall waive any further right to appeal. If the condition which caused
41 the notice to appear to issue continues to exist, the finding of responsibility may also be used by
42 the town of Southbridge as prima facie evidence of the existence of a violation in any proceeding
43 to suspend or revoke any license, permit or certificate issued by the town relative to the building,
44 structure or premises pending the correction of the condition. SECTION 5. All fines,
45 penalties or assessments in actions under this act, shall be paid to the general fund of the town of
46 Southbridge.

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