

HOUSE No. 3588

The Commonwealth of Massachusetts

PRESENTED BY:

Vincent A. Pedone

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 relative to unpaid municipal fines.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Vincent A. Pedone	15th Worcester
Martha M. Walz	8th Suffolk
Denise Provost	27th Middlesex
Mayor Thomas Menino	City Hall Boston, MA

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 4883 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and 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
2 following 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
11 snow and ice removal requirement.
12 Section 2. This chapter shall take effect in a municipality upon its acceptance.
13 Section 3. Every municipality shall, in the manner provided in this chapter, adopt the
14 procedures for the payment of certain municipal fines provided in this chapter, and may
15 revoke or rescind any such acceptance.
16 Section 4. The adoption of the procedure for the payment of certain municipal fines
17 under this chapter shall be by majority vote of the city council or town meeting.
18 Section 5. A municipality may by ordinances and by-laws provide for the removal of
19 snow and ice from sidewalks within such portions of the municipality as they consider
20 expedient by the owner of land abutting upon such sidewalks. Such ordinances and by-
21 laws shall determine the time and manner of removal and shall affix penalties, not
22 exceeding \$200 for each violation thereof. Such ordinances and by-laws shall be
23 specific as to the width of the area to be cleared and the standards for clearance.
24 Section 6. A municipality shall appoint a municipal hearings officer. The officer shall
25 hear appeals of violation notices issued within the municipality. The municipal hearing

26 officer may be the same person appointed as a municipal hearing officer pursuant to
27 chapter 148A.

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

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

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

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

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

57 Section 12. Where a notice of violation is issued for a code violation, the alleged
58 violator, within 21 days, shall return the notice of violation by mail, personally, or by
59 authorized person to the municipal hearings officer and shall either: (1) pay in full the
60 scheduled assessment by check, postal note, money order or any legal tender; or (2)
61 request a hearing before the municipal hearing officer. Each violation issued shall
62 contain a statement explaining the procedure to adjudicate the violation by mail. Any
63 amounts paid shall be payable to the municipality. If a fine remains unpaid for 21 days
64 and no hearing has been requested, a letter shall be sent to the property owner of
65 record's mailing address and, if appropriate to the local individual or property
66 management company responsible for the maintenance of the property, with a
67 processing fee of not more than \$10, notifying him that the fine shall be paid within 30
68 days after receipt of that notice unless within 14 days of receiving said notice the
69 property owner requests a hearing before the municipal hearing officer and swears in
70 writing under the pains and penalties of perjury that the property owner did not receive
71 the notice of violation. If the fine remains unpaid after said 30 days, additional penalties

72 and interest may be attached. Thereafter any fine and additional penalties and interest
73 that may be attached and which remain unpaid shall become an additional assessment
74 on the property owner's tax bill. Such amount and cost relative thereto may also be a
75 lien upon such real estate as provided in section 42B of chapter 40. A municipality's
76 determination of whether to place a lien on the property may involve the number of and
77 the dollar amount of the violations on the property. The property owner of record shall
78 be notified by certified mail of the lien on the property. No lien shall be removed until
79 after notice from the tax collector that all such matters have been disposed of in
80 accordance with law. Additional charges equal to the amount required to file the lien
81 and the amount required to remove the lien shall be assessed against the owner of
82 record for the purpose of ensuring that all costs associated with filing and releasing are
83 recovered.

84 Section 13. Any person notified to appear before the municipal hearing officer, as
85 provided herein may, without waiving the right to a hearing provided by this chapter and
86 without waiving judicial review as provided in section 14 of chapter 30A, challenge the
87 validity of the violation notice and receive a review and disposition of the violation from
88 the municipal hearing officer by mail. The alleged violator may, upon receipt of the
89 notice to appear, send a signed statement of objections to the violation notice as well as
90 signed statements from witnesses, police officers, government officials and other
91 relevant parties. Photographs, diagrams, maps and other documents may also be sent
92 with the statements. Any statements or materials sent to the municipal hearing officer
93 for review shall have attached the person's name and complete address as well as the
94 ticket number and the date of the violation. The municipal hearing officer shall, within
95 21 days after receipt of such material, review the material and dismiss or uphold the
96 violation and notify the alleged violator by mail of the disposition of the hearing. If the
97 outcome of the hearing is against the alleged violator, the municipal hearing officer shall
98 explain the reasons for the outcome on the notice. Such review and disposition
99 conducted by mail shall be informal, the rules of evidence shall not apply and the
100 decision of the municipal hearing officer shall be final subject to any hearing provisions
101 provided by this chapter or to judicial review as provided in said section 14 of said
102 chapter 30A.

103 Section 14. Notwithstanding section 21D of chapter 40, a person who desires to
104 contest a violation of any ordinance or by-law of a municipality alleged in a notice to
105 appear, pursuant to violations issued by a municipality in accordance with said section
106 21D of said chapter 40, shall request in writing a hearing before a municipal hearing
107 officer. The notice to appear shall be in the format specified in said section 21D of said
108 chapter 40, except that the third copy of the notice shall be submitted to the municipal
109 hearing officer unless the ticket was produced by an automated ticketing device.

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

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

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

130 Section 16. Any person who has received a notice of violation issued in accordance
131 with this chapter who, within the prescribed time, fails to pay the scheduled assessment
132 or fails to exercise his right to request a hearing before the municipal hearing officer or
133 who fails to appear at the time and place of the hearing, shall be deemed responsible
134 for the violations as stated in the notice of violation. Such finding of responsibility shall
135 be considered prima facie evidence of the violation in any civil proceeding regarding
136 that violation and shall be admissible as evidence in a subsequent criminal
137 proceeding. If a person fails to appear at the scheduled hearing without good cause,
138 the appeal shall be dismissed and the violator shall waive any further right to appeal. If
139 the condition which caused the notice of violation to issue continues to exist, the finding
140 of responsibility may also be used by a municipality as prima facie evidence of the
141 existence of a violation in any proceeding to suspend or revoke any license, permit or
142 certificate issued by such municipality relative to that building, structure or premises
143 pending the correction of the condition.

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

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