

**HOUSE . . . . . No.**

**[LOCAL APPROVAL RECEIVED.]**

**The Commonwealth of Massachusetts**

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PRESENTED BY:

**Geraldo Alicea**

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*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:	DISTRICT/ADDRESS:
Geraldo Alicea	6th Worcester
Richard T. Moore	

# 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.

6       The notice to appear shall be in the format required under said section 21D of said chapter 40, except  
7 that the third copy of the notice shall be submitted to the municipal hearing officer. The municipal  
8 hearing officer may be the same person appointed as municipal hearing officer pursuant to chapter  
9 148A of the General Laws.

10  
11       **SECTION 2.** Where a notice to appear is for 1 or more code violations, the person notified to appear  
12 shall return the notice of violation by mail, personally or by an authorized person to the municipal  
13 hearing officer and shall, within 21 days, either: (a) pay, in full, the scheduled assessment by check,  
14 postal note or money order; or (b) request a hearing before the municipal hearing officer. Any amounts  
15 paid shall be payable to the town of Southbridge. If the person notified to appear requests, in a timely  
16 manner, a hearing before the municipal hearing officer, the municipal hearing officer shall schedule a  
17 hearing not later than 45 days after receiving the hearing request. The municipal hearing officer shall  
18 send a hearing notice to duly notify the person notified to appear of the date, time and location of the  
19 hearing. Hearings shall be held at least twice each month, in the evening. When a hearing notice is  
20 sent, the person notified to appear shall be given an opportunity to request a rescheduled hearing date.

21       The municipal hearing officer, so designated, shall not be an employee or officer of the department  
22 associated with the issuance of the notice of violation. The municipal hearing officer shall receive  
23 annual training in the conduct of administrative hearing procedure. The hearings and dispositions by

24 the 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 and  
26 whether it was committed by the person so notified to appear.

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28 **SECTION 3.** Any person aggrieved by a decision of the municipal hearing officer, after a hearing, may  
29 appeal to the district court pursuant to section 21D of chapter 40 of the General Laws, on a form  
30 provided by the town, and shall be entitled to a de novo hearing before a clerk magistrate of the court.  
31 The district court shall consider such appeals under a civil, as opposed to a criminal, standard. The  
32 aggrieved person shall file the appeal within 10 days after receiving notice of the decision from the  
33 municipal hearing officer who conducted the hearing.

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

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

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51 **SECTION 6.** This act shall take effect upon its passage.

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