

SENATE NO. 2166

AN ACT TO CREATE A MUNICIPAL HEARING OFFICER TO HEAR APPEALS OF VIOLATION NOTICES ISSUED IN THE CITY OF SOMERVILLE IN ACCORDANCE WITH G.L.C., 40 SS 21D

*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 General Laws c. 40, §21D, a person who desires to contest a violation
2 of any ordinance of the City of Somerville alleged in a notice to appear, pursuant to violations issued
3 by the City in accordance with G.L. c. 40, §21D, shall request in writing a hearing before a municipal
4 hearing officer, who shall be appointed by the Mayor, with the approval of the Board of Aldermen, to
5 conduct requested hearings pursuant to this act. Said notice to appear shall be in the format required
6 under G.L. c. 40, § 21D, except that the third copy of the notice shall be submitted to the municipal
7 hearing officer. Said municipal hearing officer may be the same person appointed as municipal
8 hearing officer pursuant to General Laws Chapter 148A.

9 SECTION 2. Where a notice of violation is for one or more code violations, the alleged violator shall
10 return the notice of violation by mail, personally or by authorized person to the municipal hearing
11 officer and shall, within 21 days, either: (1) pay in full the scheduled assessment by check, postal note
12 or money order; or (2) request a hearing before the municipal hearing officer. Any amounts paid shall
13 be payable to the City of Somerville. If the alleged violator requests, in a timely manner, a hearing

14 before the municipal hearing officer, the municipal hearing officer shall schedule a hearing not later
15 than 45 days after receiving such hearing request. The municipal hearing officer shall duly notify
16 the alleged violator of the date, time and location of the hearing. Hearings shall be held on at least two
17 occasions in the evening per month. When a hearing notice is sent, the alleged violator shall be given
18 an opportunity to request a rescheduled hearing date. In no case shall the municipal hearing officer, so
19 designated, be an employee or officer of the department associated with the issuance of the notice of
20 violation.

21 The municipal hearing officer shall receive annual training in the conduct of administrative hearing
22 procedure. The hearing and disposition shall be informal, and the formal rules of evidence shall not
23 apply. In conducting the hearing, the hearing officer shall determine whether the violation occurred
24 and that it was committed by the person so notified to appear.

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

31 SECTION 4. Any person who has received a notice of violation issued in accordance with this
32 procedure who, within the prescribed time, fails to pay the scheduled assessment or fails to exercise
33 his right to request a hearing before the municipal hearing officer or who fails to appear at the time and
34 place of the hearing, shall be deemed responsible for the violations as stated in the notice of violation
35 and such finding of responsibility shall be considered prima facie evidence of a finding of
36 responsibility for the violation in any civil proceeding regarding said violation and shall be admissible

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