

CHAPTER 665 OF THE ACTS OF 1956

(As amended through November 30, 2001)

AN ACT AUTHORIZING THE CITY OF BOSTON
TO LIMIT BUILDINGS ACCORDING TO THEIR USE
OR CONSTRUCTION TO SPECIFIED DISTRICTS

SECTION 1 (as amended by St. 1958, c. 77, s. 1, St. 1989, c. 137, s. 2, and St. 1994, c. 461, s. 2). There shall be in the city planning department of the city of Boston, or in such other department of said city as the city council of said city with the approval of the mayor of said city shall from time to time determine, a board, known as the zoning commission, consisting of eleven zoning commissioners appointed by the mayor, subject to confirmation by the city council, as follows: one commissioner from two candidates nominated by the Greater Boston Labor Council AFL-CIO; one commissioner from two candidates nominated by the Greater Boston Real Estate Board; one commissioner from two candidates nominated one by the Boston Society of Architects and one by the Boston Society of Landscape Architects; one commissioner from two candidates nominated by the Greater Boston Chamber of Commerce; one commissioner from two candidates nominated by the Building Trades Employers' Association and two candidates nominated by The Contractor's Association of Boston, Inc.; three commissioners selected at large by the mayor, of whom one shall own alone or with one or more other persons, and shall occupy in whole or in part as her or his place of residence, a dwelling house having not more than three dwelling units, and one of whom has operational control of a retail store or manufacturing company with between five and fifty employees; and three commissioners selected by the mayor, each of whom has served for at least one year (1) as an officer or member of the board of directors or similar governing body of a residential neighborhood organization which (a) is a non-profit organization consisting primarily of residents of a specific neighborhood; (b) has at least twenty-five members; (c) allows any resident of the neighborhood to join as a member; (d) has as a principal purpose the preservation of the quality of residential life in the neighborhood; and (e) has been in existence for at least two years; or (2) as a member of a residential neighborhood organization which (a) has been established by the mayor; (b) consists primarily of residents of a specific neighborhood; and (c) has as a principal purpose the preservation of the quality of residential life in the neighborhood; provided, however, that any person appointed from a residential neighborhood organization under this section is a resident of the neighborhood represented by the residential neighborhood organization in which he or she has served. The three commissioners from residential neighborhood organizations shall reside at the time of their respective appointments in different city council districts. All zoning commissioners shall be residents of the city of Boston.

Appointments of zoning commissioners shall be for terms of three years.* Any vacancy in the office of a zoning commissioner shall be filled for the unexpired term in the same manner in which the original appointment to such term was made. Any zoning commissioner absent from more than one-third of the public hearings of the commission held within a twelve-month period during her or his term may be removed from the commission by the mayor at his discretion by notice to the city council; provided, however, that there were at least three public hearings of the commission during the twelve-month period. Any zoning commissioner so removed shall not be reappointed to the commission. Any vacancy caused by the removal of a zoning commissioner for absence shall be filled for the unexpired term in the same manner in which the original appointment to such term was made.

[*For Zoning Commissioners appointed pursuant to St. 1994, c. 461, see St. 1994, c. 461, ss. 7 and 8.]

The zoning commission shall elect one of its members as chairperson and another as vice chairperson. The zoning commission shall also elect a secretary, who need not be a member of the commission. Each zoning commissioner shall receive for every day or part thereof of actual service one hundred and fifty dollars or such other sum as may from time to time be fixed by the city council with the approval of the mayor; but no zoning commissioner shall so receive in any one year more than two thousand two hundred and fifty dollars or such other sum as may from time to time be fixed by the city council with the approval of the mayor.

The zoning commission shall cause to be made a detailed record of all its proceedings, which record shall include the vote of each member participating in its decisions, and the absence of a member or his failure to vote.

The zoning commission shall not be subject to the supervision or control of the officer or board in charge of such department of the city as the commission shall from time to time be in; but unless otherwise ordered by the mayor, the zoning commission shall not make any annual or other report except through such officer or board, and shall not communicate with the mayor except through such officer or the chairman of such board.

Zoning commission members, and members of the Boston civic design commission shall not be deemed in violation of paragraph (a) of section seventeen of chapter two hundred and sixty-eight A of the General Laws for receiving compensation regarding a particular matter which is pending before their respective commissions, or which is, or within one year has been, under their official responsibility provided that (1) the commission member does not participate either directly or indirectly in the commission's review or decision on the particular matter; and (2) as soon as the commission member becomes

aware of the conflict, such member files with the city clerk a statement making full disclosure of the member's interest and interests of the member's immediate family in the particular matter under review. Nothing contained herein shall be construed to exempt members from paragraph (c) of said section seventeen of said chapter two hundred and sixty-eight A.

SECTION 2. For the purpose of promoting the health, safety, convenience, morals or welfare of its inhabitants, the City of Boston may, by a zoning regulation adopted by its zoning commission, regulate and restrict the height, number of stories, and size of buildings and structures, the size and width of lots, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, agriculture, residence or other purposes; *provided, that use of land for a municipal purpose shall not be permitted in any district in which dwellings are permitted except that where, at the time of the adoption of a zoning regulation or amendment permitting dwellings in a district, a particular parcel of land in such district is used for a particular municipal purpose, use of such land for such purpose may be allowed to continue, and except, further, that use of a particular parcel of land for a municipal purpose in a district where dwellings are permitted may be allowed by special order of the zoning commission adopted after like report, notice and hearing, and in like manner and with like approval as a zoning regulation or amendment if notice of the hearing thereon is also sent by mail, postage prepaid, to the owners of all abutting property and also to the owners of such other property as may be deemed by the zoning commission to be especially affected by such order, as they appear on the then most recent local tax list.

[*Proviso annulled in part by St. 1966, c. 642, s. 4, par. (E).]

For any or all of such purposes a zoning regulation may divide the city into districts of such number, shape and area as may be deemed best suited to carry out the purposes of this act, and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration or use of buildings and structures, or use of land, and may prohibit noxious trades within the city or any specified part thereof. The regulations and restrictions shall be uniform for each class or kind of buildings, structures or land, and for each class or kind of use, throughout the district, but the regulations and restrictions in one district may differ from those in other districts. Due regard shall be paid to the characteristics of the different parts of the city; and the regulations and restrictions shall be the same for zones, districts or streets having substantially the same character.

A zoning regulation shall be designed among other purposes to lessen congestion in the streets; to conserve health; to secure safety from fire, panic and other dangers; to provide adequate light and air; to prevent overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public

requirements; to conserve the value of land and buildings; to encourage the most appropriate use of land throughout the city; and to preserve and increase its amenities.

SECTION 3 (as amended by St. 1958, c. 77, s. 2, and St. 1966, c. 193, s. 1 and St. 1994, c. 461, s. 2). A zoning regulation may be adopted and from time to time be amended by alteration, addition or repeal, but only in the manner hereinafter provided. No zoning regulation originally establishing the boundaries of a district or the regulations and restrictions to be enforced therein, and no such regulation amending the same as aforesaid, shall be adopted until the Boston Redevelopment Authority shall have submitted a report with recommendations concerning such regulation or amendment or allowed twenty days to elapse after receipt from the zoning commission of a request for such a report without making such a report, nor until after the zoning commission shall have given notice and held public hearing with respect to such regulation or amendment. Such notice shall be published at least twenty days prior to such hearing in one or more newspapers of general circulation in the city of Boston and, where the regulation or amendment affects a specific zoning district, in a newspaper of circulation in the neighborhood in which the zoning district is located. Such notice shall (a) refer to this act, (b) give the time and place of the public hearing, and (c) either state the express terms of the proposed regulation or amendment, or state the general subject thereof and the times when and the place where a copy of the express terms thereof may be obtained. Such notice shall also be sent by mail, postage prepaid, at least twenty days prior to the hearing, to any person filing written request for notice of hearings, such request to be renewed yearly in December. Such public hearing shall be attended by not less than six members of the zoning commission; and if less than six members are present at any public hearing, the members actually present may adjourn the same by proclamation to such time and place as they deem advisable, and further notice thereof shall not be necessary. After such notice and hearing the zoning commission, by the concurrent vote of not less than seven of its members, may adopt or reject the proposed regulation or amendment, or may adopt a regulation or amendment in substantial accord with the proposed regulation or amendment. Votes of the zoning commission adopting a zoning regulation or amendment thereof shall be subject to the same provisions of law in respect to approval by the mayor as orders or votes of the city council of the city, except that the concurrent vote of not less than nine members of the zoning commission shall be necessary to pass such a regulation or amendment over the veto of the mayor.

Any resident of the city of Boston or any owner of property therein may petition the zoning commission to adopt an amendment of a zoning regulation, but shall not be entitled to have her or his proposed amendment considered by the commission unless he or she pays the city such reasonable sum, if any, as may from time to time be established by zoning regulation as the estimated average cost to the city of giving notice of a hearing on a proposed amendment of a zoning regulation in accordance with the provisions of this section.

SECTION 4. A zoning regulation or any amendment thereof shall apply to any change in the use of building or structure or of land, and to any alteration of a building or structure when the same would amount to reconstruction, extension or structural change, and to any alteration of a building or structure to provide for its use for a purpose or in a manner substantially different from the use to which it was put before alteration, or for its use for the same purpose to a substantially greater extent; but no zoning regulation nor any amendment thereof shall apply to existing buildings or structures, nor to the existing use of any building or structure, or of land to the extent to which it is used at the time of the adoption of such regulation or amendment, except that any such regulation or amendment may regulate non-use of a nonconforming use so as not to unduly prolong the life thereof.

SECTION 5. No zoning regulation or amendment thereof shall affect any permit issued or any building or structure lawfully begun before notice of hearing before the zoning commission has first been given; provided, that construction work under such a permit is commenced within six months after its issue, and the work, whether under such permit or otherwise lawfully begun, proceeds in good faith continuously to completion so far as is reasonably practicable under the circumstances. The issuance of a permit or the beginning of work upon a building or structure, or a change of use, after such notice has been given, shall not justify the violation of a zoning regulation or an amendment thereof subsequently adopted as the outcome of such hearing and in substantial accord with such notice; provided, the subsequent steps required for the adoption of such regulation or amendment thereof are taken in their usual sequence without unnecessary or unreasonable delay.

SECTION 6. A building, structure or land used or to be used by a public service corporation may be exempted from the operation of a zoning regulation or amendment if, upon petition of the corporation, the state department of public utilities shall, after public notice and hearing, decide that the present or proposed situation of the building, structure or land in question is reasonably necessary for the convenience or welfare of the public.

SECTION 7. The building commissioner of the city shall withhold a permit for the construction or alteration of any building or structure if the building or structure as constructed or altered would be in violation of any zoning regulation or amendment thereof; and state and municipal officers shall refuse any permit or license for a new use of a building, structure or land which use would be in violation of any zoning regulation or amendment thereof.

SECTION 8 (as amended by St. 1966, c. 193, s. 2; St. 1972, c. 802, s. 66; St. 1973, c. 296, s. 4; and St. 1994, c. 461, s. 2). There is hereby established in the city of Boston a board to be called the board of appeal, and to consist of seven members and seven alternate members appointed by the mayor and

confirmed by the city council in the following manner: one member and one alternate member from four candidates nominated by the greater Boston real estate board; one member and one alternate member from four candidates nominated by the Boston Society of Architects; one member and one alternate member from eight candidates, two nominated by the Master Builders Association, two by the Building Trades Employers' Association, two by the Associated General Contractors of Massachusetts, and two by The Contractor's Association of Boston, Inc.; one member and one alternate member from four candidates nominated by the Building Trades Council of Greater Boston; one member and one alternate member selected at large by the mayor; and two members and two alternate members selected by the mayor each of whom has served for at least one year (1) as an officer or member of the board of directors or similar governing body of a residential neighborhood organization which (a) is a non-profit organization consisting primarily of residents of a specific neighborhood; (b) has at least twenty-five members; (c) allows any resident of the neighborhood to join as a member; (d) has as a principal purpose the preservation of the quality of residential life in the neighborhood; and (e) has been in existence for at least two years; or (2) as a member of a residential neighborhood organization which (a) has been established by the mayor; (b) consists primarily of residents of a specific neighborhood; and (c) has as a principal purpose the preservation of the quality of residential life in the neighborhood; provided that any person appointed from a residential neighborhood organization under this section is a resident of the neighborhood represented by the residential neighborhood organization in which she or he has served. The two members from residential neighborhood organizations shall reside at the time of their respective appointments in different city council districts. The two alternate members from residential neighborhood organizations shall reside at the time of their respective appointments in different city council districts.

All members and all alternate members of said board shall be residents of the city of Boston. Appointments of members and alternate members of said board shall be for terms of three years. Any vacancy in the office of a member or alternate member shall be filled for the unexpired term in the same manner in which the original appointment to such term was made.

Each member and each alternate member of said board shall be subject to the provisions of chapter two hundred and sixty-eight A of the General Laws. In addition, notwithstanding the provisions of any general or special law to the contrary, no member or alternate member shall participate in hearing or deciding (a) any appeal involving property in which he has held an ownership interest, or received compensation for services rendered, within two years of the date the appeal was filed with the board; and (b) any appeal involving property in the same geographic zoning district and seeking relief from the same provisions of the zoning regulations as any other appeal pending before the board in which the member or alternate member has a financial or legal interest. A violation of the

provisions of the preceding sentence shall be punishable in the same manner as a violation of the provisions of section nineteen of said chapter two hundred and sixty-eight A and shall be subject to the provisions of section twenty-one of said chapter two hundred and sixty-eight A.

Upon the absence or disqualification from the hearing of any appeal of a member appointed upon nomination or at large under this section, the alternate member appointed in the same manner as such member shall substitute for such member; provided, however, that upon the absence or disqualification from such hearing of such alternate member, the chairperson shall designate one of the remaining alternate members to substitute for such member.

Upon the absence or disqualification from the hearing of any appeal of a member appointed from a residential neighborhood organization under this section, the alternate member appointed from a residential neighborhood organization whose term is concurrent with such member shall substitute for such member; provided, however, that upon the absence or disqualification from such hearing of such alternate member, the other alternate member appointed from a residential neighborhood organization shall substitute for such member; and provided, further, that upon the absence or disqualification from such hearing of such other alternate member, the chairperson shall designate one of the remaining alternate members to substitute for such member.

Each member and each alternate member of the board of appeal shall receive for every day or part thereof of actual service two hundred dollars or such sum as may from time to time be fixed by the city council with the approval of the mayor; but no member or alternate member shall so receive in any one year more than twenty-four thousand dollars or such other sum as may from time to time be fixed by the city council with the approval of the mayor. The board shall establish rules and regulations for its own procedures not inconsistent with this act.

Any board or officer of the city or any person aggrieved by reason of being refused a permit by any administrative official under the provisions of the state building code or by reason of any order or decision of the building commissioner or other administrative official in violation of any provision of the state building code or any zoning regulation or amendment thereof adopted under the state building code may appeal to said board of appeal within forty-five days after such refusal, order or decision by paying to the building commissioner a fee of twenty-five dollars* or such other sum as the city council with the approval of the mayor may from time to time prescribe, and by filing with the board or officer from whose refusal, order or decision the appeal is taken a notice of appeal specifying the grounds thereof. Such board or officer shall forthwith transmit to said board of appeal such notice of appeal and all documents and papers constituting the record of the case in which the appeal is taken. (Effective Jan. 1, 1975)

[* See Appendix #1 of the Zoning Code for fees charged by the Building Commissioner for appeals to the Board of Appeal.]

Said board of appeal shall fix a reasonable time for the hearing of any appeal and give at least twenty days public notice thereof in a newspaper of general circulation in the city. Said board of appeal shall also send notice, by mail, postage prepaid, at least twenty days prior to the hearing, to the appellant and to the owners of all property deemed by said board of appeal to be affected thereby, as they appear on the then most recent local tax list, and to any person filing written request for notice of hearings, such request to be renewed yearly in December, and to the Boston Redevelopment Authority. The board shall schedule the hearing in the evening, if the board receives from the mayor or any city councillor and from fifty residents of the neighborhood in which the project is located, prior to the submission of the notice for publication and the mailing of the notice, a written request that the hearing be scheduled in the evening. The notice sent by mail shall identify the specific variance, exception, or other zoning relief which the appellant is seeking. At the hearing any party whether or not entitled to notice thereof may appear in person or by agent or attorney. The board of appeal may in its discretion administer oaths to all persons testifying at said hearing. No such hearing shall be held any day on which a state or municipal election, preliminary election or primary is held in said city.

In acting upon such appeal, said board of appeal may, in conformity with the provisions of this act, reverse or affirm in whole or in part, or may modify, any order or decision, and may make such order or decision as ought to be made, and to that end shall have all the powers of the board or officers from who the appeal is taken and may direct the issue of a permit. The board may in its discretion continue the hearing in order that the appellant may meet with any residential neighborhood organization specified by the board to discuss the appeal, and the board may in its discretion deny the appeal without prejudice in the event the appellant fails to do so. The concurring vote of five members of said board of appeal shall be necessary to reverse any order or decision of any administrative official under this act, or to decide in favor of the appellant on any matter upon which it is required to pass under any zoning regulation or amendment thereof, or to grant any variance in, or exception to, the application of any such regulation or amendment.

Said board of appeal shall cause to be made a detailed record of all its proceedings, which record shall set forth: the reasons for its decision; the vote of each member participating therein; the absence of a member or her or his failure to vote; and any conditions or provisos to which the granting of any variance or exception was made subject by vote of said board of appeal at the hearing. Such record shall be filed in the office of the building commissioner of the city within ninety days of the hearing and shall be open to public inspection; provided, however, that the board may for good cause extend the time for such filing.

Notice of such decision shall be mailed forthwith to each party in interest as aforesaid, to the Boston Redevelopment Authority, to every person receiving notice of the hearing, and to every person present at the hearing who requests that notice be sent to her or him and states the address to which such notice is to be sent.

SECTION 9. Upon an appeal from the refusal of the building commissioner or other administrative official to issue a permit under this act or under a zoning regulation as adopted and amended under this act, said board of appeal may authorize with respect to a particular parcel of land or to an existing building thereon a variance from the terms of such zoning regulation where, owing to conditions especially affecting such parcel or such building, but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of such zoning regulation would involve substantial hardship to the appellant, and where desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of such zoning regulation, but not otherwise. In authorizing such variance, said board may impose limitations both of time and of user, and a continuation of the use permitted may be conditioned upon compliance with regulations to be made and amended from time to time thereafter.

SECTION 10. A zoning regulation or amendment thereof may provide that exceptions may be allowed to the regulations and restrictions contained therein, which shall be applicable to all of the districts of a particular class and of a character set forth in such zoning regulation or amendment. Such exceptions shall be in harmony with the general purpose and intent of the zoning regulation or amendment, and may be subject to general or specific limitations therein contained. If exceptions are so provided for, said board of appeal may, subject to appropriate conditions and safeguards, allow such an exception upon an appeal from the refusal of the building commissioner or other administrative official to issue a permit under this act or under a zoning regulation or amendment thereof adopted under this act.

SECTION 10A (as inserted by St. 1987, c. 371, s. 2). Any persons aggrieved by a decision of the zoning commission approving a zoning map amendment or a zoning regulation or amendment thereof, or by any procedural defect therein, or any municipal board or officer, may appeal such decision to the superior court in the county of Suffolk or to the land court; provided, however, that such appeal is filed in said court within thirty days after such decision became effective in accordance with the provisions of section three. Upon an appeal pursuant to this section, the court shall hear all pertinent evidence and determine the facts, and, upon the facts as so determined, annul such action if found to exceed the authority of such commission, or make such other decree as justice and equity may require. The foregoing remedy shall be exclusive; but the parties shall have all rights of appeal and exception as in other equity cases.

Costs shall not be allowed against said zoning commission unless the court finds that the commission acted with gross negligence, in bad faith or with malice; and costs shall not be allowed against the party appealing from the action of the commission unless the court finds that said party acted in bad faith or with malice in appealing to the court.

Appeals to the superior court under this section shall have precedence over all other civil actions and proceedings.

SECTION 11 (as amended by St. 1974, c. 669, s. 1 and St. 1994, c. 461, s. 2). Any person aggrieved by a decision of said board of appeal, whether or not previously a party to the proceeding, or any municipal board or officer, may appeal to the superior court department of the trial court sitting in equity for the county of Suffolk or, in the event that such decision is concerned with any building or place used, or intended or permitted for use, as a place of human habitation, to the housing court of the city of Boston; provided, however, that such appeal is filed in either of said courts within twenty days after such decision is filed with the building commissioner. The Court may in its discretion require the person or persons so appealing to file a bond with sufficient surety, for such a sum as shall be fixed by the court, to indemnify and save harmless the person or persons in whose favor the decision was rendered from damages and costs which he or they may sustain in case the decision of said board is affirmed; provided, however, that the court shall not require the filing of such bond in an amount exceeding twenty-five thousand dollars in any appeal of a decision of said board granting a variance, exception, or other zoning relief with respect to any zoning regulation or amendment thereof, if the project for which such variance, exception, or other zoning relief was granted involves the construction, renovation, rehabilitation, or change in use of less than fifty thousand square feet of space. Upon an appeal under this section, the court shall hear all pertinent evidence and determine the facts, and upon the facts as so determined, annul such decision if found to exceed the authority of such board or make such other decree as justice and equity may require. The foregoing remedy shall be exclusive; but the parties shall have all rights of appeal as in other civil actions.

Costs shall not be allowed against said board of appeal unless it shall appear to the court that the board in making the decision appealed from acted with gross negligence, in bad faith or with malice; and costs shall not be allowed against the party appealing from the decision of the board unless it shall appear to the court that said party acted in bad faith or with malice in appealing to the court.

All issues in any proceeding under this section shall have precedence over all other civil actions and proceedings.

SECTION 12 (as amended by St. 1974, c. 669, s. 2 and St. 1994, c. 461, s. 2). The superior court department of the trial court or, in the event that the premises involved are used or intended or permitted for use as a place of human habitation, the housing court of the city of Boston sitting as aforesaid, shall have jurisdiction to enforce the provisions of this act, the provisions of the state building code, any zoning regulation or amendment adopted under this act, and any decision of the board of appeal under any zoning regulation or amendment adopted under this act, including any condition or proviso in such decision, and may restrain by injunction violation thereof.

SECTION 13. Chapter four hundred and eighty-eight of the acts of nineteen hundred and twenty-four, as amended, is hereby repealed.

SECTION 14 (as amended by St. 1957, c. 408, and St. 1964, c. 244). Sections one to twelve, inclusive, of this act shall take effect upon the acceptance of this act prior to June first, nineteen hundred and fifty-eight, by vote of the city council of the city of Boston, subject to the provisions of its charter, but not otherwise. Section thirteen of this act shall take effect at the same time as the zoning regulation originally dividing the city of Boston into districts under this act and establishing the regulations and restrictions to be enforced in said districts takes effect, provided, that the zoning regulation originally dividing the city of Boston into districts under this act and establishing the regulations and restrictions to be enforced in said district shall, after its adoption, be reported by the zoning commission to the general court by filing the same with the clerk of the senate and shall not take effect until December thirty-first, nineteen hundred and sixty-four.

SECTION 15 (as added by St. 1987, c. 371, s. 3). When used in sections fifteen through twenty, inclusive, terms, not otherwise defined, shall be defined in accordance with the definitions contained in the city of Boston zoning code in effect on the date of enactment hereof, unless the context requires otherwise and the following terms shall, unless the context requires otherwise, have the following meanings: --

"Affordable housing", a unit or units of housing, whether rental, condominium or cooperative, or a single or multi-family owner occupied home exclusively, for low and moderate income residents (i) for which the occupancy cost to the residents thereof does not exceed such percentage of the income of the occupant household as may be established from time to time for low and moderate income residents in the Boston area by the United States department of housing and urban development, as the maximum total tenant payment pursuant to section eight of the United States housing act of nineteen hundred and thirty-seven, as amended by the housing and community development act of nineteen hundred and seventy-four and as further amended from time to time, and regulations promulgated pursuant thereto, or (ii), as otherwise defined by the zoning commission through its adoption of the definition of any state or federal

agency, authority, department or similar instrumentality providing financial assistance to reduce the occupancy cost of housing to low and moderate income residents.

"Affordable housing exaction", a contribution towards the creation of affordable housing by a developer whether in kind, or by the payment of a sum of money in lieu thereof by said developer to the neighborhood housing trust; or a combination of such creation and monetary payment; all made in accordance with regulations promulgated by the Boston zoning commission.

"Combined index", an index which measures the increase in price levels by combining in equal proportions the consumer price index for all urban consumers or "CPI-U" with a 1967 index of 100 and the housing component of said CPI-U for the Boston metropolitan area, as these indices are published from time to time by the bureau of labor statistics, United States department of labor.

"CPI-W", an index now known as the consumer price index for urban wage earners and clerical workers, all items, for the Boston metropolitan area with a 1967 index of 100 as published from time to time by the bureau of labor statistics, United States department of labor.

"Developer", the person or entity seeking to create one or more new large-scale commercial real estate developments in the city of Boston.

"Employment exaction", a contribution by a developer towards the creation of a job training program or programs whether by the creation of such program or the payment of a sum of money in lieu thereof by said developer to the neighborhood jobs trust; or a combination of such creation and monetary payment; all made in accordance with regulations promulgated by the Boston zoning commission.

"Job training programs", programs designed to enhance the ability of the participants to be qualified to successfully compete for employment opportunities including, without limitation, job training, adult literacy training, employment counseling and associated support services.

"Low and moderate income resident", a resident, or group of residents all of whom occupy the same dwelling unit as their principal residence, whose total income (i) is no greater than the percent of the median income for the Boston area set forth in or determined based upon regulations and definitions promulgated from time to time by the United States department of housing and urban development pursuant to section eight of the housing act of nineteen hundred and thirty-seven, as amended by the housing and community development act of nineteen hundred and seventy-four and as further amended from time to time, for lower income families or very low income families as defined in such regulations, or any combination thereof as determined by the

zoning commission or (ii) is otherwise defined by the Boston zoning commission through its adoption of the definition of any state or federal agency, authority, department or similar instrumentality providing financing, subsidy or other financial assistance to reduce the occupancy cost of housing to low and moderate income residents.

"Neighborhood housing trust", a Massachusetts public charitable trust created under the authority of this act and the laws of the commonwealth and administered by the collector-treasurer of the city as managing trustee pursuant to chapter seven of the ordinance of the city of Boston of nineteen hundred and eighty-six and pursuant to a declaration of trust dated November nineteenth, nineteen hundred and eighty-five.

"Neighborhood jobs trust", a Massachusetts public charitable trust created under the authority of this act and the laws of the commonwealth and administered by the collector-treasurer of the city as managing trustee.

"New large-scale commercial real estate development", any development in the city of Boston in which development it is proposed to erect a building or structure having a gross floor area, exclusive in both cases of all accessory parking garage space, in excess of one hundred thousand square feet, or to enlarge or extend a building or structure so as to increase its gross floor area, exclusive of all accessory parking garage space in both cases, to more than one hundred thousand square feet or to substantially rehabilitate a building or structure or portion thereof having, or to have, after rehabilitation, a gross floor area, exclusive of all accessory parking garage space in both cases, of more than one hundred thousand square feet which square footage is intended for one or more of the following "exaction" uses: (1) office, (2) retail business or service, (3) institutional or educational, (4) hotel or motel, but not including an apartment hotel or lodging house.

"Substantially rehabilitated", to cause alterations or repairs to be made to a building or structure, constituting the new large-scale commercial real estate development, within any period of twelve months, costing in excess of fifty per cent of the assessed value of the building or structure as it appears on the assessment rolls of the city as of the first day of January preceding the date of application for the zoning relief to authorize such alterations or repairs, including, without limitation, conditional use permits, exceptions, zoning map or text amendments or variances, or the date of application for the building permit for such alterations or repairs, whichever is earlier.

SECTION 16 (as added by St. 1987, c. 371, s. 3 and amended by St. 2001, c. 170, s. 2). Notwithstanding the provisions of any general or special law or rule to the contrary, in the city of Boston the zoning commission is hereby authorized to adopt zoning regulations or amendments thereto for the purpose of mitigating the effects of any new large-scale commercial real estate development on the

health and welfare of low and moderate income residents of Boston due to the unavailability of affordable housing in the city of Boston. Such regulations shall provide that, with respect to a new large-scale commercial real estate development, any relief granted under the provisions of the zoning code, existing or as amended, including without limitation the granting of a conditional use permit, exception, zoning map or text amendment or variance, shall be conditioned upon action, or promised action, by the developer seeking to obtain such relief to contribute an affordable housing exaction, to mitigate the effects which the new large-scale commercial real estate development project may have upon the availability of affordable housing within the city, which action shall be, the contribution towards the creation of affordable housing as determined by the zoning commission pursuant to duly adopted regulation. Affordable housing may be a portion of a housing development which includes residents of mixed income levels. The regulations shall provide that the zoning relief necessary to build the new large-scale commercial real estate developments is distinct from any other relief granted under the provisions of the zoning code.

If the developer chooses to contribute towards the creation of housing in kind, in lieu of making the affordable housing exaction money payments provided for in this section, such affordable housing contribution shall be created in accordance with regulations adopted by the zoning commission which is hereby authorized to delegate to the Boston redevelopment authority hereinafter referred to as BRA, the authority to adopt such housing creation regulations. Such regulations may authorize such contribution by the actual creation of affordable housing, or by the economic participation in such creation, including without limitation, the making of loans, contribution of capital to partnerships, limited partnerships, or joint ventures, or the assignment of the developers' contractual obligations to make the money payments provided for in this section. The economic benefit, if any, of the right to any repayment of such economic participation shall be redirected by the developer, pursuant to the provisions of the housing creation regulations, or, in the absence of such redirection, to the neighborhood housing trust.

The zoning commission shall determine by regulation that the value of the affordable housing exaction shall be measured on the basis of dollars per square foot devoted to exaction uses in excess of one hundred thousand square feet of gross floor area devoted to exaction uses, exclusive in both cases of all accessory parking garage space, in the new large-scale commercial real estate development project. The developer of any new large-scale commercial real estate development project, in lieu of contributing towards the creation of affordable housing referred to in the preceding paragraph, may make a payment or payments of an amount of money equal to the measured value of the affordable housing exaction to the neighborhood housing trust authorized by section twenty over a payment period to be established by regulation of the zoning commission, for the purpose of mitigating the impact of new large-scale commercial real estate developments.

Such regulations shall provide that the measured value of the affordable housing exaction shall be determined on the basis of a fixed dollar amount per square foot of gross floor area devoted to exaction uses in excess of one hundred thousand square feet of gross floor area devoted to exaction uses, exclusive in both cases of all accessory parking garage space, of the new large-scale commercial real estate development, as determined by the zoning commission upon written recommendations of the BRA, which recommendations shall include an analysis of the following: (1) economic trends, such as real estate development activity, commercial rents per square foot, employment growth and inflation rates; (2) housing trends measured in terms of vacancy rates for affordable housing available to low and moderate income residents, and production statistics for new dwelling units; and (3) any other such information which the BRA deems appropriate for consideration; provided, however, that the zoning commission shall be authorized to decrease the measured value of the above affordable housing exaction at any time upon consideration of the factors above; provided further, that the zoning commission shall not be authorized to set the measured value of the above affordable housing exaction at more than five dollars per square foot of gross floor area devoted to exaction uses in excess of one hundred thousand square feet devoted to exaction uses, exclusive in both cases of all accessory parking garage space; and, provided further, that three years after the effective date of this act and no more frequently than at three year intervals thereafter, the zoning commission is authorized to increase the measured value above such five dollar maximum, but any such increase, expressed as a percentage increase of the then applicable maximum per square foot amount, shall not exceed the percent of the increase in the combined index for the prior thirty-six month period. No such increase shall apply to any new large-scale commercial real estate development for which an application for a conditional use permit, exception, zoning map or text amendment or variance has been filed with the appropriate governmental authority prior to the effective date of such increase or for which an application for a planned development area has been filed with the BRA prior to the effective date of such increase, whichever occurs first. The payment period of the affordable housing exaction shall be 7 years as set forth in the Boston zoning code, such payment period to begin on the initial payment date set forth in Article 26A of said code as of November 1, 1986, and the period shall not be altered by subsequent regulation. Any affordable housing exaction payment shall be made to the neighborhood housing trust, as created and administered pursuant to section twenty. The zoning commission is authorized to promulgate such regulations or rules as will effectuate the purposes of this section.

SECTION 16A (as added by St. 2001, c. 170, s. 4). Notwithstanding any general or special law to the contrary, the zoning commission may increase the measured value of the affordable housing exaction by the per cent of the increase in the combined index for the period commencing October 5, 1987 and ending as of the most recent anniversary of this date, notwithstanding that the

period is in excess of the 36 month period described in section 16; but the zoning commission may not set the measured value of the affordable housing exaction, for the period described above, at more than \$7.18 per square foot of gross floor area devoted to exaction uses in excess of 100,000 square feet devoted to exaction uses, exclusive in both cases of all accessory parking garage space. The increase shall not apply to any new large-scale commercial real estate development for which an application for a conditional use permit, exception, zoning map or text amendment or variance has been filed with the appropriate governmental authority before the effective date of the increase or for which an application for a planned development area has been filed with the BRA before the effective date of the increase, whichever occurs first.

SECTION 17 (as added by St. 1987, c. 371, s. 3 and amended by St. 2001, c. 170, s. 5). Notwithstanding any provisions of general or special law or rule to the contrary, in the city of Boston the zoning commission is hereby authorized to adopt zoning regulations or amendments thereto for the purpose of mitigating the effects of any new large-scale commercial real estate development on the health and welfare of low and moderate income residents of the city of Boston due to the unavailability of employment opportunities for such low and moderate income residents of Boston. Such regulations shall provide that any relief granted under the provisions of the zoning code, existing or as amended, including without limitation the granting of a conditional use permit, exception, zoning map or text amendment or variance, shall be conditioned upon action, or promised action, by the developer seeking to obtain such relief to contribute an employment exaction to mitigate the effects which the new large-scale commercial real estate development project may have upon the availability of jobs for low and moderate income residents within the city, which action shall be the contribution towards the creation of job training programs for the training of low and moderate income residents of the city as determined by the zoning commission pursuant to duly adopted regulation. The regulations shall provide that the zoning relief necessary to build new large-scale commercial real estate development is distinct from any other relief granted under the provisions of the zoning code.

The zoning commission shall determine by regulation that the value of an employment exaction shall be measured on the basis of dollars per square foot devoted to exaction uses in excess of one hundred thousand square feet of gross floor area devoted to exaction uses, exclusive in both cases of all accessory parking garage space, in the new large-scale commercial real estate development project. The developer of any new large-scale commercial real estate development project, in lieu of contributing towards the creation of the job training programs or similar activities projects referred to in the preceding paragraph, may make a payment or payments of an amount of money equal to the measured value of the employment exaction to the neighborhood jobs trust authorized by section twenty of this chapter over a payment period to be established by regulation of the zoning commission, for the purpose of mitigating the impact of the new large-scale commercial real estate development project.

Such regulations shall provide that the measured value of the employment exaction shall be determined on the basis of a fixed dollar amount per square foot of gross floor area devoted to exaction uses in excess of one hundred thousand square feet devoted to exaction uses, exclusive in both cases of all accessory parking garage space, in the new large-scale commercial real estate development, as determined by the zoning commission upon written recommendations of the BRA, which recommendations shall include an analysis of the following: (1) economic trends, such as real estate development activity, commercial rents per square foot, employment growth and inflation rates; (2) employment trends such as unemployment rates and statistics on the availability and use of job training programs; and (3) any other such information which the BRA deems appropriate for consideration; provided, however, that the zoning commission shall be authorized to decrease the measured value of the above employment exaction at any time upon consideration of the factors above; provided, further, that the zoning commission shall not be authorized to set the value of the above employment exaction at more than one dollar per square foot of gross floor area devoted to exaction uses, exclusive in both cases of all accessory parking garage space, in excess of one hundred thousand square feet devoted to exaction uses; and, provided further, that three years after the effective date of this act and no more frequently than at three year intervals thereafter, the zoning commission is authorized to increase the measured value above such one dollar maximum, but any such increase, expressed as a percentage of the then applicable maximum per square foot amount, shall not exceed the percent of increase of CPI-W for the prior thirty-six month period. No such increase shall apply to any new large-scale commercial real estate development for which an application for a conditional use permit, exception, zoning map or text amendment or variance has been filed with the appropriate governmental authority prior to the effective date of such increase or for which an application for a planned development area has been filed with the BRA prior to the effective date of such increase, whichever occurs first. The payment period for the employment exaction shall be the payment period for the jobs contribution grant as set forth in article 26B of the Boston zoning code as of November first, nineteen hundred and eighty-six and shall not be altered by subsequent regulation. Any employment exaction shall be paid into the neighborhood jobs trust as created pursuant to section twenty of this chapter. The zoning commission is authorized to promulgate such regulations or rules, as will effectuate the purpose of this provision.

SECTION 17A (as added by St. 2001, c. 170, s. 6 and amended by St. 2001, c. 203, s. 13). Notwithstanding any general or special law to the contrary, the zoning commission may increase the measured value of the employment exaction by the per cent of the increase in the CPI-W for the period commencing October 5, 1987 and ending as of the most recent anniversary date of this date, notwithstanding that such period is in excess of the 36 month period described in section 17; but the zoning commission may not set the measured value of the

employment exaction, for the period described above, at more than \$1.44 per square foot of gross floor area devoted to exaction uses in excess of 100,000 square feet devoted to exaction uses, exclusive in both cases of all accessory parking garage space. The increase shall not apply to any new large-scale commercial real estate development for which an application for a conditional use permit, exception, zoning map or text amendment or variance has been filed with the appropriate governmental authority before the effective date of the increase or for which an application for a planned development area has been filed with the BRA before the effective date of this increase, whichever occurs first.

SECTION 18 (as added by St. 1987, c. 371, s. 3 and amended by St. 2001, c. 170, s. 7).

- (a) The zoning commission is further authorized to promulgate zoning regulations and amendments thereto for the purpose of mitigating the effects of any new large-scale commercial real estate development in the city of Boston on the availability of affordable housing or employment opportunities for low and moderate income residents of Boston; provided, however, that such regulations may not be in force simultaneously with those authorized by sections sixteen and seventeen. Such regulations and amendments may provide that any relief granted under the provisions of the zoning code, existing or amended, including without limitation the granting of a conditional use permit, exception, zoning map or text amendment or variance, shall be conditioned upon action or promised action by the developer seeking to create such new large-scale commercial real estate development project or obtain such relief to mitigate the effects which the new large-scale commercial real estate development may have upon low and moderate income residents of the city as determined by the zoning commission pursuant to duly adopted regulations. Such regulations or amendments shall state the specific improvements or amenities to be provided as a condition required for the grant of zoning relief and the zoning relief to be granted. The regulations shall provide that the zoning relief necessary to build new large-scale commercial real estate developments is distinct from any other relief granted under the provisions of the zoning code.
- (b) Any such regulations and amendments must provide that (1) the present and future economic burden of any such improvements or amenities shall not exceed the sum of the present value of five dollars per square foot paid in equal and annual installments over a seven year period plus the present value of

one dollar per square foot paid in equal and annual installments over a two year period, each commencing on the date of the issuance of the building permit, for each square foot of gross floor area devoted to exaction uses in excess of one hundred thousand square feet devoted to exaction uses, exclusive in both cases of all accessory parking garage space, in the new large-scale commercial real estate development; provided, however, that three years after the effective date of this act and no more frequently than at three year intervals thereafter, the zoning commission is authorized to increase the maximum per square foot amount but any such increase, expressed as a percentage of the then applicable maximum per square foot amount, shall not exceed the percent increase of the combined index for the prior thirty-six month period and (2) the developer seeking to create such new large-scale commercial real estate development shall have the right to make a cash payment equal to such economic burden to a fund designated in such regulations or amendments in lieu of providing any such improvements or amenities. The incorporation herein of a limitation upon the economic burden of any such condition which may be imposed or agreed upon shall not be construed as mandating the imposition of any particular condition.

SECTION 19 (as added by St. 1987, c. 371, s. 3). Notwithstanding any provision of general or special law or rule to the contrary, (a) articles 26, 26A and 26B of the Boston zoning code; (b) all zoning code amendments, zoning map amendments, zoning variances, conditional use permits and zoning exceptions granted or enacted prior to the effective date of any zoning code amendment or zoning commission regulation pursuant to this act and in any way dependent upon, or related to, articles 26, 26A or 26B of the Boston zoning code, or any of them, which have not been appealed or challenged on the grounds of the invalidity of said articles, or any one of them, in judicial proceedings timely and properly commenced, prior to the enactment of this act or which have been so appealed or challenged in judicial proceedings which have been dismissed or otherwise adjudicated in favor of the developer prior to the enactment of this act; (c) all zoning code amendments, zoning map amendments, zoning variances, conditional use permits and zoning exceptions granted or enacted prior to the effective date of any zoning code amendment or zoning commission regulations pursuant to this act and in any way dependent upon or related to, articles 26, 26A or 26B of the Boston zoning code, or any of them, which have been appealed or challenged on the grounds of the invalidity of said articles, or any of them, in judicial proceedings timely and properly commenced prior to the enactment of this act and which have not been dismissed or otherwise adjudicated in favor of the developer prior to the enactment of this act; (d) any development impact project exactions, development impact project contributions and jobs contribution grants, as those terms are defined in said articles, and agreements for such

exactions, contributions and grants related to or dependent upon any of the zoning actions described in clause (b) and (c); and (e) any additional actions, zoning variances, conditional use permits and zoning exceptions granted pursuant to, or in connection with, any development contemplated by any zoning map amendment, zoning code amendment or agreement described in clauses (b), (c) or (d), whether or not subsequent to the date of enactment of this act, are hereby ratified, validated and confirmed, insofar as any such amendments, variances, permits, exceptions, exactions, contributions, grants, agreements, and other actions may be invalid by reason of any invalidity of said articles or any of them. Any new large-scale commercial real estate development which is the subject of any agreement ratified, validated and confirmed by this section, and any additional actions, zoning variances, conditional use permits, zoning exceptions, and zoning code and text amendments ratified, validated and confirmed by this section, shall be governed by any such agreement and by the provisions of said articles 26, 26A and 26B, or any of them, pursuant to which said agreements were made, and shall not be subject to any zoning regulations or amendments hereafter adopted by the zoning commission pursuant to this act. Notwithstanding the foregoing, no new large-scale commercial real estate development shall be subject to the terms and provisions of sections 26-3(2)(c) of article 26, section 26A-3(2)(c) of article 26A or section 26B-3(1)(c) of article 26B of the Boston zoning code.

SECTION 20 (as added by St. 1987, c. 371, s. 3). Notwithstanding any general or special law or rule to the contrary, the city of Boston is hereby authorized to establish, by ordinance, separate funds, to be known as the neighborhood housing trust and the neighborhood jobs trust. Each such fund shall be held in trust by the collector-treasurer under such terms as may heretofore or hereafter be prescribed by ordinance, subject to the approval of the mayor. Each fund shall consist of all payments heretofore or hereafter made by any developer pursuant to sections sixteen, seventeen, eighteen and nineteen other than contributions towards the creation of affordable housing as provided in section sixteen and any funds appropriated to such funds by the city for the purposes set forth in this act and in ordinances regulating such trusts for which appropriations are hereby authorized. Any payments made to such separate funds pursuant to the provisions of this act shall be impressed with the terms of the trusts established under the authority of this section and the ordinances adopted pursuant to this section, and shall be received by the collector-treasurer and deposited by him in a separate account; provided, however, that with respect to each new large-scale commercial real estate development, the total amount of all such payments to be made by a developer to such trusts shall first be accepted by the city council and approved by the mayor, which acceptance shall be deemed a final appropriation of said payments to such trusts. All payments to be made by a developer to such separate funds in respect to a particular new large-scale commercial real estate development shall thereupon and thereafter be deposited directly into such trusts and may thereafter be expended by the trustees of said trusts for the purposes authorized by this act, and for no other

purpose. All such funds received, accepted or appropriated shall at all times be impressed with the terms of the trusts as defined by this act as regulated by ordinance and shall be dedicated exclusively to the development and operation of affordable housing for low and moderate income residents of Boston or to the development of job training programs for low and moderate income residents of Boston, and for no other purpose. Any trust or fund heretofore established by the city for either of the two purposes described in this act and now existing, and any ordinance passed for the purpose of authorizing the establishment of such trusts or funds passed prior to the effective date of this act including, without limitation, chapter seven of the ordinances of the city of Boston of nineteen hundred and eighty-six and declaration of trust of neighborhood housing trust dated November nineteenth, nineteen hundred and eighty-five and any actions taken by the trustees of said neighborhood housing trust or neighborhood jobs trust prior to the effective date of this act are hereby authorized, validated and confirmed.

Any payments made by a developer of a new large-scale commercial real estate development pursuant to chapter seven of the ordinances of the city of Boston of nineteen hundred and eighty-six and the declaration of trust of the neighborhood housing trust dated November nineteenth, nineteen hundred and eighty-five before the effective date of any amendment of said chapter or declaration of trust or of any trust or fund hereafter established by the city, in either case pursuant to this act, shall be governed by said chapter of the ordinances of nineteen hundred and eighty-six and said declaration of trust of November nineteenth, nineteen hundred and eighty-five, and shall not be subject to any trust or fund amendments or any new trust or fund hereafter established.

SECTION 21 (as added by St. 2001, c. 170, s. 8). As used in this section, the following terms shall, unless the context requires otherwise, have the following meanings:-

“BRA”, the Boston redevelopment authority.

“Impact”, a significant effect on the public health, safety, convenience and welfare of the inhabitants of a section of the city of Boston.

“Impacted area”, a section of the city of Boston that is being impacted by a development project.

“Mitigation”, specific enhancements, projects, programs or financial contributions made by a developer to limit any adverse impact caused by a real estate development on an impacted area.

Notwithstanding any general or special law to the contrary, in the city of Boston the zoning commission shall adopt zoning regulations or amendments thereto for the purpose of mitigating the adverse impact of any new real estate development on the public health, safety, convenience, and welfare of its

inhabitants, including, but not limited to, the transportation network, environment, urban design components, or historic resources in the city of Boston. The regulations shall provide that, with respect to new real estate development, any approval or relief granted under the provisions of the zoning code, existing or as amended, including without limitation the granting of a conditional use permit, exception, zoning map or text amendment or variance, shall be conditioned upon action, or promised action, by the developer seeking to obtain the relief, to undertake measures, as required by the BRA, to mitigate, limit, or minimize the impact within the city.

After the developer has submitted to the BRA formal notification of a development project subject to Article 80 of the Boston zoning code, that BRA staff shall conduct a public meeting to assess the boundaries of the area impacted by the new real estate development. Nothing herein shall be interpreted to require the BRA to limit the area impacted within the city. BRA staff shall hold at least 1 public meeting in that area to discuss for the purpose determining the mitigation necessary to limit, minimize, or otherwise mitigate, any adverse impact caused by the new real estate development. The Boston zoning board of appeal or the zoning commission shall not grant zoning relief to real estate development subject to Article 80 of the Boston zoning code until the BRA has issued a written document specifying the required mitigation. The document shall be a public record. Notwithstanding any general or special law to the contrary, the BRA shall not delegate its authority to conduct the public meetings or to require the mitigation to any other person or entity.

(Note: Chapter 665 of the Acts of 1956 was accepted by order passed by the City Council on May 19, 1958, and approved by the Mayor on May 22, 1958. The Boston Zoning Code was finally adopted by the Zoning Commission of the City of Boston on March 29, 1963 and became effective on December 31, 1964.)