



**CITY OF BOSTON
ZONING BOARD OF APPEAL**

RULES AND REGULATIONS

EFFECTIVE SEPTEMBER 2, 2026

TABLE OF CONTENTS

I.	Introduction	1
II.	Composition of the Board	2
	A. Appointment of Board Members	2
	B. Term	2
	C. Authority of the Board	3
	D. Roles	3
III.	Role of Other City Agencies	4
	A. Inspectional Services Department	4
	B. Boston Planning & Development Agency	4
	C. Boston Transportation Department	5
	D. Mayor's Office of Neighborhood Services	5
IV.	Ethical Requirements for Board Members and Alternates ...	5
	A. Protections Against Conflicts of Interests	5
	B. Requirements of State Ethics Law (M.G.L. c. 268A) ...	6
	C. Requirements of the Enabling Act	8
	D. Requirements of February 24, 2020 Executive Order ...	8
	E. Training Requirements for Board Member and Staff	9
V.	Filing an Appeal for Zoning Relief	9
	A. Zoning/Building Code Refusal	9
	B. File an Appeal	9
	C. Deadline to File Appeal	10
	D. Procedure and Fees for Filing an Appeal	10
	E. Construction Drawings	11
	F. Updating Construction Drawings for Pending Appeals	11
VI.	Types of Zoning Relief	12
	A. Conditional Use	12
	B. Exception	13
	C. Variance	14

VII.	Hearings of the Board	14
	A. Public Hearings	14
	B. Time for Scheduling Hearings	15
	C. Community Process	15
	D. Notice	15
	E. Representation	16
	F. Absence of Appellant of Attorney/Agent	16
	G. Order of Business	16
	H. Voting/Quorum	17
	I. Deferrals	18
VIII.	Decisions of the Board	19
	A. Written Decision	18
	B. Provisos	20
	C. Notice of Decision	20
	D. Duration of Validity of Relief Granted	20
	E. After Board's Decision Filed with ISD	20
IX.	Appeals from Board Decisions	21
	A. Who May Appeal	21
	B. Time for Appeal	21
	C. Role of the Court	21
	D. Exclusivity of Remedy	22
X.	Special Board Functions and Procedures	22
	A. Reconsideration	22
	B. Withdrawal	22
	C. Citizen's Appeal/Interpretation	23
	D. Extension	23
	E. Board Final Arbiter	24
	F. Zoning Advisory Subcommittee	25
	G. ZBA Ambassador	26

XI.	Open Meeting Law Requirements	26
	A. Purpose	26
	B. Enforcement	26
	C. Certification	26
	D. Meetings, Deliberation and Jurisdiction	27
	E. Notice Pursuant to OML	28
	F. Recording a Public Meeting	28
	G. Public Participation in an Open Meeting	28
	H. Executive Session	29
	I. Meeting Minutes	29
XII.	Other Provisions	29
	A. Conflict of Laws	30
	B. Adoption of Rules and Regulations	30
	C. Amendment of Rules and Regulations	30
	D. Severability	30

APPENDIX

APPENDIX A; Boston Zoning Enabling Act Excerpts	31
APPENDIX B; Walsh Executive Order 2/24/20	53
APPENDIX C; City of Boston Municipal Code Excerpts	57
APPENDIX D; State Ethics Law Excerpts, G.L. c. 268A	60
APPENDIX E; City of Boston Zoning Code Excerpts	114
APPENDIX F; Massachusetts Open Meeting Law, G.L. c. 30A, §§18-25	123
APPENDIX G; ZBA-BPD Design Review Procedure	135

I. INTRODUCTION

The City of Boston Zoning Board of Appeal (the Board) is established by and operates pursuant to Chapter 665 of the Acts of 1956, as amended, entitled An Act Authorizing the City of Boston to Limit Buildings According to Their Use or Construction to Specified Districts, otherwise known as the “Enabling Act.” Section 8 of the Enabling Act establishes and authorizes the Board to review, deliberate, make findings, and to grant or deny appeals for zoning relief and to promulgate rules and regulations for its own procedures.¹ See Appendix A. The Board has adopted these Rules and Regulations pursuant to Section 8 of the Enabling Act and in accordance with An Executive Order Relative to the Zoning Board of Appeal issued by Mayor Martin J. Walsh on February 24, 2020. See Appendix B. A copy of the Rules and Regulations, and any amendments hereto, shall be filed with the City Clerk.

The Board of Appeal is an independent public body composed of Board Members with backgrounds in differing areas of expertise. Board Members are appointed by the Mayor, confirmed by the City Council, and serve the City of Boston as special municipal employees. Administrative staff and the Corporation Counsel for the City of Boston supports the Board.

The Rules and Regulations of the Board are intended to serve as a guide for the actions of the Board with respect to zoning appeals to ensure that all appeals are treated fairly, uniformly, and consistently. The Rules and Regulations are also designed to be a reference source for interested citizens with questions about zoning appeals and to ensure transparency in the appeals process.

The Rules and Regulations will also facilitate the orderly conduct of business by the Board, provide for the most efficient use of Board and staff time, and facilitate the decision making processes of the Board by specifying standard procedures to be used in its business affairs with the public.

The Rules and Regulations set forth the filing requirements and procedures for all matters before the Board and may serve as instructions for the public on how to file appeals. The Rules and Regulations, in conjunction with the Board’s mandatory filing forms, and the Enabling Act should be carefully reviewed prior to any filing with the Board to ensure compliance with all requirements.

The Rules and Regulations of the Board and other relevant Board materials are available to the public online at <https://www.boston.gov/departments/inspectional-services/zoning-board-appeal>.

The Board may amend these Rules and Regulations as the Board deems necessary.

¹See also City of Boston Code, c. 9, § 4. See Appendix C. To the extent City of Boston Code, c. 9, § 4 conflicts with Chapter 665 of the Acts of 1956, § 8, as amended, Chapter 665 of the Acts of 1956, § 8, as amended shall control; See 2020 Mass. Acts 365, § 5 for the Board’s authority to promulgate its own rules and regulations.

II. COMPOSITION OF THE BOARD

A. APPOINTMENT OF BOARD MEMBERS

The Board consists of seven (7) members and seven (7) alternate members. The Mayor appoints and the City Council confirms all Board members and alternates. All Board members and alternates must be residents of the City of Boston. Chapter 665 of the Acts of 1956, § 8, as amended. See Appendix A.

The Enabling Act requires that the Board members and alternates include individuals nominated by the following groups:

- 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 non-profit residential neighborhood organization that has at least twenty-five members, has been in existence for at least two years, allows any resident of the neighborhood to join, and has a principal purpose of preserving the quality of residential life for the neighborhood; or (2) as a member of a residential neighborhood organization that has been established by the Mayor, consists primarily of residents of a specific neighborhood, and has a primary purpose of preserving the quality of residential life for the neighborhood. Members and alternates from residential neighborhood organizations must each reside in a different city council district at the time of their appointment. Chapter 665 of the Acts of 1956, § 8, as amended. See Appendix A.

B. TERM

Appointment shall be for a term of three (3) years. Any vacancy in the office of a Board member or alternate shall be filled for the unexpired term in the same manner in which the original appointment to such term was made. Chapter 665 of the Acts of 1956, § 8, as amended. See Appendix A.

A Board member or alternate whose appointment term has expired may continue to serve on the Board, in the same capacity, as a “holdover” member. A “holdover” is one “who, having

served the term, or initial term, provided by such statute or ordinance, is continuing to serve in the office or position to which appointed, at the pleasure of the Mayor, or is continuing to serve in the office or position to which appointed pending reappointment, or pending appointment and qualification of a successor.” City of Boston Code, § 5-5.11. See Appendix C.

C. AUTHORITY OF THE BOARD

The Enabling Act gives the Board the authority to reverse or affirm, in whole or in part, any order or decision of the Commissioner of the Inspectional Services Department during a Zoning Board of Appeal hearing. Chapter 665 of the Acts of 1956, § 8, as amended. See Appendix A. The Board also operates under the inherent authority of a statutorily authorized municipal administrative board. See generally Aronson v. Brookline Rent Control Bd., 19 Mass. App. Ct. 700, 703 (1985) and related case law.

D. ROLES²

1. CHAIR

The Board members elect one member to serve as Chair and one member to serve as Deputy Chair by majority vote on an annual basis. The Chair presides over all Board hearings and subject to these rules, the Chair decides all points of order, unless overruled by a majority vote of the other Board members. When the Chair is unavailable, the Deputy Chair serves with the same authority as the Chair. If the Deputy Chair is unable to serve, the Chair or Deputy Chair will designate an Acting Chair for that hearing. The Chair, Deputy Chair, and Acting Chair shall also have all powers and responsibilities identified in other sections of these Rules and Regulations, but not specifically referenced in this subsection.

2. SECRETARY

The Board members elect one member to serve as Secretary and one member to serve as Deputy Secretary by majority vote on an annual basis. When the Secretary is unavailable, the Deputy Secretary serves with the same authority as the Secretary. The Secretary manages the files for each matter presented to the Board during a hearing and calls each matter into the record. In the event the Secretary or Deputy Secretary is not available to attend a hearing or participate in a matter, the Chair or Deputy Chair designates a member as Acting Secretary for that hearing.

3. ARCHITECT

The Architect and alternate Architect, who are subject to certain qualifications under the Enabling Act, review the plans submitted with a proposed project in advance of the appeal hearing to ensure the plans are current, accurate, and technically sufficient. At the hearing, the Architect may field questions from other Board members about the proposed plans and may also pose technical questions about the plans to the project proponent. If the Board votes to approve a

² Pursuant to City of Boston Municipal Code, Chapter 5, Section 5-5.15, the Board shall organize by May of each year by electing one of its members as Chair and one of its members as Secretary.

project, the Architect stamps the plans indicating that they have been reviewed and approved by the Board. The Architect's approval of the plans includes any provisos upon which the grant of relief is conditioned. In the event that the Architect and Alternate Architect are both unavailable to attend a hearing or to participate on a specific project, ZBA staff may designate a member as Acting Architect for that hearing.

III. ROLE OF OTHER CITY AGENCIES

A number of other City agencies play a role in the building permit application and appeal processes. A determination by one of these agencies may impact a zoning appeal before the Board. These agencies are listed below with a brief description of their primary functions. In certain instances when it deems appropriate, the Board may solicit the technical expertise of other City departments.

A. INSPECTIONAL SERVICES DEPARTMENT

The City's Inspectional Services Department (ISD) administers and enforces building, housing, health, sanitation, and safety regulations mandated by the City of Boston and the Commonwealth of Massachusetts. ISD's mission is to serve the public by protecting the health, safety, and environmental stability of Boston's commercial and residential communities. ISD is composed of five regulatory divisions which aim to protect and improve the quality of life for all Boston residents. With respect to the Board's proceedings, the ISD Plans and Zoning Division reviews building permit applications for zoning code and building code compliance. If ISD refuses a permit application due to a zoning code or building code violation, the permit applicant may appeal to the Board for relief. Visit the ISD's webpage at <https://www.boston.gov/departments/inspectional-services> for an overview of the Department's five regulatory divisions.

B. BOSTON PLANNING DEPARTMENT

The City of Boston Planning Department (BPD) is the planning and economic development agency for the City of Boston. The BPD plans and guides inclusive growth in Boston -creating opportunities for everyone to live, work and connect. The BPD plans the future of neighborhoods, identifies height and density limits, charts the course for sustainable development and resilient building construction, responds to the City's changing population, produces insightful research on our City, and ensures that Boston retains its distinctive character. The BPD reviews large development projects and uses tools such as Article 80 Project Review, Institutional Master Plans (IMPs), and Planned Development Areas (PDAs) to determine shape, density, and use guidelines. Visit the BPD's website at <http://www.bostonplans.org/>.

The BPD is also the primary agency tasked with creating and updating the Boston Zoning Code by petitioning the Zoning Commission. Although anyone may petition the Zoning Commission to adopt a change to the zoning code, the BPD typically petitions the Zoning Commission to adopt changes after a public dialogue and planning process. After the BPD Board authorizes a petition, BPD sends public notice of a Zoning Commission hearing online, in the

Boston Herald, and other local newspapers at least 20 days prior to the hearing. Visit the Zoning Commission's website at <http://www.bostonplans.org/zoning/zoning-commission>.

Pursuant to the Enabling Act and Zoning Code, the BPD receives notice of all appeals for zoning relief. The Zoning Code requires the BPD to provide recommendations to the Board on all requests for conditional use permits and some requests for variances. The Code also authorizes the BPD to submit recommendations on all other variances for which recommendations are not required. The Board may also require BPD design review as a condition of zoning relief and typically includes a proviso to any relief granted when the Board determines that design review is appropriate. The BPD conducts this review through the urban design component of Large Project Review or the design component of Small Project Review, depending on the project's size. For a detailed description of the Design Review process visit the BPD's website at <http://www.bostonplans.org/>.

C. BOSTON TRANSPORTATION DEPARTMENT

The mission of the Boston Transportation Department (BTD) is to plan, build, maintain, and operate Boston's streets in a manner that increases access to opportunities, promotes safety and resilience, and fosters the highest quality of life for everyone living, working, and visiting our City.

One of the many functions of the BTD is transportation development review of large projects to reduce a development's transportation impacts on the community. As it relates to the Board, the BTD reviews projects for the feasibility of proposed off-street parking for size, maneuverability and traffic visibility. Visit the BTD's webpage at <https://www.boston.gov/departments/transportation>.

D. MAYOR'S OFFICE OF NEIGHBORHOOD SERVICES

The Mayor's Office of Neighborhood Services (ONS) provides a forum for both groups and individuals to express concerns, request services, and extend opinions. ONS also serves to disseminate information and facilitate delivery of City services. ONS encourages, facilitates, and maximizes resident input and participation in all aspects of government. As this relates to the Board, ONS coordinates the "community process for Board appeals and holds "abutters meetings" so that abutters of development projects seeking zoning relief can learn about the project and work collectively with permit applicants to help shape projects that provide maximum benefit to the neighborhood. Visit ONS's webpage at <https://www.boston.gov/departments/neighborhood-services>.

IV. **ETHICAL REQUIREMENTS FOR BOARD MEMBERS AND ALTERNATES**

A. PROTECTIONS AGAINST CONFLICTS OF INTERESTS

In An Executive Order Relative to the Zoning Board of Appeal, Mayor Martin J. Walsh highlighted the importance that the Board conduct its business in a manner that promotes

transparency and supports public confidence in its proceedings by avoiding apparent or potential conflicts of interest. There are three key sources that impose requirements and prohibit certain conduct to protect against conflicts of interest of Board members and alternates. The State Ethics Law, found in G.L. c. 268A, imposes requirements on all municipal employees and “special municipal employees.” The Enabling Act imposes additional ethical requirements beyond the requirements of the State Ethics Law. Mayor Martin J. Walsh’s February 24, 2020 Executive Order Relative to the Zoning Board of Appeal imposes other additional ethical and training requirements beyond the requirements of the State Ethics Law and the Enabling Act. See Appendix B.

The sections that follow provide a summary of some of the ethical requirements in the State Ethics Law, the Enabling Act, and the Executive Order. For a complete description of all of the ethical and training requirements, Board members, alternates, and members of the public should consult G.L. c. 268A, the Enabling Act, and the Executive Order. See Appendices D, A and B, respectively.

B. REQUIREMENTS OF STATE ETHICS LAW (M.G.L. c. 268A)

The State Ethics Law governs the conduct of public officials and employees. Board members and alternates are “special municipal employees” and are therefore subject to G.L. c. 268A. Some of the key provisions summarizing applicable standards of conduct found in G.L. c. 268A are below.

1. **Corrupt Gifts (Bribes):** The State Ethics Law prohibits Board members and alternates from accepting gifts, offers, or promises of anything of value from another with intent to influence an official act, commit, aid in committing, or allow fraud upon the Board, or to do or omit any act in violation of a member’s lawful duty. G.L. c. 268A, §2(a). See Appendix D.
2. **Self-dealing and Nepotism:** The State Ethics Law prohibits Board members and alternates from participating in matters before the Board in which, to their knowledge, an immediate family member or partner, a business organization in which they serve as an officer, director, trustee, partner or employee, or any person or organization with whom they are negotiating prospective employment has a financial interest. G.L. c. 268A, §19(a) & G.L. c. 268A §1(e). See Appendix D.

It is not a violation of this section if a Board member or alternate first appropriately discloses the interest to their appointing official or designee and receives an exemption or if the particular matter involves a determination of general policy and the interest of the municipal employee or members of his immediate family is shared with a substantial segment of the population of the municipality. G.L. c. 268A, §19(b). See Appendix D.

3. **Incompatible Employment:** The State Ethics Law prohibits Board members and alternates from accepting other employment involving compensation of substantial value, the responsibilities of which are inherently incompatible with the responsibilities of their public office. Additionally, there are some restrictions that prevent special municipal

employees from holding more than one municipal position. G.L. c. 268A, §23(b)(1). See Appendix D.

4. **Unwarranted Privileges:** The State Ethics Law prohibits Board members and alternates from using or attempting to use their official position to solicit or receive for themselves or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals. G.L. c. 268A, §23(b)(2). See Appendix D.
5. **Appearance of Conflict:** The State Ethics Law prohibits Board members and alternates from acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy the public employee's favor in the performance of his or her official duties, or that he or she is likely to act or fail to act as a result of kinship, rank, position or undue influence by any party or person. It shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his or her appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such a conclusion. G.L. c. 268A, §23(b)(3). See Appendix D.
6. **Confidential Information:** The State Ethics Law prohibits Board members and alternates from accepting "employment or engag[ing] in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position" and from "improperly disclos[ing] material or data within the exemptions to the definition of public records as defined by section seven of chapter four, and were acquired by him in the course of his official duties nor use such information to further his personal interest." G.L. c. 268A, §23(c)(1) and (2). See Appendix D. This provision also applies to former Board members and alternates.
7. **Substantial Value:** The State Ethics Law prohibits Board members and alternates from accepting gifts of substantial value, defined as \$50 or more. The value of a gift is its fair market value at the time of the gift, cost, or face value, whichever is greater. In determining substantial value, the State Ethics Commission may aggregate all gifts offered or given by a person as defined in 930 CMR 5.04 to a public employee within any 365 day period. 930 CMR 5.05; G.L. c. 268A, §23(f). See Appendix D.
8. **Restrictions on Contracts with the City of Boston:** Generally, the State Ethics Law prohibits municipal employees from having a direct or indirect financial interest in a contract with the City. However, there are exceptions to this rule. There are also additional exceptions to the rule that apply only to special municipal employees, including Board members and alternates. G.L. c. 268A, §20. See Appendix D.
9. **Disclosures:** Most exceptions to the conflicts of interest laws found in Chapter 268A require a written public disclosure. The Commonwealth provides standardized disclosure forms for special municipal employees, like Board members and alternates, to use. Whenever a Board member or alternate submits a required written public disclosure, she or he must file it with the City Clerk. The City Clerk maintains these forms as public

records and are available for inspection pursuant to a valid public records request. G.L. c. 268A, §24. See Appendix D.

C. REQUIREMENTS OF THE ENABLING ACT

The Enabling Act expressly states that each Board member and alternate is subject to the requirements of the State Ethics Law. The Enabling Act also sets forth additional requirements for Board members and alternates.

First, the Enabling Act prohibits Board members from hearing or deciding an appeal involving property in which the member held an ownership interest or received compensation for services rendered within two years from the date when the appeal was filed with the Board.

Second, the Enabling Act prohibits Board members from hearing or deciding an appeal involving property that is in the same geographic zoning district and is seeking relief from the same provisions of the zoning code as any other appeal pending before the Board in which the Board member has a financial or legal interest. Chapter 665 of the Acts of 1956, § 8, as amended. See Appendix A.

D. REQUIREMENTS OF FEBRUARY 24, 2020 EXECUTIVE ORDER

On February 24, 2020, Mayor Walsh issued An Order Relative to the Zoning Board of Appeal. The Executive Order imposes the following ethical requirements, which are in addition to the ethical requirements imposed by the State Ethics Law and the Enabling Act.

1. At the time of appointment to the Board, each member shall disclose all properties or projects in which they or their business associates have business dealings, ownership interests, or investments, and which are likely to be before the Board for any reason.
 - a. Board members shall disclose any additional property or project as soon as they become aware that such property or project may come before the Board for any reason.
 - b. For the purposes of this disclosure requirement, a “business associate” includes any individual, company, or organization with which a member or alternate is acting together to pursue a common business purpose, including partners in a partnership, co-owners of a business, outside employers, or co-members of an LLC.
2. In addition to the two (2) years prohibition described in Section C above, the Enabling Act prohibits Board members and alternates from participating in or deciding any appeal involving a project or property in which they held an ownership interest, or received compensation for services rendered, within five (5) years before the date the appeal was filed with the Board.
3. The State Ethics Law prohibits Board members and alternates from having any subsequent business dealings concerning any project on which they voted, including purchasing, lending, investing, or performing construction, architectural, marketing, sales

or brokerage or other services for compensation, for two (2) years after the date of any vote on the project. Prior to accepting appointment to the Board, all members and alternates shall acknowledge this restriction.

4. Zoning Board of Appeal members and alternates will submit annual statements of financial interest to the City Clerk's Office. See Appendix B.

E. TRAINING REQUIREMENTS FOR BOARD MEMBERS AND STAFF

In addition to increased ethical requirements, the Executive Order also sets forth training requirements for Board members and alternates, along with Board staff. Under the Executive Order, Board members and alternates must undergo comprehensive ethics training, as well as training in Board processes, the Boston Zoning Code, and principles of zoning law, upon appointment or reappointment to the Board. Board staff will also receive training bi-annually. See Appendix B.

V. **FILING AN APPEAL FOR ZONING RELIEF**

When ISD determines that an application for a building permit incurs one or more violations of the Zoning Code or Building Code, the permit applicant must either redesign the proposal to be code compliant or they must seek and obtain relief from the violations from the Board of Appeal. This section lays out the steps an applicant timely must follow to seek relief from the Board and for ISD to issue the building permit if the Board grants the necessary relief.

A. ZONING/BUILDING CODE REFUSAL

Upon the submission of a complete building permit application, an ISD plans examiner will review the application for compliance with the Boston Zoning Code and State Building Code. If a proposed project does not meet the requirements of the codes, the plans examiner issues a refusal letter. The refusal letter will specifically identify each provision of the relevant code that the proposed project violates. Applicants should allow 30 days for ISD to complete its review.

B. FILE AN APPEAL

An Applicant whose permit application has been refused by ISD due to violation(s) of the Boston Zoning Code and/or the State Building Code may appeal to the Board of Appeal for relief from said violations. Chapter 665 of the Acts of 1956, § 8, as amended. See Appendix A.

C. DEADLINE TO FILE APPEAL

An appeal of a refusal letter issued due to violation(s) of the Boston Zoning Code and/or State Building Code must be filed within forty-five (45) days of the issuance of the refusal letter. Chapter 665 of the Acts of 1956, § 8, as amended. See Appendix A.

An appeal filed later than forty-five (45) days is not timely and will not be accepted by Board staff. If the time to file a zoning appeal has expired, the applicant must refile the permit

application and file an appeal upon issuance of a new zoning refusal letter. Under certain circumstances, ISD may elect to issue an updated zoning refusal letter in the interests of administrative efficiency and fairness if the applicant could not timely submit their appeal due to excusable neglect or for reasons beyond their control or any other reason that ISD deems sufficient to justify issuing an updated zoning refusal letter.

D. PROCEDURE AND FEES FOR FILING AN APPEAL

Every appeal to the Board of Appeal shall be in writing and on a form prescribed by the Board whether online or by paper. Every such appeal shall refer to the specific provisions of the code involved, and shall exactly set forth the interpretation that is claimed, the conditional use for which permission is sought, or the details of the variance, or other relief, that is applied for and the grounds on which it is claimed that the requested relief should be granted, as the case may be. Chapter 665 of the Acts of 1956, § 8, as amended and Boston Zoning Code, Art. 5, § 2. See Appendices A and E.

An application for appeal can be completed online via ISD's Online Permitting Portal. The portal can be accessed via ISD's webpage at <https://www.boston.gov/departments/inspectional-services> or directly at <https://onlinepermitsandlicenses.cityofboston.gov/isdpermits/>.

The portal provides applicants the ability to:

- Electronically submit an application for appeal;
- Upload supporting documents (including architectural plans, renderings, etc.);
- Submit online payment via e-check and debit or credit card;
- Receive an automated confirmation of receipt of application.

Filing fees must be paid at the time an appeal is filed with the Board. The Board will not schedule an appeal for a hearing date until the Applicant has paid their filing fee. The fees are as follows:

- Residential buildings with three units or less: \$150 flat fee.
- All other buildings or residential buildings with more than three units: \$150 for each City or state violation.

The Board does not have the authority to waive fees. However, the Board will refund fees if an appeal application is withdrawn prior to the Board mailing the required 20-day notice for the appeal. The Board's Executive Secretary has authority to issue refunds under other circumstances subject to any refund policies promulgated by the City of Boston or any other applicable laws and regulations.

Upon submitting an application for appeal, administrative staff will notify applicants via email about the next steps in the appeal process, including preparing for the public hearing and completing the community engagement process. For assistance using the portal please email the Board at isdboardofappeal@boston.gov.

E. CONSTRUCTION DRAWINGS

The Board will review all construction drawings submitted as a requirement of the permit application in hearing an appeal for zoning or building code relief. ISD stamps all construction documents used in making its zoning determination and sends those documents to the Board. The ISD stamp indicates that ISD has reviewed the construction drawings and that they fairly and accurately depict the aspects and features of the proposed construction or use which require zoning relief and, as such, are sufficient for zoning review. Moreover, the ISD plans examiner responsible for reviewing a permit application will request stamped architectural or engineering drawings if required by the Building Code for the work proposed. Massachusetts law requires, in relevant part:

No office, board, or commission of the commonwealth... charged with the enforcement of the state building code or laws, by-laws, ordinances, rules or regulations relating to the construction, reconstruction, enlargement or alteration of buildings or structures, shall accept or approve any plans or specifications that do not bear the seal of registration of an architect or a professional engineer, unless the plans and specifications are not required to be prepared by a registered architect or by a registered professional engineer... G.L. c. 143, § 54A.

The State Building Code further provides that the “building official is authorized to waive submission of construction documents and other data not required to be prepared by a registered design professional if it found that the nature of the work applied for is such that review of construction documents is not necessary to obtain compliance with 780 CMR.” 780 CMR 107.1.

The State Building Code exempts the following structures from the requirements for registered design professional services:

- buildings containing less than 35,000 cubic feet of enclosed space;
- one or two-family dwellings or accessory buildings thereto;
- retaining walls less than ten feet in height; and
- structures where the building official determines that the scope of work is minor in nature and not needing registered design professional services. 780 CMR 107.6.1.

F. UPDATING CONSTRUCTION DRAWINGS FOR PENDING APPEALS

Many applicants submit updated construction drawings prior to their hearing before the Board of Appeal. Updated drawings often reflect changes to the design or scope of the proposed project born of community input or financial, site, or other issues encountered by a project during its pendency before the Board. Applicants must submit any updated construction drawings to the Board at isdboardofappeal@boston.gov at least two weeks prior to the hearing. Board staff will refer those documents to the ISD plans examiner for review.

ISD must review all updated construction drawings to determine whether the adjustments to the project change any zoning or building code relief needed for the project. ISD may issue an updated zoning refusal letter if necessary. The Board may be required to issue new notices for an appeal if the relief needed changes because of updated construction drawings. In those instances, the hearing will be delayed to allow the Board to comply with all applicable notice requirements.

Applicants who fail to meet the two week deadline to submit updated construction drawings must request a deferral of their hearing from the Board. Under certain circumstances, applicants who timely meet the two week deadline may also need a deferral to allow ISD to complete its review.

Under no circumstances will the Board review updated construction drawings not stamped by ISD certifying that ISD has conducted its review. Applicants who fail to verify that ISD has submitted the stamped versions of any updated drawings to the Board will be required to request a deferral of their hearing so that the Board may receive and review the ISD stamped drawings.

VI. TYPES OF ZONING RELIEF

The Enabling Act authorizes the Board to grant conditional use permits, exceptions and variances. Chapter 665 of the Acts of 1956, §§ 9 and 10. See Appendix A. The criteria for each type of relief are further described within the Zoning Code.

The zoning refusal letter sets out the provisions of the Zoning Code from which an appellant must obtain relief in order for a building permit to be issued on a project as proposed in the permit application. The provisions of the Zoning Code cited in the refusal letter control what type of relief is necessary for that provision of the Code. The Board primarily grants three types of relief: conditional uses, exceptions and variances. The standards for granting each type of relief are set forth below.

A. CONDITIONAL USE

Pursuant to Article 6, Section 3 of the Zoning Code the Board shall grant an appeal for conditional use only if it finds that all of the following conditions are met:

- a. The specific site is an appropriate location for such use or, in the case of a substitute nonconforming use under Section 9-2, such substitute nonconforming use will not be more objectionable nor more detrimental to the neighborhood than the nonconforming use for which it is being substituted;
- b. The use will not adversely affect the neighborhood;
- c. There will be no serious hazard to vehicles or pedestrians from the use;
- d. No nuisance will be created by the use;

- e. Adequate and appropriate facilities will be provided for the proper operation of the use;
- f. If such appeal relates to a Development Impact Project, as defined in Section 80B-7, the applicant shall have complied with the Development Impact Project Exaction requirements set forth in Section 80B-7.3; and
- g. If such appeal relates to a Proposed Project in an area designated a Greenbelt Protection Overlay District as defined in Section 29-2, the Applicant shall have complied with the requirements set forth in Section 29-3 and Section 29-5 and the standards set forth in Section 29-6.

Boston Zoning Code, Art. 6, § 3. See Appendix E.

B. EXCEPTION

Pursuant to Article 6A, Section 3 of the Zoning Code the Board shall allow an exception only if it finds:

- a. That such exception is in harmony with the general purpose and intent of this code;
- b. The exception requested is in conformity with one or more of the following, as applicable:
 - i. The development plan for the planned development area, or
 - ii. The land assembly and redevelopment or urban renewal plan, or the low rent housing project or housing project for elderly persons of low income for the urban renewal area, or
 - iii. The plan adopted by the Boston Planning Department for the downtown district involved, or for the Harborpark District, and such conformity has been certified to by the Boston Redevelopment Authority; or if the exception relates to a setback of parapet requirement in a B-6-90a, B-6-90b, B-8-120a, or B-8-120c district, the Boston Redevelopment Authority has certified to the Board of Appeal that the proposed project has been subject to design review; or if the exception relates to the requirement of Section 25-5.8 concerning the location of a structure in a high hazard coastal (V zone) district, the project has received a Conditional Letter of Map Revision (CLOMR) from the Federal Emergency Management Agency; and
- c. If such appeal relates to a Development Impact Project, as defined in Section 80B-7, the applicant shall have complied with the Development Impact Project Exaction requirements set forth in Section 80B-7.3.

Boston Zoning Code, Art. 6A, § 3. See Appendix E.

C. VARIANCE

Pursuant to Article 7, Section 3 of the Zoning Code the Board shall grant a variance only if it finds that all of the following conditions are met:

- a. That there are special circumstances or conditions, fully described in the findings, applying to the land or structure for which the variance is sought (such as, but not limited to, the exceptional narrowness, shallowness, or shape of the lot, or exceptional topographical conditions thereof) which circumstances or conditions are peculiar to such land or structure but not the neighborhood, and that said circumstances or conditions are such that the application of the provisions of this code would deprive the appellant of the reasonable use of such land or structure;
- b. That, for reasons of practical difficulty and demonstrable and substantial hardship fully described in the findings, the granting of the variance is necessary for the reasonable use of the land or structure and that the variance as granted by the Board is the minimum variance that will accomplish this purpose;
- c. That the granting of the variance will be in harmony with the general purpose and intent of this code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and
- d. That, if the variance is for a Development Impact Project, as defined in Section 80B-7, the applicant shall have complied with the Development Impact Project Exaction Requirements set forth in Section 80B-7.3, except if such variance is for a deviation from said requirements.

In determining its findings, the Board of Appeal shall take into account:

1. The number of persons residing or working upon such land or in such structure;
2. The character and use of adjoining lots and those in the neighborhood; and
3. Traffic conditions in the neighborhood.

Boston Zoning Code, Art. 7, § 3. See Appendix E.

VII. HEARINGS OF THE BOARD

A. PUBLIC HEARINGS

All hearings of the Board shall be open to the public and subject to the Open Meeting Law (OML). G.L. c. 30A, §20. Only those meetings of the Board which satisfy the

requirements of the Open Meeting Law to be held in “Executive Session” will be closed to the public. G.L. c. 30A, §21. See Appendix F.

Pursuant to the OML, the public is permitted to attend meetings of the Board, subject to certain exceptions. For an individual to address the Board, they must first receive the permission of the Chair. Members of the public may not disrupt a meeting of the Board and must remain silent when requested by the Chair. The Board encourages and allows as much public participation as time allows, however, such participation may be limited at the discretion of the Chair. G.L. c. 30A, §20. See Appendix F. All full-Board meetings and hearings shall be recorded electronically and are available for viewing live stream at <https://www.boston.gov/departments/broadband-and-cable/watch-boston-city-tv> and, subsequent to the hearing, recordings may be found at https://www.cityofboston.gov/cable/video_library.asp. The Open Meeting Law is discussed in more detail in Section XI.

B. TIME FOR SCHEDULING HEARINGS

The Board shall hold a public hearing on an appeal within a reasonable time after filing. Chapter 665 of the Acts of 1956, § 8, as amended. See Appendix A. An appeal will be scheduled for the next available hearing date upon communication from the Mayor’s Office of Neighborhood Services (ONS) to Board staff that the applicant has completed the required community process. The applicant must also ensure that all appeal fees are paid before the Board may schedule a hearing.

C. COMMUNITY PROCESS

After the applicant files an appeal with the Board, the applicant must contact ONS and complete the required community process. Once the applicant has completed the community process, ONS will communicate to Board staff that the appeal is ready to be scheduled for a hearing date.

As part of the community process, the applicant must hold abutters meetings and meet with the appropriate neighborhood or civic associations as determined by ONS. ONS organizes the community process and communicates all requirements of that process to the applicant.

For contacts and additional information visit the ONS’s webpage at <https://www.boston.gov/departments/neighborhood-services>.

D. NOTICE OF PUBLIC HEARINGS

Notice of all public hearings of the Board shall be posted and advertised as required by law. Pursuant to Section 8 of The Enabling Act, administrative staff sends notice by mail at least twenty (20) days prior to the hearing to the appellant and to the owners of all property deemed by the Board to be affected by the requested relief, as the owner appears on the then most recent tax list, and to any person filing written request for notice of hearings, and to the BPD. The Board will also give at least twenty (20) days public notice of a hearing on an appeal by posting an

advertisement in a newspaper of general circulation in the City. Such advertisement can generally be found in the Boston Herald. See Appendix A.

Pursuant to the Open Meeting Law, the Board shall post notice of a meeting or hearing of the Board at least forty-eight (48) hours in advance, excluding Saturdays, Sundays and legal holidays. Such notice shall be in the form of the hearing agenda and filed with the City Clerk. The notice of the agenda will then be available on the City's website and visible on the various display monitors throughout City Hall. Such notice shall be printed in a legible and easily understood format and shall contain the date, time, and place of the hearing and a listing of the appeals that the Chair reasonably expects to be discussed. G.L. c. 30A, §20. See Appendix F.

E. REPRESENTATION

An applicant may appear at the appeal hearing on his or her own behalf or be represented by an agent or attorney.

F. ABSENCE OF APPELLANT OR AGENT/ATTORNEY

If an applicant or his or her agent or attorney fails to appear at the hearing, the Board, at its discretion, can move to dismiss the appeal without prejudice or defer the appeal to a later date for good cause.

G. ORDER OF BUSINESS

This section is intended as a non-binding guide on the typical procedure of a Board hearing. The Board may vary its procedure as needed to meet operational needs, enhance efficiency, and accommodate scheduled matters.

The following items will be the usual order of conduct of business at a public hearing and will be clearly identified on the hearing agenda:

- a. Call to order;
- b. Opening remarks of the Chair;
- c. Approval of Hearing Minutes (if scheduled);
- d. Requests for Extension (if scheduled);
- e. Requests for Board Final Arbiter (if scheduled);
- f. Subcommittee Recommendations (if scheduled);
- g. Appeals requesting *only* GCOD relief (if scheduled);
- h. Appeals requesting *only* Building Code relief (if scheduled);
- i. Appeals on New Matters
- j. Re-Discussions (Matters previously deferred);
- k. Requests for Reconsideration (if scheduled);
- l. Interpretations/Appeals of Issued Permits (if scheduled)
- m. Remands from Superior Court or other courts (if scheduled);
- n. Close of hearing.

The following steps will be the usual order of the conduct of business for an individual appeal:

- a. Board Secretary calls appeal into the record by BOA number and address;
- b. Appellant's presentation on proposed project and request for relief;
- c. Questioning and deliberation by the Board;
- d. Opinion of Boston Planning Department and/or Boston Transportation Department representatives (if requested by the Board);
- e. Comments of elected officials or their representatives;
- f. Public comments;
- g. Response by Appellant to comments (if requested by Board);
- h. Motion and Vote.

The order of business may change at the discretion of the Chair. Members of the Board hearing the appeal may direct appropriate questions to any party during any portion of the hearing. No rebuttal on the part of any party will be allowed without specific permission of the Chair.

H. VOTING/QUORUM

Board members are encouraged to vote when present at a hearing. The concurring vote of five (5) members of the Board shall be necessary to reverse any order or decision of the Commissioner of Inspectional Services, or any administrative official, or to decide in favor of the Appellant on any matter upon which it is required to pass, or to grant any variance or conditional use permit or other form of relief as may be requested by the Appellant. Chapter 665 of the Acts of 1956, § 8, as amended. See Appendix A. If a quorum of Board Members is unable to hear a particular appeal, the Board will defer that hearing to a date where it anticipates that a quorum will be able to render a decision.

When appropriate, the Chair shall call for a vote upon an appeal. Any Board Member, including the Chair, may move to approve, deny, dismiss without prejudice, or defer an appeal. The Board Member who makes a motion shall state their reasons for making the motion for the record. Any other Board Member may second the motion, and they may state their reasons for supporting the motion if different than the reasons offered by the moving Member. Any motion that fails to receive a second fails and does not require a vote by the other Members. After a motion is seconded, the Chair shall then take a roll call vote of all sitting Members on the motion. All sitting Members, who have not recused or abstained, must vote in favor or in opposition to the motion, and they may offer their reasons in support or against the motion at that time.

Upon the failure of a motion to approve the requested relief to receive at least five votes (i.e. a quorum) in favor, the Chair shall ask the Board Members to consider a motion for dismissal without prejudice. If no such motion is offered, or if a motion for dismissal without prejudice fails to receive at least five votes (i.e. a quorum), the Chair shall ask Board Members to consider a motion for dismissal. If no such motion is offered, or if the motion to dismiss fails to

receive five out of seven votes from Board Members sitting for the appeal, the Chair shall then ask the Board Members to consider a motion to defer the matter for another hearing.

In any appeal before the Board in which a Board Member is aware of a conflict of interest, or potential conflict of interest, in hearing the appeal the Board Member shall recuse themselves from the hearing of the appeal prior to its start or immediately upon realizing the existence of a conflict or potential conflict. In so doing, the Board Member should state on the record that he or she is recusing himself or herself from the appeal and shall exit the hearing room until the conclusion of the hearing of said appeal.

The vote, recusal, or absence of the Board Members presiding over a hearing shall be reflected in the written decision of the Board. Chapter 665 of the Acts of 1956, § 8, as amended. See Appendix A.

I. DEFERRALS

Administrative Deferrals

If the Board has not yet sent legal notice of the appeal, an Appellant may request that administrative staff reschedule their appeal for a later date. The Appellant should submit their administrative deferral request to isdboardofappeal@boston.gov with the BOA number and property address of the appeal in the subject line. Appellants should clearly state the reasons for their request in their written submission. Staff will then communicate the next hearing date available.

Deferrals

If the Board has already sent legal notice of the appeal, an Appellant must appear to request a deferral at the scheduled hearing. A failure to appear could result in a dismissal without prejudice. An Appellant may request that a hearing on an appeal be deferred to a later date for good cause shown. The Board will hear a request for deferral by the Appellant or Appellant's agent and will vote accordingly. Upon a vote approving a request for a deferral, staff will also update the hearing agenda to reflect the new date and time for the deferred appeal. If the request to defer is denied, the Appellant will be expected to proceed with their presentation on their request for relief. In the event the Appellant declines or is otherwise unable to proceed with presentation of their appeal, the Chair shall request a motion on the appeal, based upon the information presently before the Board, and the Board shall vote accordingly.

If an appeal must be deferred due to an updated zoning refusal letter which requires notice to be sent, as required under the Enabling Act, the Appellant's appearance at the originally scheduled hearing may be waived. Such a request for deferral will also be reflected on the hearing agenda to the extent possible.

The Chair may, at their discretion, request a motion for a deferral based upon the presentation on the request for zoning relief. Reasons for such a motion request by the Chair may include, but shall not be limited to, the absence of information material to the granting of the requested relief, changes to architectural plans or drawings which are not before the Board at the

time of hearing, and issues raised by the comments of the elected officials and/or the public. The Board will provide the Appellant with the subsequent hearing date for the appeal upon the vote of the Board approving such deferral.

While the Board grants deferrals for good cause shown, the Board advises that Appellants should not request unnecessary or unsupported numerous deferrals. The Board may vote to dismiss an appeal where it determines that requests for deferrals are excessive and/or meritless. These requests for deferrals may result in the Board voting to dismiss the appeal.

Additionally, in the event a Board consisting of less than seven (7) voting members is to preside over an appeal, the Board will offer to the Appellant the option of deferring the hearing on the appeal to a later hearing date, such that the appeal can be heard by a full seven (7) member board. The Appellant must request a deferral for that reason prior to presenting their case for relief. The Board considers this an administrative deferral and will not include this request in determining whether the number of deferral requests is excessive.

Matters deferred to a later hearing will generally be scheduled for the 'Re-discussion' portion of the agenda. When the Board defers a matter, it will not be formally re-noticed unless the Board determines there exists a reason for doing so.

VIII. DECISIONS OF THE BOARD

A. WRITTEN DECISION

Upon rendering a decision on an appeal or other request, the Board shall file a written record of the proceedings which memorializes the reasons for the decision, the vote of each member presiding at the hearing, the absence or failure to vote of any member, and any conditions or provisos to which the granting of any variance, conditional use or other relief was made subject by vote of the Board at the hearing. Chapter 665 of the Acts of 1956, § 8, as amended. See Appendix A.

For appellants who are not represented by an attorney at a Board hearing, the written decision will be prepared and approved by Assistant Corporation Counsel, on behalf of Corporation Counsel, for the City of Boston. For appellants who are represented by an attorney at a Board hearing, the attorney is expected to timely submit a written proposed draft to the Board for review and approval by Assistant Corporation Counsel. Proposed drafts should be submitted to the Executive Secretary via email as an editable Word document.

The Enabling Act provides the Board with ninety (90) days from the date of a hearing to file its final, written decision with the Commissioner of ISD. See Appendix A. The Board may also extend that deadline for good cause. The Board may administratively dismiss appeals, even after it has granted relief, when an appellant represented by counsel fails to submit a draft prior to the ninety (90) deadline. Administrative staff will attempt to provide notice of its intent to administratively dismiss the appeal as untimely by contacting the person or entity who filed the appeal with the Board. The Board must receive a response within seven (7) days of notifying the

applicant in order to keep the appeal open. The response must be in writing and explain the good cause for failing to timely submit the draft.

After a decision has been approved by Assistant Corporation Counsel, it will be presented to the Board members for signature. The vote of each sitting Board member will be recorded within the signature block.

Each written decision of the Board shall receive a quorum of the signatures of the concurring Board members prior to filing.

B. PROVISOS

Provisos are conditions placed on the relief granted by the Board that are explicitly authorized by the Zoning Code. See Appendix E. All provisos must be complied with for permit issuance and retention. Failure to comply with or to continue to comply with provisos can result in adverse action by the Board or by ISD, including revocation of an existing permit or other civil enforcement measures allowed by law.

Provisos are part of the motion by the moving Board member and adopted by a quorum vote of the Board. Provisos are plainly stated at the bottom of the Board's written decision as required by Section 8 of the Enabling Act. See Appendix A.

C. NOTICE OF DECISION

Notice of the decision of the Board shall be mailed at the time of filing of the written decision to each party in interest (i.e., applicant/appellant), to the BPD, to every person receiving notice of the hearing, and to every person who requests that notice be sent, and provides an address to which such notice is to be sent. Chapter 665 of the Acts of 1956, § 8, as amended. See Appendix A.

D. DURATION OF VALIDITY OF RELIEF GRANTED

Relief granted by the Board will lapse two (2) years after the date of the filing of the decision with the ISD unless said relief has been used within that time. The two year validity period applies to the grant of a conditional use pursuant to Article 6, other exceptions pursuant to Article 6A and to variances pursuant to Article 7. Boston Zoning Code, Art. 6, § 1, Art. 6A, §1 and Art. 7, § 1. See Appendix E.

E. AFTER BOARD'S DECISION FILED WITH ISD

After the Board's written decision has been filed with the ISD, the Appellant proceeds through the permitting process based upon the decision of the Board.

1. Request for relief granted - The Board's written decision is not permission to begin building and is not a building permit. If the Board approves an Appellant's request for relief, the Appellant must then continue through the permitting process

for the building permit to issue. After the expiration of the 20 day appeal period (see Section IX-B), the ISD plans examiner will continue their review of the building permit application. Based upon their review, the plans examiner may either issue the permit or request additional information necessary to complete the application review such that the permit may be issued. An Appellant may also still need to receive approvals from other City entities prior to receiving their building permit. All provisos to the Board's grant of relief must be complied with prior to permit issuance.

2. Denied - A decision by the Board to deny the appeal means that no relief has been granted and the underlying building permit can not be issued. An appeal for relief for the same proposal may not be brought before the Board for one (1) year from the date the decision is filed with the ISD.
3. Dismissed/without prejudice - A decision by the Board to dismiss an appeal without prejudice means that no relief has been granted. However, an appellant can file a new permit application, typically with a modified proposal, and appeal to the Board without having to wait one (1) year. A new permit application and new appeal are required.

IX. APPEALS FROM BOARD DECISIONS

A. WHO MAY APPEAL

Any person aggrieved by a decision of the Board may appeal to the Suffolk County Superior Court or, if the decision concerns any building or place of human habitation, the Eastern Division of the Housing Court Department. Chapter 665 of the Acts of 1956, § 11, as amended. See Appendix A.

B. TIME FOR APPEAL

An appeal of a decision of the Board must be filed in either of the courts identified above within twenty (20) days after the written decision of the Board is filed with the ISD. Chapter 665 of the Acts of 1956, § 11, as amended. See Appendix A.

C. ROLE OF THE COURT

Upon the filing of an appeal, the Court shall hear all pertinent evidence and determine the facts, and, upon those facts, annul such decision of the Board if the Court finds the decision exceeded the Board's authority. Alternatively, the Court may make such other decree as justice and equity may require. Chapter 665 of the Acts of 1956, § 11, as amended. See Appendix A.

D. EXCLUSIVITY OF REMEDY

The filing of an appeal as described above shall be the exclusive remedy for a person aggrieved by a decision of the Board. However, parties shall have rights of appeal as in other civil actions. Chapter 665 of the Acts of 1956, § 11, as amended. See Appendix A.

X. **SPECIAL BOARD FUNCTIONS AND PROCEDURES**

A. RECONSIDERATION

If an appeal for an interpretation, conditional use, or variance is decided by the Board of Appeal adversely to the appellant, no appeal for the same interpretation, conditional use, or variance shall be considered on its merits by the Board within one (1) year after such adverse decision, except with the concurring vote of not less than five (5) members of the Board. Boston Zoning Code, Art. 5, § 3. See Appendix E.

Such a request should be submitted in letter form to the Board, within fourteen (14) days after the hearing, setting forth the reasons for reconsideration of the adverse decision of the Board. If the request is timely filed, it shall be scheduled to be heard at the next available hearing date with notice to be provided as required under the Enabling Act. The hearing on the request for reconsideration shall determine only whether the Board will allow for rehearing of the appeal. If the request for reconsideration is granted, the Board shall schedule a new hearing for the appeal that will be noticed as required by the Enabling Act.

If the Board denies the request for reconsideration, the Board's prior decision of denial will be formally entered and the exclusive remedy of the applicant/appellant will be to file an appeal in the Superior Court as described in Section IX.

B. WITHDRAWAL

An appeal may be withdrawn, without prejudice, at any time prior to the mailing or publication of the notice of a public hearing on the matter by submitting a written request to the Board. The Appellant may file the same appeal again within one (1) year.

After publication and mailing of the public hearing notice, an appeal may only be withdrawn without prejudice with approval of the Board by majority vote at the scheduled hearing. A request to withdraw must be submitted in writing and by the applicant, himself or herself, or by his or her authorized representative, and they must appear at the scheduled hearing and request the same.

An appeal may be withdrawn with prejudice at any time by submitting a written request to the Board. If an applicant chooses this route, they must wait one (1) year before filing the appeal again. If administrative staff have already sent notice of the hearing, the Board Secretary will announce at the hearing that the appeal was withdrawn at the request of the applicant and that the appeal has been denied.

C. CITIZEN’S APPEAL/INTERPRETATION

A third party may challenge ISD’s decision to issue a building permit on the grounds that the application should have been denied because the proposed project allegedly violates one or more provisions of the Zoning Code. The Board refers to such an appeal as a “Citizen’s Appeal” or “Interpretation.” An abutter or other third party with standing to challenge ISD’s decision to issue the permit may file a Citizen’s Appeal or Interpretation.

Such an appeal must be filed with the Board within forty-five (45) days of the issuance of the building permit by the ISD. Chapter 665 of the Acts of 1956, § 8, as amended. See Appendix A. The Board will not schedule untimely appeals for a hearing. The appeal must be in writing and set forth the reasoning for the appeal. Any documentation for consideration by the Board should be submitted with the appeal.

Once filed, Board staff will notify the permit holder that an appeal has been filed challenging the issuance of their permit and forward copies of the appeal and any supporting documentation filed with the appeal. The filing of an appeal with the Board does not mean that a permit holder must cease work under their permit. Any determination of whether a permit holder must cease working while an appeal is pending before the Board is made by ISD.

A hearing on the appeal will be scheduled with notice pursuant to the Enabling Act. At the hearing the appellant will argue before the Board the reasons why the building permit was incorrectly issued. The permit holder will have an opportunity to argue the reasons why the building permit was correctly issued. Additionally, ISD typically sends a representative to explain the basis for issuing the permit and to answer any questions from the Board members. Upon hearing all arguments and considering all information presented to it, the Board will decide the appeal upon a motion and vote.

In some instances, a Citizen’s Appeal may present complicated issues of law for which the Board may, upon a motion and vote, refer the matter to the City’s Law Department for an advisory opinion prior to making a final decision on the appeal. The Board considers all advisory opinions to be privileged and confidential legal advice, and they are not included in the record of the appeal. After receiving advice from the Law Department, the Board will schedule a further hearing of the matter. It is unlikely the Board will hear further arguments at this subsequent hearing unless the Board requires additional information to make findings of fact. The primary purpose of the further hearing is for the Board to make its final decision on the appeal by having a motion and a vote with the attendant deliberation.

D. EXTENSION

The Board routinely hears and decides requests for extensions of relief previously granted. Relief granted by the Board is valid for two (2) years from the date the written decision is filed with the ISD. See Appendix E; Boston Zoning Code Articles 6-1, 6A-1, and 7-1. The prior grant of relief may be extended at the discretion of the Board upon a showing of good cause. Appellants should submit extension requests to isdboardofappeal@boston.gov.

The Appellant should submit a request for an extension of relief to the Board in writing prior to the date of expiration of the relief. The request should briefly describe the proposal for which relief was granted, the filing date of the written decision, the expiration date of the relief, and the reasons for requesting an extension of the relief. The request should also include copies of any prior extension requests allowed by the Board, if they exist. A request for extension which is not timely filed may result in a decision of denial. It is the responsibility of the Appellant to know when the previously granted relief expires.

A properly filed request for extension will be scheduled to be heard by the Board at the next available hearing. Notice of the request for extension will be posted at least forty-eight (48) hours in advance of the hearing. No other notice of the request for extension of the relief will be sent.

In certain circumstances, other State or Federal laws may apply to extend relief beyond the limitations imposed by the Zoning Code. Appellants that believe those laws apply to their relief should raise the matter with the Board's Executive Secretary who can then appropriately brief the Board and place the matter on the Board's agenda for consideration.

E. BOARD FINAL ARBITER

The process of Board Final Arbitrator ("BFA") is a longstanding procedure of the Board to facilitate the finalization of projects which may undergo "*de minimis*" changes after the Board has granted relief. See generally Perry v. Bd. of Appeal of Boston, 100 Mass. App. Ct. 138, 148 (2021) and related case law. Generally, this occurs as a result of BPD design review, issues encountered during construction, or settlement agreements involving design changes to a project. Appellants should submit BFA requests to isdboardofappeal@boston.gov.

In order for a proposed project to be appropriate for Board Final Arbitrator (BFA), the proposed changes must not incur any further zoning violations or significantly increase the degree of non-conformity within any violation. This must be confirmed by an ISD plans examiner before such a request will be scheduled to be heard by the Board.

A request to be heard for BFA must be in letter form, from the Appellant or their representative, explaining in detail how the new proposal differs from that initially approved by the Board. Appellants must include the plans previously approved by the Board and the new plans for review as part of their submission. The Board may also request additional documentation or clarification as needed prior to scheduling a BFA request for a hearing. As the procedure of BFA operates to finalize projects where relief has been previously granted and no new relief is sought, public notice will not be sent, nor will the request be advertised other than in the hearing agenda in compliance with the Open Meeting Law.

The request letter submitted by the Appellant will serve as the Board's written decision. A copy of the filed decision will be sent to the Appellant, ISD and the BPD.

The Board also uses the BFA process to make administrative changes to grants of relief. These include, but are not limited to, changing the street addresses associated with the project, changing the name of the permit applicant, and amending or removing provisos.

F. ZONING ADVISORY SUBCOMMITTEE

The Zoning Advisory Subcommittee (Subcommittee) is a three-member panel of the Board which hears certain types of smaller-scale appeals. The purpose of Subcommittee hearings is to facilitate an efficient hearing schedule of the Board by allowing qualifying appeals to potentially be heard sooner, by freeing space on the agenda before the full Board and providing qualifying Appellants an alternative to appear on a weekday evening rather than a weekday morning. The Boston Zoning Enabling Act explicitly authorizes the Board to create subcommittees “as it sees fit.” See Appendix A, Chapter 665 of the Acts of 1956, § 8 as amended. The Board may from time-to-time amend the composition, procedures, and eligibility for the Subcommittee.

Subcommittee hearings follow the same procedures and are subject to the same notice and public records requirements as full hearings of the Board in accordance with Section 8 of the Enabling Act, the Open Meeting Law and Public Records Law. Chapter 665 of the Acts of 1956, § 8, as amended; G.L. c. 30A, §§ 18-25; and G.L. c. 66.

The three-member Subcommittee is comprised of the Chair, Secretary, and Architect, when possible. However, alternate members of the Board will sit for the Subcommittee as necessary.

The criteria for an appeal to be eligible to be heard by the Subcommittee are as follows:

- One-family or two-family dwellings;
 - Dwelling does not have to be owner-occupied
- Small businesses occupying less than 35,000 square feet of commercial space
- No new construction (i.e., ERT permit applications)
- Accessory/Additional dwelling units

An Appellant who is eligible to appear before the Subcommittee can opt out of the Subcommittee hearing and appear before the full Board.

Notice for an appeal scheduled before the Subcommittee will contain two (2) hearing dates; the date of the Subcommittee hearing and the date of the full Board hearing at which the subcommittee recommendation will be voted on by the full Board.

The Subcommittee holds a hearing one Thursday per month at 5:00 PM. Subcommittee hearings are held at 1010 Massachusetts Avenue, 5th Floor, Boston, MA 02118 or virtually in compliance with the amendments to the Open Meeting Law. The hearing agenda will identify the location of the hearing, and interested persons may also reach out to the Board’s administrative office. The Subcommittee will hear the appeal and vote on a motion which will become the recommendation of the Subcommittee to the full Board if the decision is unanimous. If the

decision is not unanimous, the matter will be deferred to the next full Board hearing for consideration by the full Board. The Full Board will vote on the Subcommittee's recommendations at the next scheduled full hearing. The recommendation of the Subcommittee is not official until it receives the vote of the full Board and the signed written decision is filed with the ISD.

The Subcommittee has the discretion to defer any appeal before it to the next scheduled hearing of the full Board, or to a later hearing of the Subcommittee or full Board, as it deems necessary and/or appropriate. Failure to appear for a Subcommittee hearing without notifying the Board in advance may result in the dismissal of the appeal.

G. ZBA AMBASSADOR

Mayor Walsh's An Executive Order Relative to the Zoning Board of Appeal mandated the designation of an ombudsperson to answer questions and inform members of the public about Board procedures and the process by which they can provide testimony. Pursuant to Mayor Walsh's order, the Board has created the role of "ZBA Ambassador." The role is staffed by ISD's Constituent Services office. The ZBA Ambassador is available prior to the start of each hearing and during the hearing to provide assistance to constituents. The ZBA Ambassador addresses questions about a range of topics, including, but not limited to, hearing agenda, hearing procedure, offering comments in favor or opposition of an appeal, and post-hearing procedures, as well as to properly direct constituent inquiries the ZBA Ambassador cannot answer. The ZBA Ambassador can be contacted at zba.ambassador@boston.gov.

XI. OPEN MEETING LAW REQUIREMENTS

A. PURPOSE

The Open Meeting Law (OML) requires that meetings of public bodies, with some exceptions, be open to the public. G.L. c. 30A, § 20(a). See Appendix F. The purpose of the OML is to ensure transparency in the deliberations of public bodies by allowing the public to witness and, in some instances, participate in those deliberations.

B. ENFORCEMENT

The Attorney General for the Commonwealth of Massachusetts is responsible for enforcement of the OML, a duty which is carried out through the Division Of Open Government. G.L. c. 30A, § 19(a). See Appendix F. The Division of Open Government provides training, responds to inquiries, investigates complaints, and when necessary, makes findings and orders remedial action to address violations of the OML.

C. CERTIFICATION

Board Members, upon confirmation by City Council, must complete a Certificate of Receipt of Open Meeting Law Materials certifying that they have received educational OML materials from the Division of Open Government and that they understand the requirements of

the OML and the consequences of violating it. The Certificate of Receipt must be retained with the Board of Appeal's official records. G.L. c. 30A, § 20(h). See Appendix F.

D. MEETINGS, DELIBERATION AND JURISDICTION

All meetings of a public body, with certain exceptions, must be open to the public. A "meeting" is defined as "a deliberation by a public body with respect to any matter within the body's jurisdiction." However, a "meeting" does not include the following:

- a. an on-site inspection of a project or program, so long as the members do not deliberate;
- b. attendance by a quorum of a public body at a public or private gathering, including a conference or training program or a media, social or other event, so long as the members do not deliberate;
- c. attendance by a quorum of a public body at a meeting of another public body that has complied with the notice requirements of the open meeting law, so long as the visiting members communicate only by open participation in the meeting on those matters under discussion by the host body and do not deliberate;
- d. a meeting of a quasi-judicial board or commission held for the sole purpose of making a decision required in an adjudicatory proceeding brought before it; or
- e. a session of a town meeting convened under section 9 of chapter 39 which would include the attendance by a quorum of a public body at any such session. G.L. c. 30A, § 18. See Appendix F.

A "deliberation" is oral or written communication between a quorum of the public body on any public business within its jurisdiction. However, a "deliberation" shall not include the distribution of a meeting agenda, scheduling information or distribution of other procedural meetings or the distribution of reports or documents that may be discussed at a meeting, provided that no opinion of a member is expressed. G.L. c. 30A, § 18. See Appendix F.

The Attorney General's Open Meeting Law Guide and Educational Materials notes that the expression of an opinion on matters within the body's jurisdiction to a quorum of a public body is a deliberation, even if no other public body member responds. For example, if a member of a public body sends an email to a quorum of a public body expressing an opinion on a matter that could come before that body, this communication violates the law even if none of the recipients responds.

The OML does not specifically define "jurisdiction". However, the Attorney General's Open Meeting Law Guide and Educational Materials states that any matter of public business on which a quorum of the public body may make a decision or recommendation is considered a matter within the jurisdiction of the public body.

The Open Meeting Law Guide and Educational Materials contains other helpful explanations and examples interpreting the provisions of the OML, and it is available on the Attorney General's website. A copy of the guide can be viewed here https://www.mass.gov/files/documents/2018/11/15/2017%20Guide%20with%20ed%20materials_revised%201-30-18.pdf.

E. NOTICE PURSUANT TO OML

The OML has its own notice requirements with which the Board must comply in addition to the notice requirements of the Enabling Act.

Except in an emergency, in addition to any notice otherwise required by law, a public body shall post notice of every meeting at least 48 hours prior to such meeting, excluding Saturdays, Sundays and legal holidays. In an emergency, a public body shall post notice as soon as reasonably possible prior to such meeting. Notice shall be printed in a legible, easily understandable format and shall contain the date, time and place of such meeting and a listing of topics that the chair reasonably anticipates will be discussed at the meeting. G.L. c. 30A, § 20(b). See Appendix F.

For meetings of a local public body, such as the Board of Appeal, notice shall be filed with the municipal clerk and posted in a manner conspicuously visible to the public at all hours in or on the municipal building in which the clerk's office is located. G.L. c. 30A, § 20(c). See Appendix F. For each hearing, the Board will create a hearing agenda containing the date, time and place of the hearing and a list of appeals to be heard. The hearing agenda will be filed with the City Clerk at least 48 hours prior to the hearing and is displayed on television monitors throughout Boston City Hall and is also posted on the City's website at <https://www.boston.gov/public-notices>.

F. RECORDING A PUBLIC MEETING

After notifying the Chair of the public body, any person may make a video or audio recording of an open session of a meeting of a public body, or may transmit the meeting through any medium, subject to reasonable requirements of the Chair as to the number, placement and operation of equipment used so as not to interfere with the conduct of the meeting. At the beginning of the meeting the chair shall inform other attendees of any recordings. G.L. c. 30A, § 20(f). See Appendix F.

G. PUBLIC PARTICIPATION IN AN OPEN MEETING

Pursuant to the Massachusetts General Laws, no person shall address a meeting of a public body without permission of the Chair, and all persons shall, at the request of the Chair, be silent. No person shall disrupt the proceedings of a meeting of a public body. If, after clear warning from the Chair, a person continues to disrupt the proceedings, the Chair may order the person to withdraw from the meeting and if the person does not withdraw, the Chairperson may authorize a constable or other officer to remove the person from the meeting. G.L. c. 30A, § 20(g). See Appendix F.

Pursuant to this provision of the OML, the Board will make every effort to hear from all persons interested in speaking during its hearings. However, such participation by members of the public may be limited at the discretion of the Chair. Additionally, comments offered to the Board from elected officials, their representatives, the BPD and the public are only advisory and will be considered by the Board with all other information presented in rendering a decision.

H. EXECUTIVE SESSION

While meetings of a public body are to be open to the public, there are exceptions for which the public body can meet in a closed session, referred to as “executive session”. There are ten (10) specifically identified purposes for which a public body may enter an executive session. G.L. c. 30A, § 21(a). See Appendix F.

Prior to entering an executive session, the public body must first convene in an open session, have a majority vote to enter executive session with the vote of each member taken by roll call and recorded in the minutes, state the purpose for entering executive session, state whether open session will reconvene at the conclusion of the executive session and maintain accurate records of the executive session. G.L. c. 30A, § 21(b). See Appendix F.

I. MEETING MINUTES

The OML also requires that the Board “create and maintain accurate minutes of all meetings, including executive sessions, setting forth the date, time and place, the members present or absent, a summary of the discussions on each subject, a list of documents and other exhibits used at the meeting, the decisions made and the actions taken at each meeting, including the record of all votes.” G.L. c. 30A, § 22(a). See Appendix F. The OML further requires that “minutes of all open sessions shall be created and approved in a timely manner.” G.L. c. 30A, § 22(c). See Appendix F.

Minutes of Board hearings are taken during each hearing and subsequently prepared for publishing. Once prepared by Board staff, the proposed official minutes are presented to the Board Members for review and placed on a subsequent hearing agenda for a motion and vote by the Board. If the proposed minutes are approved by a quorum vote of the Board they become the official hearing minutes and are posted on the Board’s webpage on the City’s website at <https://www.boston.gov/departments/inspectional-services/zoning-board-appeal>.

XII. OTHER PROVISIONS

A. CONFLICTS OF LAW

All matters upon which these rules and regulations are silent shall be determined by the applicable provisions of the Massachusetts General Laws, Chapter 665 of the Acts of 1956, as amended, the Ordinances of the City of Boston, or other applicable statute, or Commonwealth of Massachusetts or Federal rule or regulation. In the event of any conflict between these rules and regulations and any provision of the General Laws, Chapter 665, City ordinances, or other

applicable statute, Commonwealth of Massachusetts or Federal rule or regulation, the Laws, Chapter 665, City ordinances, and other statutes, or Commonwealth of Massachusetts or Federal rules or regulations shall control.

B. ADOPTION OF RULES AND REGULATIONS

These rules and regulations shall become effective upon adoption by a vote of five (5) Members of the Board in favor of their adoption at an appropriately noticed hearing on their adoption and upon filing a copy thereof with the City Clerk. Copies of these rules and regulations shall be kept available by the City Clerk for inspection by any person at reasonable times. A copy will also be available on the Board's webpage.

C. AMENDMENT OF RULES AND REGULATIONS

These rules and regulations may be amended from time to time, as necessary and proper, by a vote of five (5) Members of the Board in favor of their amendment at an appropriately noticed hearing on their amendment.

D. SEVERABILITY

If any provision of these policies and procedures is declared invalid, such invalidity shall have no effect on the validity of the remaining provisions of these policies and procedures not so in conflict.

AS APPROVED BY THE CITY OF BOSTON ZONING BOARD OF APPEAL ON THIS _____ DAY OF _____, 20__, AND TO BE EFFECTIVE ON THE _____ DAY OF _____, 20__.

CITY OF BOSTON ZONING BOARD OF APPEAL,

By its Chair,

Print Name:

APPENDIX A:

THE ENABLING ACT

CHAPTER 665 OF THE ACTS OF 1956

Enabling Act

CHAPTER 665 OF THE ACTS OF 1956^[1]

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 and City of Boston shall cause to be made public electronically accessible contact information for members of the zoning commission and meeting minutes.

(Acts of 2020, Ch. 365, § 2, approved 1-14-2021)

The zoning commission may establish rules and regulations for its own procedures not inconsistent with this act and may, from time to time, establish subcommittees as it sees fit.

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 and welfare of its inhabitants, the City of Boston may, through zoning regulations adopted by its zoning commission, regulate and restrict the following: the height, number of stories and size of buildings and structures, size and width of lots, percentage of a 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. In order to protect and enhance the public welfare and meet planning goals so that neighborhoods will have a range of housing options with sizes, types, and levels of affordability to support a diverse populace, the zoning commission may also adopt inclusionary zoning regulations or amendments to establish and further inclusionary development for income restricted housing in residential developments

[*Proviso annulled in part by St. 1966, c. 642, s. 4, par. (E); Acts of 2020, Ch. 385, § 3, approved 1-14-2021.]

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 a range of housing options with sizes, types, and levels of affordability to support a diverse populace, 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.

(Acts of 2020, Ch. 365, § 4, approved 1-14-2021)

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 may, from time to time, establish subcommittees as it sees fit.

(Acts of 2020, Ch. 365, § 5, 1-14-2021)

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 councilor 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 him/her/them and states the address to which such notice is to be sent.

(Acts of 2020, Ch. 365, § 6, approved 1-14-2021)

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.

Inclusionary development", a set of programs, policies, ordinances and regulations designed to create or incent the creation of income restricted housing and further fair housing by requiring development projects meeting thresholds established by the City of Boston to include income

restricted housing on-site, construct income restricted housing off-site or contribute financially to the construction of income restricted housing or a city fund designated for such purpose.

"Income restricted housing", a unit of housing, whether rental, condominium or cooperative, a single or multi-family owner occupied home, or other dwelling type, for which the occupancy cost to the resident(s) thereof does not exceed the percentage of the maximum income of an income eligible occupant household, attributed to that unit of housing, as defined by any state or federal agency, authority, department, or similar instrumentality providing financial assistance to reduce the occupancy cost of housing.

"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 real estate development", any development in the City in which development 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 100,000 square feet, or other threshold as established from time to time by the zoning commission, or to enlarge or extend a building or structure so as to increase its gross floor area, exclusive of all accessory garage space in both cases, to more than 100,000 square feet or other threshold as established from time to time by the zoning commission, 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 100,000 square feet or other threshold as established from time to time by the zoning commission, which square footage is intended for 1

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; or (5) other uses as determined by the zoning commission.

"Substantially rehabilitated", to cause alterations or repairs to be made to a building or structure, constituting a new large-scale commercial real estate development, within any period of 12 months, costing in excess of 50 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 to the zoning commission for any zoning map or text amendment to authorize such alterations or repairs, the filing of a Project Notification Form pursuant to Article 80 of the Boston Zoning Code, 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 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, or any approvals granted pursuant to Article 80 of the Boston Zoning Code, shall be conditioned upon action, or promised action, by the developer seeking to obtain such relief or approvals to contribute an affordable housing exaction, to mitigate the effects which new large-scale commercial real estate development projects 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 or approvals necessary to build new large-scale commercial real estate developments are distinct from any other relief or approvals granted under the provisions of the zoning code.

(Acts of 2020, Ch. 365, § 11, approved 1-14-2021)

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. The requirements for creation of housing in kind or payments made over a period of time shall be determined by the 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.

(Acts of 2020, Ch. 365, §§ 12, 13, approved 1-14-2021)

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 100,000 square feet of gross floor area devoted to exaction uses or other such threshold as determined by the zoning commission, 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 annually on each July 1st, the current housing exaction in dollars per square foot (\$9.03 as of the date of adoption of this amendment) as set by the zoning commission shall be automatically adjusted by the BRA to reflect the combined index; and provided further, that the zoning commission may adopt additional adjustments based on BRA recommendations pursuant to the analysis as required above. 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, Project Notification Form or other Article 80 application 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; provided, however, that the zoning commission may require increased exactions for any development project which seeks additional relief through the filing of a Notice of Project Change amendment of a planned development area, or other such zoning relief as specified by the zoning commission. 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.

(Acts of 2020, Ch. 365, § 14, approved 1-14-2021)

SECTION 16A

(as added by St. 2001, c. 170, s. 4; Rpld by Acts of 2020, Ch. 365, § 15, approved 1-14-2021).

SECTION 17

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 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, or review and approval under Article 80 of the Boston zoning code, shall be conditioned upon action, or promised action, by the developer seeking to obtain such relief or approvals to contribute an employment exaction to mitigate the effects which the new large-scale commercial real estate development projects 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 regulations. The regulations shall provide that the zoning relief or approvals necessary to build new large-scale commercial real estate developments are distinct from any other relief or approvals 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 an amount as established from time to time by the zoning commission devoted to exaction uses, exclusive in both cases of all accessory parking garage space, in the new large-scale commercial real estate development project or other such threshold as determined by the zoning commission. The developer of any new large-scale commercial real estate development project, in lieu of contributing towards the creation of job training programs or similar 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 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 of 100,000 square feet devoted to exaction uses, exclusive in both cases of all accessory parking garage space or other such threshold as determined by the zoning commission, 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 annually on each July 1st, the current employment exaction in dollars per square foot (\$1.78 as of the date of adoption of this amendment) as set by the zoning commission shall be automatically adjusted by the BRA to reflect the combined index; and

provided further, that the zoning commission may adopt additional adjustments based on BRA recommendations pursuant to the analysis as required above. 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, Project Notification Form or other Article 80 application 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; provided, however, that the zoning commission may require increased exactions for any development project which seeks additional relief through the filing of a Notice of Project Change, amendment of a planned development area, or other such zoning relief as specified by the zoning commission. 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.

(as added by St. 1987, c. 371, s. 3 and amended by St. 2001, c. 170, s. 5 and amended by Acts of 2020, Ch. 365, § 16, approved 1-14-2021).

SECTION 17A

(as added by St. 2001, c. 170, s. 6 and amended by St. 2001, c. 203, s. 13; rpld by Acts of 2020, Ch. 365, § 17, approved 1-14-2021).

SECTION 18

(a) The zoning commission is further authorized to promulgate zoning regulations and amendments thereto for the purpose of mitigating the effects of 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 16 and 17. 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 review and approval under Article 80 of the Boston zoning code or other such threshold as determined by the zoning commission, 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 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 or approvals and the zoning relief or approvals to be granted. The regulations shall provide that the zoning relief or approvals necessary to build new large-scale commercial real estate developments are 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 the prevailing affordable housing exaction as established by the zoning commission (at

the time of adoption of this amendment, \$9.03) per square foot paid in equal and annual installments over a seven year period plus the present value of the prevailing employment exaction as established by the zoning commission (at the time of adoption of this amendment, \$1.78) 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 100,000 square feet devoted to exaction uses, exclusive in both cases of all accessory parking garage space, or other such threshold as determined by the zoning commission, in the new large-scale commercial real estate development; provided, however, that annually on each July 1st, the affordable housing exaction and the employment exaction shall be automatically adjusted by the BRA to reflect the combined index; and provided further, that the zoning commission may adopt additional adjustments based on BRA recommendations pursuant to the analysis as required above.

(as added by St. 1987, c. 371, s. 3 and amended by St. 2001, c. 170, s. 7 and amended by Acts of 2020, Ch. 365, § 18, approved 1-14-2021).

SECTION 19

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 planned development areas approved 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, or planned development areas approved 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 clauses (b) and (c); and (e) any additional actions, zoning variances, conditional use permits, or planned development areas approved 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 of the Boston zoning code, or any of them, pursuant to which said agreements were made or planned development areas approved, 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.

(as added by St. 1987, c. 371, s. 3 and amended by Acts of 2020, Ch. 365, § 19, approved 1-14-2021).

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/her/them 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.

(Acts of 2020, Ch. 365, § 19, approved 1-14-2021).

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:-

"BPD", the Boston Planning Department

"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 new real estate development on the public health, safety, convenience, and welfare of its inhabitants, including, but not limited to, the transportation network, infrastructure, 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, or approvals pursuant to Article 80 of the zoning code shall be conditioned upon action, or promised action, by the developer seeking to obtain the relief or approvals, to undertake measures, as required by the BRA, to mitigate, limit, or minimize the impact within the city.

(Act of 2020, Ch. 365, § 21, 1-14-21)

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.)

SECTION 22.

Notwithstanding the provision of any general or special law or rule to the contrary, in order to protect and enhance the public health, safety and welfare in accordance with the goal of this act, to meet fair housing and planning goals so that neighborhoods will have a range of housing options to support a diverse populace, the city of Boston zoning commission is hereby authorized to adopt inclusionary zoning regulations or amendments to set aside, or to facilitate the creation or preservation of, income restricted housing. Such regulations or amendments shall be adopted in a manner consistent with the planning and zoning authorities, standards and processes of the city of Boston, BRA and zoning commission except as specified in this section.

The zoning commission shall only adopt inclusionary development or an amendment thereto, following a recommendation of the board of the BRA, and a vote or inaction of the Boston city council, as described herein. After a vote of the BRA board, the BRA shall provide notice to the city council of the inclusionary development or amendment thereto. The city council shall have, from date of notification, 60 days to reject the inclusionary development or amendment thereto, by a two thirds vote of all its members. If the council fails to reject the inclusionary development or amendment thereto or should the council take no action within the specified 60 days, then the inclusionary development or amendment thereto shall proceed to the zoning commission, which shall notice and schedule a hearing in accordance with section 3.

Such inclusionary development or amendment thereto may include 1 or more of the following requirements that, regardless of the need for zoning relief, residential development projects, as defined by the zoning commission, shall: (1) include a percentage of the units or a percent of square footage on-site as income restricted dwelling units; (2) produce or cause to be produced income restricted units off-site; or (3) in lieu of including or producing such units, make a monetary or in-kind contribution toward the creation or preservation of income restricted housing. Such requirements may vary based on the zoning district of the new project, or such

other factors determined by the zoning commission to be necessary or advisable to achieve the goal of this act.

In making a recommendation, the BRA shall consider: (1) Boston housing cost trends; (2) market and income restricted housing production goals; (3) providing housing at a cost not generally available in the city; (4) the city's goal of maintaining racial and economic diversity in the city, and affirmatively furthering fair housing for members of protected classes and the larger community; (5) financial and other considerations regarding the production and cost of market-rate residential development projects and income restricted housing units; and other factors as determined by the zoning commission; provided that, the zoning commission may waive such analysis upon finding that proposed regulations are substantially similar in nature, enact clerical or procedural adjustments, clarify existing requirements, support adoption of a citywide regulation into neighborhood or planned development area zoning, or are otherwise reflected in documented consideration of such factors by the zoning commission, the BRA or the city of Boston within 3 years of submission.

(Acts of 2020, Ch. 364, § 22, 1-14-21)

SECTION 23.

Should any part of this act be found invalid, all valid parts that are severable from the invalid part remain in effect. If any part of this act is found invalid in 1 or more of its applications, that part remains in effect in all valid applications that are severable from the invalid applications.

(Acts of 2020, Ch. 364, § 22, 1-14-21)

[1](As amended through November 30, 2001)

APPENDIX B:

EXECUTIVE ORDER OF MAYOR MARTIN J. WALSH

An Executive Order Relative to the Zoning Board of Appeal

February 24, 2020



CITY OF BOSTON • MASSACHUSETTS

OFFICE OF THE MAYOR
MARTIN J. WALSH

**EXECUTIVE ORDER
OF
MAYOR MARTIN J. WALSH**

An Executive Order Relative to the Zoning Board of Appeal

Pursuant to the authority vested in me as Chief Executive Officer of the City of Boston pursuant to St. 1948, c. 452, s. 11, and every other power hereto enabling, I hereby order and direct as follows:

ARTICLE I. Purpose.

The Zoning Board of Appeal (the “Board”) plays a critical role in determining what development is approved in the City of Boston. Because these decisions affect the nature and success of our community, it is important that the Board conduct itself in a manner that supports public confidence in its proceedings by avoiding apparent or potential conflicts of interest. The Board is already subject to the robust provisions of G. L. c. 268A, to which all City employees are obligated to conform their conduct, and to additional conflict of interest requirements of St. 1956, c. 665, s. 8, as amended, governing the City of Boston Zoning Board of Appeal. Among other things, these statutes prohibit Board members from participating in proceedings related to: projects in which they had an interest in the two years before any application to the Board; and projects seeking the same type of relief in the same district as is sought by any project in which a board member has an interest. In order to further support the effective implementation of those existing obligations, to further promote public confidence in the Board, and to further reduce the potential for conflicts of interest by promoting greater transparency, and improving the overall efficiency and functioning of the Board, related agencies, entities and processes, the following requirements are imposed.

ARTICLE II. Policy.

1. Ethics and Transparency

- A. At the time of appointment to the Board, each member shall disclose all properties or projects in which they or their business associates have business dealings, ownership interests, or investments, and which are likely to be, before the Board for any reason. Board members shall disclose any additional such property or project as soon as they become aware that such property or project may come before the Board for any reason. For the purposes of this disclosure requirement, a “business associate” includes any individual, company, or organization with which a member or alternate is acting together

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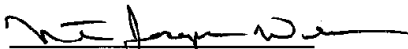
to pursue a common business purpose, including partners in a partnership, co-owners of a business, outside employers, or co-members of an LLC.

- B. In addition to the two years prohibition set forth in St. 1956, c. 665, s. 8, as amended, Board members and alternates are prohibited from participating in or deciding any appeal involving a project or property in which they held an ownership interest, or received compensation for services rendered, within five years before the date the appeal was filed with the board.
 - C. In addition to limitations imposed by G. L. c 268A, Zoning Board of Appeal members and alternates shall be prohibited from having any subsequent business dealings concerning any project on which they voted, including purchasing, lending, investing, or performing construction, architectural, marketing, sales or brokerage or other services for compensation, for two years after the date of any vote on the project. Prior to accepting appointment to the Board, all members and alternates shall acknowledge this restriction.
 - D. Zoning Board of Appeal members and alternates will submit annual statements of financial interest to the City Clerk's Office.
 - E. Upon appointment or re-appointment to the Zoning Board of Appeal, members and alternates will undergo comprehensive ethics training, as well as training in Board processes, the Boston Zoning Code, and principles of zoning law. Board staff will be similarly trained, with said training to be updated bi-annually. The Office of Human Resources, in conjunction with Corporation Counsel, will develop these trainings.
 - F. The Inspectional Services Department is hereby directed to petition, or to coordinate with the Boston Planning and Development Agency to petition, the Boston Zoning Commission to amend, within 180 days, Article 80 (or other relevant provisions) of the Boston Zoning Code to lower the threshold for requiring disclosures of ownership and beneficial interests in a property or project from the current 100,000 square foot threshold so as to extend it to apply to all or a substantial majority of non-homeowner projects. Such petition shall specify that such disclosures shall also identify, including but not limited to, architects, attorneys, consultants, real estate brokers, engineers, planners, or surveyors employed on the project who earn or are projected to earn \$10,000 or more, and that such disclosures are provided to the Board.
 - G. The Executive Secretary of the Zoning Board of Appeal shall, within 120 days, schedule a business meeting for the Zoning Board of Appeal to consider the creation of any written policies or protocols which, in the judgment of the Board, would facilitate the efficient, predictable conduct of its proceedings and decision making. Any such policies and protocols will be filed with the City Clerk.
2. Modernization, Function and Efficiency
- A. The Department of Innovation and Technology (DoIT), in conjunction with the Inspectional Services Department (ISD), is instructed to:

- a. Enable on-line application and payment for permits and petitions to ISD within 180 days of this order;
 - b. Post physical and electronic link addresses to the Board, with instructions for residents to submit written and/or electronic testimony within 180 days of this order; and
 - c. Enable electronic submission of plans within 18 months of this order; and
 - d. Enable email notification of notice to hearings, deferrals and new hearing dates to those who sign up for email notice within 18 months of this order; and
 - e. Enable the electronic circulation of plans and petitions to be heard by Zoning Board of Appeal members prior to the hearing date within 18 months of this order; and
 - f. Update and improve the existing online subscription list for residents and other interested parties to receive updates on projects within specific geographic zones; and update and improve the existing database such that it is searchable and contains all pending applications, deferrals, and decided petitions, including the decisions themselves, within 18 months of this order.
- B. The Inspectional Services Department is instructed to:
- a. Work in conjunction with the Mayor's Office of Language and Communications Access, to ensure the provision of translation services, including through assistive technology and/or staff to ensure effective conveyance of technical discussions, at Board hearings within 45 days of this order; and
 - b. Designate an ombudsperson to answer questions and inform members of the public about Board procedures and the process by which they can provide testimony, within 45 days of this order.

ARTICLE III. **Effective Date.**

This Order and the policy it announces shall take effect immediately.
SIGNED THIS 24th DAY OF FEBRUARY, 2020.


Martin J. Walsh
Mayor of Boston

APPENDIX C:

City of Boston Code

Chapter 5, Section 5.11: Provisions Regarding Holdovers

Chapter 9, Section 4: Board of Appeal

City of Boston Municipal Code

5-5.11 Provisions Regarding Holdovers.

The term "holdover" as used herein shall mean a person appointed by the Mayor pursuant to statute or ordinance, as head of a Department, Board, Agency, Commission, Authority, or Office, or as a member of any such Department, Board, Agency, Commission, Authority, or Office, for a term, the duration of which is fixed, including those who are subject to the provisions of Sections 9 through 14 of Chapter 486 of the Acts of 1909, as amended, and those subject to the provisions of Chapter 473 of the Acts of 1953, as these statutes have been amended and are now in force, who, having served the term, or initial term, provided by such statute or ordinance, is continuing to serve in the office or position to which appointed, during the pleasure of the Mayor, or is continuing to serve in the office or position to which appointed pending reappointment, or pending appointment and qualification of a successor.

Any person who is a holdover for sixty (60) days or more in compensated position, including those who are compensated on a per diem basis, shall be compensated while a holdover at the rate of one (\$1.00) dollar per year, apportioned for length of service and such compensation shall be in full for all services rendered to the City and County, notwithstanding the existence of any ordinance (including without limiting the generality of the foregoing, subsection 5-5.10 and subsection 5-5.13). This section shall not apply to an office or position occupied by a holdover in an office or position which is subject to confirmation by the City Council if the Mayor has transmitted the appointment to the City Council and the Council has failed to act thereon.

(Ord. 1978 c. 2)

City of Boston Municipal Code

9-4 BOARD OF APPEAL.**Editor's Note:**

The Building Department and the Housing Inspection Department were abolished and all powers and duties transferred to the Inspection Services Department by Ch. 19 of the Ordinances of 1981 (Section 9-9 of this Code).

9-4.1 Board Members.

There shall be in the Building Department a Board, known as the Board of Appeal, consisting of five (5) members appointed by the Mayor as follows: one member from two (2) candidates nominated, one by The Boston Society of Architects and one by the Boston Society of Civil Engineers, one member from two (2) candidates nominated by the Building Trades Council of Boston and Vicinity, one member from two (2) candidates nominated, one by the Greater Boston Real Estate Board and one by the Massachusetts Real Estate Association, one member from three (3) candidates nominated, one by The Master Builders' Association of Boston, one by the Building Trades Employers' Association of the City of Boston and one by the Associated General Contractors of Massachusetts, Inc., and one member selected at large by the Mayor. All members of the Board of Appeal shall be residents of, or engaged in business in, Boston. As the term of any member in office expires, his successor shall be appointed in like manner as such member for a term of five (5) years. Vacancies in the Board shall be filled in the same manner for the unexpired term. No member of the Board shall act in any case in which he has a personal interest; and when a member is so disqualified or absent or when there is a vacancy in the office of a member, the remaining members shall designate a substitute.

The Board of Appeal shall not be subject to the supervision or control of the Building Commissioner; but unless otherwise ordered by the Mayor, the Board of Appeal shall not communicate with the Mayor, or make any annual or other report, except through the Building Commissioner.

(St. 1938 c. 479; Ord. 1954 c. 2 § 21; Rev. Ord. 1961 c. 9 § 3; CBC 1975 Ord. T9 § 150)

Cross-reference:

Ord. Section 2-7; Ord. Section 9-3

9-4.2 Powers and Duties.

The Board of Appeal shall exercise the powers and perform the duties set forth in Sections 117, 118 and 119 of the Boston Building Code, and Section 19 of Chapter 488 of the Acts of 1924.

(Rev. Ord. 1961 c. 9 § 4; CBC 1975 Ord. T9 § 151)

Cross-reference:

St. 1924 c. 488 § 19; St. 1938 c. 479 § § 117, 118, 119

APPENDIX D:

Massachusetts General Laws, Chapter 268A
Conduct of Public Officials and Employees

Massachusetts General Laws Annotated Part IV. Crimes, Punishments and Proceedings in Criminal Cases (Ch. 263-280) Title I. Crimes and Punishments (Ch. 263-274) Chapter 268A. Conduct of Public Officials and Employees (Refs & Annos)

M.G.L.A. 268A § 1

§ 1. Definitions

Currentness

In this chapter the following words, unless a different meaning is required by the context or is specifically prescribed, shall have the following meanings:--

- (a) "Compensation", any money, thing of value or economic benefit conferred on or received by any person in return for services rendered or to be rendered by himself or another.
- (b) "Competitive bidding", all bidding, where the same may be prescribed by applicable sections of the General Laws or otherwise, given and tendered to a state, county or municipal agency in response to an open solicitation of bids from the general public by public announcement or public advertising, where the contract is awarded to the lowest responsible bidder.
- (c) "County agency", any department or office of county government and any division, board, bureau, commission, institution, tribunal or other instrumentality thereof or thereunder.
- (d) "County employee", a person performing services for or holding an office, position, employment, or membership in a county agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent, or consultant basis.
- (e) "Immediate family", the employee and his spouse, and their parents, children, brothers and sisters.
- (f) "Municipal agency", any department or office of a city or town government and any council, division, board, bureau, commission, institution, tribunal or other instrumentality thereof or thereunder.
- (g) "Municipal employee," a person performing services for or holding an office, position, employment or membership in a municipal agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent, or consultant basis, but excluding (1) elected members of a town meeting and (2) members of a charter commission established under Article LXXXIX of the Amendments to the Constitution.
- (h) "Official act", any decision or action in a particular matter or in the enactment of legislation.

(i) "Official responsibility", the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and whether personal or through subordinates, to approve, disapprove or otherwise direct agency action.

(j) "Participate", participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise.

(k) "Particular matter", any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property.

(l) "Person who has been selected", any person who has been nominated or appointed to be a state, county or municipal employee or has been officially informed that he will be so nominated or appointed.

(m) "Special county employee", a county employee who is performing services or holding an office, position, employment or membership for which no compensation is provided; or who is not an elected official and (1) occupies a position which, by its classification in the county agency involved or by the terms of the contract or conditions of employment, permits personal or private employment during normal working hours, provided that disclosure of such classification or permission is filed in writing with the State Ethics Commission and the office of the county commissioners prior to the commencement of any personal or private employment, or (2) in fact does not earn compensation as a county employee for an aggregate of more than eight hundred hours during the preceding three hundred and sixty-five days. For this purpose compensation by the day shall be considered as equivalent to compensation for seven hours per day. A special county employee shall be in such a status on days for which he is not compensated as well as on days on which he earns compensation.

(n) "Special municipal employee", a municipal employee who is not a mayor, a member of the board of aldermen, a member of the city council, or a selectman in a town with a population in excess of ten thousand persons and whose position has been expressly classified by the city council, or board of aldermen if there is no city council, or board of selectmen, as that of a special employee under the terms and provisions of this chapter; provided, however, that a selectman in a town with a population of ten thousand or fewer persons shall be a special municipal employee without being expressly so classified. All employees who hold equivalent offices, positions, employment or membership in the same municipal agency shall have the same classification; provided, however, no municipal employee shall be classified as a "special municipal employee" unless he occupies a position for which no compensation is provided or which, by its classification in the municipal agency involved or by the terms of the contract or conditions of employment, permits personal or private employment during normal working hours, or unless he in fact does not earn compensation as a municipal employee for an aggregate of more than eight hundred hours during the preceding three hundred and sixty-five days. For this purpose compensation by the day shall be considered as equivalent to compensation for seven hours per day. A special municipal employee shall be in such status on days for which he is not compensated as well as on days on which he earns compensation. All employees of any city or town wherein no such classification has been made shall be deemed to be "municipal employees" and shall be subject to all the provisions of this chapter with respect thereto without exception.

(o) "Special state employee", a state employee:

(1) Who is performing services or holding an office, position, employment or membership for which no compensation is provided, or

(2) Who is not an elected official and

(a) occupies a position which, by its classification in the state agency involved or by the terms of the contract or conditions of employment, permits personal or private employment during normal working hours, provided that disclosure of such classification or permission is filed in writing with the state ethics commission prior to the commencement of any personal or private employment, or

(b) in fact does not earn compensation as a state employee for an aggregate of more than eight hundred hours during the preceding three hundred and sixty-five days. For this purpose compensation by the day shall be considered as equivalent to compensation for seven hours per day. A special state employee shall be in such a status on days for which he is not compensated as well as on days on which he earns compensation.

(p) "State agency", any department of state government including the executive, legislative or judicial, and all councils thereof and thereunder, and any division, board, bureau, commission, institution, tribunal or other instrumentality within such department, and any independent state authority, district, commission, instrumentality or agency, but not an agency of a county, city or town.

(q) "State employee", a person performing services for or holding an office, position, employment, or membership in a state agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent or consultant basis, including members of the general court and executive council. No construction contractor nor any of their personnel shall be deemed to be a state employee or special state employee under the provisions of paragraph (o) or this paragraph as a result of participation in the engineering and environmental analysis for major construction projects either as a consultant or part of a consultant group for the commonwealth. Such contractors or personnel may be awarded construction contracts by the commonwealth and may continue with outstanding construction contracts with the commonwealth during the period of such participation; provided, that no such contractor or personnel shall directly or indirectly bid on or be awarded a contract for any construction project if they have participated in the engineering or environmental analysis thereof.

Credits

Added by St.1962, c. 779, § 1. Amended by St.1965, c. 351; St.1966, Ex.Sess., c. 734, § 2; St.1969, c. 350, §§ 1, 2; St.1977, c. 245; St.1981, c. 430; St.1982, c. 612, §§ 1 to 4; St.1989, c. 289; St.1990, c. 192.

M.G.L.A. 268A § 1, MA ST 268A § 1

Current through Chapter 176 of the 2020 2nd Annual Session

Massachusetts General Laws Annotated
Part IV. Crimes, Punishments and Proceedings in Criminal Cases (Ch. 263-280)
Title I. Crimes and Punishments (Ch. 263-274)
Chapter 268A. Conduct of Public Officials and Employees (Refs & Annos)

M.G.L.A. 268A § 2

§ 2. Corrupt gifts, offers or promises to influence official acts; corruption of witnesses

Effective: September 29, 2009
Currentness

(a) Whoever, directly or indirectly, corruptly gives, offers or promises anything of value to any state, county or municipal employee, or to any person who has been selected to be such an employee, or to any member of the judiciary, or who offers or promises any such employee or any member of the judiciary, or any person who has been selected to be such an employee or member of the judiciary, to give anything of value to any other person or entity, with intent

(1) to influence any official act or any act within the official responsibility of such employee or member of the judiciary or person who has been selected to be such employee or member of the judiciary, or

(2) to influence such an employee or member of the judiciary or person who has been selected to be such an employee or member of the judiciary, to commit or aid in committing, or collude in, or allow, any fraud, or make opportunity for the commission of any fraud on the commonwealth or a state, county or municipal agency, or

(3) to induce such an employee or member of the judiciary or person who has been selected to be such an employee or member of the judiciary to do or omit to do any act in violation of his lawful duty; or

(b) Whoever, being a state, county or municipal employee or a member of the judiciary or a person selected to be such an employee or member of the judiciary, directly or indirectly, corruptly asks, demands, exacts, solicits, seeks, accepts, receives or agrees to receive anything of value for himself or for any other person or entity, in return for

(1) being influenced in his performance of any official act or any act within his official responsibility, or

(2) being influenced to commit or aid in committing, or to collude in, or allow any fraud, or make opportunity for the commission of any fraud, on the commonwealth or on a state, county or municipal agency, or

(3) being induced to do or omit to do any acts in violation of his official duty; or

(c) Whoever, directly or indirectly, corruptly gives, offers or promises anything of value to any person, or offers or promises such person to give anything of value to any other person or entity, with intent to influence the testimony under oath or affirmation of such first-mentioned person or any other person as a witness upon a trial, or other proceeding, before any court,

any committee of either house or both houses of the general court, or any agency, commission or officer authorized by the laws of the commonwealth to hear evidence or take testimony, or with intent to influence such witness to absent himself therefrom; or

(d) Whoever, directly or indirectly, corruptly asks, demands, exacts, solicits, seeks, accepts, receives or agrees to receive anything of value for himself or for any other person or entity in return for influence upon the testimony under oath or affirmation of himself or any other person as a witness upon any such trial, hearing or other proceeding or in return for the absence of himself or any other person therefrom;--shall be punished by a fine of not more than \$100,000, or by imprisonment in the state prison for not more than 10 years, or in a jail or house of correction for not more than 2 ½ years, or both; and in the event of final conviction shall be incapable of holding any office of honor, trust or profit under the commonwealth or under any state, county or municipal agency.

Clauses (c) and (d) shall not be construed to prohibit the payment or receipt of witness fees provided by law or the payment by the party upon whose behalf a witness is called and receipt by a witness of the reasonable cost of travel and subsistence incurred and the reasonable value of time lost in attendance at any such trial, hearing or proceeding, or, in the case of expert witnesses, involving a technical or professional opinion, a reasonable fee for time spent in the preparation of such opinion, in appearing or testifying.

Credits

Added by St.1962, c. 779, § 1. Amended by St.1964, c. 287; St.2009, c. 28, § 61, eff. Sept. 29, 2009.

M.G.L.A. 268A § 2, MA ST 268A § 2

Current through Chapter 176 of the 2020 2nd Annual Session

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Massachusetts General Laws Annotated
Part IV. Crimes, Punishments and Proceedings in Criminal Cases (Ch. 263-280)
Title I. Crimes and Punishments (Ch. 263-274)
Chapter 268A. Conduct of Public Officials and Employees (Refs & Annos)

M.G.L.A. 268A § 3

§ 3. Gifts, offers or promises for acts performed or to be performed;
corruption of witnesses; solicitation of gifts; witness fees; regulations

Effective: September 29, 2009
Currentness

(a) Whoever knowingly, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly, gives, offers or promises anything of substantial value to any present or former state, county or municipal employee or to any member of the judiciary, or to any person selected to be such an employee or member of the judiciary: (i) for or because of any official act performed or to be performed by such an employee or member of the judiciary or person selected to be such an employee or member of the judiciary; or (ii) to influence, or attempt to influence, an official action of the state, county or municipal employee or to any member of the judiciary; or

(b) Whoever knowingly, being a present or former state, county or municipal employee or member of the judiciary, or person selected to be such an employee or member of the judiciary, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly, asks, demands, exacts, solicits, seeks, accepts, receives or agrees to receive anything of substantial value: (i) for himself for or because of any official act or act within his official responsibility performed or to be performed by him; or (ii) to influence, or attempt to influence, him in an official act taken; or

(c) Whoever knowingly, directly or indirectly, gives, offers or promises anything of substantial value to any person, for or because of testimony under oath or affirmation given or to be given by such person or any other person as a witness upon a trial, hearing or other proceeding, before any court, any committee of either house or both houses of the general court, or any agency, commission or officer authorized by the laws of the commonwealth to hear evidence or take testimony or for or because of his absence therefrom; or

(d) Whoever knowingly, directly or indirectly, asks, demands, exacts, solicits, seeks, accepts, receives or agrees to receive anything of substantial value for himself for or because of the testimony under oath or affirmation given or to be given by him or any other person as a witness upon any such trial, hearing or other proceeding, or for or because of his absence therefrom; shall be punished by a fine of not more than \$50,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 ½ years, or both.

(e) Clauses (c) and (d) shall not prohibit the payment or receipt of witness fees provided by law or the payment by the party upon whose behalf a witness is called and receipt by a witness of the reasonable cost of travel and subsistence incurred and the

§ 3. Gifts, offers or promises for acts performed or to be..., MA ST 268A § 3

reasonable value of time lost in attendance at any such trial, hearing or proceeding, or, in the case of expert witnesses, involving a technical or professional opinion, a reasonable fee for time spent in the preparation of such opinion, in appearing or testifying.

(f) The state ethics commission shall adopt regulations: (i) defining "substantial value."; provided, however, that "substantial value" shall not be less than \$50; (ii) establishing exclusions for ceremonial gifts; (iii) establishing exclusions for gifts given solely because of family or friendship; and (iv) establishing additional exclusions for other situations that do not present a genuine risk of a conflict or the appearance of a conflict of interest.

Credits

Added by St.1962, c. 779, § 1. Amended by St.2009, c. 28, § 62, eff. Sept. 29, 2009.

M.G.L.A. 268A § 3, MA ST 268A § 3

Current through Chapter 176 of the 2020 2nd Annual Session

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Massachusetts General Laws Annotated
Part IV. Crimes, Punishments and Proceedings in Criminal Cases (Ch. 263-280)
Title I. Crimes and Punishments (Ch. 263-274)
Chapter 268A. Conduct of Public Officials and Employees (Refs & Annos)

M.G.L.A. 268A § 4

§ 4. Other compensation; offer, gift, receipt or request; acting as agent
or attorney for other than state; legislators; special state employees

Effective: September 29, 2009
Currentness

(a) No state employee shall otherwise than as provided by law for the proper discharge of official duties, directly or indirectly receive or request compensation from anyone other than the commonwealth or a state agency, in relation to any particular matter in which the commonwealth or a state agency is a party or has a direct and substantial interest.

(b) No person shall knowingly, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly give, promise or offer such compensation.

(c) No state employee shall, otherwise than in the proper discharge of his official duties, act as agent or attorney for anyone other than the commonwealth or a state agency for prosecuting any claim against the commonwealth or a state agency, or as agent or attorney for anyone in connection with any particular matter in which the commonwealth or a state agency is a party or has a direct and substantial interest.

Whoever violates any provision of this section shall be punished by a fine of not more than \$10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 ½ years, or both.

Neither a member of the general court nor a member of the executive council shall be subject to paragraphs (a) or (c). However, no member of the general court or executive council shall personally appear for any compensation other than his legislative or executive council salary before any state agency, unless:

(1) the particular matter before the state agency is ministerial in nature; or

(2) the appearance is before a court of the commonwealth; or

(3) the appearance is in a quasi-judicial proceeding.

For the purposes of this paragraph, ministerial functions include, but are not limited to, the filing or amendment of: tax returns, applications for permits or licenses, incorporation papers, or other documents. For the purposes of this paragraph, a proceeding shall be considered quasi-judicial if:

(1) the action of the state agency is adjudicatory in nature; and

(2) the action of the state agency is appealable to the courts; and

(3) both sides are entitled to representation by counsel and such counsel is neither the attorney general nor the counsel for the state agency conducting the proceeding.

A special state employee shall be subject to paragraphs (a) and (c) only in relation to a particular matter (a) in which he has at any time participated as a state employee, or (b) which is or within one year has been a subject of his official responsibility, or (c) which is pending in the state agency in which he is serving. Clause (c) of the preceding sentence shall not apply in the case of a special state employee who serves on no more than sixty days during any period of three hundred and sixty-five consecutive days.

This section shall not prevent a state employee from taking uncompensated action, not inconsistent with the faithful performance of his duties, to aid or assist any person who is the subject of disciplinary or other personnel administration proceedings with respect to those proceedings.

This section shall not prevent a state employee, including a special employee, from acting, with or without compensation, as agent or attorney for or otherwise aiding or assisting members of his immediate family or any person for whom he is serving as guardian, executor, administrator, trustee or other personal fiduciary except in those matters in which he has participated or which are the subject of his official responsibility; provided, that the state official responsible for appointment to his position approves.

This section shall not prevent a present or former special state employee from aiding or assisting another person for compensation in the performance of work under a contract with or for the benefit of the commonwealth; provided, that the head of the special state employee's department or agency has certified in writing that the interest of the commonwealth requires such aid or assistance and the certification has been filed with the state ethics commission.

This section shall not prevent a state employee from giving testimony under oath or making statements required to be made under penalty for perjury or contempt.

This section shall not prohibit a state employee from holding an elective or appointive office in a city, town or district, nor in any way prohibit such an employee from performing the duties of or receiving the compensation provided for such office. No such elected or appointed official may vote or act on any matter which is within the purview of the agency by which he is employed or over which such employee has official responsibility.

This section shall not prevent a state employee, other than an employee in the department of revenue, from requesting or receiving compensation from anyone other than the commonwealth in relation to the filing or amending of state tax returns.

Credits

Added by St.1962, c. 779, § 1. Amended by St.1978, c. 210, §§ 4, 5; St.1980, c. 10, § 1; St.1982, c. 143; St.2007, c. 204, §§ 1 to 3, eff. Feb. 27, 2008; St.2009, c. 28, § 63, eff. Sept. 29, 2009.

M.G.L.A. 268A § 4, MA ST 268A § 4

Current through Chapter 176 of the 2020 2nd Annual Session

§ 4. Other compensation; offer, gift, receipt or request; acting as..., MA ST 268A § 4

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Massachusetts General Laws Annotated
Part IV. Crimes, Punishments and Proceedings in Criminal Cases (Ch. 263-280)
Title I. Crimes and Punishments (Ch. 263-274)
Chapter 268A. Conduct of Public Officials and Employees (Refs & Annos)

M.G.L.A. 268A § 5

§ 5. Former state employees; acting as agent or attorney or
receiving compensation; partners of state employees or legislators

Effective: November 22, 2011
Currentness

- (a) A former state employee who knowingly acts as agent or attorney for, or receives compensation directly or indirectly from anyone other than the commonwealth or a state agency, in connection with any particular matter in which the commonwealth or a state agency is a party or has a direct and substantial interest and in which he participated as a state employee while so employed, or
- (b) a former state employee who, within one year after his last employment has ceased, appears personally before any court or agency of the commonwealth as agent or attorney for anyone other than the commonwealth in connection with any particular matter in which the commonwealth or a state agency is a party or has a direct and substantial interest and which was under his official responsibility as a state employee at any time within a period of two years prior to the termination of his employment, or
- (b $\frac{1}{2}$) A former state, county or municipal employee who participated as such in general legislation on expanded gaming in the commonwealth or in the implementation, administration or enforcement of chapter 23K, and who becomes an officer or employee of, or who acquires a financial interest in, an applicant for a gaming license or a gaming licensee under said chapter 23K within one year after his last state, county or municipal employment has ceased, or
- (c) a partner of a former state employee who knowingly engages, during a period of one year following the termination of the latter's employment by the commonwealth, in any activity in which the former state employee is himself prohibited from engaging in by clause (a), or
- (d) a partner of a state employee who knowingly acts as agent or attorney for anyone other than the commonwealth in connection with any particular matter in which the commonwealth or a state agency is a party or has a direct and substantial interest and in which the state employee participates or has participated as a state employee or which is the subject of his official responsibility, or
- (e) a former state employee or elected official, including a former member of the general court, who acts as legislative or executive agent, as defined in section thirty-nine of chapter three, for anyone other than the commonwealth or a state agency before the governmental body, as determined by the state ethics commission with which he has been associated, within one year after he leaves that body or

(f) a former state employee whose salary was not less than that in step one of job group M-VII in the management salary schedule in section forty-six C of chapter thirty, and who becomes an officer or employee of a business organization which is or was a party to any privatization contract as defined in section fifty-three of chapter seven in which contract he participated as such state employee, if he becomes such officer or employee while the business organization is such a party or within one year after he terminates his state employment, unless before the termination of his state employment the governor determines, in a writing filed with the state ethics commission, that such participation did not significantly affect the terms or implementation of such contract, shall be punished by a fine of not more than \$10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 ½ years, or both.

If a partner of a member of the general court or of a special state employee or of a former state employee is also a member of another partnership in which the member of the general court or special or former employee has no interest, the activities of the latter partnership in which the member of the general court or special or former employee takes no part shall not thereby be subject to clause (c) or (d).

This section shall not prevent a present or former special state employee from aiding or assisting another person for compensation in the performance of work under a contract with or for the benefit of the commonwealth; provided, that the head of the special state employee's department or agency has certified in writing that the interest of the commonwealth requires such aid or assistance and the certification has been filed with the state ethics commission.

Credits

Added by St.1962, c. 779, § 1. Amended by St.1978, c. 210, §§ 6 to 8; St.1986, c. 557, § 191; St.1993, c. 296, § 2; St.2009, c. 28, §§ 64 to 66, eff. Sept. 29, 2009; St.2011, c. 194, § 49, eff. Nov. 22, 2011.

M.G.L.A. 268A § 5, MA ST 268A § 5

Current through Chapter 176 of the 2020 2nd Annual Session

End of Document

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Massachusetts General Laws Annotated
Part IV. Crimes, Punishments and Proceedings in Criminal Cases (Ch. 263-280)
Title I. Crimes and Punishments (Ch. 263-274)
Chapter 268A. Conduct of Public Officials and Employees (Refs & Annos)

M.G.L.A. 268A § 6

§ 6. Financial interest of state employee, relative or associates; disclosure

Effective: September 29, 2009
Currentness

(a) Except as permitted by this section, any state employee who participates as such employee in a particular matter in which to his knowledge he, his immediate family or partner, a business organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest, shall be punished by a fine of not more than \$10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 ½ years, or both.

Any state employee whose duties would otherwise require him to participate in such a particular matter shall advise the official responsible for appointment to his position and the state ethics commission of the nature and circumstances of the particular matter and make full disclosure of such financial interest, and the appointing official shall thereupon either

(1) assign the particular matter to another employee; or

(2) assume responsibility for the particular matter; or

(3) make a written determination that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the commonwealth may expect from the employee, in which case it shall not be a violation for the employee to participate in the particular matter. Copies of such written determination shall be forwarded to the state employee and filed with the state ethics commission by the person who made the determination. Such copy shall be retained by the commission for a period of six years.

<[There is no subsection (b).]>

Credits

Added by St.1962, c. 779, § 1. Amended by St.1978, c. 210, § 9; St.2009, c. 28, § 67, eff. Sept. 29, 2009.

M.G.L.A. 268A § 6, MA ST 268A § 6

Current through Chapter 176 of the 2020 2nd Annual Session

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Massachusetts General Laws Annotated
Part IV. Crimes, Punishments and Proceedings in Criminal Cases (Ch. 263-280)
Title I. Crimes and Punishments (Ch. 263-274)
Chapter 268A. Conduct of Public Officials and Employees (Refs & Annos)

M.G.L.A. 268A § 6A

§ 6A. Conflict of interest of public official; reporting requirement

Currentness

Any public official, as defined by section one of chapter two hundred and sixty-eight B, who in the discharge of his official duties would be required knowingly to take an action which would substantially affect such official's financial interests, unless the effect on such an official is no greater than the effect on the general public, shall file a written description of the required action and the potential conflict of interest with the state ethics commission established by said chapter two hundred and sixty-eight B.

Credits

Added by St.1978, c. 210, § 10. Amended by St.1984, c. 189, § 163.

M.G.L.A. 268A § 6A, MA ST 268A § 6A

Current through Chapter 176 of the 2020 2nd Annual Session

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Proposed Legislation

Massachusetts General Laws Annotated
Part IV. Crimes, Punishments and Proceedings in Criminal Cases (Ch. 263-280)
Title I. Crimes and Punishments (Ch. 263-274)
Chapter 268A. Conduct of Public Officials and Employees (Refs & Annos)

M.G.L.A. 268A § 6B

§ 6B. Candidates for employment as state employee; disclosure of relation to state employee

Effective: July 1, 2011
Currentness

Each candidate for employment as a state employee shall be required by the hiring authority as part of the application process to disclose, in writing, the names of any state employee who is related to the candidate as: spouse, parent, child or sibling or the spouse of the candidate's parent, child or sibling.

The contents of a disclosure received under this section from an employee when such employee was a candidate shall be considered public records under section 7 of chapter 4 and chapter 66.

All disclosures made by applicants hired by a state agency shall be made available for public inspection to the extent permissible by law by the official with whom such disclosure has been filed.

Credits

Added by St.2011, c. 93, § 118, eff. July 1, 2011.

M.G.L.A. 268A § 6B, MA ST 268A § 6B

Current through Chapter 176 of the 2020 2nd Annual Session

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Proposed Legislation

Massachusetts General Laws Annotated
Part IV. Crimes, Punishments and Proceedings in Criminal Cases (Ch. 263-280)
Title I. Crimes and Punishments (Ch. 263-274)
Chapter 268A. Conduct of Public Officials and Employees (Refs & Annos)

M.G.L.A. 268A § 7

§ 7. Financial interest in contracts of state agency; application of section

Effective: November 5, 2010
Currentness

A state employee who has a financial interest, directly or indirectly, in a contract made by a state agency, in which the commonwealth or a state agency is an interested party, of which interest he has knowledge or has reason to know, shall be punished by a fine of not more than \$10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 ½ years, or both.

This section shall not apply if such financial interest consists of the ownership of less than one per cent of the stock of a corporation.

This section shall not apply (a) to a state employee who in good faith and within thirty days after he learns of an actual or prospective violation of this section makes full disclosure of his financial interest to the contracting agency and terminates or disposes of the interest, or (b) to a state employee other than a member of the general court who is not employed by the contracting agency or an agency which regulates the activities of the contracting agency and who does not participate in or have official responsibility for any of the activities of the contracting agency, if the contract is made after public notice or where applicable, through competitive bidding, and if the state employee files with the state ethics commission a statement making full disclosure of his interest and the interests of his immediate family in the contract, and if in the case of a contract for personal services (1) the services will be provided outside the normal working hours of the state employee, (2) the services are not required as part of the state employee's regular duties, the employee is compensated for not more than five hundred hours during a calendar year, and (3) the head of the contracting agency makes and files with the state ethics commission a written certification that no employee of that agency is available to perform those services as a part of their regular duties, or (c) to the interest of a member of the general court in a contract made by an agency other than the general court or either branch thereof, if his direct and indirect interests and those of his immediate family in the corporation or other commercial entity with which the contract is made do not in the aggregate amount to ten per cent of the total proprietary interests therein, and the contract is made through competitive bidding and he files with the state ethics commission a statement making full disclosure of his interest and the interests of his immediate family or (d) to a special state employee who does not participate in or have official responsibility for any of the activities of the contracting agency and who files with the state ethics commission a statement making full disclosure of his interest and the interests of his immediate family in the contract, or (e) to a special state employee who files with the state ethics commission a statement making full disclosure of his interest and the interests of his immediate family in the contract, if the governor with the advice and consent of the executive council exempts him.

This section shall not apply to a state employee who provides services or furnishes supplies, goods and materials to a recipient of public assistance, provided that such services or such supplies, goods and materials are provided in accordance with a schedule of charges promulgated by the department of transitional assistance or the division of health care policy and finance and provided,

further, that such recipient has the right under law to choose and in fact does choose the person or firm that will provide such services or furnish such supplies, goods and materials.

This section shall not prohibit a state employee from teaching or performing other related duties in an educational institution of the commonwealth; provided, that such employee does not participate in, or have official responsibility for, the financial management of such educational institution; and provided, further, that such employee is so employed on a part-time basis. Such employee may be compensated for such services, notwithstanding the provisions of section twenty-one of chapter thirty.

This section shall not prohibit a state employee from being employed on a part-time basis by a facility operated or designed for the care of mentally ill or mentally retarded persons, public health, correctional facility or any other facility principally funded by the state which provides similar services and which operates on an uninterrupted and continuous basis; provided that such employee does not participate in, or have official responsibility for, the financial management of such facility, that he is compensated for such part-time employment for not more than four hours in any day in which he is otherwise compensated by the commonwealth, and at a rate which does not exceed that of a state employee classified in step one of job group XX of the general salary schedule contained in section forty-six of chapter thirty, and that the head of the facility makes and files with the state ethics commission a written certification that there is a critical need for the services of the employee. Such employee may be compensated for such services, notwithstanding the provisions of section twenty-one of chapter thirty.

This section shall not preclude an officer or employee of the Massachusetts Port Authority from eligibility for any residential sound insulation program or the bayswater environmental program provided that the officer or employee has no responsibility for the administration for that program from which he is to receive the benefit.

Credits

Added by St.1962, c. 779, § 1. Amended by St.1968, c. 446; St.1978, c. 210, § 11; St.1980, c. 303; St.1982, c. 612, §§ 5 to 7; St.1986, c. 599, § 53; St.1990, c. 487, § 1; St.1993, c. 301, § 1; St.1998, c. 161, § 556; St.2009, c. 28, § 68, eff. Sept. 29, 2009; St.2010, c. 264, § 1, eff. Nov. 5, 2010.

M.G.L.A. 268A § 7, MA ST 268A § 7

Current through Chapter 176 of the 2020 2nd Annual Session

Massachusetts General Laws Annotated

Part IV. Crimes, Punishments and Proceedings in Criminal Cases (Ch. 263-280)

Title I. Crimes and Punishments (Ch. 263-274)

Chapter 268A. Conduct of Public Officials and Employees (Refs & Annos)

M.G.L.A. 268A § 8

§ 8. Public building or construction contracts

Effective: September 29, 2009

Currentness

No state, county or municipal employee and no person acting or purporting to act on behalf of such employee, or any state, county or municipal agency, shall with respect to any public building or construction contract which is about to be or which has been competitively bid, require the bidder to make application to or furnish financial data to, or to obtain, or procure, any of the surety bonds or insurance specified in connection with such contract or specified by any law from any particular insurance or surety company, agent, or broker. This section shall not prevent the exercise by such employee on behalf of a state, county, or municipal agency of its right to approve the form, sufficiency, or manner of execution of the surety bonds and insurance furnished by the insurance or surety company selected by the bidder to underwrite said insurance and bonds. Any provisions in any invitation for bids, or in any of the contract documents, in conflict with this section are hereby declared to be contrary to the public policy of this commonwealth. Whoever violates any provision of this section shall be punished by a fine of not more than \$10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 ½ years, or both.

Credits

Added by St.1962, c. 779, § 1. Amended by St.2009, c. 28, § 69, eff. Sept. 29, 2009.

M.G.L.A. 268A § 8, MA ST 268A § 8

Current through Chapter 176 of the 2020 2nd Annual Session

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Massachusetts General Laws Annotated
Part IV. Crimes, Punishments and Proceedings in Criminal Cases (Ch. 263-280)
Title I. Crimes and Punishments (Ch. 263-274)
Chapter 268A. Conduct of Public Officials and Employees (Refs & Annos)

M.G.L.A. 268A § 8A

§ 8A. Members of state commissions or boards; prohibited appointments to other positions

Currentness

No member of a state commission or board shall be eligible for appointment or election by the members of such commission or board to any office or position under the supervision of such commission or board. No former member of such commission or board shall be so eligible until the expiration of thirty days from the termination of his service as a member of such commission or board.

Credits

Added by St.1964, c. 314.

M.G.L.A. 268A § 8A, MA ST 268A § 8A

Current through Chapter 176 of the 2020 2nd Annual Session

End of Document

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Massachusetts General Laws Annotated
Part IV. Crimes, Punishments and Proceedings in Criminal Cases (Ch. 263-280)
Title I. Crimes and Punishments (Ch. 263-274)
Chapter 268A. Conduct of Public Officials and Employees (Refs & Annos)

M.G.L.A. 268A § 8B

§ 8B. Members of commonwealth utilities commission; prohibited lobbying activities

Effective: April 15, 2009

Currentness

No member of the commonwealth utilities commission, appointed pursuant to section 2 of chapter 25, or the commissioner of telecommunications and cable shall, within one year after his service has ceased or terminated on said commission, be employed by, or lobby said commission on behalf of, any company or regulated industry over which said commission had jurisdiction during the tenure of such member of the commission.

Credits

Added by St.1997, c. 164, § 291. Amended by St.2008, c. 522, §§ 46, 47, eff. April 15, 2009.

M.G.L.A. 268A § 8B, MA ST 268A § 8B

Current through Chapter 176 of the 2020 2nd Annual Session

End of Document

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Massachusetts General Laws Annotated
Part IV. Crimes, Punishments and Proceedings in Criminal Cases (Ch. 263-280)
Title I. Crimes and Punishments (Ch. 263-274)
Chapter 268A. Conduct of Public Officials and Employees (Refs & Annos)

M.G.L.A. 268A § 9

§ 9. Avoiding, rescinding or canceling state agency actions
resulting from violations of chapter; restitution and damages

Effective: September 29, 2009
Currentness

(a) In addition to any other remedies provided by law, any violation of sections 2 to 8, inclusive, or section 23 which has substantially influenced the action taken by any state agency in any particular matter, shall be grounds for avoiding, rescinding or canceling the action on such terms as the interests of the commonwealth and innocent third persons shall require.

(b) In addition to the remedies set forth in subsection (a), the state ethics commission upon a finding pursuant to an adjudicatory proceeding that a person has acted to his economic advantage in violation of sections 2 to 8, inclusive, or section 23, may issue an order: (1) requiring the violator to pay the commission on behalf of the commonwealth damages in the amount of the economic advantage or \$500, whichever is greater; and (2) requiring the violator to make restitution to an injured third party. If there has been no final criminal judgment of conviction or acquittal of the same violation, upon receipt of the written approval of the attorney general, the commission may order payment of additional damages in an amount not exceeding twice the amount of the economic advantage or \$500, and payment of such additional damages shall bar any criminal prosecution for the same violation.

The maximum damages that the commission may order a violator to pay under this section shall be \$25,000. If the commission determines that the damages authorized by this section exceed \$25,000, it may bring a civil action against the violator to recover such damages.

(c) The remedies authorized by this section shall be in addition to any civil penalty imposed by the state ethics commission in accordance with clause (3) of subsection (j) of section 4 of chapter 268B.

Credits

Added by St.1962, c. 779, § 1. Amended by St.1978, c. 210, § 12; St.2009, c. 28, § 70, eff. Sept. 29, 2009.

M.G.L.A. 268A § 9, MA ST 268A § 9
Current through Chapter 176 of the 2020 2nd Annual Session

End of Document

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Massachusetts General Laws Annotated
Part IV. Crimes, Punishments and Proceedings in Criminal Cases (Ch. 263-280)
Title I. Crimes and Punishments (Ch. 263-274)
Chapter 268A. Conduct of Public Officials and Employees (Refs & Annos)

M.G.L.A. 268A § 10

§ 10. Opinions of state ethics commission

Currentness

The state ethics commission shall issue opinions interpreting the requirements of this chapter in accordance with clause (g) of section three of chapter two hundred and sixty-eight B.

Credits

Added by St.1962, c. 779, § 1. Amended by St.1978, c. 210, § 13; St.1984, c. 189, § 164.

M.G.L.A. 268A § 10, MA ST 268A § 10

Current through Chapter 176 of the 2020 2nd Annual Session

End of Document

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Massachusetts General Laws Annotated
Part IV. Crimes, Punishments and Proceedings in Criminal Cases (Ch. 263-280)
Title I. Crimes and Punishments (Ch. 263-274)
Chapter 268A. Conduct of Public Officials and Employees (Refs & Annos)

M.G.L.A. 268A § 11

§ 11. County employees; receiving or requesting compensation
from, or acting as agent or attorney for other than county agency

Effective: September 29, 2009
Currentness

(a) No county employee shall, otherwise than as provided for the proper discharge of official duties, directly or indirectly receive or request compensation from anyone other than a county or a county agency in relation to any particular matter in which a county agency is a party or has a direct and substantial interest.

(b) No person shall knowingly, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly give, promise or offer such compensation.

(c) No county employee shall, otherwise than as provided by law for the proper discharge of official duties, act as agent or attorney for anyone other than a county or a county agency in prosecuting any claim against a county or county agency, or as agent or attorney for anyone in connection with any particular matter in which a county or county agency is a party or has a direct and substantial interest.

Whoever violates any provision of this section shall be punished by a fine of not more than \$10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 ½ years, or both.

A county employee shall be subject to paragraphs (a) and (c) only in relation to the county of which he is an employee. A special county employee shall be subject to said paragraphs (a) and (c) only in relation to a particular matter (a) in which he has at any time participated as a county employee, or (b) which is or within one year has been a subject of his official responsibility, or (c) which is pending in the county agency in which he is serving. Clause (c) of the preceding sentence shall not apply in the case of a county employee who serves on no more than sixty days during any period of three hundred and sixty-five consecutive days.

This section shall not prevent a county employee from taking uncompensated action, not inconsistent with the faithful performance of his duties, to aid or assist any person who is the subject of disciplinary or other personnel administration proceedings with respect to those proceedings.

This section shall not prevent a county employee, including a special employee, from acting, with or without compensation, as agent or attorney for or otherwise aiding or assisting members of his immediate family or any person for whom he is serving as guardian, executor, administrator, trustee or other personal fiduciary except in those matters in which he has participated or which are the subject of his official responsibility; provided, that the state or county official responsible for appointment to his position approves.

§ 11. County employees; receiving or requesting compensation..., MA ST 268A § 11

This section shall not prevent a present or former special county employee from aiding or assisting another person for compensation in the performance of work under a contract with or for the benefit of the county; provided, that the head of the special county employee's department or agency has certified in writing that the interest of the county requires such aid or assistance and the certification has been filed with the state ethics commission. The certification shall be open to public inspection.

This section shall not prevent a county employee from giving testimony under oath or making statements required to be made under penalty for perjury or contempt.

This section shall not prohibit a county employee from holding an elective or appointive office in a city, town or district nor in any way prohibit such an employee from performing the duties or receiving the compensation provided for such office. No such elected or appointed official may vote or act on any matter which is within the purview of the agency by which he is employed or over which such employee has official responsibility.

Credits

Added by St.1962, c. 779, § 1. Amended by St.1978, c. 210, § 14; St.1980, c. 10, § 2; St.1982, c. 612, § 8; St.2009, c. 28, § 71, eff. Sept. 29, 2009.

M.G.L.A. 268A § 11, MA ST 268A § 11

Current through Chapter 176 of the 2020 2nd Annual Session

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Massachusetts General Laws Annotated
Part IV. Crimes, Punishments and Proceedings in Criminal Cases (Ch. 263-280)
Title I. Crimes and Punishments (Ch. 263-274)
Chapter 268A. Conduct of Public Officials and Employees (Refs & Annos)

M.G.L.A. 268A § 12

§ 12. Former county employees; acting as attorney or receiving compensation
from other than county; partners of employees or former employees or legislators

Effective: September 29, 2009
Currentness

(a) A former county employee who knowingly acts as agent or attorney for or receives compensation directly or indirectly from anyone other than a county or a county agency in connection with any particular matter in which the county or a county agency of the same county is a party or has a direct and substantial interest and in which he participated as a county employee while so employed, or

(b) A former county employee who, within one year after his last employment has ceased, appears personally before any agency of the county as agent or attorney for anyone other than the county in connection with any particular matter in which the county or a county agency of the same county is a party or has a direct and substantial interest and which was under his official responsibility as a county employee at any time within a period of two years prior to the termination of his employment, or

(c) A partner of a former county employee who knowingly engages, during a period of one year following the termination of the latter's employment by the county, in any activity in which the former county employee is himself prohibited from engaging by clause (a), or

(d) A partner of a county employee who knowingly acts as agent or attorney for anyone other than the county in connection with any particular matter in which the county or a county agency of the same county is a party or has a direct and substantial interest and in which the county employee participates or has participated as a county employee or which is the subject of his official responsibility, shall be punished by a fine of not more than \$10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 ½ years, or both.

If a partner of a special county employee or of a former county employee is also a member of another partnership in which the special or former employee has no interest, activities of the latter partnership in which the special or former employee takes no part shall not thereby be subject to clause (c) or (d).

This section shall not prevent a present or former special county employee from aiding or assisting another person for compensation in the performance of work under a contract with or for the benefit of the county; provided, that the head of the special county employee's department or agency has certified in writing that the interest of the county requires such aid or assistance and the certification has been filed with the state ethics commission. The certification shall be open to public inspection.

§ 12. Former county employees; acting as attorney or receiving..., MA ST 268A § 12

Credits

Added by St.1962, c. 779, § 1. Amended by St.1978, c. 210, § 15; St.1982, c. 612, § 9; St.2009, c. 28, § 72, eff. Sept. 29, 2009.

M.G.L.A. 268A § 12, MA ST 268A § 12

Current through Chapter 176 of the 2020 2nd Annual Session

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Massachusetts General Laws Annotated
Part IV. Crimes, Punishments and Proceedings in Criminal Cases (Ch. 263-280)
Title I. Crimes and Punishments (Ch. 263-274)
Chapter 268A. Conduct of Public Officials and Employees (Refs & Annos)

M.G.L.A. 268A § 13

§ 13. Financial interest of county employee, relatives or associates; disclosure

Effective: September 29, 2009
Currentness

(a) Except as permitted by paragraph (b), a county employee who participates as such an employee in a particular matter in which to his knowledge he, his immediate family or partner, a business organization which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest, shall be punished by a fine of not more than \$10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 ½ years, or both.

(b) Any county employee whose duties would otherwise require him to participate in such a particular matter shall advise the official responsible for appointment to his position and the state ethics commission of the nature and circumstances of the particular matter and make full disclosure of such financial interest, and the appointing official shall thereupon either

(1) assign the particular matter to another employee; or

(2) assume responsibility for the particular matter; or

(3) make a written determination that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the county may expect from the employee, in which case it shall not be a violation for the employee to participate in the particular matter. Copies of such written determination shall be forwarded to the county employee and filed with the state ethics commission by the person who made the determination. Such copy shall be retained by the commission for a period of six years.

Credits

Added by St.1962, c. 779, § 1. Amended by St.1978, c. 210, § 16; St.2009, c. 28, § 73. eff. Sept. 29, 2009.

M.G.L.A. 268A § 13, MA ST 268A § 13

Current through Chapter 176 of the 2020 2nd Annual Session

End of Document

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Massachusetts General Laws Annotated
Part IV. Crimes, Punishments and Proceedings in Criminal Cases (Ch. 263-280)
Title I. Crimes and Punishments (Ch. 263-274)
Chapter 268A. Conduct of Public Officials and Employees (Refs & Annos)

M.G.L.A. 268A § 14

§ 14. County employees; financial interest in contracts of county agency

Effective: September 29, 2009
Currentness

A county employee who has a financial interest, directly or indirectly, in a contract made by a county agency of the same county, in which the county or a county agency is an interested party of which financial interest he has knowledge or has reason to know, shall be punished by a fine of not more than \$10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 ½ years, or both.

This section shall not apply if such financial interest consists of the ownership of less than one per cent of the stock of a corporation.

This section shall not apply (a) to a county employee who in good faith and within thirty days after he learns of an actual or prospective violation of this section makes full disclosure of his financial interest to the contracting agency and terminates or disposes of the interest, or (b) to a county employee who does not participate in or have official responsibility for any of the activities of the contracting agency, if the contract is made through competitive bidding and his direct and indirect interests and those of his immediate family in the corporation or other commercial entity with which the contract is made do not in the aggregate amount to ten per cent of the total proprietary interests therein, or (c) to a special county employee who does not participate in or have official responsibility for any of the activities of the contracting agency and who files with the state ethics commission a statement making full disclosure of his interest and the interests of his immediate family in the contract, if the county commissioners approve the exemption of his interest from this section.

Credits

Added by St.1962, c. 779, § 1. Amended by St.1978, c. 210, § 17; St.1982, c. 612, § 10; St.2009, c. 28, § 74, eff. Sept. 29, 2009.

M.G.L.A. 268A § 14, MA ST 268A § 14
Current through Chapter 176 of the 2020 2nd Annual Session

End of Document

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Massachusetts General Laws Annotated
Part IV. Crimes, Punishments and Proceedings in Criminal Cases (Ch. 263-280)
Title I. Crimes and Punishments (Ch. 263-274)
Chapter 268A. Conduct of Public Officials and Employees (Refs & Annos)

M.G.L.A. 268A § 15

§ 15. Avoiding, rescinding or canceling county agency actions
resulting from violations of chapter; restitution and damages

Effective: September 29, 2009
Currentness

(a) In addition to any other remedies provided by law, a violation of section 2, 3, 8, or sections 11 to 14, inclusive, or section 23 which has substantially influenced the action taken by any county agency in any particular matter, shall be grounds for avoiding, rescinding, or canceling the action on such terms as the interests of the county and innocent third persons shall require.

(b) In addition to the remedies set forth in subsection (a), the commission may, upon a finding pursuant to an adjudicatory proceeding that a person has acted to his economic advantage in violation of section 2, 3, 8, sections 11 to 14, inclusive, or section 23, issue an order (1) requiring the violator to pay the commission on behalf of the county damages in the amount of the economic advantage or \$500, whichever is greater; and (2) requiring the violator to make restitution to an injured third party. If there has been no final criminal judgment of conviction or acquittal of the same violation, upon receipt of the written approval of the attorney general and the district attorney, the commission may order payment of additional damages in an amount not exceeding twice the amount of the economic advantage or \$500, and payment of such additional damages shall bar any criminal prosecution for the same violation.

The maximum damages that the commission may order a violator to pay under this section shall be \$25,000. If the commission determines that the damages authorized by this section exceed \$25,000, it may bring a civil action against the violator to recover such damages.

(c) The remedies authorized by this section shall be in addition to any civil penalty imposed by the commission in accordance with clause (3) of subsection (j) of section 4 of chapter 268B.

Credits

Added by St.1962, c. 779, § 1. Amended by St.1978, c. 210, § 18; St.2009, c. 28, § 75, eff. Sept. 29, 2009.

M.G.L.A. 268A § 15, MA ST 268A § 15
Current through Chapter 176 of the 2020 2nd Annual Session

Massachusetts General Laws Annotated
Part IV. Crimes, Punishments and Proceedings in Criminal Cases (Ch. 263-280)
Title I. Crimes and Punishments (Ch. 263-274)
Chapter 268A. Conduct of Public Officials and Employees (Refs & Annos)

M.G.L.A. 268A § 15A

§ 15A. Members of county commission or board;
restrictions on appointments to certain positions

Currentness

No member of a county commission or board shall be eligible for appointment or election by the members of such commission or board to any office or position under the supervision of such commission or board. No former member of such commission or board shall be so eligible until the expiration of thirty days from the termination of his service as a member of such commission or board.

Credits

Added by St.1967, c. 887, § 1.

M.G.L.A. 268A § 15A, MA ST 268A § 15A

Current through Chapter 176 of the 2020 2nd Annual Session

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§ 16. Repealed, 1978, 210, Sec. 19, MA ST 268A § 16

 KeyCite Red Flag - Severe Negative Treatment
KeyCite Red Flag Negative Treatment§ 16 Repealed, 1978, 210, Sec. 19

Massachusetts General Laws Annotated
Part IV. Crimes, Punishments and Proceedings in Criminal Cases (Ch. 263-280)
Title I. Crimes and Punishments (Ch. 263-274)
Chapter 268A. Conduct of Public Officials and Employees (Refs & Annos)

M.G.L.A. 268A § 16

§ 16. Repealed, 1978, 210, Sec. 19

Currentness

M.G.L.A. 268A § 16, MA ST 268A § 16
Current through Chapter 176 of the 2020 2nd Annual Session

End of Document

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Massachusetts General Laws Annotated
Part IV. Crimes, Punishments and Proceedings in Criminal Cases (Ch. 263-280)
Title I. Crimes and Punishments (Ch. 263-274)
Chapter 268A. Conduct of Public Officials and Employees (Refs & Annos)

M.G.L.A. 268A § 17

§ 17. Municipal employees; gift or receipt of compensation
from other than municipality; acting as agent or attorney

Effective: September 29, 2009
Currentness

(a) No municipal employee shall, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly receive or request compensation from anyone other than the city or town or municipal agency in relation to any particular matter in which the same city or town is a party or has a direct and substantial interest.

(b) No person shall knowingly, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly give, promise or offer such compensation.

(c) No municipal employee shall, otherwise than in the proper discharge of his official duties, act as agent or attorney for anyone other than the city or town or municipal agency in prosecuting any claim against the same city or town, or as agent or attorney for anyone in connection with any particular matter in which the same city or town is a party or has a direct and substantial interest.

Whoever violates any provision of this section shall be punished by a fine of not more than \$10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 ½ years, or both.

A special municipal employee shall be subject to paragraphs (a) and (c) only in relation to a particular matter (a) in which he has at any time participated as a municipal employee, or (b) which is or within one year has been a subject of his official responsibility, or (c) which is pending in the municipal agency in which he is serving. Clause (c) of the preceding sentence shall not apply in the case of a special municipal employee who serves on no more than sixty days during any period of three hundred and sixty-five consecutive days.

This section shall not prevent a municipal employee from taking uncompensated action, not inconsistent with the faithful performance of his duties, to aid or assist any person who is the subject of disciplinary or other personnel administration proceedings with respect to those proceedings.

This section shall not prevent a municipal employee, including a special employee, from acting, with or without compensation, as agent or attorney for or otherwise aiding or assisting members of his immediate family or any person for whom he is serving as guardian, executor, administrator, trustee or other personal fiduciary except in those matters in which he has participated or which are the subject of his official responsibility; provided, that the official responsible for appointment to his position approves.

This section shall not prevent a present or former special municipal employee from aiding or assisting another person for compensation in the performance of work under a contract with or for the benefit of the city or town; provided, that the head

of the special municipal employee's department or agency has certified in writing that the interest of the city or town requires such aid or assistance and the certification has been filed with the clerk of the city or town. The certification shall be open to public inspection.

This section shall not prevent a municipal employee from giving testimony under oath or making statements required to be made under penalty for perjury or contempt.

This section shall not prevent a municipal employee from applying on behalf of anyone for a building, electrical, wiring, plumbing, gas fitting or septic system permit, nor from receiving compensation in relation to any such permit, unless such employee is employed by or provides services to the permit-granting agency or an agency that regulates the activities of the permit-granting agency.

Credits

Added by St.1962, c. 779, § 1. Amended by St.1998, c. 100; St.2009, c. 28, § 76, eff. Sept. 29, 2009.

M.G.L.A. 268A § 17, MA ST 268A § 17

Current through Chapter 176 of the 2020 2nd Annual Session

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Massachusetts General Laws Annotated

Part IV. Crimes, Punishments and Proceedings in Criminal Cases (Ch. 263-280)

Title I. Crimes and Punishments (Ch. 263-274)

Chapter 268A. Conduct of Public Officials and Employees (Refs & Annos)

M.G.L.A. 268A § 18

§ 18. Former municipal employee; acting as attorney or
receiving compensation; from other than municipality; partners

Effective: September 29, 2009

Currentness

(a) A former municipal employee who knowingly acts as agent or attorney for or receives compensation, directly or indirectly from anyone other than the same city or town in connection with any particular matter in which the city or town is a party or has a direct and substantial interest and in which he participated as a municipal employee while so employed, or (b) a former municipal employee who, within one year after his last employment has ceased, appears personally before any agency of the city or town as agent or attorney for anyone other than the city or town in connection with any particular matter in which the same city or town is a party or has a direct and substantial interest and which was under his official responsibility as a municipal employee at any time within a period of two years prior to the termination of his employment, or (c) a partner of a former municipal employee who knowingly engages, during a period of one year following the termination of the latter's employment by the city or town, in any activity in which the former municipal employee is himself prohibited from engaging by clause (a), or (d) a partner of a municipal employee who knowingly acts as agent or attorney for anyone other than the city or town in connection with any particular matter in which the same city or town is a party or has a direct and substantial interest and in which the municipal employee participates or has participated as a municipal employee or which is the subject of his official responsibility, shall be punished by a fine of not more than \$10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 ½ years, or both.

If a partner of a former municipal employee or of a special municipal employee is also a member of another partnership in which the former or special employee has no interest, the activities of the latter partnership in which the former or special employee takes no part shall not thereby be subject to clause (c) or (d).

Notwithstanding the provisions of clause (b), a former town counsel who acted in such capacity on a salary or retainer of less than two thousand dollars per year shall be prohibited from appearing personally before any agency of the city or town as agent or attorney for anyone other than the city or town only in connection with any particular matter in which the same city or town is a party or has a direct and substantial interest and in which he participated while so employed.

This section shall not prevent a present or former special municipal employee from aiding or assisting another person for compensation in the performance of work under a contract with or for the benefit of the city or town; provided, that the head of the special municipal employee's department or agency has certified in writing that the interest of the city or town requires such aid or assistance and the certification has been filed with the clerk of the city or town. The certification shall be open to public inspection.

Credits

Added by St.1962, c. 779, § 1. Amended by St.2009, c. 28, § 77, eff. Sept. 29, 2009.

§ 18. Former municipal employee; acting as attorney or receiving..., MA ST 268A § 18

M.G.L.A. 268A § 18, MA ST 268A § 18
Current through Chapter 176 of the 2020 2nd Annual Session

End of Document

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Massachusetts General Laws Annotated

Part IV. Crimes, Punishments and Proceedings in Criminal Cases (Ch. 263-280)

Title I. Crimes and Punishments (Ch. 263-274)

Chapter 268A. Conduct of Public Officials and Employees (Refs & Annos)

M.G.L.A. 268A § 19

§ 19. Municipal employees, relatives or associates; financial interest in particular matter

Effective: September 29, 2009

Currentness

(a) Except as permitted by paragraph (b), a municipal employee who participates as such an employee in a particular matter in which to his knowledge he, his immediate family or partner, a business organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest, shall be punished by a fine of not more than \$10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 ½ years, or both.

(b) It shall not be a violation of this section (1) if the municipal employee first advises the official responsible for appointment to his position of the nature and circumstances of the particular matter and makes full disclosure of such financial interest, and receives in advance a written determination made by that official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee, or (2) if, in the case of an elected municipal official making demand bank deposits of municipal funds, said official first files, with the clerk of the city or town, a statement making full disclosure of such financial interest, or (3) if the particular matter involves a determination of general policy and the interest of the municipal employee or members of his immediate family is shared with a substantial segment of the population of the municipality.

Credits

Added by St.1962, c. 779, § 1. Amended by St.1965, c. 395; St.1982, c. 612, § 11; St.2009, c. 28, § 78, eff. Sept. 29, 2009.

M.G.L.A. 268A § 19, MA ST 268A § 19

Current through Chapter 176 of the 2020 2nd Annual Session

End of Document

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 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Massachusetts General Laws Annotated
Part IV. Crimes, Punishments and Proceedings in Criminal Cases (Ch. 263-280)
Title I. Crimes and Punishments (Ch. 263-274)
Chapter 268A. Conduct of Public Officials and Employees (Refs & Annos)

M.G.L.A. 268A § 20

§ 20. Municipal employees; financial interest in
contracts; holding one or more elected positions

Effective: September 29, 2009
Currentness

(a) A municipal employee who has a financial interest, directly or indirectly, in a contract made by a municipal agency of the same city or town, in which the city or town is an interested party of which financial interest he has knowledge or has reason to know, shall be punished by a fine of not more than \$10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 ½ years, or both.

This section shall not apply if such financial interest consists of the ownership of less than one per cent of the stock of a corporation.

This section shall not apply (a) to a municipal employee who in good faith and within thirty days after he learns of an actual or prospective violation of this section makes full disclosure of his financial interest to the contracting agency and terminates or disposes of the interest, or (b) to a municipal employee who is not employed by the contracting agency or an agency which regulates the activities of the contracting agency and who does not participate in or have official responsibility for any of the activities of the contracting agency, if the contract is made after public notice or where applicable, through competitive bidding, and if the municipal employee files with the clerk of the city or town a statement making full disclosure of his interest and the interest of his immediate family, and if in the case of a contract for personal services (1) the services will be provided outside the normal working hours of the municipal employee, (2) the services are not required as part of the municipal employee's regular duties, the employee is compensated for not more than five hundred hours during a calendar year, (3) the head of the contracting agency makes and files with the clerk of the city or town a written certification that no employee of that agency is available to perform those services as part of their regular duties, and (4) the city council, board of selectmen or board of aldermen approve the exemption of his interest from this section, or (c) to a special municipal employee who does not participate in or have official responsibility for any of the activities of the contracting agency and who files with the clerk of the city or town a statement making full disclosure of his interest and the interests of his immediate family in the contract, or (d) to a special municipal employee who files with the clerk of the city, town or district a statement making full disclosure of his interest and the interests of his immediate family in the contract, if the city council or board of aldermen, if there is no city council, board of selectmen or the district prudential committee, approve the exemption of his interest from this section, or (e) to a municipal employee who receives benefits from programs funded by the United States or any other source in connection with the rental, improvement, or rehabilitation of his residence to the extent permitted by the funding agency, or (f) to a municipal employee if the contract is for personal services in a part time, call or volunteer capacity with the police, fire, rescue or ambulance department of a fire district, town or any city with a population of less than thirty-five thousand inhabitants; provided, however, that the head of the contracting agency makes and files with the clerk of the city, district or town a written certification that no employee of said agency is available to perform such services as part of his regular duties, and the city council, board of selectmen, board of

aldermen or district prudential committee approve the exemption of his interest from this section or (g) to a municipal employee who has applied in the usual course and is otherwise eligible for a housing subsidy program administered by a local housing authority, unless the employee is employed by the local housing authority in a capacity in which he has responsibility for the administration of such subsidy programs or (h) to a municipal employee who is the owner of residential rental property and rents such property to a tenant receiving a rental subsidy administered by a local housing authority, unless such employee is employed by such local housing authority in a capacity in which he has responsibility for the administration of such subsidy programs.

This section shall not prohibit an employee or an official of a town from holding the position of selectman in such town nor in any way prohibit such employee from performing the duties of or receiving the compensation provided for such office; provided, however, that such selectman shall not, except as hereinafter provided, receive compensation for more than one office or position held in a town, but shall have the right to choose which compensation he shall receive; provided, further, that no such selectman may vote or act on any matter which is within the purview of the agency by which he is employed or over which he has official responsibility; and, provided further, that no such selectman shall be eligible for appointment to any such additional position while he is still a member of the board of selectmen or for six months thereafter. Any violation of the provisions of this paragraph which has substantially influenced the action taken by any municipal agency in any matter shall be grounds for avoiding, rescinding or cancelling the action on such terms as the interest of the municipality and innocent third parties may require.

This section shall not prohibit any elected official in a town, whether compensated or uncompensated for such elected position, from holding one or more additional elected positions, in such town, whether such additional elected positions are compensated or uncompensated.

This section shall not prohibit an employee of a municipality with a city or town council form of government from holding the elected office of councillor in such municipality, nor in any way prohibit such an employee from performing the duties of or receiving the compensation provided for such office; provided, however, that no such councillor may vote or act on any matter which is within the purview of the agency by which he is employed or over which he has official responsibility; and provided, further, that no councillor shall be eligible for appointment to such additional position while a member of said council or for six months thereafter. Any violation of the provisions of this paragraph which has substantially influenced the action taken by a municipal agency in any matter shall be grounds for avoiding, rescinding or cancelling such action on such terms as the interest of the municipality and innocent third parties require. No such elected councillor shall receive compensation for more than one office or position held in a municipality, but shall have the right to choose which compensation he shall receive.

This section shall not prohibit an employee of a housing authority in a municipality from holding any elective office, other than the office of mayor, in such municipality nor in any way prohibit such employee from performing the duties of or receiving the compensation provided for such office; provided, however, that such elected officer shall not, except as otherwise expressly provided, receive compensation for more than one office or position held in a municipality, but shall have the right to choose which compensation he shall receive; provided further that no such elected official may vote or act on any matter which is within the purview of the housing authority by which he is employed; and provided further that no such elected official shall be eligible for appointment to any such additional position while he is still serving in such elective office or for six months thereafter. Any violation of the provisions of this paragraph which has substantially influenced the action taken by the housing authority in any matter shall be grounds for avoiding, rescinding, or cancelling the action on such terms as the interest of the municipality and innocent third parties may require.

This section shall not prohibit an employee in a town having a population of less than three thousand five hundred persons from holding more than one appointed position with said town, provided that the board of selectmen approves the exemption of his interest from this section.

<[There is no subsection (b).] >

Credits

Added by St.1962, c. 779, § 1. Amended by St.1979, c. 135; St.1982, c. 107; St.1982, c. 612, § 12; St.1983, c. 481; St.1984, c. 459; St.1985, c. 98; St.1985, c. 252, §§ 3, 4; St.1985, c. 415; St.1987, c. 374, § 2; St.1987, c. 497; St.1989, c. 262, §§ 2, 3; St.1999, c. 7, § 3; St.2009, c. 28, § 79, eff. Sept. 29, 2009.

M.G.L.A. 268A § 20, MA ST 268A § 20

Current through Chapter 176 of the 2020 2nd Annual Session

End of Document

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Massachusetts General Laws Annotated
Part IV. Crimes, Punishments and Proceedings in Criminal Cases (Ch. 263-280)
Title I. Crimes and Punishments (Ch. 263-274)
Chapter 268A. Conduct of Public Officials and Employees (Refs & Annos)

M.G.L.A. 268A § 21

§ 21. Avoiding, rescinding or canceling municipal action
resulting from violations of chapter; restitution and damages

Effective: September 29, 2009
Currentness

(a) In addition to any other remedies provided by law, a finding by the commission pursuant to an adjudicatory proceeding that there has been any violation of sections 2, 3, 8, 17 to 20, inclusive, or section 23, which has substantially influenced the action taken by any municipal agency in any particular matter, shall be grounds for avoiding, rescinding or canceling the action of said municipal agency upon request by said municipal agency on such terms as the interests of the municipality and innocent third persons require.

(b) In addition to the remedies set forth in subsection (a), the commission may, upon a finding pursuant to an adjudicatory proceeding that a person has acted to his economic advantage in violation of sections 2, 3, 8, 17 to 20, inclusive, or section 23, may issue an order (1) requiring the violator to pay the commission on behalf of the municipality damages in the amount of the economic advantage or \$500, whichever is greater; and (2) requiring the violator to make restitution to an injured third party. If there has been no final criminal judgment of conviction or acquittal of the same violation, upon receipt of the written approval of the district attorney, the commission may order payment of additional damages in an amount not exceeding twice the amount of the economic advantage or \$500, and payment of such additional damages shall bar any criminal prosecution for the same violation. The maximum damages that the commission may order a violator to pay under this section shall be \$25,000. If the commission determines that the damages authorized by this section exceed \$25,000, it may bring a civil action against the violator to recover such damages.

(c) The remedies authorized by this section shall be in addition to any civil penalty imposed by the commission in accordance with clause (3) of subsection (j) of section 4 of chapter 268B.

Credits

Added by St.1962, c. 779, § 1. Amended by St.1982, c. 612, § 13; St.2009, c. 28, § 80, eff. Sept. 29, 2009.

M.G.L.A. 268A § 21, MA ST 268A § 21

Current through Chapter 176 of the 2020 2nd Annual Session

End of Document

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Massachusetts General Laws Annotated
Part IV. Crimes, Punishments and Proceedings in Criminal Cases (Ch. 263-280)
Title I. Crimes and Punishments (Ch. 263-274)
Chapter 268A. Conduct of Public Officials and Employees (Refs & Annos)

M.G.L.A. 268A § 21A

§ 21A. Members of municipal commission or board;
restrictions on appointments to certain positions

Currentness

Except as hereinafter provided, no member of a municipal commission or board shall be eligible for appointment or election by the members of such commission or board to any office or position under the supervision of such commission or board. No former member of such commission or board shall be so eligible until the expiration of thirty days from the termination of his service as a member of such commission or board.

The provisions of this section shall not apply to a member of a town commission or board, if such appointment or election has first been approved at an annual town meeting of the town.

Credits

Added by St.1967, c. 887, § 2.

M.G.L.A. 268A § 21A, MA ST 268A § 21A

Current through Chapter 176 of the 2020 2nd Annual Session

End of Document

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Massachusetts General Laws Annotated
Part IV. Crimes, Punishments and Proceedings in Criminal Cases (Ch. 263-280)
Title I. Crimes and Punishments (Ch. 263-274)
Chapter 268A. Conduct of Public Officials and Employees (Refs & Annos)

M.G.L.A. 268A § 21B

§ 21B. Prospective municipal appointees; demanding undated resignations prohibited

Currentness

No mayor, city manager, or town manager shall require a prospective appointee to a board, commission or position under his jurisdiction to submit as a condition precedent to said appointment an undated resignation from said board, commission or position. Whoever violates the provisions of this section shall be punished by a fine of not more than five hundred dollars.

Credits

Added by St.1973, c. 810.

M.G.L.A. 268A § 21B, MA ST 268A § 21B

Current through Chapter 176 of the 2020 2nd Annual Session

End of Document

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Massachusetts General Laws Annotated
Part IV. Crimes, Punishments and Proceedings in Criminal Cases (Ch. 263-280)
Title I. Crimes and Punishments (Ch. 263-274)
Chapter 268A. Conduct of Public Officials and Employees (Refs & Annos)

M.G.L.A. 268A § 22

§ 22. Opinions of corporation counsel, city solicitor or town counsel

Currentness

Any municipal employee shall be entitled to the opinion of the corporation counsel, city solicitor or town counsel upon any question arising under this chapter relating to the duties, responsibilities and interests of such employee. All requests for such opinions by a subordinate municipal employee shall be made in confidence directly to the chief officer of the municipal agency in which he is employed, who shall in turn request in confidence such opinion of the corporation counsel, city solicitor or town counsel on behalf of such subordinate municipal employee, and all constitutional officers and chief officers or heads of municipal agencies may make direct confidential requests for such opinions on their own account. The town counsel or city solicitor shall file such opinion in writing with the city or town clerk and such opinion shall be a matter of public record; however, no opinion will be rendered by the town counsel or city solicitor except upon the submission of detailed existing facts which raise a question of actual or prospective violation of any provision of this chapter.

Credits

Added by St.1962, c. 779, § 1. Amended by St.1964, c. 408.

M.G.L.A. 268A § 22, MA ST 268A § 22

Current through Chapter 176 of the 2020 2nd Annual Session

End of Document

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 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Massachusetts General Laws Annotated
Part IV. Crimes, Punishments and Proceedings in Criminal Cases (Ch. 263-280)
Title I. Crimes and Punishments (Ch. 263-274)
Chapter 268A. Conduct of Public Officials and Employees (Refs & Annos)

M.G.L.A. 268A § 23

§ 23. Supplemental provisions; standards of conduct

Effective: September 29, 2009
Currentness

(a) In addition to the other provisions of this chapter, and in supplement thereto, standards of conduct, as hereinafter set forth, are hereby established for all state, county, and municipal employees.

(b) No current officer or employee of a state, county or municipal agency shall knowingly, or with reason to know:

(1) accept other employment involving compensation of substantial value, the responsibilities of which are inherently incompatible with the responsibilities of his public office;

(2) (i) solicit or receive anything of substantial value for such officer or employee, which is not otherwise authorized by statute or regulation, for or because of the officer or employee's official position; or (ii) use or attempt to use such official position to secure for such officer, employee or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals;

(3) act in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person. It shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such a conclusion; or

(4) present a false or fraudulent claim to his employer for any payment or benefit of substantial value.

(c) No current or former officer or employee of a state, county or municipal agency shall knowingly, or with reason to know:

(1) accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority;

(2) improperly disclose materials or data within the exemptions to the definition of public records as defined by section seven of chapter four, and were acquired by him in the course of his official duties nor use such information to further his personal interest.

(d) Any activity specifically exempted from any of the prohibitions in any other section of this chapter shall also be exempt from the provisions of this section. The state ethics commission, established by chapter two hundred and sixty-eight B, shall not enforce the provisions of this section with respect to any such exempted activity.

(e) Where a current employee is found to have violated the provisions of this section, appropriate administrative action as is warranted may also be taken by the appropriate constitutional officer, by the head of a state, county or municipal agency. Nothing in this section shall preclude any such constitutional officer or head of such agency from establishing and enforcing additional standards of conduct.

(f) The state ethics commission shall adopt regulations: (i) defining substantial value; provided, however, that substantial value shall not be less than \$50; (ii) establishing exclusions for ceremonial privileges and exemptions; (iii) establishing exclusions for privileges and exemptions given solely because of family or friendship; and (iv) establishing additional exclusions for other situations that do not present a genuine risk of a conflict or the appearance of a conflict of interest.

Credits

Added by St.1962, c. 779, § 1. Amended by St.1975, c. 508; St.1982, c. 612, § 14; St.1983, c. 409; St.1986, c. 12, § 2; St.2009, c. 28, §§ 81 to 83, eff. Sept. 29, 2009.

M.G.L.A. 268A § 23, MA ST 268A § 23

Current through Chapter 176 of the 2020 2nd Annual Session

End of Document

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Massachusetts General Laws Annotated
Part IV. Crimes, Punishments and Proceedings in Criminal Cases (Ch. 263-280)
Title I. Crimes and Punishments (Ch. 263-274)
Chapter 268A. Conduct of Public Officials and Employees (Refs & Annos)

M.G.L.A. 268A § 23A

§ 23A. Trustees of public institutions of higher learning; prohibited positions

Currentness

No trustee of any public institution of higher education operated by the commonwealth shall be eligible to be appointed to or hold any other office or position with said institution for a period of three years next after the termination of his services as such trustee, or in the case of an elected student trustee at said institution, for a period of one year next after the termination of his services as such trustee; provided, however, that any such elected student trustee may accept and hold part-time employment at said institution while a student thereat, and provided further, that a trustee may be appointed to or hold an unpaid office or position with said institution after his services as such trustee.

Credits

Added by St.1964, c. 389. Amended by St.1973, c. 775; St.1974, c. 330.

M.G.L.A. 268A § 23A, MA ST 268A § 23A

Current through Chapter 176 of the 2020 2nd Annual Session

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Massachusetts General Laws Annotated
Part IV. Crimes, Punishments and Proceedings in Criminal Cases (Ch. 263-280)
Title I. Crimes and Punishments (Ch. 263-274)
Chapter 268A. Conduct of Public Officials and Employees (Refs & Annos)

M.G.L.A. 268A § 24

§ 24. Disclosures and certifications; form; public inspection

Currentness

All disclosures and certifications provided for in this chapter and made in accordance with its provisions shall be made in writing and, unless otherwise specifically provided in this chapter, shall be kept open to inspection by the public by the official with whom such disclosure has been filed.

Credits

Added by St.1962, c. 779, § 1.

M.G.L.A. 268A § 24, MA ST 268A § 24
Current through Chapter 176 of the 2020 2nd Annual Session

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Massachusetts General Laws Annotated
Part IV. Crimes, Punishments and Proceedings in Criminal Cases (Ch. 263-280)
Title I. Crimes and Punishments (Ch. 263-274)
Chapter 268A. Conduct of Public Officials and Employees (Refs & Annos)

M.G.L.A. 268A § 25

§ 25. Suspension of persons under indictment for misconduct in office; notice;
compensation and fringe benefits; temporary replacements; reinstatement

Effective: July 1, 2004
Currentness

An officer or employee of a county, city, town or district, howsoever formed, including, but not limited to, regional school districts and regional planning districts, or of any department, board, commission or agency thereof may, during any period such officer or employee is under indictment for misconduct in such office or employment or for misconduct in any elective or appointive public office, trust or employment at any time held by him, be suspended by the appointing authority, whether or not such appointment was subject to approval in any manner. Notice of said suspension shall be given in writing and delivered in hand to said person or his attorney, or sent by registered mail to said person at his residence, his place of business, or the office or place of employment from which he is being suspended. Such notice so given and delivered or sent shall automatically suspend the authority of such person to perform the duties of his office or employment until he is notified in like manner that his suspension is removed. A copy of any such notice together with an affidavit of service shall be filed as follows: in the case of a county, with the clerk of the superior court of the county in which the officer or employee is employed; in the case of a city, with the city clerk; in the case of a town, with the town clerk; in the case of a regional school district, with the secretary of the regional school district; and in the case of all other districts, with the clerk of the district.

Any person so suspended shall not receive any compensation or salary during the period of suspension, nor shall the period of his suspension be counted in computing his sick leave or vacation benefits or seniority rights, nor shall any person who retires from service while under such suspension be entitled to any pension or retirement benefits, notwithstanding any contrary provisions of law, but all contributions paid by him into a retirement fund, if any, shall be returned to him, subject to section 15 of chapter 32. The employer of a person so suspended shall immediately notify the retirement system of which the person is a member of the suspension and shall notify the retirement board of the outcome of any charges brought against the individual.

A suspension under this section shall not, in any way, be used to prejudice the rights of the suspended person either civilly or criminally. During the period of any such suspension, the appointing authority may fill the position of the suspended officer or employee on a temporary basis, and the temporary officer or employee shall have all the powers and duties of the officer or employee suspended.

Any such temporary officer or employee who is appointed as a member of a board, commission or agency may be designated as chairman.

If the criminal proceedings against the person suspended are terminated without a finding or verdict of guilty on any of the charges on which he was indicted, his suspension shall be forthwith removed, and he shall receive all compensation or salary due him for the period of his suspension, and the time of his suspension shall count in determining sick leave, vacation, seniority and other rights, and shall be counted as creditable service for purposes of retirement.

§ 25. Suspension of persons under indictment for misconduct in..., MA ST 268A § 25

Credits

Added by St.1972, c. 257. Amended by St.2004, c. 149, § 210, eff. July 1, 2004.

M.G.L.A. 268A § 25, MA ST 268A § 25

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Massachusetts General Laws Annotated
Part IV. Crimes, Punishments and Proceedings in Criminal Cases (Ch. 263-280)
Title I. Crimes and Punishments (Ch. 263-274)
Chapter 268A. Conduct of Public Officials and Employees (Refs & Annos)

M.G.L.A. 268A § 26

§ 26. Penalty for violations of clause (b)(2) or (b)(4) of Sec. 23

Effective: September 29, 2009
Currentness

(a) Any person who, directly or through another, with fraudulent intent, violates clause (2) or (4) of subsection (b) of section 23, or any person who, with fraudulent intent, causes any other person to violate said clauses (2) or (4) of said subsection (b) of said section 23 or with fraudulent intent offers or gives any privileges or exemptions of substantial value in violation of said clause (2) or (4) of said subsection (b) of said section 23, shall be punished by a fine of not more than \$10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 ½ years, or both, if the unwarranted privileges or exemptions have a fair market value in the aggregate of more than \$1,000 in any 12 month period.

<[There is no subsection (b).]>

Credits

Added by St.2009, c. 28, § 84, eff. Sept. 29, 2009.

M.G.L.A. 268A § 26, MA ST 268A § 26
Current through Chapter 176 of the 2020 2nd Annual Session

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Massachusetts General Laws Annotated
Part IV. Crimes, Punishments and Proceedings in Criminal Cases (Ch. 263-280)
Title I. Crimes and Punishments (Ch. 263-274)
Chapter 268A. Conduct of Public Officials and Employees (Refs & Annos)

M.G.L.A. 268A § 27

§ 27. Publication of summaries of Chapter 268A; filing of acknowledgment by employees

Effective: September 29, 2009
Currentness

The commission shall prepare, and update as necessary, summaries of this chapter for state, county, and municipal employees, respectively, which the commission shall publish on its official website. Every state, county and municipal employee shall, within 30 days of becoming such an employee, and on an annual basis thereafter, be furnished with a summary of this chapter prepared by the commission and sign a written acknowledgment that he has been provided with such a summary. Municipal employees shall be furnished with the summary by, and file an acknowledgment with, the city or town clerk. Appointed state and county employees shall be furnished with the summary by, and file an acknowledgment with, the employee's appointing authority or his designee. Elected state and county employees shall be furnished with the summary by, and file an acknowledgment with, the commission. The commission shall establish procedures for implementing this section and ensuring compliance.

Credits

Added by St.2009, c. 28, § 84, eff. Sept. 29, 2009.

M.G.L.A. 268A § 27, MA ST 268A § 27

Current through Chapter 176 of the 2020 2nd Annual Session

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Massachusetts General Laws Annotated
Part IV. Crimes, Punishments and Proceedings in Criminal Cases (Ch. 263-280)
Title I. Crimes and Punishments (Ch. 263-274)
Chapter 268A. Conduct of Public Officials and Employees (Refs & Annos)

M.G.L.A. 268A § 28

§ 28. Online training programs

Effective: September 29, 2009
Currentness

The state ethics commission shall prepare and update from time to time the following online training programs, which the commission shall publish on its official website: (1) a program which shall provide a general introduction to the requirements of this chapter; and (2) a program which shall provide information on the requirements of this chapter applicable to former state, county, and municipal employees. Every state, county, and municipal employee shall, within 30 days after becoming such an employee, and every 2 years thereafter, complete the online training program. Upon completion of the online training program, the employee shall provide notice of such completion to be retained for 6 years by the appropriate employer.

The commission shall establish procedures for implementing this section and ensuring compliance.

Credits

Added by St.2009, c. 28, § 84, eff. Sept. 29, 2009.

M.G.L.A. 268A § 28, MA ST 268A § 28
Current through Chapter 176 of the 2020 2nd Annual Session

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Massachusetts General Laws Annotated
Part IV. Crimes, Punishments and Proceedings in Criminal Cases (Ch. 263-280)
Title I. Crimes and Punishments (Ch. 263-274)
Chapter 268A. Conduct of Public Officials and Employees (Refs & Annos)

M.G.L.A. 268A § 29

§ 29. Municipal liaisons to state ethics commission

Effective: September 29, 2009
Currentness

Each municipality, acting through its city council, board of selectmen, or board of aldermen, shall designate a senior level employee of the municipality as its liaison to the state ethics commission. The municipality shall notify the commission in writing of any change to such designation within 30 days of such change. The commission shall disseminate information to the designated liaisons and conduct educational seminars for designated liaisons on a regular basis on a schedule to be determined by the commission in consultation with the municipalities.

Credits

Added by St.2009, c. 28, § 84, eff. Sept. 29, 2009.

M.G.L.A. 268A § 29, MA ST 268A § 29
Current through Chapter 176 of the 2020 2nd Annual Session

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APPENDIX E:

Zoning Code Provisions

Article 5 - Administration and Procedure

Article 6 - Conditional Uses

Article 6A - Other Exceptions

Article 7 - Variances

ARTICLE 5 - ADMINISTRATION AND PROCEDURE

Section 5-1. - Enforcement.

It shall be the duty of the Building Commissioner to enforce the provisions of this code.

Section 5-2. - Procedure for Appeal.

Every appeal to the Board of Appeal shall be in writing and on a form prescribed by said Board. Every such appeal shall refer to the specific provisions of this code involved, and shall exactly set forth the interpretation that is claimed, the conditional use for which permission is sought, or the details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted, as the case may be. A copy of every decision of the Board of Appeal on a matter on which the Boston Redevelopment Authority has filed a report shall be transmitted by said Board to said Authority.

Section 5-3. - Limitation on Appeal.

If an appeal for an interpretation, conditional use, or variance is decided by the Board of Appeal adversely to the appellant, no appeal for the same interpretation, conditional use, or variance shall be considered on its merits by said Board within one year after such adverse decision, except with the concurring vote of not less than five of the members of said Board.

(As amended on July 31, 1997)

Section 5-4. - Estimated Cost of a Hearing on a Proposed Amendment.

The estimated average cost to the City of a hearing before the Zoning Commission on a proposed amendment of this code is hereby established as two hundred and seventy-five dollars.

(As amended on May 26, 1970, August 18, 1980, April 22, 1985, and September 17, 1990)

Section 5-5. - Authorization of Commissioner of Inspectional Services Department to Hold Permit Application in Pending Status.

If the Zoning Commission gives public notice of an amendment to this code proposing a change in or addition to its provisions, either in its text or in its maps, which may affect a permit application then in process before the Commissioner of the Inspectional Services Department, the Commissioner may hold such application in a pending status until the date by which the Zoning Commission according to its own procedural rules and regulations must decide to either adopt or reject the proposed amendment or until the effective date of a decision by the Zoning Commission on the proposed amendment which originally allowed the Commissioner to hold such application in a pending status, whichever occurs first; provided that the Commissioner may act on the application if the application meets the more restrictive or additional provisions, or if the Zoning Commission fails to act on the first proposed zoning change affecting a permit application within the time period established by its own rules and regulations.

(As inserted on July 27, 1987)

ARTICLE 6 - CONDITIONAL USES

Section 6-1. - Permit for Conditional Uses.

As provided for in Section 10 of Chapter 665 of the Acts of 1956, as now in force or hereafter amended, and in Section 8-3 of this code, and subject to the provisions of Sections 6-2, 6-3, 6-3A and 6-4, the Board of Appeal may, in a specific case after public notice and hearing, grant permission for a use specified in Table A of Section 8-7 or other provision of this code as a conditional use; provided, however, that such permission shall lapse and become null and void unless such conditional use is commenced within two years after the record of said Board's proceedings pertaining thereto is filed in the office of the Building Commissioner pursuant to Section 8 of said Chapter 665.

(As amended on September 27, 1973 and April 27, 1990)

Section 6-2. - Procedure for Appeal.

Each appeal for a conditional use shall be filed in quadruplicate with the Building Commissioner, who shall retain one copy for his files and transmit the other copies as follows: one to the Board of Appeal, one to the Boston Redevelopment Authority, and the other to the Zoning Commission. The Boston Redevelopment Authority shall, within thirty days after the date of such transmittal, file with the Board of Appeal a report with recommendations, together with material, maps or plans to aid the Board of Appeal in judging the appeal and determining special conditions and safeguards. The Board of Appeal shall not hold a hearing nor render any decision on an appeal for a conditional use until such report with recommendations has been received and considered, provided that if no such report is received within said thirty days, the Board of Appeal may hold a hearing and render its decision without such report.

(As amended on May 26, 1970)

Section 6-3. - Conditions Required for Approval.

The Board of Appeal shall grant any such appeal only if it finds that all of the following conditions are met:

- (a) the specific site is an appropriate location for such use or, in the case of a substitute nonconforming use under Section 9-2, such substitute nonconforming use will not be more objectionable nor more detrimental to the neighborhood than the nonconforming use for which it is being substituted;
- (b) the use will not adversely affect the neighborhood;
- (c) there will be no serious hazard to vehicles or pedestrians from the use;
- (d) no nuisance will be created by the use;
- (e) adequate and appropriate facilities will be provided for the proper operation of the use;

(f) if such appeal relates to a Development Impact Project, as defined in Section 80B-7, the applicant shall have complied with the Development Impact Project Exaction requirements set forth in Section 80B-7.3; and

(g) if such appeal relates to a Proposed Project in an area designated a Greenbelt Protection Overlay District as defined in Section 29-2, the Applicant shall have complied with the requirements set forth in Section 29-3 and Section 29-5 and the standards set forth in Section 29-6.

(As amended on December 29, 1983, February 27, 1986, June 1, 1987 and May 9, 1996.)

Section 6-3A. - Additional Conditions Required for Approval of Parking Facilities in a Restricted Parking District.

In a restricted parking district, the Board of Appeal shall grant a conditional use for an off-street parking facility, whether a parking lot, a public garage, or parking which is accessory or ancillary to any use other than Use Items numbered 1 through 15, only if the Board of Appeal finds that said facility meets one or more of the following conditions:

- a. It will serve a traffic demand not adequately provided for by public transportation; or
- b. It will replace existing off-street parking spaces in one or more nearby parking facilities, or it will replace legal on-street parking spaces that have been physically eliminated through permanent modification or demolition; or
- c. It is accessory or ancillary to a use which by its nature does not contribute significantly to traffic flows during peak traffic periods; or
- d. The facility constitutes a temporary parking lot use of land and that serious intent to reuse the land for an allowed use within a specified period of time has been demonstrated to the satisfaction of the Board of Appeal.

(As inserted on September 27, 1973, and amended on September 2, 1976)

Section 6-4. - Other Conditions Necessary as Protection.

In approving a conditional use, the Board of Appeal may attach such conditions and safeguards as it deems necessary to assure harmony with the general purposes and intent of this code, such as, but not limited to, the following:

- (a) requirement of front, side, and rear yards greater than the minimum required by this code;
- (b) requirement of screening of parking areas and other parts of the lot from adjoining lots or from the street, by walls, fences, planting, or other devices;
- (c) modification of the exterior features or appearance of the structure;
- (d) limitation of size, number of occupants, method and time of operation, and extent of facilities;
- (e) regulation of number, design, and location of access drives and other traffic features; and
- (f) requirement of off-street parking and other special features beyond the minimum required by this or other applicable codes or regulations.

Section 6-5. - Effect of Non-Use of Conditional Use.

If a structure or land is being lawfully used for a conditional use, whether lawfully existing on the date of this code, made conditional by amendment thereof, or granted by the Board of Appeal under Sections 1 through 4 of this article, in order not to unduly prolong the life of such conditional use, subsequent non-use of such conditional use for a period of twenty-four consecutive calendar months shall terminate the right to use such structure or land for such conditional use. For purposes of this section, whenever a structure or land is not being actively used for such conditional use, there shall be deemed to be a non-use of such conditional use.

(Inserted on May 13, 1976)

Former Section 6-5, entitled Exceptional Relief within Urban Renewal Areas and Public Housing Projects, was inserted on September 7, 1967 and repealed on July 2, 1968.

ARTICLE 6A - OTHER EXCEPTIONS^[1]

Footnotes:

Section 6A-1. - Authorization for Exceptions.

Authorization for Exceptions in Planned Development and Urban Renewal Areas; in Downtown Districts, Special Districts, and the Harborpark District as Specified in the Articles Governing Such Districts; to Setback of Parapet Requirements in B-6-90a, B-6-90b, B-8-120a, and B-8-120c Districts; to the Requirements of Section 16-6(f) in a B-8-120c District, and to the Requirement of Section 25-5.8 in a V Zone Flood Hazard District.

As provided for in Section 10 of Chapter 665 of the Acts of 1956, as now in force or hereafter amended, and subject to the provisions of Section 6A-2, 6A-3, and 6A-4, the Board of Appeal may, in a specific case after public notice and hearing, allow an exception from the provisions of this code. Such exception shall lapse and become null and void unless

- (a) such exception is used within two years after the record of said Board's proceedings thereto is filed with the Building Commissioner pursuant to Section 8 of said Chapter 665, or
- (b) such exception relates to work in a planned development area of not less than 5 acres, or to the use thereof, and within such two year period the Boston Redevelopment Authority files with the Building Commissioner a certificate that work within said planned development area has been commenced and is diligently proceeding in which case such exception shall not lapse unless thereafter said Authority files with the Building Commissioner a certificate that such work is not diligently proceeding.

(As amended on December 29, 1982, April 2, 1987, March 20 and September 13, 1989, March 20, April 27, and December 6, 1990, and June 7, 1991)

Section 6A-2. - Procedure for Appeal.

Each appeal for an exception shall be filed in quadruplicate with the Building Commissioner, who shall retain one copy for his files and transmit the other copies as follows: one to the Board of Appeal, one to the Boston Redevelopment Authority, and the other to the Zoning Commission. Said Authority shall, within thirty days after the date of such transmittal, file with the Board of Appeal a report with recommendations, together with material, maps or plans to aid the Board of Appeal in judging the appeal and determining what conditions and safeguards may be necessary or appropriate. The Board of Appeal shall not hold a hearing nor render any decision on an appeal for an exception until such report with recommendations has been received and considered, provided that if no such report is received within said thirty days, the Board of Appeal may hold a hearing and render its decision without such report.

(As amended on May 26, 1970)

Section 6A-3. - Conditions Required for Approval.

The Board of Appeal shall allow an exception only if it finds:

- (a) That such exception is in harmony with the general purpose and intent of this code;
- (b) The exception requested is in conformity with one or more of the following, as applicable:
 - (i) the development plan for the planned development area or
 - (ii) the land assembly and redevelopment or urban renewal plan, or the low rent housing project or housing project for elderly persons of low income for the urban renewal area, or
 - (iii) the plan adopted by the Boston Redevelopment Authority for the downtown district involved, or for the Harborpark District, and such conformity has been certified to by the Boston

Redevelopment Authority; or if the exception relates to a setback of parapet requirement in a B-6-90a, B-6-90b, B-8-120a, or B-8-120c district, the Boston Redevelopment Authority has certified to the Board of Appeal that the proposed project has been subject to design review; or if the exception relates to the requirement of Section 25-5.8 concerning the location of a structure in a high hazard coastal (V zone) district, the project has received a Conditional Letter of Map Revision (CLOMR) from the Federal Emergency Management Agency; and

(c) if such appeal relates to a Development Impact Project, as defined in Section 80B-7, the applicant shall have complied with the Development Impact Project Exaction requirements set forth in Section 80B-7.3; and

(As amended on December 29, 1983, February 27, 1986, April 2, 1987, March 20 and September 13, 1989, April 27 and December 6, 1990, and May 9, 1996.)

Section 6A-4. - Other Conditions Necessary as Protection.

In allowing an exception, the Board of Appeal may attach such conditions and safeguards as it deems necessary to insure harmony with the general purposes and intent of this code.

ARTICLE 7 - VARIANCES

Section 7-1. - Authorization for Variance.

As provided for in Section 9 of Chapter 665 of the Acts of 1956, as now in force or hereafter amended, and subject to the provisions of Sections 7-2, 7-3 and 7-4, the Board of Appeal may, in a specific case after public notice and hearing, grant a variance from the terms of this code; provided, however, that such grant shall lapse and become null and void unless such variance is used within two years after the record of said Board's proceedings pertaining thereto is filed in the office of the Building Commissioner pursuant to Section 8 of said Chapter 665.

Section 7-2. - Procedure for Appeal.

Each appeal for a variance shall be filed in quadruplicate with the Building Commissioner, who shall retain one copy for his files and transmit the other copies as follows: one to the Board of Appeal, one to the Boston Redevelopment Authority, and the other to the Zoning Commission.

In each of the following cases, the Boston Redevelopment Authority shall, within thirty days after the date of such transmittal, file with the Board of Appeal a report with recommendations, together with material, maps or plans to aid the Board of Appeal in judging the appeal and determining special limitations and safeguards:

- (a) an appeal for the erection or alteration of a building to a height greater than that authorized by this code;
- (b) an appeal for a nonconforming use of land with an area of more than 20,000 square feet;

(c) an appeal for a nonconforming use of an existing building or buildings with a gross floor area in excess of 2,000 square feet or a floor area ratio more than fifty percent greater than that permitted in the district in which it or they are located; and

(d) an appeal for a commercial or industrial use in a residential district, on a parcel of land not previously used for a commercial or industrial purpose.

In any other case, the Boston Redevelopment Authority may, within thirty days after the date of such transmittal, file with the Board of Appeal a report with recommendations in connection with the appeal for variance therein.

The Board of Appeal shall not hold a hearing nor render any decision on an appeal for a variance until such report with recommendations has been received and considered, provided that if no such report is received within said thirty days, the Board of Appeal may hold a hearing and render its decision without such report.

(As amended on May 26, 1970)

Section 7-3. - Conditions Required for Variance.

The Board of Appeal shall grant a variance only if it finds that all of the following conditions are met:

(a) That there are special circumstances or conditions, fully described in the findings, applying to the land or structure for which the variance is sought (such as, but not limited to, the exceptional narrowness, shallowness, or shape of the lot, or exceptional topographical conditions thereof) which circumstances or conditions are peculiar to such land or structure but not the neighborhood, and that said circumstances or conditions are such that the application of the provisions of this code would deprive the appellant of the reasonable use of such land or structure;

(b) That, for reasons of practical difficulty and demonstrable and substantial hardship fully described in the findings, the granting of the variance is necessary for the reasonable use of the land or structure and that the variance as granted by the Board is the minimum variance that will accomplish this purpose;

(c) That the granting of the variance will be in harmony with the general purpose and intent of this code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and

(d) That, if the variance is for a Development Impact Project, as defined in Section 80B-7, the applicant shall have complied with the Development Impact Project Exaction Requirements set forth in Section 80B-7.3, except if such variance is for a deviation from said requirements.

In determining its findings, the Board of Appeal shall take into account:

(1) the number of persons residing or working upon such land or in such structure;

- (2) the character and use of adjoining lots and those in the neighborhood; and
- (3) traffic conditions in the neighborhood.

(As amended on December 29, 1983, February 27, 1986, and May 9, 1996.)

Section 7-4. - Other Conditions Necessary as Protection.

In approving a variance, the Board of Appeal may attach such conditions and safeguards as it deems necessary to assure harmony with the general purposes and intent of this code, such as, but not limited to, the following:

- (a) a requirement of front, side, and rear yards greater than the minimum required by this code;
- (b) requirement of screening of parking areas and other parts of the lot from adjoining lots or from the street by walls, fences, planting, or other devices;
- (c) modification of the exterior features or appearance of the structure;
- (d) limitation of the size, number of occupants, method and time of operation, and extent of facilities;
- (e) regulation of number, design, and location of access drives and other traffic features; and
- (f) requirement of off-street parking and other special features beyond the minimum required by this or other applicable codes or regulations.

APPENDIX F:

Massachusetts General Laws, Chapter 30A, §§18-25

The Massachusetts Open Meeting Law

THE COMMONWEALTH OF MASSACHUSETTS
OPEN MEETING LAW, G.L. c. 30A, §§18-25

* * *

This version of the law is current as of April 7, 2015.

NOTICE: This is NOT the official version of the Massachusetts General Law (MGL). While reasonable efforts have been made to ensure the accuracy and currency of the data provided, do not rely on this information without first checking an official edition of the MGL.

* * *

Section 18: [DEFINITIONS]

As used in this section and sections 19 to 25, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:

"Deliberation", an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction; provided, however, that "deliberation" shall not include the distribution of a meeting agenda, scheduling information or distribution of other procedural meeting or the distribution of reports or documents that may be discussed at a meeting, provided that no opinion of a member is expressed.

"Emergency", a sudden, generally unexpected occurrence or set of circumstances demanding immediate action.

"Executive session", any part of a meeting of a public body closed to the public for deliberation of certain matters.

"Intentional violation", an act or omission by a public body or a member thereof, in knowing violation of the open meeting law.

"Meeting", a deliberation by a public body with respect to any matter within the body's jurisdiction; provided, however, "meeting" shall not include:

- (a) an on-site inspection of a project or program, so long as the members do not deliberate;
- (b) attendance by a quorum of a public body at a public or private gathering, including a conference or training program or a media, social or other event, so long as the members do not deliberate;
- (c) attendance by a quorum of a public body at a meeting of another public body that has complied with the notice requirements of the open meeting law, so long as the visiting members communicate only by open participation in the meeting on those matters under discussion by the host body and do not deliberate;
- (d) a meeting of a quasi-judicial board or commission held for the sole purpose of making a decision required in an adjudicatory proceeding brought before it; or
- (e) a session of a town meeting convened under section 9 of chapter 39 which would include the attendance by a quorum of a public body at any such session.

"Minutes", the written report of a meeting created by a public body required by subsection (a) of section 22 and section 5A of chapter 66.

"Open meeting law", sections 18 to 25, inclusive.

"Post notice", to display conspicuously the written announcement of a meeting either in hard copy or electronic format.

"Preliminary screening", the initial stage of screening applicants conducted by a committee or subcommittee of a public body solely for the purpose of providing to the public body a list of those applicants qualified for further consideration or interview.

"Public body", a multiple-member board, commission, committee or subcommittee within the executive or legislative branch or within any county, district, city, region or town, however created, elected, appointed or otherwise constituted, established to serve a public purpose; provided, however, that the governing board of a local housing, redevelopment or other similar authority shall be deemed a local public body; provided, further, that the governing board or body of any other authority established by the general court to serve a public purpose in the commonwealth or any part thereof shall be deemed a state public body; provided, further, that "public body" shall not include the general court or the committees or recess commissions thereof, bodies of the judicial branch or bodies appointed by a constitutional officer solely for the purpose of advising a constitutional officer and shall not include the board of bank incorporation or the policyholders protective board; and provided further, that a subcommittee shall include any multiple-member body created to advise or make recommendations to a public body.

"Quorum", a simple majority of the members of the public body, unless otherwise provided in a general or special law, executive order or other authorizing provision.

Section 19. [Division of Open Government; Open Meeting Law Training; Open Meeting Law Advisory Commission; Annual Report]

(a) There shall be in the department of the attorney general a division of open government under the direction of a director of open government. The attorney general shall designate an assistant attorney general as the director of the open government division. The director may appoint and remove, subject to the approval of the attorney general, such expert, clerical and other assistants as the work of the division may require. The division shall perform the duties imposed upon the attorney general by the open meeting law, which may include participating, appearing and intervening in any administrative and judicial proceedings pertaining to the enforcement of the open meeting law. For the purpose of such participation, appearance, intervention and training authorized by this chapter the attorney general may expend such funds as may be appropriated therefor.

(b) The attorney general shall create and distribute educational materials and provide training to public bodies in order to foster awareness and compliance with the open meeting law. Open meeting law training may include, but shall not be limited to, instruction in:

- (1) the general background of the legal requirements for the open meeting law;
- (2) applicability of sections 18 to 25, inclusive, to governmental bodies;
- (3) the role of the attorney general in enforcing the open meeting law; and
- (4) penalties and other consequences for failure to comply with this chapter.

(c) There shall be an open meeting law advisory commission. The commission shall consist of 5 members, 2 of whom shall be the chairmen of the joint committee on state administration and regulatory oversight; 1 of whom shall be the president of the Massachusetts Municipal Association or his designee; 1 of whom shall be the president of the Massachusetts Newspaper Publishers Association or his designee; and 1 of whom shall be the attorney general or his designee.

The commission shall review issues relative to the open meeting law and shall submit to the attorney general recommendations for changes to the regulations, trainings, and educational initiatives relative to the open meeting law as it deems necessary and appropriate.

(d) The attorney general shall, not later than January 31, file annually with the commission a report providing information on the enforcement of the open meeting law during the preceding calendar year. The report shall include, but not be limited to:

- (1) the number of open meeting law complaints received by the attorney general;
- (2) the number of hearings convened as the result of open meeting law complaints by the attorney general;
- (3) a summary of the determinations of violations made by the attorney general;
- (4) a summary of the orders issued as the result of the determination of an open meeting law violation by the attorney general;
- (5) an accounting of the fines obtained by the attorney general as the result of open meeting law enforcement actions;
- (6) the number of actions filed in superior court seeking relief from an order of the attorney general; and
- (7) any additional information relevant to the administration and enforcement of the open meeting law that the attorney general deems appropriate.

Section 20. [Meetings of a Public Body to be Open to the Public; Notice of Meeting; Remote Participation; Recording and Transmission of Meeting; Removal of Persons for Disruption of Proceedings]

(a) Except as provided in section 21, all meetings of a public body shall be open to the public.

(b) Except in an emergency, in addition to any notice otherwise required by law, a public body shall post notice of every meeting at least 48 hours prior to such meeting, excluding Saturdays, Sundays and legal holidays. In an emergency, a public body shall post notice as soon as reasonably possible prior to such meeting. Notice shall be printed in a legible, easily understandable format and shall contain the date, time and place of such meeting and a listing of topics that the chair reasonably anticipates will be discussed at the meeting.

(c) For meetings of a local public body, notice shall be filed with the municipal clerk and posted in a manner conspicuously visible to the public at all hours in or on the municipal building in which the clerk's office is located.

For meetings of a regional or district public body, notice shall be filed and posted in each city or town within the region or district in the manner prescribed for local public bodies. For meetings of a regional school district, the secretary of the regional school district committee shall be considered to be its clerk and shall file notice with the clerk of each city or town within such district and shall post the notice in the manner prescribed for local public bodies. For meetings of a county public body, notice shall be filed in the office of the county commissioners and a copy of the notice shall be publicly posted in a manner conspicuously visible to the public at all hours in such place or places as the county commissioners shall designate for the purpose.

For meetings of a state public body, notice shall be filed with the attorney general by posting on a website under the procedures established for this purpose and a duplicate copy of the notice shall be filed with the regulations division of the state secretary's office.

The attorney general may prescribe or approve alternative methods of notice where the attorney general determines the alternative methods will afford more effective notice to the public.

(d) The attorney general may by regulation or letter ruling, authorize remote participation by members of a public body not present at the meeting location; provided, however, that the absent members and all persons present at the meeting location are clearly audible to each other; and provided, further, that a quorum of the body, including the chair, are present at the meeting location. The authorized members may vote and shall not be deemed absent for the purposes of section 23D of chapter 39.

(e) A local commission on disability may by majority vote of the commissioners at a regular meeting permit remote participation applicable to a specific meeting or generally to all of the commission's meetings; provided, however, that the commission shall comply with all other requirements of law and regulation.

(f) After notifying the chair of the public body, any person may make a video or audio recording of an open session of a meeting of a public body, or may transmit the meeting through any medium, subject to reasonable requirements of the chair as to the number, placement and operation of equipment used so as not to interfere with the conduct of the meeting. At the beginning of the meeting the chair shall inform other attendees of any recordings.

(g) No person shall address a meeting of a public body without permission of the chair, and all persons shall, at the request of the chair, be silent. No person shall disrupt the proceedings of a meeting of a public body. If, after clear warning from the chair, a person continues to disrupt the proceedings, the chair may order the person to withdraw from the meeting and if the person does not withdraw, the chair may authorize a constable or other officer to remove the person from the meeting.

(h) Within 2 weeks of qualification for office, all persons serving on a public body shall certify, on a form prescribed by the attorney general, the receipt of a copy of the open meeting law, regulations promulgated under section 25 and a copy of the educational materials prepared by the attorney general explaining the

open meeting law and its application pursuant to section 19. Unless otherwise directed or approved by the attorney general, the appointing authority, city or town clerk or the executive director or other appropriate administrator of a state or regional body, or their designees, shall obtain certification from each person upon entering service and shall retain it subject to the applicable records retention schedule where the body maintains its official records. The certification shall be evidence that the member of a public body has read and understands the requirements of the open meeting law and the consequences of violating it.

Section 21. [EXECUTIVE SESSIONS]

(a) A public body may meet in executive session only for the following purposes:

1. To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. The individual to be discussed in such executive session shall be notified in writing by the public body at least 48 hours prior to the proposed executive session; provided, however, that notification may be waived upon written agreement of the parties. A public body shall hold an open session if the individual involved requests that the session be open. If an executive session is held, such individual shall have the following rights:

- i. to be present at such executive session during deliberations which involve that individual;
- ii. to have counsel or a representative of his own choosing present and attending for the purpose of advising the individual and not for the purpose of active participation in the executive session;
- iii. to speak on his own behalf; and
- iv. to cause an independent record to be created of said executive session by audio-recording or transcription, at the individual's expense.

The rights of an individual set forth in this paragraph are in addition to the rights that he may have from any other source, including, but not limited to, rights under any laws or collective bargaining agreements and the exercise or non-exercise of the individual rights under this section shall not be construed as a waiver of any rights of the individual.

- 2. To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel;
- 3. To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares;
- 4. To discuss the deployment of security personnel or devices, or strategies with respect thereto;
- 5. To investigate charges of criminal misconduct or to consider the filing of criminal complaints;
- 6. To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body;
- 7. To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements;
- 8. To consider or interview applicants for employment or appointment by a preliminary screening committee if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants;

provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee, to consider and interview applicants who have passed a prior preliminary screening;

9. To meet or confer with a mediator, as defined in section 23C of chapter 233, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or entity, provided that:

- (i) any decision to participate in mediation shall be made in an open session and the parties, issues involved and purpose of the mediation shall be disclosed; and
- (ii) no action shall be taken by any public body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open session; or

10. To discuss trade secrets or confidential, competitively-sensitive or other proprietary information provided in the course of activities conducted by a governmental body as an energy supplier under a license granted by the department of public utilities pursuant to section 1F of chapter 164, in the course of activities conducted as a municipal aggregator under section 134 of said chapter 164 or in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to section 136 of said chapter 164, when such governmental body, municipal aggregator or cooperative determines that such disclosure will adversely affect its ability to conduct business in relation to other entities making, selling or distributing electric power and energy.

(b) A public body may meet in closed session for 1 or more of the purposes enumerated in subsection (a) provided that:

1. the body has first convened in an open session pursuant to section 21;
2. a majority of members of the body have voted to go into executive session and the vote of each member is recorded by roll call and entered into the minutes;
3. before the executive session, the chair shall state the purpose for the executive session, stating all subjects that may be revealed without compromising the purpose for which the executive session was called;
4. the chair shall publicly announce whether the open session will reconvene at the conclusion of the executive session; and
5. accurate records of the executive session shall be maintained pursuant to section 23.

Section 22. [Meeting Minutes; Records]

(a) A public body shall create and maintain accurate minutes of all meetings, including executive sessions, setting forth the date, time and place, the members present or absent, a summary of the discussions on each subject, a list of documents and other exhibits used at the meeting, the decisions made and the actions taken at each meeting, including the record of all votes.

(b) No vote taken at an open session shall be by secret ballot. Any vote taken at an executive session shall be recorded by roll call and entered into the minutes.

(c) Minutes of all open sessions shall be created and approved in a timely manner. The minutes of an open session, if they exist and whether approved or in draft form, shall be made available upon request by any person within 10 days.

(d) Documents and other exhibits, such as photographs, recordings or maps, used by the body at an open or executive session shall, along with the minutes, be part of the official record of the session.

(e) The minutes of any open session, the notes, recordings or other materials used in the preparation of such minutes and all documents and exhibits used at the session, shall be public records in their entirety and not exempt from disclosure pursuant to any of the exemptions under clause Twenty-sixth of section 7 of chapter 4. Notwithstanding this paragraph, the following materials shall be exempt from disclosure to the public as personnel information: (1) materials used in a performance evaluation of an individual bearing on his professional competence, provided they were not created by the members of the body for the purposes of the evaluation; and (2) materials used in deliberations about employment or appointment of individuals, including applications and supporting materials; provided, however, that any resume submitted by an applicant shall not be exempt.

(f) The minutes of any executive session, the notes, recordings or other materials used in the preparation of such minutes and all documents and exhibits used at the session, may be withheld from disclosure to the public in their entirety under subclause (a) of clause Twenty-sixth of section 7 of chapter 4, as long as publication may defeat the lawful purposes of the executive session, but no longer; provided, however, that the executive session was held in compliance with section 21.

When the purpose for which a valid executive session was held has been served, the minutes, preparatory materials and documents and exhibits of the session shall be disclosed unless the attorney-client privilege or 1 or more of the exemptions under said clause Twenty-sixth of said section 7 of said chapter 4 apply to withhold these records, or any portion thereof, from disclosure.

For purposes of this subsection, if an executive session is held pursuant to clause (2) or (3) of subsections (a) of section 21, then the minutes, preparatory materials and documents and exhibits used at the session may be withheld from disclosure to the public in their entirety, unless and until such time as a litigating, negotiating or bargaining position is no longer jeopardized by such disclosure, at which time they shall be disclosed unless the attorney-client privilege or 1 or more of the exemptions under said clause Twenty-sixth of said section 7 of said chapter 4 apply to withhold these records, or any portion thereof, from disclosure.

(g)(1) The public body, or its chair or designee, shall, at reasonable intervals, review the minutes of executive sessions to determine if the provisions of this subsection warrant continued non-disclosure. Such determination shall be announced at the body's next meeting and such announcement shall be included in the minutes of that meeting.

(2) Upon request by any person to inspect or copy the minutes of an executive session or any portion thereof, the body shall respond to the request within 10 days following receipt and shall release any such minutes not covered by an exemption under subsection (f); provided, however, that if the body has not

performed a review pursuant to paragraph (1), the public body shall perform the review and release the non-exempt minutes, or any portion thereof, not later than the body's next meeting or 30 days, whichever first occurs. A public body shall not assess a fee for the time spent in its review.

Section 23. [Enforcement of Open Meeting Law; Complaints; Hearings; Civil Actions]

(a) Subject to appropriation, the attorney general shall interpret and enforce the open meeting law.

(b) At least 30 days prior to the filing of a complaint with the attorney general, the complainant shall file a written complaint with the public body, setting forth the circumstances which constitute the alleged violation and giving the body an opportunity to remedy the alleged violation; provided, however, that such complaint shall be filed within 30 days of the date of the alleged violation. The public body shall, within 14 business days of receipt of a complaint, send a copy of the complaint to the attorney general and notify the attorney general of any remedial action taken. Any remedial action taken by the public body in response to a complaint under this subsection shall not be admissible as evidence against the public body that a violation occurred in any later administrative or judicial proceeding relating to such alleged violation. The attorney general may authorize an extension of time to the public body for the purpose of taking remedial action upon the written request of the public body and a showing of good cause to grant the extension.

(c) Upon the receipt of a complaint by any person, the attorney general shall determine, in a timely manner, whether there has been a violation of the open meeting law. The attorney general may, and before imposing any civil penalty on a public body shall, hold a hearing on any such complaint. Following a determination that a violation has occurred, the attorney general shall determine whether the public body, 1 or more of the members, or both, are responsible and whether the violation was intentional or unintentional. Upon the finding of a violation, the attorney general may issue an order to:

- (1) compel immediate and future compliance with the open meeting law;
- (2) compel attendance at a training session authorized by the attorney general;
- (3) nullify in whole or in part any action taken at the meeting;
- (4) impose a civil penalty upon the public body of not more than \$1,000 for each intentional violation;
- (5) reinstate an employee without loss of compensation, seniority, tenure or other benefits;
- (6) compel that minutes, records or other materials be made public; or
- (7) prescribe other appropriate action.

(d) A public body or any member of a body aggrieved by any order issued pursuant to this section may, notwithstanding any general or special law to the contrary, obtain judicial review of the order only through an action in superior court seeking relief in the nature of certiorari; provided, however, that notwithstanding section 4 of chapter 249, any such action shall be commenced in superior court within 21 days of receipt of the order. Any order issued under this section shall be stayed pending judicial review; provided, however, that if the order nullifies an action of the public body, the body shall not implement such action pending judicial review.

(e) If any public body or member thereof shall fail to comply with the requirements set forth in any order issued by the attorney general, or shall fail to pay any civil penalty imposed within 21 days of the date of

issuance of such order or within 30 days following the decision of the superior court if judicial review of such order has been timely sought, the attorney general may file an action to compel compliance. Such action shall be filed in Suffolk superior court with respect to state public bodies and, with respect to all other public bodies, in the superior court in any county in which the public body acts or meets. If such body or member has not timely sought judicial review of the order, such order shall not be open to review in an action to compel compliance.

(f) As an alternative to the procedure in subsection (b), the attorney general or 3 or more registered voters may initiate a civil action to enforce the open meeting law.

Any action under this subsection shall be filed in Suffolk superior court with respect to state public bodies and, with respect to all other public bodies, in the superior court in any county in which the public body acts or meets.

In any action filed pursuant to this subsection, in addition to all other remedies available to the superior court, in law or in equity, the court shall have all of the remedies set forth in subsection (c).

In any action filed under this subsection, the order of notice on the complaint shall be returnable not later than 10 days after the filing and the complaint shall be heard and determined on the return day or on such day as the court shall fix, having regard to the speediest possible determination of the cause consistent with the rights of the parties; provided, however, that orders may be issued at any time on or after the filing of the complaint without notice when such order is necessary to fulfill the purposes of the open meeting law. In the hearing of any action under this subsection, the burden shall be on the respondent to show by a preponderance of the evidence that the action complained of in such complaint was in accordance with and authorized by the open meeting law; provided, however, that no civil penalty may be imposed on an individual absent proof that the action complained of violated the open meeting law.

(g) It shall be a defense to the imposition of a penalty that the public body, after full disclosure, acted in good faith compliance with the advice of the public body's legal counsel.

(h) Payment of civil penalties under this section paid to or received by the attorney general shall be paid into the general fund of the commonwealth.

Section 24. [Investigation by Attorney General of Violations of Open Meeting Law]

(a) Whenever the attorney general has reasonable cause to believe that a person, including any public body and any other state, regional, county, municipal or other governmental official or entity, has violated the open meeting law, the attorney general may conduct an investigation to ascertain whether in fact such person has violated the open meeting law. Upon notification of an investigation, any person, public body or any other state, regional, county, municipal or other governmental official or entity who is the subject of an investigation, shall make all information necessary to conduct such investigation available to the attorney general. In the event that the person, public body or any other state, regional, county, municipal or other governmental official or entity being investigated does not voluntarily provide relevant information to the attorney general within 30 days of receiving notice of the investigation, the attorney general may: (1) take testimony under oath concerning such alleged violation of the open meeting law; (2) examine or cause to be

examined any documentary material of whatever nature relevant to such alleged violation of the open meeting law; and (3) require attendance during such examination of documentary material of any person having knowledge of the documentary material and take testimony under oath or acknowledgment in respect of any such documentary material. Such testimony and examination shall take place in the county where such person resides or has a place of business or, if the parties consent or such person is a nonresident or has no place of business within the commonwealth, in Suffolk county.

(b) Notice of the time, place and cause of such taking of testimony, examination or attendance shall be given by the attorney general at least 10 days prior to the date of such taking of testimony or examination.

(c) Service of any such notice may be made by: (1) delivering a duly-executed copy to the person to be served or to a partner or to any officer or agent authorized by appointment or by law to receive service of process on behalf of such person; (2) delivering a duly-executed copy to the principal place of business in the commonwealth of the person to be served; or (3) mailing by registered or certified mail a duly-executed copy addressed to the person to be served at the principal place of business in the commonwealth or, if said person has no place of business in the commonwealth, to his principal office or place of business.

(d) Each such notice shall: (1) state the time and place for the taking of testimony or the examination and the name and address of each person to be examined, if known and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs; (2) state the statute and section thereof, the alleged violation of which is under investigation and the general subject matter of the investigation; (3) describe the class or classes of documentary material to be produced thereunder with reasonable specificity, so as fairly to indicate the material demanded; (4) prescribe a return date within which the documentary material is to be produced; and (5) identify the members of the attorney general's staff to whom such documentary material is to be made available for inspection and copying.

(e) No such notice shall contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of the commonwealth or require the disclosure of any documentary material which would be privileged, or which for any other reason would not be required by a subpoena duces tecum issued by a court of the commonwealth.

(f) Any documentary material or other information produced by any person pursuant to this section shall not, unless otherwise ordered by a court of the commonwealth for good cause shown, be disclosed to any person other than the authorized agent or representative of the attorney general, unless with the consent of the person producing the same; provided, however, that such material or information may be disclosed by the attorney general in court pleadings or other papers filed in court.

(g) At any time prior to the date specified in the notice, or within 21 days after the notice has been served, whichever period is shorter, the court may, upon motion for good cause shown, extend such reporting date or modify or set aside such demand or grant a protective order in accordance with the standards set forth in Rule 26(c) of the Massachusetts Rules of Civil Procedure. The motion may be filed in the superior court of the county in which the person served resides or has his usual place of business or in Suffolk county. This section shall not be applicable to any criminal proceeding nor shall information obtained under the authority of this section be admissible in evidence in any criminal prosecution for substantially identical transactions.

Section 25. [REGULATIONS, LETTER RULINGS, ADVISORY OPINIONS]

(a) The attorney general shall have the authority to promulgate rules and regulations to carry out enforcement of the open meeting law.

(b) The attorney general shall have the authority to interpret the open meeting law and to issue written letter rulings or advisory opinions according to rules established under this section.

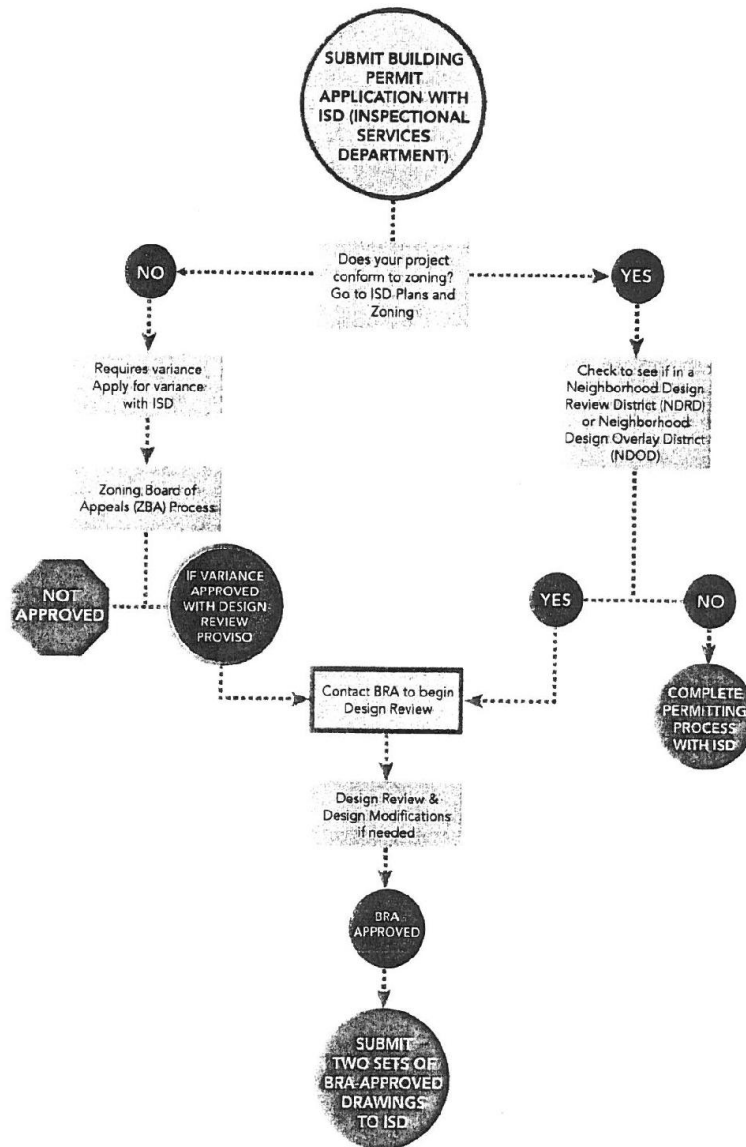
APPENDIX G:

ZBA-BPD DESIGN REVIEW PROCEDURES

ZBA-BRA DESIGN REVIEW

► PURPOSE OF DESIGN REVIEW PROCESS + NEXT STEPS

The purpose of Zoning Board of Appeal (ZBA) - Boston Redevelopment Authority (BRA) design review is to ensure that the design of the proposed exterior alterations, additions or new construction is compatible with, and enhances the existing character of the immediate neighborhood. Please follow this guide to help expedite BRA design review approval.



- 1 **SET UP DESIGN REVIEW MEETING WITH BRA**
- 2 Contact the BRA design review staff assigned to review the project (see below).
- 3 Identify your size/type of project from the descriptions on the back of this page.
- 4 Come prepared with the required documentation. You may also submit your plans and photos over email.
- 5 If the project also requires approval from another City Commission/Dept., please bring the appropriate approvals along.
- 6 At each stage of review, the BRA staff assigned to the case will **respond within 5 business days** of your correspondence/submission to determine next steps in approval process. Phone calls will be returned within 1 business day.

YOUR BRA DESIGN REVIEW CONTACT IS:

- Michael Cannizzo
617-918-4386
michael.cannizzo@boston.gov
- Matthew Martin
617-918-4235
matthew.martin@boston.gov
- Alexa Pinard
617-918-4273
alexa.pinard@boston.gov
- Corey Zehngebort
617-918-4310
corey.zehngebort@boston.gov
- Cynthia Dorta-Quinones
617-918-4421
cynthia.dorta@boston.gov

BRA DESIGN REVIEW

SUBMISSION REQUIREMENTS BY PROJECT SIZE AND TYPE

BRA DESIGN REVIEW IS INTENDED TO ADDRESS THE FOLLOWING:

1. What is the existing context of the site, building and adjoining neighborhood?
2. What specifically is being proposed and how can it be best laid out on the site?
3. What will the proposed exterior changes look like when the work is completed?
4. What will be the impact of these changes on the abutting properties and neighborhood?
5. Is the proposed addition or new construction compatible with the character of the neighborhood?
6. How well does the proposed design maintain and improve the existing neighborhood context and character?

SUBMISSION REQUIREMENTS

1. The visual documentation listed below is required to expedite BRA design review for projects approved by the Zoning Board of Appeals with a BRA Design Review Proviso.

2. Submissions sent via email must be in a PDF format. The preferred formats for photos is jpeg. All photos and drawings must be labeled with property address, date, and appropriate description (e.g., "view from street", "site plan" etc.). Photographs must depict the property in question along with abutting properties to clearly indicate the surrounding context.

› NEW CONSTRUCTION OR MAJOR REHABILITATION (COMMERCIAL OR RESIDENTIAL)

- Current photographs of existing site conditions and adjoining properties.
- A certified Plot Plan (Existing Conditions).
- Site Plan to scale indicating proposed building layout, adjacent buildings, relationship to street(s), site access and egress locations, and on-site parking.
- Building Floor Plans indicating interior layout.
- Building Elevations of all sides of the building.
- A Landscape Plan indicating appropriate screening, street edge treatment; specify plant species, sizes, number, spacing, and locations.
- Indicate all proposed signage location and details.
- All plans must be drawn to scale.

› CHANGE OF OCCUPANCY ONLY (WITH NO EXTERIOR ALTERATIONS)

- Current photographs of the existing site conditions and adjoining properties.
- Drawings showing proposed interior layout.

› MINOR MODIFICATIONS

(eg. roof decks, dormers, storefronts, etc)

- Current photographs of existing building, site condition, and surrounding properties.
- Drawing(s) indicating design, exterior materials, and colors of proposed alterations in context with the existing building or site. Drawing(s) must indicate all visible exterior changes in floor plans and elevation (exterior façade) views. The drawing must indicate all dimensions accurately.
- All plans must be drawn to scale.

› PARKING LOTS AND GAS STATIONS

- Current photographs of existing site conditions, relationship to adjoining streets, and adjoining properties.
- A certified Plot Plan (Existing Conditions).
- Site Plan to scale, indicating proposed site layout including all parking spaces, buildings, circulation and all entry and egress points, curb cuts, drainage, lighting, and signage.
- Plan should identify locations to screen automobiles from the street(s) and adjoining properties, as well as visually break-up the expanse of the parking lot.
- All plans must be drawn to scale.

If you have any questions about the process, or would like to give us your feedback about the design review process, please contact Michael Cannizzo at michael.cannizzo@boston.gov (617-918-4386).

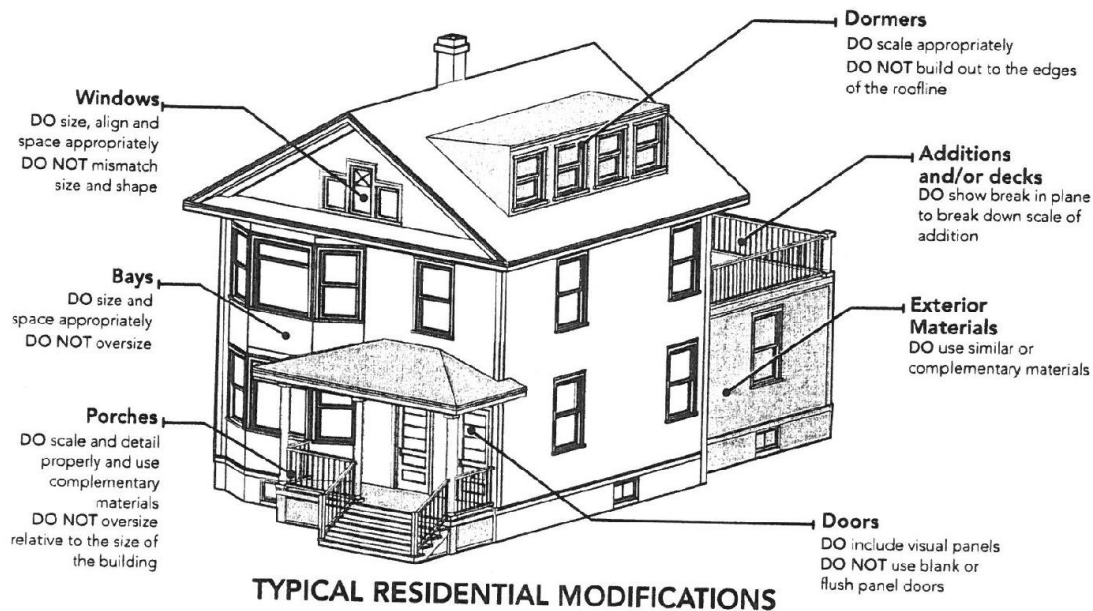
BRA DESIGN REVIEW

BRA DESIGN REVIEW

RESIDENTIAL: FACADE CONSIDERATIONS

› PURPOSE OF DESIGN REVIEW PROCESS

The purpose of BRA design review is to ensure that the design of the proposed exterior alterations, additions or new construction is compatible with, and enhances the existing character of the immediate neighborhood. In general, modifications to an existing residential structure should be appropriate in scale and complementary in material so as not to overwhelm the original structure. Site considerations are very important. When proposing modifications, take care to consider impacts on abutting properties and how the property will look within the context of a particular neighborhood or street.



TYPICAL RESIDENTIAL MODIFICATIONS

› RESIDENTIAL DESIGN REVIEW TOPICS FOR CONSIDERATION:

- ① **Dormers**
As a general rule, dormers should be set back at least 3'-0" feet to the edge of the roofline and at least 1'-0" feet below the ridge line. They should be scaled relative to the overall shape and size of the residence.
- ② **Porches + Decks**
Material and scale are the most important aspects of porch design. Porches should be constructed out of materials that can be painted. Pressure-treated lumber is not to be used as an externally visible building material. Design and details for replacing missing porches should reflect similar style porches found on residential buildings nearby on the street or in the neighborhood.
- ③ **Windows + Doors**
The composition of windows and doors should create a harmonious facade. The size, shape, and type of new window(s) selected should complement the existing building. Clad windows are the standard. Entry doors with glass panels are the standard. Windows should generally be vertically proportioned.
- ④ **Additions**
Additions should not overwhelm the existing structure. They should be carefully designed to be unobtrusive and complementary to the existing house and homes on the street or neighborhood. Window pattern and spacing in the addition should be considered in relation to alignment of the existing windows. The materials and detailing should be of high quality.

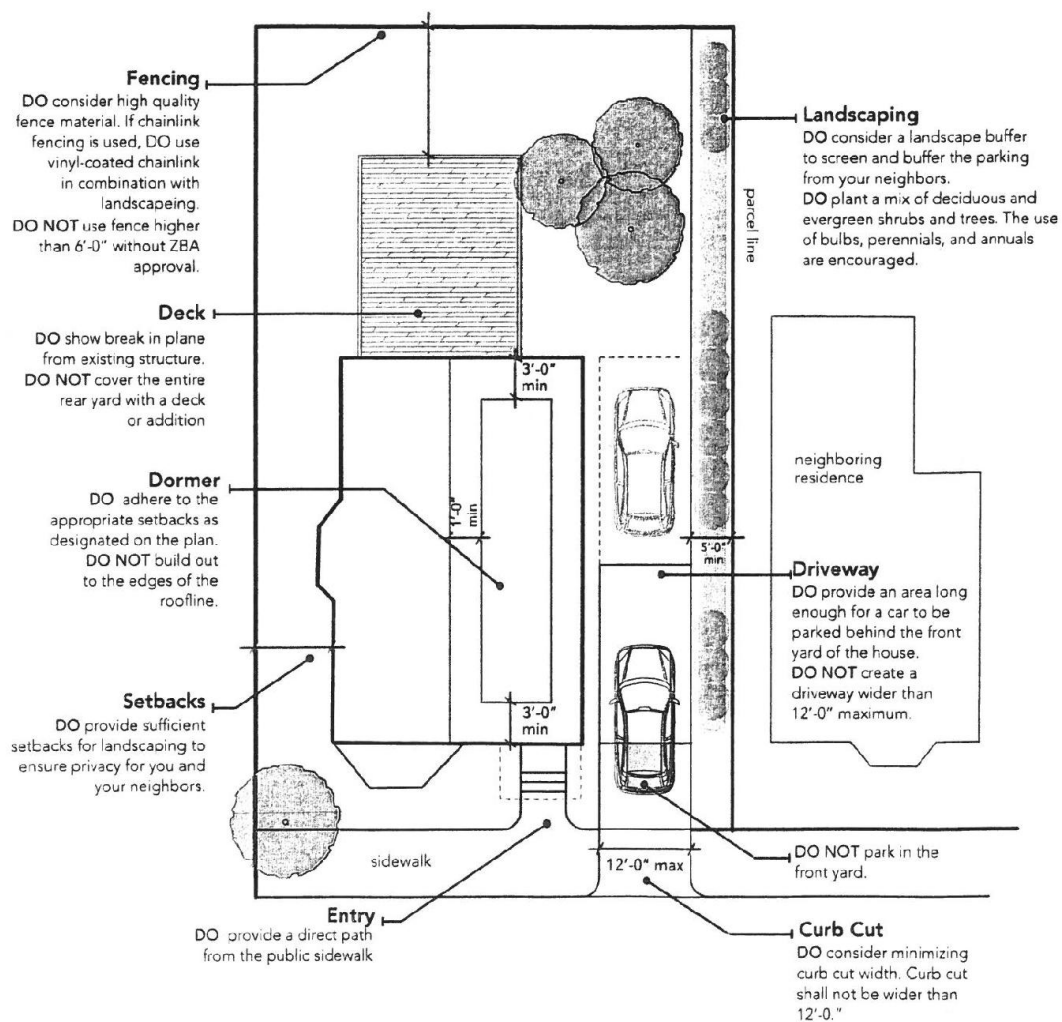
BRA DESIGN REVIEW

BRA DESIGN REVIEW

RESIDENTIAL: SITE CONSIDERATIONS

› PRIMARY CONSIDERATIONS FOR SITE DESIGN

1. What is the existing context of the site, residence, and adjoining neighborhood?
2. What specifically is being proposed and how can it be best laid out on the site? What will the proposed exterior changes look like when the work is completed?
3. How well do the site improvements improve or blend in with the character of the neighborhood and abutting properties? Does the landscaping, fencing, parking, etc. improve the quality of the property, but are also sensitive to neighbors?



TYPICAL RESIDENTIAL SITE PLAN

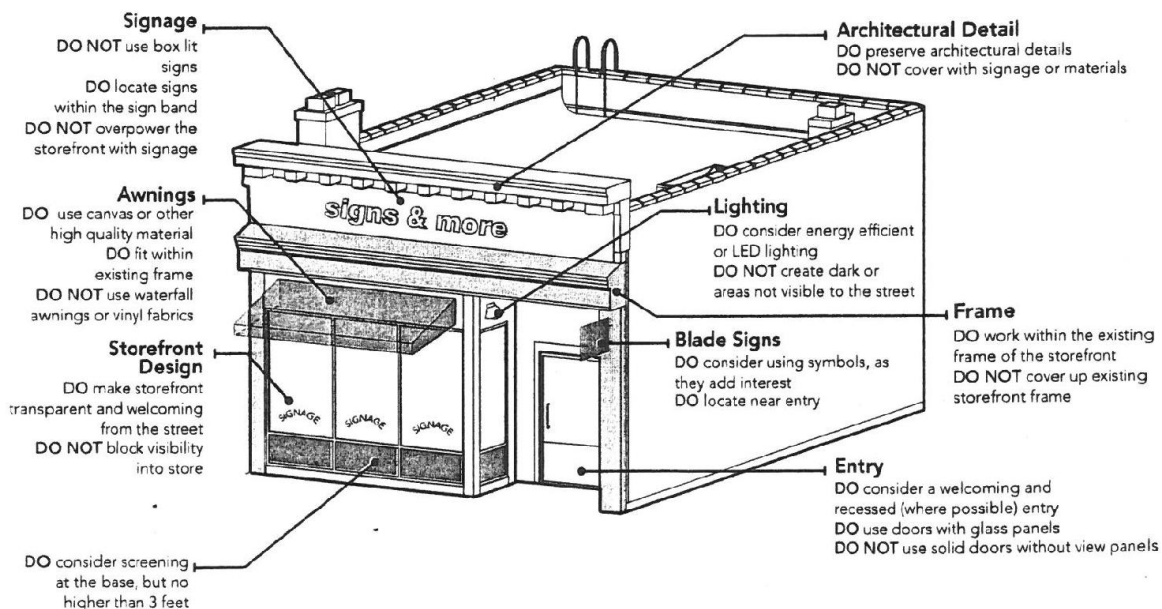
BRA DESIGN REVIEW

COMMERCIAL: FACADE CONSIDERATIONS

› PURPOSE OF DESIGN REVIEW PROCESS

The purpose of BRA design review is to ensure that the design of the proposed exterior alterations, additions or new construction is compatible with, and enhances the existing character of the immediate neighborhood. Sensitivity to different types of retail within neighborhoods is also important. Storefronts along main streets may differ from smaller retail areas or neighborhood shopping centers, but the overriding objective is the same: storefront design should add to the vitality of neighborhoods, while being inviting and compatible with the adjoining retail.

TYPICAL COMMERCIAL STOREFRONT



› PRIMARY COMMERCIAL STOREFRONT DESIGN REVIEW TOPICS FOR CONSIDERATION:

- 1 **Storefront Design**
Care should be taken to create a transparent storefront design that is inviting from the street, uses high quality materials, and preserves any existing architectural details. Do consider glass, decorative panels, or sign bands within the transom. Grills are permitted on the inside of the storefront. Exterior grills and grates are not permitted.
- 2 **Signage**
Consideration of signage is important, as it is the first impression of the business within. Signs should be simple, visible, and respectful of the architecture of the storefront. Content should include only logos and names, and should be applied in appropriate amounts relative to the storefront size and orientation. Use individual letters or a sign board. Fully illuminated box lit signs are not permitted.

› ADDITIONAL REFERENCES

Neighborhood Main Streets
<http://www.cityofboston.gov/dnd/obd/mainstreets.asp>

Accessibility (ADA) compliance
<http://www.mass.gov/eopss/consumer-prot-and-bus-lit/license-type/aab/aab-rules-and-regulations-pdf.html>

Public Improvement Commission (PIC)
<http://www.cityofboston.gov/publicworks/engineering/pic.asp>

Landmarks Commission and Historic Districts
<http://www.cityofboston.gov/landmarks/>

Storefront and Signage Guidelines and Info
<http://www.bostonredevelopmentauthority.org/business-dev/storefront-signage>

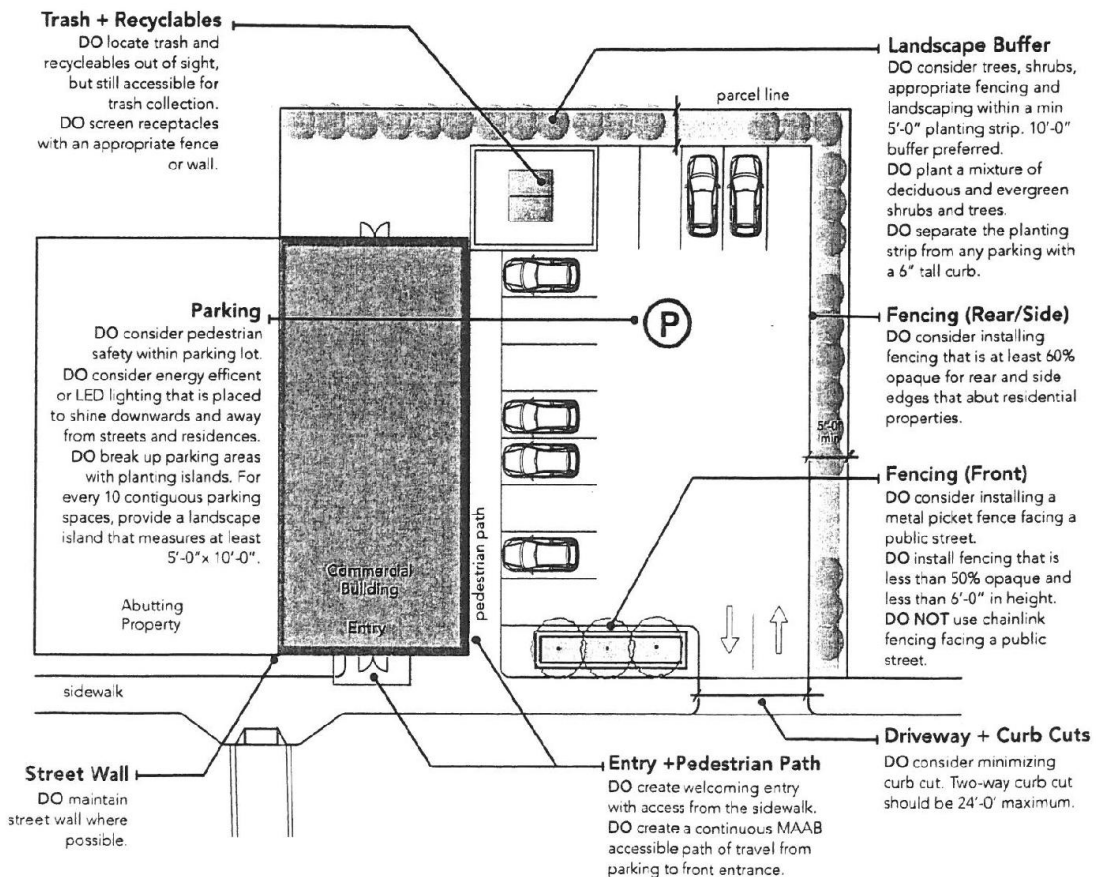
BRA DESIGN REVIEW

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COMMERCIAL: SITE CONSIDERATIONS

PRIMARY CONSIDERATIONS FOR SITE DESIGN

1. What is the existing context of the site, building and adjoining neighborhood?
2. Are parking needs being balanced with need to provide landscaping along the street edge and adjacent properties?
3. What specifically is being proposed and how can it be best laid out on the site? What is the appearance of proposed exterior changes look like from the street?
4. How well does the proposed addition or new construction maintain and improve with the character of the district and abutting properties?
5. Will the proposed landscaping and amenities be easy to maintain over time?



TYPICAL COMMERCIAL SITE PLAN