

examination of the policy, the owner is not satisfied with it for any reason. If the owner, pursuant to such notice, surrenders the policy to the insurer by delivering it to the home office or branch office of said insurer, or to the agent through whom it was purchased, any premium paid shall be refunded and the policy shall upon such delivery be deemed void from the beginning.

SECTION 3. The provisions of sections one hundred and nineteen B and one hundred eighty-seven H of chapter one hundred and seventy-five of the General Laws, inserted by sections one and two of this act, shall apply to policies delivered or issued for delivery on or after July first, nineteen hundred and seventy-six.

*Approved December 16, 1975.*

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**Chap. 772. AN ACT ESTABLISHING THE BOSTON LANDMARKS COMMISSION.**

*Be it enacted, etc., as follows:*

SECTION 1. *Purposes.* The purposes of this act are: (a) to protect the beauty of the city of Boston and improve the quality of its environment through identification, recognition, conservation, maintenance and enhancement of areas, sites, structures and fixtures which constitute or reflect distinctive features of the political, economic, social, cultural or architectural history of the city; (b) to foster appropriate use and wider public knowledge and appreciation of such features, areas, sites, structures, and fixtures; (c) to resist and restrain environmental influences adverse to such purposes; and (d) to encourage private efforts in support of such purposes; and (e) by furthering such purposes, to promote the public welfare, to strengthen the cultural and educational life of the city and the commonwealth and to make the city a more attractive and desirable place in which to live and work.

SECTION 2. *Definitions.* As used in this act, the following words shall have the following meanings: —

“Architectural conservation district”, any area designated by the commission in accordance with section four as an area containing any physical features or improvements or both which are of historical, social, cultural, architectural or aesthetic significance to the city and cause such area to constitute a distinctive section of the city.

“Back Bay Residential District”, the district created by section two of chapter six hundred and twenty-five of the acts of nineteen hundred and sixty-six, as it now is or hereafter may be constituted.

“Boston Redevelopment Authority”, a public body, politic and

corporate created pursuant to chapter one hundred and twenty-one B of the General Laws and any successor as planning agency of the city, whether by operation of law or otherwise.

“Building commissioner”, the building commissioner of the city.

“City”, the city of Boston.

“City clerk”, the city clerk of the city.

“Commission”, the commission provided for by section three.

“Council”, the city council of the city.

“Demolition”, the razing of any exterior architectural feature or structure, including its ruin by neglect of necessary maintenance and repairs, or either.

“Exterior architectural features”, the site topography and general architectural arrangement, or either, of such portion of the exterior of any structure as is designed to be open to view from any street or way open to public travel, including but not limited to (a) the kind, color and texture of the building material of such portion so open to view, (b) the type and design of all windows, doors, lights, signs and other fixtures appurtenant to such portion, (c) the location, adequacy and treatment of any vehicular access to such structure, and (d) the location and treatment of any motor vehicle parking space appurtenant to such structure and so open to view.

“Historic Beacon Hill District”, the district created by section one of chapter six hundred and sixteen of the acts of nineteen hundred and fifty-five, as amended by chapter three hundred and fifteen of the acts of nineteen hundred and fifty-eight and by chapter six hundred and twenty-two of the acts of nineteen hundred and sixty-three, as it now is or may hereafter be constituted.

“Improvement”, any place, structure, building, fixture, object or landscape or topographic feature which in whole or part constitutes an exterior or interior betterment, adornment or enhancement of any real property.

“Landmark”, any physical feature or improvement designated by the commission in accordance with section four as a physical feature or improvement which in whole or part has historical, social, cultural, architectural or aesthetic significance to the city and the commonwealth, the New England region or the nation.

“Landmark district”, any area designated by the commission in accordance with section four as an area containing any physical features or improvements or both which are of historical, social, cultural, architectural or aesthetic significance to the city and the commonwealth, the New England region or the nation and cause such area to constitute a distinctive section of the city.

“Mayor”, the mayor of the city.

“Physical feature”, any natural topographic feature or landscape element, including plants or trees, water courses, shores, promontories and rock outcroppings.

“Privately owned”, all property which is not owned by the city, the commonwealth, or the federal government or by any department, board, agency or authority thereof.

“Protection area”, any area designated by the commission in accordance with section four as an area which is contiguous to and constitutes an essential part of the physical environment of any architectural conservation district, landmark or landmark district.

“Site topography”, all or any of the topography, planting, paving, steps, fencing and masonry walls of the site of any structure.

“Structure”, a structure as defined in the Boston building code and the site topography of any structure.

SECTION 3. *Boston Landmarks Commission.* There shall be in the Boston Redevelopment Authority a Boston Landmarks Commission, hereinafter called the commission. The commission shall consist of nine members and nine alternates residing in the city and appointed by the mayor for a term of three years, except, however, that of the initial appointments three members and alternates shall be for a term expiring June thirtieth, nineteen hundred and seventy-six, three members and alternates for a term expiring June thirtieth, nineteen hundred and seventy-seven, and three members and alternates for a term expiring June thirtieth, nineteen hundred and seventy-eight, as follows: — two commissioners from four candidates, and two alternates from four other candidates, who shall be registered architects in the commonwealth, nominated by the Boston Society of Architects; one commissioner from two candidates, and one alternate from two other candidates, who shall be architectural historians, nominated by the Society for the Preservation of New England Antiquities; one commissioner from two candidates and one alternate from two other candidates, who shall be experienced as city planners, nominated by the Regional Chapter of the American Institute of Planners; one commissioner from two candidates, and one alternate from two other candidates, who shall be landscape architects registered in the commonwealth, nominated by the Boston Society of Landscape Architects; one commissioner from two candidates, and one alternate from two other candidates, nominated by the Greater Boston Real Estate Board; one commissioner from two candidates, and one alternate from two other candidates, nominated by the Greater Boston Chamber of Commerce; and two commissioners, and two alternates, selected at large by the mayor and who by reasons of

experience or education have demonstrated knowledge and concern for conservation and enhancement of those physical features of the city which are important to its distinctive character. Any vacancy in the office of any member of the commission shall be filled in like manner for the unexpired term of such office. As the term of any member of the commission expires, his successor shall be appointed in like manner as such member. Nominations for all initial appointments to the commission shall be submitted to the mayor not later than ninety days after the date of approval hereof by the governor of the commonwealth. Whenever a commissioner is absent or unable for any cause to perform his duties, the alternate appointed in the same manner as such commissioner shall exercise the powers and perform the duties of such commissioner, or if neither a commissioner nor his alternate shall be present, any other alternate present shall perform his duties; but an alternate shall not be otherwise deemed to be, or act as, a member of the commission. All references to members herein shall be deemed to include alternates unless the context indicates otherwise. Upon designation of any landmark district, architectural conservation district or protection area and unless the designation so provides that the commission itself shall exercise regulatory functions, the mayor shall appoint a district commission to consist of two residents of such district or area or owners of property therein and two alternates and three members of the commission who shall act for the commission in the exercise of those regulatory functions described in section five which pertain exclusively to said district or area. All appointments to the commission or the district commission shall be confirmed by the city council.

Every member of the commission shall continue in office after expiration of his term until his successor shall have been duly appointed. The mayor may remove any member in accordance with section fourteen of chapter four hundred and eighty-six of the acts of nineteen hundred and nine. No member shall receive compensation for his service on the commission but shall be reimbursed for his actual expenses reasonably and necessarily incurred in performance of his official duties.

For the purposes of chapter two hundred and sixty-eight A of the General Laws, every member of the commission, and every person who shall, on a part-time and consultative basis, perform any professional services for the commission, such as the services of architect, attorney, engineer, planner, environmentalist or expert in construction, finance, real estate or traffic, shall be deemed to be a special municipal employee.

Without regard to chapter thirty-one of the General Laws, the Boston Redevelopment Authority shall provide the commission with an administrative staff acceptable to the commission and

adequate to carry on the functions of the commission as provided for in this act. Such staff shall be employees of the Boston Redevelopment Authority. Notwithstanding the foregoing the commission may contract directly for such professional and expert technical assistance as such business shall require.

The commission shall adopt, and may from time to time amend, by-laws concerning its internal management and, after public hearing, may adopt and from time to time amend regulations for the purpose of interpreting this act and of implementing its administration and enforcement, which regulations shall be in addition to those required by section four. A copy of every such by-law and amendment thereof and every regulation and amendment thereof adopted pursuant to this section shall be filed in the office of the city clerk; and no such regulation or amendment thereof shall become effective until it shall have been so filed.

Annually on the first day of May or as soon thereafter as may be convenient, the commission shall elect one of its members as chairman and another as vice chairman. The commission shall designate from time to time one of its staff to serve as its secretary. Whenever the secretary shall not attend a meeting of the commission, the commission shall elect a secretary pro tempore who shall take the minutes of the meeting. The records of the commission shall set forth every determination made by the commission, the vote of every member participating in such determination and the absence or failure to vote of every other member.

The commission shall be deemed a department of the city for the purposes of section fifty-three A of chapter forty-four of the General Laws.

**SECTION 4. *Designations by Commission.*** Subject to the conditions hereafter specified in this section, the commission by a two-thirds vote of all members of the commission may designate any landmark, landmark district, architectural conservation district or protection area, or by such vote, may amend or rescind in whole or part any such designation.

The commission may designate any improvement or physical feature as a landmark, and may designate any area in the city as a landmark district, or architectural conservation district and may amend any such designation as herein provided upon a finding by the commission that the designation or amendment meets any of the following criteria: — (a) inclusion in National Register of Historic Places as provided in the National Historic Preservation Act of 1966; (b) structures, sites, objects, man-made or natural, at which events occurred that have made an outstanding contribution to, and are identified prominently with, or which best represent some important aspect of the cultural, political, economic, military, or social history of the city, the com-

monwealth, the New England region or the nation; (c) structures, sites, objects, man-made or natural, associated significantly with the lives of outstanding historical personages; (d) structures, sites, objects, man-made or natural, representative of elements of architectural or landscape design or craftsmanship which embody distinctive characteristics of a type inherently valuable for study of a period, style or method of construction or development, or a notable work of an architect, landscape architect, designer, or builder whose work influenced the development of the city, the commonwealth, the New England region, or the nation.

The commission may designate any area in the city as a protection area as herein provided upon a finding by the commission that the area to be designated is visually related to the landmark, landmark district or architectural conservation district but is not necessarily of sufficient historical, social, cultural, architectural or aesthetic significance to warrant designation as such. In determining the boundaries of a protection area, the commission shall consider the following elements:— (a) major views and vistas of and from the landmark, landmark district, or architectural conservation district as determined by the topographical characteristics and the siting of existing buildings in the area contiguous to the landmark, landmark district or architectural conservation district; (b) pattern of roads, paths and alleys which determine the size and shape of land parcels and which control vehicular and non-vehicular movement to and from the landmark, landmark district or architectural conservation district; (c) contrasts between the scale and density of the landmark, landmark district or architectural conservation district and the improvements under consideration for designation as a protection area; (d) contrasts between the arrangement of structures and landscape and open space features of the landmark, in the landmark district or architectural conservation district and the improvements under consideration for designation as a protection area. In no case shall the protection area extend more than twelve hundred feet from a boundary of the landmark, landmark district or architectural conservation district.

Prior to the designation or amendment of designation of any landmark, landmark district, architectural conservation district or protection area, an investigation and report on the historical and architectural significance of the structure, sites or objects to be designated shall be made. Such report will also attempt to provide an indication of the economic status of the property or properties under consideration for designation by providing such information as assessed value, recent real estate transactions or other appropriate data. The report shall also recommend the boundaries of any proposed landmark, landmark district, architectural conservation district or protection area and recom-

ment standards to be adopted by the commission in carrying out its regulatory functions provided under section five of this act. All recommendations shall be made in consideration of any master plan, zoning requirements, projected public improvements and existing and proposed renewal and development plans applicable to the section of the city to be affected by the designation or amendment of designation.

In the case of a landmark which is under consideration for designation, the report shall be prepared by the commission with the assistance of its staff or consultants or in the case of a landmark district, architectural conservation district or protection area, the report shall be prepared by a study committee consisting of five members of the commission and six persons who have demonstrated interest in the district or area under consideration and who shall be appointed by the mayor and confirmed by the city council, with the assistance of the commission staff or consultants.

The mayor, any ten registered voters of the city or any commission member may petition the commission to designate a landmark, landmark district, architectural conservation district or protection area or to amend or rescind such a designation, and the commission shall within thirty days next following the filing of such petition hold a preliminary hearing on such petition with the petitioners and arrange for the preparation of a report and, if required, request the appointment of a study committee. The commission shall not reconsider a proposed designation, amendment or rescission of designation within one year of its previous hearing thereon, unless two-thirds of all its members vote to do so. Within twenty-one days after the completion of a report by the commission pertaining to the proposed designation of a landmark or within sixty days after the transmittal of a report of a study committee to the commission pertaining to a proposed designation of a landmark district, architectural conservation district or protection area, the commission shall hold a public hearing. The commission shall give notice of such public hearing by an appropriate advertisement published in a newspaper of general circulation in the city and, if possible, in at least one periodical, if any exist, circulated in the vicinity of the proposed landmark, landmark district, architectural conservation district or protection area at least three weeks prior to the date of the hearing and by mailing a copy of such advertisement to the owner of the proposed landmark and to every owner as appearing on the then most recent tax list of property abutting the proposed landmark or within the proposed landmark district, architectural conservation district or protection area as determined from the records of the assessing department and to the mayor, the Boston Redevelopment Authority, the city clerk, the Office of Public Service, and any other person that may have filed a written

request for such notice with the commission. Such request may be made annually in December. Notice of such hearing will announce the availability of a report on the proposed designation. Whenever feasible in the judgement of the commission, such hearing shall be held in the vicinity of such landmark, landmark district architectural conservation district or protection area.

Prior to the public hearing, the commission shall transmit copies of the report to the Boston Redevelopment Authority and the Massachusetts Historical Commission for their respective consideration and recommendations.

Every designation or amendment of designation of any landmark district, architectural conservation district or protection area shall state its location, describe its general characteristics and specify its boundaries, and every designation of any landmark shall state its location, describe its general characteristics and specify the boundaries of its site. Designation of interior portions of improvements shall further specify which rooms, spaces and surfaces are included in such designation.

As part of every such designation or amendment of designation, the commission shall adopt regulations which shall specify general standards and other appropriate criteria consistent with the purposes of this act and the provisions of section five which shall be applied by the commission in making any determination under section six with respect to the designated landmark or within the designated landmark district, architectural conservation district or protection area. Such standards and criteria shall be adopted by the commission after it has considered the study report as provided for in this section. Such standards and criteria shall take account of the differences in significance and purpose of designation among a landmark, landmark district, architectural conservation district or protection area; provided, however, that the standards and criteria applicable within any protection area shall relate only to demolition, land coverage, height of structure, landscape or topography.

The commission may designate as a landmark any property located within the city however owned and may include, in any landmark district, architectural conservation district or protection area, any such property, provided that the commission shall not designate as a landmark district, architectural conservation district or protection area that portion of the city bounded and described as follows: — beginning at a point at the intersection of the center line of Massachusetts avenue with the Massachusetts Turnpike Extension, continuing northwesterly along the center line of said Massachusetts avenue to the city boundary with the city of Cambridge in the Charles river, thence turning northeasterly and continuing along the said city boundary to the pierhead line, thence turning southeasterly and continuing along



the said pierhead line toward Fort Point channel, continuing southwardly along the middle of said Fort Point Channel to Dorchester avenue, continuing along the center line of said Dorchester avenue to the Broadway bridge, thence turning northwesterly along the center line of the Broadway bridge crossing the John Fitzgerald expressway, continuing along a straight line to the Massachusetts Turnpike Extension, along the center of said Turnpike Extension to the point of origin, except that the foregoing shall not prevent the adoption of historic districts pursuant to the provisions of chapter forty C of the General Laws within the area described herein.

Notwithstanding anything to the contrary herein, no designation of the interior portion of any improvement shall be made unless the notice pursuant to this section and the designation specifically indicates that said interior shall be designated.

Within the historic Beacon Hill District or Back Bay Residential District, the commission may designate interior portions of structures, and landscape features individually as landmarks in the manner provided herein. The commission may not designate as a landmark district, architectural conservation district or protection area any portion of the Historic Beacon Hill District or Back Bay Residential District, or any portion or any other historic district hereinafter established pursuant to any general or special law.

Every designation, amendment and rescission of designation approved by the commission shall be presented to the mayor for his approval. If he approves it, he shall sign it. If he disapproves it, he shall file it with the city clerk with his objections thereto in writing. Every such designation, amendment or rescission of designation which within fifteen days after its presentation to the mayor is neither signed by him nor filed with his written objections shall be deemed approved by the mayor after the sixteenth day following such presentation.

Within thirty days of the mayor's approval of a designation, amendment or rescission of designation of a landmark, landmark district, architectural conservation district or protection area pursuant to this section, the city council may override such designation, amendment or rescission of designation of such landmark, landmark district, architectural conservation district or protection area by a two-thirds vote of the council. In the absence of such override or express approval thereof, any such designation, amendment or rescission of designation of any such landmark, landmark district, architectural conservation district or protection area shall be deemed approved by the council after the thirty-first day following such action by the mayor pursuant to this section.

Any designation, amendment of designation and rescission of designation shall become effective upon determination of a designation by the commission provided however that such designation shall be filed promptly thereafter by the commission with the city clerk, the Public Improvement Commission and the building commissioner. No designation of or amendment of such a designation shall be effective as to any person without actual notice thereof or as to any parcel of property until recorded in the Suffolk county registry of deeds and indexed in the grantor index under the name of the record owner or owners thereof and, with respect to registered land, filed in said registry and noted on the certificate of title of the owner or owners. The commission may at any time after notice of a public hearing to consider designation of a landmark under this section, record as above provided, a notice that a designation is under consideration relating to the property, in which case for the period of ninety days after such recording or until the proposed designation is rejected, if such action occurs sooner such property shall be treated as and entitled to all the protection of a landmark hereunder.

SECTION 5. *Regulatory Function of the Commission.* Except as may otherwise be provided by regulations of the commission duly adopted and effective in accordance with section four or section three and section four: —

(a) No permit shall be issued by the building commissioner for any reconstruction, restoration, exterior or interior replacement or alteration or demolition of any landmark or for the construction, reconstruction, exterior replacement or alteration or demolition of any improvement not a landmark in any landmark district, architectural conservation district or protection area, unless the application for such a permit shall be accompanied by a certificate issued and effective in accordance with sections six, seven and eight;

(b) No permit shall be issued by the Public Improvement Commission or such other agency, if any, of the city as shall have authority to issue such permit for the erection or replacement of any sign, marquee, awning, or other exterior architectural feature to be attached or appurtenant to any landmark or to any improvement not a landmark in any landmark district, architectural conservation district or protection area, unless the application for such permit shall be accompanied by such a certificate;

(c) No reconstruction, restoration, exterior erection, exterior or interior replacement or alteration or demolition not requiring such a building permit or sign permit shall be undertaken by any person or by any officer, department, agency, authority, or board of the city or commonwealth with respect to any landmark, unless such person, officer, department, agency, authority, or board shall first have applied for and received such a certificate;

(d) No construction, reconstruction, exterior erection, replacement or alteration or demolition not requiring such a building permit or sign permit shall be undertaken by any person or by an officer, department, agency, authority or board of the city or commonwealth with respect to any improvement or exterior architectural feature in any landmark district or architectural conservation district or any improvement in any protection area, unless such person, officer, department, agency, authority or board shall first have applied for and received such a certificate;

(e) The regulatory functions of the commission as described in this section shall extend to any property however owned and designated as a landmark or located in or to be constructed in any landmark district, architectural conservation district or protection area and to plans, projects or work to be executed or assisted by any governmental body or its officers, departments, agencies, authorities or boards and affecting any landmark or any improvement or exterior architectural feature located in or to be constructed in any landmark district, architectural conservation district or protection area.

**SECTION 6.** *Application for Certificates from Commission.* Every application for any certificate required by section five shall be filed with the secretary of the commission and shall include as appendices a copy of the application, if any, for the building permit or sign permit to be accompanied by such certificate and such plans, specifications and other information as shall be prescribed by the commission in its regulations then in effect.

Within the eight days next following the date of such filing, excluding any Saturday, Sunday, or legal holiday, the commission or such person as the commission shall have duly authorized so to act on its behalf shall determine whether the application shall be acted on as an application for a certificate of design approval to be issued in accordance with section seven or a certificate of exemption to be issued in accordance with section eight; and if eight days shall expire without any such determination, the commission or authorized person shall thereupon issue a certificate of exemption, provided that no certificate of exemption pursuant to section eight may be issued until a public hearing has been held as provided hereunder.

Except as otherwise provided in this section, the commission shall hold a public hearing on every application determined, in accordance with section six and eight to require a certificate or design approval or a certificate of exemption.

The commission shall give at least ten days' prior notice to every hearing provided for in this section by posting notice thereof in the office of the city clerk and mailing copy of such notice to the applicants and to every owner as appearing on the then most recent tax list of property abutting the landmark or

improvement which is the subject of the application, the mayor, the Boston Redevelopment Authority and any other person that shall have requested notice of such hearing. Such requests may be made annually in December.

Any such hearing may be conducted by any member or members or employee or employees of the commission duly authorized by the commission so to act on its behalf, in which event such person or persons shall, promptly following conclusion of the hearing, file with the commission a written report on the hearing with recommendations for action by the commission.

As soon as may be convenient following such hearing but not later than the thirtieth day next following the date of filing of the application or such further time as the applicant in writing may allow the commission, the commission shall determine whether or not the construction, reconstruction, restoration, alteration, erection, replacement or demolition delineated in the application and appendices thereto is consistent with the purposes of this act. Forthwith upon making such determination, the commission shall issue a certificate of design approval or a certificate of exemption or shall state in writing its reasons including such recommendations, if any, as the commission may deem appropriate for not issuing such certificate and shall by certified mail give notice of such determination to the applicant and, whenever a public hearing shall have been held, give notice by regular mail to every person who shall have requested at the public hearing notice of such decision. If the commission shall fail to make such a determination within the said period of time, such application shall be considered approved by operation of law and the commission shall, upon demand of the applicant following expiration of such period, forthwith issue a certificate of exemption.

In making such determination the commission shall consider: (i) the regulations adopted by the commission under section four as part of the designation to which the application is subject; (ii) the relationship of the construction, reconstruction, restoration, alteration, erection, replacement or demolition delineated in the application and appendices thereto to the entirety of the landmark, improvement or exterior architectural feature which is the subject of the application, to other physical features or improvements in the landmark district, architectural conservation district or protection area, if any, where such landmark, improvement, or exterior architectural feature is located, and to the historical, social, cultural, architectural or aesthetic significance to the city, the commonwealth, the New England region or the nation of such landmark, improvement, or exterior architectural feature; and (iii) such historical, social, cultural, architectural or aesthetic consideration or considerations, if any, as the commission shall deem significant and directly related to effecting the purposes of this act.

**SECTION 7. *Certificate of Design Approval.*** The commission may incorporate in any certificate of design approval such condition or conditions, if any, as the commission may find necessary or desirable to effect the purposes of this act and may specify that certain of such conditions shall be covenants running with the land. Prior to any such incorporation, the commission may advise the applicant of the proposed condition or conditions and invite his comments thereon and, in accordance with the procedures and criteria of this section, may at any time and from time to time modify or remove any condition so incorporated.

No certificate of design approval issued by the commission subject to any condition which has been specified as a covenant running with the land, nor any action by the commission modifying or removing any such condition, shall take effect until notice thereof shall have been recorded in the Suffolk county registry of deeds. Such notice shall contain the name and address of the owner as appearing on the then most recent tax list of the property which is the subject of the application, shall identify such property, shall state the date and docket number of the commission's determination on the application and shall summarize every such condition. Such notice shall be indexed in the grantor index under the name of such owner, and the fee for such recording shall be paid by the applicant.

**SECTION 8. *Certificate of Exemption.*** A certificate of exemption shall be issued by the commission in response to every application determined, in accordance with section six, to delineate: (i) only ordinary maintenance and repair involving no change in design, material, color and outward appearance, or any of them; or (ii) any construction, reconstruction, restoration, alteration, erection, replacement or demolition which the building commissioner shall have certified as being required to remove or rectify a condition dangerous to the public safety; or (iii) any construction, reconstruction, restoration, alteration, erection, replacement or demolition authorized under any building permit or sign permit duly issued prior to the effective date of this act.

Such a certificate may be issued by the commission in response to any application whenever, in accordance with section six, it shall be determined: (i) that the construction, reconstruction, restoration, alteration, erection, replacement or demolition delineated in the application and appendices thereto would not materially impair the historical, social, cultural, architectural or aesthetic significance of the landmark or improvement which is the subject of the application and the landmark district or architectural conservation district, if any, in which such landmark or improvement is located; and (ii) that failure to issue such certificate would impose substantial hardship on the applicant. The applicant shall be required to produce evidence of substantial hardship, which may include evidence that the

property which is the subject of the application is not capable of earning a reasonable return. The commission shall review such evidence and make a finding as to whether substantial hardship would result from failure to issue a certificate of exemption. Notwithstanding any other provisions hereunder, the commission may postpone a final determination on the application for up to ninety days from the date of the hearing held pursuant to section six, during which time it shall endeavor to devise, in consultation with the applicant, a plan whereby, through such actions as are necessary or appropriate, the landmark or improvement may be preserved.

SECTION 9. *Appeals.* Any person aggrieved by a designation of the commission or any applicant for a certificate aggrieved by a determination pertaining to that certificate of the commission may, within thirty days next following date of such designation or determination, appeal the designation or determination to the superior court for Suffolk county.

Upon every such appeal, the court shall hear all pertinent evidence and, on the basis thereof, shall affirm the designation or determination of the commission or, if it finds the decision of the commission to be unwarranted by the evidence or to exceed the authority of the commission, or to damage the owner of the property unreasonably in comparison to the benefit conferred on the public, shall annul the designation or determination of the commission in whole or in part or remand the case for further action by the commission or make such other decree as justice and equity may require, including requiring that notice of such decision be recorded. The remedy provided by this section shall be exclusive, but the parties shall have all rights of exception and appeal as in other cases. Costs shall not be allowed against the commission or any appellant unless the court shall find that the commission's determination shall have been made, or the appellant's appeal shall have been taken in bad faith.

SECTION 10. *Enforcement.* Whoever, without the certificate required by and effective in accordance with this act, shall undertake any (i) reconstruction, restoration, exterior erection, exterior or interior replacement or alteration or demolition of any landmark or any (ii) construction, reconstruction, exterior erection, replacement or alteration or demolition with respect to any exterior architectural feature in any landmark district, architectural conservation district or protection area shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars; and whoever, after having received from the commission appropriate notice to desist, shall, in violation of this act, permit any exterior architectural feature of any landmark or in any such district or area to continue to exist shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars. A separate offense shall occur every day during any portion of which any such violation shall transpire.

Upon petition of the commission, the superior court for Suffolk county may restrain any construction, reconstruction, restoration, erection, replacement, alteration, or demolition in violation of this act and may order the removal in whole or part of any exterior architectural feature permitted to exist in violation of this act and may order such reconstruction or restoration as may be necessary or desirable to redress any alteration or demolition undertaken in violation of this act.

SECTION 11. *Other Functions of Commission.* The commission may conduct and direct continuing studies of areas, physical features and improvements in the city which are known to or shall be brought to the attention of the commission as possible landmarks, landmark districts, architectural conservation districts or protection areas, may from time to time make appropriate reports on such studies, may carry on educational activities in furtherance of the purposes of this act and shall advise such other officials of the city as the mayor may from time to time specify and may advise any official of the city, the commonwealth, the New England region or the nation who may request such advice.

The commission or its members shall be deemed for all purposes to be an historic district study committee as provided under chapter forty C of the General Laws, but if in case the provisions of said chapter forty C shall conflict with this act, the provisions of this act shall govern.

The commission shall be deemed for all purposes to be the historical commission of the city and shall have all the powers of a historical commission under section eight D of chapter forty and under chapter forty C of the General Laws; but if in any case the provisions of said section eight D of chapter forty or chapter forty C shall conflict with this act, the provisions of this act shall govern.

In the name of the city and in order to effect the purposes of this act, the commission may, with the consent of the mayor and council, apply for any gift or grant of any property and any form of subvention and subject to the consent of the mayor and council, may receive any such gift, grant, or subvention and acquire by gift, purchase, grant, bequest, devise, lease, or otherwise the fee, any lesser interest, development right, easement, including any scenic easement, covenant, or other contractual right, including conveyances on conditions or with limitations or reversions, in any property in the city. The commission may, with the consent of the mayor and council, apply for, receive, or expend any federal, state or private grant, grant-in-aid, gift or bequest, in furtherance of the general purposes of this act, and with consent of the mayor and council, may notwithstanding any provision of law or ordinance to the contrary, for the purpose of matching or qualifying for such a grant, grant-in-aid, gift or bequest, obligate the expenditure of funds which the commission may have, or have

appropriated to it, whether or not the same is to be spent within the then current municipal or fiscal year.

Upon written request by the commission of the mayor, the city, by a two-thirds vote of the council and the consent of the mayor, may, in order to effect the purposes of this act, take by eminent domain under chapter seventy-nine of the General Laws any real estate or interest therein located in the city; and, by such vote and such consent, the city may appropriate and expend money for the purpose of paying, in whole or part, any damages for which the city may be liable by reason of any such taking.

All property so received, acquired, or taken shall be under the care, custody and control of the commission in the name of the city.

In the name of the city, in order to effect the purposes of this act, and subject to the consent of the mayor and council, the commission may, by sale, barter, or other exchange, convey with or without deed restrictions or other protective encumbrances or otherwise transfer any property managed and controlled by it.

**SECTION 12. Severability.** The provisions of this act are severable; and if any such provision or provisions shall be held invalid or unconstitutional by any decision of any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provisions of this act.

*Approved December 16, 1975.*

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**Chap. 773. AN ACT ESTABLISHING THE MASSACHUSETTS CENTRAL RAILROAD CORPORATION.**

*Be it enacted, etc., as follows:*

**SECTION 1.** Peter M. Dearness, Louis O. Hebert, Daniel P. Moscato, Alfred M. Randall and Richard E. Towle, their associates and successors, are hereby made a corporation by the name of the Massachusetts Central Railroad Corporation; with all the powers and privileges, and subject to all the restrictions and liabilities set forth in all general laws now or hereafter in force relating to railroad companies, except as otherwise provided herein.

**SECTION 2.** Said corporation is hereby authorized, subject to the approval of the department of public utilities, and subject to such other provisions of law as may be applicable, to acquire, by purchase, gift, devise, transfer, lease or otherwise, and to hold, lease, pledge or otherwise deal with, transfer, sell or otherwise dispose of railroad rights-of-way or related facilities.

**SECTION 3.** Subject to the approval of the department of public utilities, said corporation may locate, construct, maintain and operate an extension of the railroad commencing at Canal