

**BY-LAWS FOR THE SOUTH END LANDMARK DISTRICT COMMISSION**

Adopted September 3, 1991

**Article 1                    General Provisions**

**Section 1.1            AUTHORITY:** These by-laws are adopted pursuant to Section 3 of Chapter 772 of the General Laws of the Commonwealth of Massachusetts for 1975, hereinafter referred to as the enabling statute.

**Section 1.2            PURPOSE:** These by-laws shall govern the internal management of the South End Landmark District Commission and are intended to further the goals set forth in Section 1 of the enabling statute.

**Section 1.3            OFFICE:** The offices of the commission shall be maintained at Boston City Hall during normal business hours on all days that the building is open to the public.

**Section 1.4            COUNSEL:** Legal counsel for the commission shall be designated by the Corporation Counsel of the City of Boston.

**Article 2:                Members, Officers, Staff**

**Section 2.1            MEMBERS:** The membership of the commission shall be as provided in Section 3 of the enabling statute.

**Section 2.2            ALTERNATES:** For all purposes except voting, alternates shall have the same authority and responsibilities as commissioners. An alternate member shall cast a vote when his or her designated member is absent or withdraws from a vote. An alternate may also vote when a designated member and alternate are both absent or have both withdrawn from a vote.

**Section 2.3            ELECTED OFFICERS:** The district commission shall hold a yearly election at an annual meeting on its regular meeting day in May for the offices of Chairman and Vice-Chairman. Elected officers shall serve a term of one year. The election shall be made by secret ballot under the direction of the secretary. Alternate members are not eligible for permanent office.

**Section 2.4            ACTING OFFICER:** In the absence of the elected officers, an acting Chairman shall be elected by the members and shall serve until the return of one of the elected officers or until the next annual election of officers, whichever event occurs first.

**Section 2.5            DUTIES OF THE CHAIRMAN:** The principal duties of the Chairman shall be as follows:

- a. supervise the affairs of the commission;
- b. preside at meetings of the commission;
- c. sign correspondence and all official documents of the commission;
- d. perform such other duties and assume responsibilities as may be consistent with and in furtherance of the enabling statute, including representing the commission before other public bodies; and,
- e. delegate from time to time specific authority to other members, alternates, and staff.

**Section 2.6 DUTIES OF THE VICE-CHAIRMAN:** The principal duties of the Vice-Chairman shall be, in the absence of the Chairman, to perform all the duties and assume all the responsibilities of the Chairman.

**Section 2.7 SECRETARY:** The commission shall have the services of a staff member of the City of Boston Environment Department to act as its Secretary.

**Section 2.8 DUTIES OF THE SECRETARY:** The principal duties of the Secretary shall be:

- a. take, or cause to be taken, minutes of all the meetings of the commission;
- b. maintain, or cause to be maintained, records for every determination of the commission, noting the vote of every member;
- c. supervise the activities of the staff of the commission;
- d. administer the preparation of all reports and publications of the commission;
- e. receive and process, on behalf of the commission, all petitions, applications for certificates and other official correspondence;
- f. prepare agenda and notify all persons entitled to notice as listed in Section 6.1 for all commission meetings;
- g. act as liaison between the commission and all other agencies, departments and organizations to which it must relate in the conduct of its affairs, including but not limited to the City of Boston Inspectional Services Department, the Massachusetts Historical Commission, the Boston Landmarks Commission, the South End Historical Society, and the Boston Redevelopment Authority;
- h. prepare and sign, on behalf of the commission, such correspondence as the commission may from time to time authorize and direct; and,
- i. perform such other duties and assume such other responsibilities as the commission may from time to time direct.

**Section 2.9 ACTING SECRETARY:** In the absence of the secretary or in the event of a vacancy in the office of the secretary, the chairman shall designate an acting secretary who shall temporarily perform the duties of the secretary.

**Section 2.10 STAFF ARCHITECT:** The commission shall be provided with the services of a staff architect by the City of Boston Environment Department or its successor agency. This architect shall be experienced in historic preservation and familiar with the architectural characteristics of the district.

**Section 2.11 DUTIES OF THE STAFF ARCHITECT:** The principal duties of the staff architect shall be:

- a. to consult with applicants for Certificates of Design Approval prior to the hearing on applications;
- b. to make recommendations for action by the commission on applications for certificates;
- c. to determine eligibility for issuing Certificates of Exemption as provided in Section 6 of the enabling statute; and,
- d. to perform such other duties and assume such other responsibilities as the commission or secretary may from time to time direct.

**Article 3: Meetings**

**Section 3.1 ANNUAL MEETINGS:** The commission shall meet annually for the purpose of electing officers; such meetings shall occur at the regular May meeting.

**Section 3.2 REGULAR MEETINGS:** Regular meetings of the commission shall be held monthly on the first Tuesday of the month in Boston City Hall, or at other locations within the city which are accessible to the public and the subject of appropriate advance notice in accordance with Chapter 303 of the Acts of 1975, known hereafter as the Open Meeting Law.

**Section 3.3 SPECIAL MEETINGS:** Special meetings of the commission may be called by the Chairman, by the Secretary with the consent of the Chairman or Vice-Chairman, or by three members of the commission.

**Section 3.4 EMERGENCY MEETINGS:** Emergency meetings to deal with special matters may be called by the Chairman or in the absence of the Chairman, Vice-chairman and may proceed as soon as quorum is present.

**Section 3.5 PUBLIC HEARINGS:** The commission shall, from time to time, hold public hearings about such matters before it as are required by statute or otherwise desired by the commission. Public hearings may occur at regular or special meetings of the commission, and shall be announced and conducted in accordance with the enabling statute, the Open Meeting Law, and such rules and regulations as the commission may adopt regarding its relationship to the public.

**Section 3.6 EXECUTIVE SESSION:** For purposes authorized by the Open Meeting Law, the commission may on a motion duly adopted and for reasons stated on the record, adjourn to executive session.

**Article 4: Procedures**

**Section 4.1 NOTICE:** The commission shall endeavor to provide the maximum possible notice to its members and to the public of its forthcoming meetings and public hearings. In no case shall the form and timing of such notice be inconsistent with the enabling statute, Open Meeting Law, and the commission's rules and regulations regarding its relationship with the public.

**Section 4.2 QUORUM:** The number of members required to constitute a quorum shall vary as follows, according to the nature of the business being conducted at the commission meeting:

- a. Election of officers: five members or alternates
- b. Amendments to by-laws: five members or alternates
- c. modifications to district Standards and Criteria: five members or alternates
- d. Other business: three members or alternates

**Section 4.3 VOTES REQUIRED FOR APPROVAL:** A majority vote of the quorum shall constitute approval in all cases, except when voting for amendments to the by-laws of the commission or modifications to the district Standards and Criteria, for which a two-thirds majority vote of the quorum shall be required.

**Section 4.4 PROXIES:** Voting by proxy shall not be allowed.

**Section 4.5 CONFLICTS OF INTEREST:** Any member who has an interest in any matter before the commission which would affect impartial discharge of his or her responsibilities in accordance with Chapter 268A of the Massachusetts General Laws, shall not participate in the discussion of the matter or in the voting of the matter before the commission. Said member shall inform the commission and Secretary in advance, and shall physically withdraw from the commission while the matter is before the commission. The minutes of the meeting shall state that the member has abstained from consideration of the matter.

**Section 4.6 MANNER OF VOTING:** All votes of the commission shall be taken in open public session. A member may cast a vote only in favor of or in opposition to a proposed action of the commission; abstentions shall not be permitted. Withdrawal of a member for cause, and appointment of an alternate for purposes of voting, shall be allowed in accordance with Section 4.5 of the by-laws.

**Section 4.7 ABSENCES:** It is the responsibility of any member unable to attend a scheduled meeting to so inform the Secretary in advance of the meeting, and an alternate in sufficient time as to allow that alternate to attend the meeting.

**Section 4.8 ADVANCE REVIEW OF APPLICATIONS:** All members shall, if possible, review applications for Certificates of Design Approval and shall visit the subject buildings before the public hearing on the applications. Abutting property owners and all others receiving notice shall also be notified that applications are available for public inspection at the commission office.

**Section 4.9 MINUTES:** Minutes shall be taken at every meeting of the commission, be available to the public, and shall include:

- a) a summary of discussion of each application presented at the public hearing;
- b) a record of all motions, including the name of the member making the motion, and a listing of all the yea and nay votes cast.

**Section 4.10 CONTINUANCE:** A decision on an application before the commission may, at the discretion of the chairman, be taken under advisement and continued to the next regular meeting of the commission or to a special meeting in the event that unusual conditions warrant more time to study the merit of the application.

**Section 4.11 DELINQUENT ATTENDANCE:** Members who are absent from three (3) or more successive regular meetings and public hearings of the commission or who, in the judgment of the Chairman and the Vice-chairman, repeatedly fail to attend committee meetings, shall be subject to appear before the commission in Executive Session to show cause why the commission should not request their resignation or seek their removal and a new appointment in their stead in accordance with the enabling statute.

**Section 4.12 RECONSIDERATION:** The commission may reconsider its vote upon any action, except where prohibited by the enabling statute. A motion for reconsideration must be made by a member present and voting upon the original determination proposed for reconsideration. Approval of a reconsideration motion shall require two-thirds majority of votes cast; the required quorum for reconsideration shall be identical to that required for determination of the motion being reconsidered.

**Section 4.13 EFFECTIVE DATE:** The effective date of a decision is the day of issue of the Certificate of Design Approval.

**Article 5: Applications for Certificate of Design Approval**

**Section 5.1 APPLICATIONS FOR CERTIFICATES:** Any person seeking a Certificate of Design Approval or Certificate of Exemption shall file an application with the Commission. Such applications will be filed at the offices of the commission with the secretary to the commission. Property owners (or their authorized agents) must sign each application, and applications from a condominium building must have a signature representing an endorsement from the trustees (or managing board).

All applications must be complete and include all items specified on the instructions. The secretary shall not accept any incomplete application. In that event, the applicant must file the additional information required by the commission before the secretary may accept the application.

**Section 5.2 DEADLINE:** An applicant must file for a Certificate of Design Approval no later than twelve (12) days prior to a regular meeting of the commission to be heard at the public hearing occurring at said regular meeting.

**Article 6: Public Hearings**

**Section 6.1 NOTICE:** The commission shall hold public hearings as required in Section 6 of the enabling statute. The secretary shall give ten (10) days notice of the hearing to:

- a. Members and Alternates of the Commission.
- b. The City Clerk (to be posted in the office thereof).
- c. The Mayor.
- d. The Boston Redevelopment Authority.
- e. The Inspectional Services Department.
- f. All persons materially affected by any application to be heard at the hearing, consisting at a minimum:
  1. all persons listed on the application;
  2. owners of abutting properties as listed in the most recent tax list.

**Section 6.2 FORM OF NOTICE:** The notice of the public hearing shall contain the following information:

- a. the date, time, and place of the hearing
- b. a list of all applicants to be heard, including number, address, applicant, and a precise of the work proposed;
- c. a statement that applications are available for public inspection in accordance with Section 4.8 of these regulations.

**Section 6.3 WAIVER OF NOTICE:** The commission shall hear an application for a Certificate of Design Approval without advance notice at a regular meeting if and only if all persons entitled to notice as listed in Section 6.1(f) of these regulations waive, in writing, their right to notice.

**Section 6.4 CONDUCT OF HEARINGS:** Applications will generally be heard in the order given on the agenda and will not be heard prior to the time indicated thereon. Presentation will include comments by the staff architect or secretary, who will summarize and read the staff recommendation. The applicant shall also make additional statements, and any member of the public, in order of recognition by the chair, may subsequently speak on the application. The Chairman may impose a time limit on testimony at his or her discretion.

**Article 7:                    Actions by the Commission**

**Section 7.1                    CERTIFICATES OF DESIGN APPROVAL:** The commission may take any of the following actions regarding application for a Certificate of Design Approval:

- a.    **Approval --** The Commission may approve the application as submitted. This action authorizes the secretary to issue a Certificate of Design Approval.
- b.    **Approval with Provisos --** The commission may approve the application subject to certain provisos generally pertaining to changes in the proposed work or subsequent design review of elements of the proposed work by either Commission or staff.
- c.    **Approval with conditions to be Covenants --** Subject to the provisions of Section 6 of Chapter 772, the Commission may approve an application, incorporating into the Certificate of Design Approval conditions to be covenants running with the land, found to achieve the purposes of the enabling statute.
- d.    **Denial --** The Commission may deny the application, in which case it must set forth its reasons, and notify the applicant in writing of the reasons cited for the denial, and may include recommendations concerning the work proposed in the denied application. Without substantial changes, a denied application may not be resubmitted for two years.
- e.    **Denial without Prejudice --** The commission may deny without prejudice the application in order to request additional or alternative information, in which case it must specifically set forth the required information.

**Section 7.2                    NOTICE OF DECISION:** Notices of determinations by the Commission shall be sent by certified mail to applicants and by regular mail to those who have at the public hearing requested such notice. A Certificate of Design Approval is valid for two years following issuance of the notice of decision.

**Section 7.3                    CERTIFICATE OF EXEMPTION:** According to the enabling statute, there are conditions under which the Commission shall issue a Certificate of Exemption. These pertain to applications delineating work which is "ordinary maintenance and repair," or which is required to remove or rectify a condition dangerous to the public safety. The Commission staff shall review each application to see if any of these conditions apply. Upon determining that any such conditions do apply, a Certificate of Exemption shall immediately be issued.

For purposes of administering the process expeditiously, "ordinary maintenance and repair" will be interpreted to include changes which are specifically excluded from the jurisdiction of the Commission by virtue of the Standards and Criteria adopted at the time of designation.

**Section 7.4 CERTIFICATE OF EXEMPTION BASED ON HARDSHIP:** Section 7 of the enabling statute establishes certain conditions under which the Commission may issue a Certificate of Exemption based on economic hardship to the applicant. No administrative review may occur on an application for a Certificate of Exemption based on hardship. An applicant seeking a Certificate of Exemption based on financial hardship shall be required to produce evidence of substantial financial hardship. At the time of filing for a Certificate of Exemption based on hardship, the applicant shall supply the Commission with the following information:

1. The amount paid for the property, the date of purchase and the party from whom purchased (including a description of the relationship, if any, between the owner and the person from whom the property was purchased).
2. The assessed value of the land and improvements thereon according to the most recent tax assessments.
3. Real estate taxes for the previous two years.
4. Annual debt service, if any, for the previous two years.
5. All appraisals obtained within the previous two years by the owner or applicant in connection with purchases, financing, or ownership of the property.
6. Any listing of the property for sale or rent, price asked and offers received, if any.
7. Any consideration by the owner as to profitable adaptive uses for the property.

If the property is income-producing, an owner must also provide:

1. Annual gross income from the property for the previous two years.
2. Itemized operating and maintenance expenses for the previous two years.
3. Cash flow, if any during the same period.

**Section 7.5 APPEAL OF DECISIONS:** Any person aggrieved by a decision of the commission must, in accordance with Section 9 of the enabling statute, file for appeal to the superior court for Suffolk County.

**Section 7.6 APPEAL OF SATISFACTION OF CONDITIONS:** If both the person designated under Section 7.1(b) to certify approval with provisos and the applicant cannot agree as to whether the conditions have been met, the applicant may appeal to the full commission by filing for an appeal with the secretary. The appeal must be filed in writing by the deadline for application for Certificates of Design Approval, and must include all necessary drawings and documents. The appeal will be heard at the first eligible regular meeting of the commission. The commission may uphold an appeal by simple majority vote.



**Article 8:**                    **Violations**

**Section 8.1**                    **PROCEDURES:** The Secretary shall notify owners of record of property where exterior changes are being made without commission approval that they are in violation of the enabling statute and that they are required to report directly to the commission about the violation. The secretary shall issue notice of violation to the owners of record, describing the violation and the steps needed to rectify it, in response to complaints filed by any of the following:

1. Any commission member or alternate;
2. the Secretary or any member of the staff;
3. the City of Boston Inspectional Services Department; or,
4. any person, if the violation is certified by a person listed above.

The secretary shall send the notice of violation by first class mail upon receipt of the complaint, subject to certification. If the owner of record does not respond within ten (10) days of the issuance of the notice, the secretary shall send a second notice expressing the intent of the Commission to present the case to Corporation Counsel if no response is received. If no response is forthcoming, the secretary shall present the violation to the Corporation Counsel for appropriate action to require conformance with the enabling statute.

A cease and desist order shall be issued where work deemed hazardous to any property within the district is underway and immediate notification is required to suspend such activity. Such orders shall be delivered in person to the site.

**Section 8.2**                    **RECORDS:** The secretary shall maintain a record of all notices of violation sent and responses received, which shall be available to the public for review.

**Article 9:**                    **AMENDMENTS:** Amendments to these by-laws shall be made available to the public and the members and alternates of the Commission at such time as notice is given for the public hearing at which they are to be considered. Amendments to these by-laws may be considered at any regular, special, or annual meeting of the commission subsequent to a public hearing on the proposed amendments. Approval shall be consistent with Sections 4.2 and 4.3 of these by-laws.

**Article 10:**                    **SEVERABILITY:** The provisions of these by-laws are severable; 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 the by-laws.