

# Massachusetts General Laws

## CHAPTER 40C.

### HISTORIC DISTRICTS.

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#### 40C:1. Citation.

Section 1. This chapter shall be known and may be cited as the  
Historic Districts Act. 1  
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#### 40C:2. Purpose.

Section 2. The purpose of this chapter is to promote the educational, cultural, economic and general welfare of the public through the preservation and protection of the distinctive characteristics of buildings and places significant in the history of the commonwealth and its cities and towns or their architecture, and through the maintenance and improvement of settings for such buildings and places and the encouragement of design compatible therewith. 1  
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#### 40C:3. Establishment of historic districts; prerequisites; enlargement or reduction of boundaries; amendment of creating ordinance; filing of maps.

Section 3. A city or town may, by ordinance or by-law adopted by two-thirds vote of the city council in a city or by a two-thirds vote of a town meeting in a town, establish historic districts subject to the following provisions:— Prior to the establishment of any historic district in a city or town an investigation and report on the historical and architectural significance of the buildings, structures or sites to be included in the proposed historic district or districts shall be made by an historic district study committee or by an historic district commission, as provided in this section and in section four, who shall transmit copies of the report to the planning board, if any, of the city 1  
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or town, and to the Massachusetts historical commission for their respective consideration and recommendations. The buildings, structures or sites to be included in the proposed historic district may consist of one or more parcels or lots of land, or one or more buildings or structures on one or more parcels or lots of land. The Massachusetts historical commission may consult with the executive director of the Massachusetts office of business development, the secretary of communities and development and the commissioner of environmental management with respect to such reports, and may make guidelines for such reports, and, after public hearing, establish rules as to their form and manner of transmission. Not less than sixty days after such transmittal the study committee shall hold a public hearing on the report after due notice given at least fourteen days prior to the date thereof, which shall include a written notice mailed postage prepaid, to the owners as they appear on the most recent real estate tax list of the board of assessors of all properties to be included in such district or districts. The committee shall submit a final report with its recommendations, a map of the proposed district or districts and a draft of a proposed ordinance or by-law, to the city council or town meeting.

An historic district may be enlarged or reduced or an additional historic district in a city or town created in the manner provided for creation of the initial district, except that (a) in the case of the enlargement or reduction of an existing historic district the investigation, report and hearing shall be by the historic district commission having jurisdiction over such historic district instead of by a study committee; (b) in the case of creation of an additional historic district the investigation, report and hearing shall be by the historic district commission of the city or town, or by the historic district commissions acting jointly if there be more than one, instead of by a study committee unless the commission or commissions recommend otherwise; and (c) if the district is to be reduced written notice as above provided of the commission's hearing on the proposal shall be given to said owners of each property in the district.

Any ordinance or by-law creating an historic district may, from time to time, be amended in any manner not inconsistent with the provisions of this chapter by a two-thirds vote of the city council in a city or by a two-thirds vote of a town meeting in a town, provided that the substance of such amendment has first been submitted to the historic district commission having jurisdiction over such district for its recommendation and its recommendation has been received or sixty days have elapsed without such recommendation.

No ordinance or by-law creating an historic district, or changing the boundaries of an historic district, shall become effective until a map or maps setting forth the boundaries of the historic district, or the change in the boundaries thereof, has been filed with the city clerk or

town clerk and has been recorded in the registry of deeds for the	56
county or district in which the city or town is located, and the	57
provisions of section thirteen A of chapter thirty-six shall not apply.	58

**40C:4. Study committees; commissions; establishment; membership; terms; vacancies; compensation; officers.**

Section 4. An historic district study committee may be established	1
in any city or town by vote of the city council or board of selectmen	2
for the purpose of making an investigation of the desirability of	3
establishing an historic district or districts therein. The study commit-	4
tee shall consist of not less than three nor more than seven members	5
appointed in a city by the mayor, subject to confirmation by the city	6
council, or in a town by the board of selectmen, including one member	7
from two nominees submitted by the local historical society or, in the	8
absence thereof, by the Society for the Preservation of New England	9
Antiquities, one member from two nominees submitted by the chapter	10
of the American Institute of Architects covering the area, and one	11
member from two nominees of the board of realtors, if any, covering	12
the area. If within thirty days after submission of a written request	13
for nominees to any of the organizations herein named no such	14
nominations have been made the appointing body may proceed to	15
appoint the study committee without nominations by such organiza-	16
tion.	17

Whenever an historic district is established as provided in section	18
three an historic district commission shall be established which shall	19
consist of not less than three nor more than seven members. An	20
historic district commission shall be appointed in a city by the mayor,	21
subject to confirmation by the city council, or in a town by the board	22
of selectmen, in the same manner as an historic district study commit-	23
tee unless (a) the report recommending its establishment recommends	24
alternate or additional organizations to submit nominees for member-	25
ship and states reasons why such alternate or additional organizations	26
would be appropriate or more appropriate for the particular city or	27
town, the Massachusetts historical commission does not recommend	28
otherwise prior to the public hearing on the establishment of the	29
district, and the ordinance or by-law so provides; or (b) there is an	30
existing historic district commission in the city or town which the	31
report recommends should administer the new district, and the ordi-	32
nance or by-law so provides. Unless the report recommends otherwise	33
on account of the small number of residents or individual property	34
owners, and the ordinance or by-law so provides, the members of the	35
historic district commission shall include one or more residents of or	36
owners of property in an historic district to be administered by the	37
commission. If within thirty days after submission of a written	38
request for nominees to an organization entitled to submit nomina-	39
tions for membership on the commission no such nominations have	40
been made the appointing body may proceed to make the appointment	41

to the commission without nomination by such organization. The 42  
 appointments to membership in the commission shall be so arranged 43  
 that the term of at least one member will expire each year, and their 44  
 successors shall be appointed in the same manner as the original 45  
 appointment for terms of three years. Vacancies shall be filled in the 46  
 same manner as the original appointment for the unexpired term. 47  
 Ordinances or by-laws adopted hereunder may provide for the ap- 48  
 pointment of alternate members not exceeding in number the princi- 49  
 pal members who need not be from nominees of organizations entitled 50  
 to nominate members. In case of the absence, inability to act or 51  
 unwillingness to act because of self-interest on the part of a member 52  
 of the commission, his place shall be taken by an alternate member 53  
 designated by the chairman. Each member and alternate shall contin- 54  
 ue in office after the expiration of his term until his successor is duly 55  
 appointed and qualified. All members shall serve without compensa- 56  
 tion. The commission shall elect annually a chairman and vice-chair- 57  
 man from its own number and a secretary from within or without its 58  
 number. 59

## 40C:5. Definitions.

Section 5. As used in this chapter the word "altered" includes the 1  
 words "rebuilt", "reconstructed", "restored", "removed" and "demol- 2  
 ished" and the phrase "changed in exterior color"; the word "build- 3  
 ing" means a combination of materials forming a shelter for persons, 4  
 animals or property; the word "commission" means the commission 5  
 acting as the historic district commission; the word "constructed" 6  
 includes the words "built", "erected", "installed", "enlarged", and 7  
 "moved"; the words "exterior architectural feature" mean such por- 8  
 tion of the exterior of a building or structure as is open to view from 9  
 a public street, public way, public park or public body of water, 10  
 including but not limited to the architectural style and general ar- 11  
 rangement and setting thereof, the kind, color and texture of exterior 12  
 building materials, the color of paint or other materials applied to 13  
 exterior surfaces and the type and style of windows, doors, lights, 14  
 signs and other appurtenant exterior fixtures; the words "person 15  
 aggrieved" mean the applicant, an owner of adjoining property, an 16  
 owner of property within the same historic district as property within 17  
 one hundred feet of said property lines and any charitable corporation 18  
 in which one of its purposes is the preservation of historic structures 19  
 or districts; and the word "structure" means a combination of materi- 20  
 als other than a building, including a sign, fence, wall, terrace, walk 21  
 or driveway. 22

40C:6. Certificates of appropriateness, non-applicability or hardship; necessi-  
 ty; applications and plans, etc.; building and demolition permits restricted.

Section 6. Except as the ordinance or by-law may otherwise pro- 1  
 vide in accordance with section eight or said section eight or nine, no 2

building or structure within an historic district shall be constructed or altered in any way that affects exterior architectural features unless the commission shall first have issued a certificate of appropriateness, a certificate of non-applicability or a certificate of hardship with respect to such construction or alteration.

Any person who desires to obtain a certificate from the commission shall file with the commission an application for a certificate of appropriateness, a certificate of non-applicability or a certificate of hardship, as the case may be, in such form as the commission may reasonably determine, together with such plans, elevations, specifications, material and other information, including in the case of demolition or removal a statement of the proposed condition and appearance of the property thereafter, as may be reasonably deemed necessary by the commission to enable it to make a determination on the application.

No building permit for construction of a building or structure or for alteration of an exterior architectural feature within an historic district and no demolition permit for demolition or removal of a building or structure within an historic district shall be issued by a city or town or any department thereof until the certificate required by this section has been issued by the commission.

#### 40C:7. Factors to be considered by commission.

Section 7. In passing upon matters before it the commission shall consider, among other things, the historic and architectural value and significance of the site, building or structure, the general design, arrangement, texture, material and color of the features involved, and the relation of such features to similar features of buildings and structures in the surrounding area. In the case of new construction or additions to existing buildings or structures the commission shall consider the appropriateness of the size and shape of the building or structure both in relation to the land area upon which the building or structure is situated and to buildings and structures in the vicinity, and the commission may in appropriate cases impose dimensional and set-back requirements in addition to those required by applicable ordinance or by-law. When ruling on applications for certificates of appropriateness for solar energy systems, as defined in section one A of chapter forty A, the commission shall also consider the policy of the commonwealth to encourage the use of solar energy systems and to protect solar access. The commission shall not consider interior arrangements or architectural features not subject to public view.

The commission shall not make any recommendation or requirement except for the purpose of preventing developments incongruous to the historic aspects or the architectural characteristics of the surroundings and of the historic district.

**40C:8. Review authority of commission over certain categories of buildings, structures or exterior architectural features limited; authorization.**

Section 8. (a) Any city or town may provide in the ordinance or by-law establishing a district or in any amendment thereof that the authority of the commission shall not extend to the review of one or more of the following categories of buildings or structures or exterior architectural features in the historic district, and, in this event, the buildings or structures or exterior architectural features so excluded may be constructed or altered within the historic district without review by the commission:

(1) Temporary structures or signs, subject, however, to such conditions as to duration of use, location, lighting, removal and similar matters as the commission may reasonably specify.

(2) Terraces, walks, driveways, sidewalks and similar structures, or any one or more of them, provided that any such structure is substantially at grade level.

(3) Walls and fences, or either of them.

(4) Storm doors and windows, screens, window air conditioners, lighting fixtures, antennae and similar appurtenances, or any one or more of them.

(5) The color of paint.

(6) The color of materials used on roofs.

(7) Signs of not more than one square foot in area in connection with use of a residence for a customary home occupation or for professional purposes, provided only one such sign is displayed in connection with each residence and if illuminated is illuminated only indirectly; and one sign in connection with the nonresidential use of each building or structure which is not more than twelve square feet in area, consist of letters painted on wood without symbol or trademark and if illuminated is illuminated only indirectly; or either of them.

(8) The reconstruction, substantially similar in exterior design, of a building, structure or exterior architectural feature damaged or destroyed by fire, storm or other disaster, provided such reconstruction is begun within one year thereafter and carried forward with due diligence.

(b) A commission may determine from time to time after public hearing that certain categories of exterior architectural features, colors, structures or signs, including, without limitation, any of those enumerated under paragraph (a), if the provisions of the ordinance or by-law do not limit the authority of the commission with respect thereto, may be constructed or altered without review by the commis-

sion without causing substantial derogation from the intent and purposes of this chapter. 41  
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(c) A city or town may provide in its ordinance or by-law, or in any amendment thereof, that the authority of the commission shall be limited to exterior architectural features within a district which are subject to view from one or more designated public streets, public ways, public parks or public bodies of water, although other portions of buildings or structures within the district may be otherwise subject to public view, and, in the absence of such provision of the ordinance or by-law, a commission may determine from time to time after public hearing that the authority of the commission may be so limited without substantial derogation from the intent and purposes of this chapter. 43  
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(d) Upon request the commission shall issue a certificate of nonapplicability with respect to construction or alteration in any category then not subject to review by the commission in accordance with the provisions of paragraph (a), (b) or (c). 54  
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#### 40C:9. Maintenance and repair, etc.

Section 9. Nothing in this chapter shall be construed to prevent the ordinary maintenance, repair or replacement of any exterior architectural feature within an historic district which does not involve a change in design, material, color or the outward appearance thereof, nor to prevent landscaping with plants, trees or shrubs, nor construed to prevent the meeting of requirements certified by a duly authorized public officer to be necessary for public safety because of an unsafe or dangerous condition, nor construed to prevent any construction or alteration under a permit duly issued prior to the effective date of the applicable historic district ordinance or by-law. 1  
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#### 40C:10. Additional powers, functions and duties of commission.

Section 10. The commission shall have the following additional powers, functions and duties:— (a) If the commission determines that the construction or alteration for which an application for a certificate of appropriateness has been filed will be appropriate for or compatible with the preservation or protection of the historic district, the commission shall cause a certificate of appropriateness to be issued to the applicant. In the case of a disapproval of an application for a certificate of appropriateness the commission shall place upon its records the reasons for such determination and shall forthwith cause a notice of its determination, accompanied by a copy of the reasons therefor as set forth in the records of the commission, to be issued to the applicant, and the commission may make recommendations to the applicant with respect to appropriateness of design, arrangement, texture, material and similar features. Prior to the issuance of any 1  
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disapproval the commission may notify the applicant of its proposed action accompanied by recommendations of changes in the applicant's proposal which, if made, would make the application acceptable to the commission. If within fourteen days of the receipt of such a notice the applicant files a written modification of his application in conformity with the recommended changes of the commission, the commission shall cause a certificate of appropriateness to be issued to the applicant.

(b) In the case of a determination by the commission that an application for a certificate of appropriateness or for a certificate of nonapplicability does not involve any exterior architectural feature, or involves an exterior architectural feature which is not then subject to review by the commission in accordance with the provisions of section eight, the commission shall cause a certificate of non-applicability to be issued to the applicant.

(c) If the construction or alteration for which an application for a certificate of appropriateness has been filed shall be determined to be inappropriate, or in the event of an application for a certificate of hardship, the commission shall determine whether, owing to conditions especially affecting the building or structure involved, but not affecting the historic district generally, failure to approve an application will involve a substantial hardship, financial or otherwise, to the applicant and whether such application may be approved without substantial detriment to the public welfare and without substantial derogation from the intent and purposes of this chapter. If the commission determines that owing to such conditions failure to approve an application will involve substantial hardship to the applicant and approval thereof may be made without such substantial detriment or derogation, or in the event of failure to make a determination on an application within the time specified in section eleven, the commission shall cause a certificate of hardship to be issued to the applicant.

(d) Each certificate issued by the commission shall be dated and signed by its chairman, vice-chairman, secretary or such other person designated by the commission to sign such certificates on its behalf.

(e) The commission shall keep a permanent record of its resolutions, transactions, and determinations and of the vote of each member participating therein, and may adopt and amend such rules and regulations not inconsistent with the provisions of this act and prescribe such forms as it shall deem desirable and necessary for the regulation of its affairs and the conduct of its business. The commission shall file a copy of any such rules and regulations with the city or town clerk.

(f) The commission shall file with the city or town clerk and with any department of the city or town having authority to issue building



permits a copy or notice of all certificates and determinations of disapproval issued by it. 59  
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(g) A commission may after public hearing set forth in such manner as it may determine the various designs of certain appurtenances, such as light fixtures, which will meet the requirements of an historic district and a roster of certain colors of paint and roofing materials which will meet the requirements of an historic district, but no such determination shall limit the right of an applicant to present other designs or colors to the commission for its approval. 61  
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(h) The commission may, subject to appropriation, employ clerical and technical assistants or consultants and incur other expenses appropriate to the carrying on of its work, and may accept money gifts and expend the same for such purposes. The commission may administer on behalf of the city or town any properties or easements, restrictions or other interests in real property which the city or town may have or may accept as gifts or otherwise and which the city or town may designate the commission as the administrator thereof. 68  
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(i) The commission shall have, in addition to the powers, authority and duties granted to it by this act, such other powers, authority and duties as may be delegated or assigned to it from time to time by vote of the city council or town meeting. 76  
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**40C:11. Approval or disapproval of exterior architectural features by commission; meetings; applications for certificates; public hearings; notices.**

Section 11. Meetings of a commission shall be held at the call of the chairman and shall be called at the request of two members of the commission and in such other manner as the commission shall determine in its rules. A majority of the members of a commission shall constitute a quorum. The concurring vote of a majority of the members of the commission shall be necessary to issue a certificate of appropriateness, a certificate of non-applicability or a certificate of hardship. 1  
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A commission shall determine promptly, and in all events within fourteen days after the filing of an application for a certificate of appropriateness, a certificate of non-applicability or a certificate of hardship, as the case may be, whether the application involves any exterior architectural features which are subject to approval by the commission. If a commission determines that such application involves any such features which are subject to approval by the commission shall hold a public hearing on such application unless such hearing is dispensed with as hereinafter provided. 9  
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The commission shall fix a reasonable time for the hearing on any application and shall give public notice of the time, place and purposes thereof at least fourteen days before said hearing in such manner as 18  
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it may determine, and by mailing, postage prepaid, a copy of said notice to the applicant, to the owners of all adjoining property and other property deemed by the commission to be materially affected thereby as they appear on the most recent real estate tax list of the board of assessors, to the planning board of the city or town, to any person filing written request for notice of hearings, such request to be renewed yearly in December, and to such other persons as the commission shall deem entitled to notice.

As soon as convenient after such public hearing but in any event within sixty days after the filing of the application, or such lesser period as the ordinance or by-law may provide, or within such further time as the applicant may allow in writing, the commission shall make a determination on the application. If the commission shall fail to make a determination within such period of time the commission shall thereupon issue a certificate of hardship.

A public hearing on an application need not be held if such hearing is waived in writing by all persons entitled to notice thereof. In addition, a public hearing on an application may be waived by the commission if the commission determines that the exterior architectural feature involved or its category or color, as the case may be, is so insubstantial in its effect on the historic district that it may be reviewed by the commission without public hearing on the application, provided, however, that if the commission dispenses with a public hearing on an application notice of the application shall be given to the owners of all adjoining property and other property deemed by the commission to be materially affected thereby as above provided and ten days shall elapse after the mailing of such notice before the commission may act upon such application.

**40C:12. Review procedure provided by local ordinance or by-law.**

Section 12. A city or town may provide in its ordinance or by-law or in any amendment thereof, for a review procedure whereby any person aggrieved by a determination of the commission may, within twenty days after the filing of the notice of such determination with the city or town clerk, file a written request with the commission for a review by a person or persons of competence and experience in such matters, designated by the regional planning agency of which the city or town is a member. If the city or town is not a member of a regional planning agency, the department of community affairs shall select the appropriate regional planning agency.

The finding of the person or persons making such review shall be filed with the city or town clerk within forty-five days after the request, and shall be binding on the applicant and the commission, unless a further appeal is sought in the superior court as provided in section twelve A.

**40C:12A. Appeal to superior court.**

Section 12A. Any person aggrieved by a determination of the commission, or by the finding of a person or persons making a review, if the provisions of section twelve are included in a local ordinance or by-law, may, within twenty days after the filing of the notice of such determination or such finding with the city or town clerk, appeal to the superior court sitting in equity for the county in which the city or town is situated. The court shall hear all pertinent evidence and shall annul the determination of the commission if it finds the decision of the commission to be unsupported by the evidence or to exceed the authority of the commission, or may remand the case for further action by the commission or make such other decree as justice and equity may require. The remedy provided by this section 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 the commission unless it shall appear to the court that the commission acted with gross negligence, in bad faith or with malice in the matter from which the appeal was taken. Costs shall not be allowed against the party appealing from such determination of the commission unless it shall appear to the court that such party acted in bad faith or with malice in making the appeal to the court.

**40C:13. Jurisdiction of superior court; penalty.**

Section 13. The superior court sitting in equity for the county in which the city or town is situated shall have jurisdiction to enforce the provisions of this chapter and any ordinance or by-law enacted hereunder and the determinations, rulings and regulations issued pursuant thereto and may, upon the petition of the mayor or of the board of selectmen or of the commission, restrain by injunction violations thereof; and, without limitation, such court may order the removal of any building, structure or exterior architectural feature constructed in violation thereof, or the substantial restoration of any building, structure or exterior architectural feature altered or demolished in violation thereof, and may issue such other orders for relief as may be equitable.

Whoever violates any of the provisions of this chapter shall be punished by a fine of not less than ten dollars nor more than five hundred dollars. Each day during any portion of which a violation continues to exist shall constitute a separate offense.

**40C:14. Powers and duties of commissions established hereunder as historical commissions.**

Section 14. If the city council or town meeting so votes a commission established hereunder shall have the powers and duties of an historical commission as provided in section eight D of chapter forty

and, in this event, a commission may be entitled an historical commission. 4  
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**40C:15. Filing of ordinances, maps, reports, etc.**

Section 15. All ordinance or by-laws creating an historic district adopted by a city or town under authority of this chapter and under authority of any special law, unless the special law shall otherwise provide, amendments thereto, maps of historic districts created thereunder, and annual reports and other publications of commissions, and rosters of membership therein, shall be filed with the Massachusetts historical commission. 1  
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**40C:16. Special historic districts; acceptance and effect of this chapter.**

Section 16. A city or town in which there is located an historic district established under a special law may, upon recommendation of the historic district commission having jurisdiction over such district, accept the provisions of this chapter with respect to such district by a two-thirds vote of the city council in a city or by two-thirds vote of a town meeting in a town, and thereafter such historic district shall be subject to the provisions of this chapter notwithstanding the terms of any special act pursuant to which such historic district was created. The provisions of this chapter shall not impair the validity of an historic district established under any special act. 1  
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**40C:17. Severability.**

Section 17. The provisions of this chapter shall be deemed to be severable if any of its provisions shall be held to be invalid or unconstitutional by any court of competent jurisdiction the remaining provisions shall continue in full force and effect. 1  
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