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Approved September 30, 1987.

EMERGENCY LETTER: September 30, 1987 @ 4:07 P.M.

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**Chapter 371. AN ACT AUTHORIZING CERTAIN ACTIONS BY THE CITY OF BOSTON TO MITIGATE THE EFFECTS OF NEW LARGE-SCALE COMMERCIAL REAL ESTATE DEVELOPMENT (LINKAGE).**

Be it enacted, etc., as follows:

**SECTION 1. Preamble** Whereas, the general court finds and declares that a serious public emergency exists in the city of Boston with respect to housing and employment of a substantial number of the citizens of said city, as hereafter described; and

Whereas, due to its concentrated population, its intense land use by business, educational, governmental, and religious entities, its role as the center of commerce and finance in New England, and its geographic layout, the city of Boston is unique in the commonwealth; and

Whereas, there is not an adequate supply of affordable housing for low and moderate income residents of said city; and

Whereas, the development and construction of large-scale commercial real estate projects, without the obligation to mitigate their adverse impact on the availability of such affordable housing, is contrary to the public health, safety, convenience and welfare; and

Whereas, there is an urgent need to supply affordable housing for low and moderate income residents of said city in conjunction with the development and construction of new large-scale commercial real estate projects; and

Whereas, the development and construction of new large-scale commercial real estate projects in said city influences land use patterns and can directly and indirectly eliminate existing businesses; and

Whereas, new large-scale commercial real estate developments influence employment opportunities for low and moderate income residents and tend to reduce the number of jobs for which low and moderate income residents of said city are qualified; and

Whereas, new large-scale commercial real estate developments change the character of surrounding areas and, to the extent that such developments create jobs, they create jobs for which low and moderate income residents of said city are not qualified without additional job training; and

Whereas, the development and construction of new large-scale commercial real estate projects, without the obligation to mitigate their adverse impact on the availability of jobs for which low and moderate income residents of said city are qualified, is contrary to the public health, safety, convenience and welfare; and

Whereas, there is an urgent need to provide job training to low and

moderate income residents of said city in conjunction with the development and construction of new large-scale commercial real estate projects; and

Whereas, the foregoing findings are based upon a consideration of city of Boston housing trends, production statistics for new dwellings and housing vacancy rates for affordable housing for low and moderate income residents, as well as a consideration of employment trends, unemployment rates, and statistics on job training programs; and

Whereas, it is hereby determined that: (1) prior to the effective date of this act, developers of new large-scale commercial real estate developments, have relied reasonably and in good faith on the applicability to their developments of article 26, article 26A and article 26B of the city of Boston zoning code; (2) the approval, grant, or enactment of all zoning code amendments, zoning map amendments, zoning variances, conditional use permits, and zoning exceptions requested by any new large-scale commercial real estate developments, is an act of independent legal significance governed by the provisions of the city of Boston zoning code; (3) prior to the effective date of this act, owners and financiers of new large-scale commercial real estate developments, relying reasonably and in good faith on the validity of zoning code amendments, zoning map amendments, zoning variances, conditional use permits, and zoning exceptions approved, have invested a substantial amount of funds and time in such projects; (4) the agreements to make development impact project exactions, development impact project contributions and jobs contribution grants entered into prior to the effective date of this act provide revenues to meet a public exigency for the provision of affordable housing and job training for low and moderate income residents of the city of Boston; and (5) there is an urgent need to provide the public with certainty (i) that the funds, time and jobs invested in and dependent upon development impact projects are secure; (ii) that the zoning code amendments, zoning map amendments, zoning variances, conditional use permits, and zoning exceptions upon which such development impact projects depend are secure; and (iii) that the development impact project exactions, development impact project contributions and jobs contribution grants agreed to be made by development impact projects are available for the provision of job training and affordable housing for low and moderate income residents of said city; now

THEREFORE, this act is declared to be in the public interest and necessary for the public health, safety and general welfare of the citizens of the city of Boston.

**SECTION 2.** Chapter 665 of the acts of 1956, as amended by section 2 of chapter 669 of the acts of 1974, is hereby further amended by inserting after section 10 the following section:-

**Section 10A.** Any persons aggrieved by a decision of the zoning commission approving a zoning map amendment or a zoning regulation or amendment thereof, or by any procedural defect therein, or any municipal board or officer, may appeal such decision to the superior

court in the county of Suffolk or to the land court; provided, however, that such appeal is filed in said court within thirty days after such decision became effective in accordance with the provisions of section three. Upon an appeal pursuant to this section, the court shall hear all pertinent evidence and determine the facts, and, upon the facts as so determined, annul such action if found to exceed the authority of such commission, or make such other decree as justice and equity may require. The foregoing remedy shall be exclusive; but the parties shall have all rights of appeal and exception as in other equity cases.

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

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

**SECTION 3.** Said chapter 665, as so amended, is hereby further amended by adding the following six sections:-

Section 15. When used in sections fifteen through twenty, inclusive, terms, not otherwise defined, shall be defined in accordance with the definitions contained in the city of Boston zoning code in effect on the date of enactment hereof, unless the context requires otherwise and the following terms shall, unless the context requires otherwise, have the following meanings:-

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

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

"Combined index", an index which measures the increase in price levels by combining in equal proportions the consumer price index for all

urban consumers or "CPI-U" with a 1967 index of 100 and the housing component of said CPI-U for the Boston metropolitan area, as these indices are published from time to time by the bureau of labor statistics, United States department of labor.

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

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

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

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

"Low and moderate income resident", a resident, or group of residents all of whom occupy the same dwelling unit as their principal residence, whose total income (i) is no greater than the per cent of the median income for the Boston area set forth in or determined based upon regulations and definitions promulgated from time to time by the United States department of housing and urban development pursuant to section eight of the housing act of nineteen hundred and thirty-seven, as amended by the housing and community development act of nineteen hundred and seventy-four and as further amended from time to time, for lower income families or very low income families as defined in such regulations, or any combination thereof as determined by the zoning commission or (ii) is otherwise defined by the Boston zoning commission through its adoption of the definition of any state or federal agency, authority, department or similar instrumentality providing financing, subsidy or other financial assistance to reduce the occupancy cost of housing to low and moderate income residents.

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

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

"New large-scale commercial real estate development", any development in the city of Boston in which development it is proposed to

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

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

**Section 16.** Notwithstanding the provisions of any general or special law or rule to the contrary, in the city of Boston the zoning commission is hereby authorized to adopt zoning regulations or amendments thereto for the purpose of mitigating the effects of any new large-scale commercial real estate development on the health and welfare of low and moderate income residents of Boston due to the unavailability of affordable housing in the city of Boston. Such regulations shall provide that, with respect to a new large-scale commercial real estate development, any relief granted under the provisions of the zoning code, existing or as amended, including without limitation the granting of a conditional use permit, exception, zoning map or text amendment or variance, shall be conditioned upon action, or promised action, by the developer seeking to obtain such relief to contribute an affordable housing exaction, to mitigate the effects which the new large-scale commercial real estate development project may have upon the availability of affordable housing within the city, which action shall be, the contribution towards the creation of affordable housing as determined by the zoning commission pursuant to duly adopted regulation. Affordable housing may be a portion of a housing development which includes residents of mixed income levels.

If the developer chooses to contribute towards the creation of housing in kind, in lieu of making the affordable housing exaction money payments provided for in this section, such affordable housing contribution shall be created in accordance with regulations adopted by the zoning commission which is hereby authorized to delegate to the Boston redevelopment authority hereinafter referred to as BRA, the authority to adopt such housing creation regulations. Such regulations

may authorize such contribution by the actual creation of affordable housing, or by the economic participation in such creation, including without limitation, the making of loans, contribution of capital to partnerships, limited partnerships, or joint ventures, or the assignment of the developers' contractual obligations to make the money payments provided for in this section. The economic benefit, if any, of the right to any repayment of such economic participation shall be redirected by the developer, pursuant to the provisions of the housing creation regulations, or, in the absence of such redirection, to the neighborhood housing trust.

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

Such regulations shall provide that the measured value of the affordable housing exaction shall be determined on the basis of a fixed dollar amount per square foot of gross floor area devoted to exaction uses in excess of one hundred thousand square feet of gross floor area devoted to exaction uses, exclusive in both cases of all accessory parking garage space, of the new large-scale commercial real estate development, as determined by the zoning commission upon written recommendations of the BRA, which recommendations shall include an analysis of the following: (1) economic trends, such as real estate development activity, commercial rents per square foot, employment growth and inflation rates; (2) housing trends measured in terms of vacancy rates for affordable housing available to low and moderate income residents, and production statistics for new dwelling units; and (3) any other such information which the BRA deems appropriate for consideration; provided, however, that the zoning commission shall be authorized to decrease the measured value of the above affordable housing exaction at any time upon consideration of the factors above; provided further, that the zoning commission shall not be authorized to set the measured value of the above affordable housing exaction at more than five dollars per square foot of gross floor area devoted to exaction uses in excess of one hundred thousand square feet devoted to exaction uses, exclusive in both cases of all accessory parking garage space; and, provided further, that three years after the effective date of this act and no more frequently than at three year intervals thereafter, the zoning commission is authorized to increase the measured value above such five dollar maximum, but any such increase, expressed as a

percentage increase of the then applicable maximum per square foot amount, shall not exceed the per cent of the increase in the combined index for the prior thirty-six month period. No such increase shall apply to any new large-scale commercial real estate development for which an application for a conditional use permit, exception, zoning map or text amendment or variance has been filed with the appropriate governmental authority prior to the effective date of such increase or for which an application for a planned development area has been filed with the BRA prior to the effective date of such increase, whichever occurs first. The payment period for the affordable housing exaction shall be the payment period for the housing contribution grant or exaction as set forth in article 26A of the Boston zoning code as of November first, nineteen hundred and eighty-six and any such period shall not be altered by subsequent regulation. Any affordable housing exaction payment shall be made to the neighborhood housing trust, as created and administered pursuant to section twenty. The zoning commission is authorized to promulgate such regulations or rules as will effectuate the purposes of this section.

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

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

established by regulation of the zoning commission, for the purpose of mitigating the impact of the new large-scale commercial real estate development project.

Such regulations shall provide that the measured value of the employment exaction shall be determined on the basis of a fixed dollar amount per square foot of gross floor area devoted to exaction uses in excess of one hundred thousand square feet devoted to exaction uses, exclusive in both cases of all accessory parking garage space, in the new large-scale commercial real estate development, as determined by the zoning commission upon written recommendations of the BRA, which recommendations shall include an analysis of the following:

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

Section 18. (a) The zoning commission is further authorized to promulgate zoning regulations and amendments thereto for the purpose of mitigating the effects of any new large-scale commercial real estate development in the city of Boston on the availability of affordable

housing or employment opportunities for low and moderate income residents of Boston; provided, however, that such regulations may not be in force simultaneously with those authorized by sections sixteen and seventeen. Such regulations and amendments may provide that any relief granted under the provisions of the zoning code, existing or amended, including without limitation the granting of a conditional use permit, exception, zoning map or text amendment or variance, shall be conditioned upon action or promised action by the developer seeking to create such new large-scale commercial real estate development project or obtain such relief to mitigate the effects which the new large-scale commercial real estate development may have upon low and moderate income residents of the city as determined by the zoning commission pursuant to duly adopted regulations. Such regulations or amendments shall state the specific improvements or amenities to be provided as a condition required for the grant of zoning relief and the zoning relief to be granted.

(b) Any such regulations and amendments must provide that (1) the present and future economic burden of any such improvements or amenities shall not exceed the sum of the present value of five dollars per square foot paid in equal and annual installments over a seven year period plus the present value of one dollar per square foot paid in equal and annual installments over a two year period, each commencing on the date of the issuance of the building permit, for each square foot of gross floor area devoted to exaction uses in excess of one hundred thousand square feet devoted to exaction uses, exclusive in both cases of all accessory parking garage space, in the new large-scale commercial real estate development; provided, however, that three years after the effective date of this act and no more frequently than at three year intervals thereafter, the zoning commission is authorized to increase the maximum per square foot amount but any such increase, expressed as a percentage of the then applicable maximum per square foot amount, shall not exceed the per cent increase of the combined index for the prior thirty-six month period and (2) the developer seeking to create such new large-scale commercial real estate development shall have the right to make a cash payment equal to such economic burden to a fund designated in such regulations or amendments in lieu of providing any such improvements or amenities. The incorporation herein of a limitation upon the economic burden of any such condition which may be imposed or agreed upon shall not be construed as mandating the imposition of any particular condition.

Section 19. Notwithstanding any provision of general or special law or rule to the contrary, (a) articles 26, 26A and 26B of the Boston zoning code; (b) all zoning code amendments, zoning map amendments, zoning variances, conditional use permits and zoning exceptions granted or enacted prior to the effective date of any zoning code amendment or zoning commission regulation pursuant to this act and in any way dependent upon, or related to, articles 26, 26A or 26B of the Boston zoning code, or any of them, which have not been appealed or challenged on the grounds of the invalidity of said articles, or any one of them, in

judicial proceedings timely and properly commenced, prior to the enactment of this act or which have been so appealed or challenged in judicial proceedings which have been dismissed or otherwise adjudicated in favor of the developer prior to the enactment of this act; (c) all zoning code amendments, zoning map amendments, zoning variances, conditional use permits and zoning exceptions granted or enacted prior to the effective date of any zoning code amendment or zoning commission regulations pursuant to this act and in any way dependent upon or related to, articles 26, 26A or 26B of the Boston zoning code, or any of them, which have been appealed or challenged on the grounds of the invalidity of said articles, or any of them, in judicial proceedings timely and properly commenced prior to the enactment of this act and which have not been dismissed or otherwise adjudicated in favor of the developer prior to the enactment of this act; (d) any development impact project exactions, development impact project contributions and jobs contribution grants, as those terms are defined in said articles, and agreements for such exactions, contributions and grants related to or dependent upon any of the zoning actions described in clause (b) and (c); and (e) any additional actions, zoning variances, conditional use permits and zoning exceptions granted pursuant to, or in connection with, any development contemplated by any zoning map amendment, zoning code amendment or agreement described in clauses (b), (c) or (d), whether or not subsequent to the date of enactment of this act, are hereby ratified, validated and confirmed, insofar as any such amendments, variances, permits, exceptions, exactions, contributions, grants, agreements, and other actions may be invalid by reason of any invalidity of said articles or any of them. Any new large-scale commercial real estate development which is the subject of any agreement ratified, validated and confirmed by this section, and any additional actions, zoning variances, conditional use permits, zoning exceptions, and zoning code and text amendments ratified, validated and confirmed by this section, shall be governed by any such agreement and by the provisions of said articles 26, 26A and 26B, or any of them, pursuant to which said agreements were made, and shall not be subject to any zoning regulations or amendments hereafter adopted by the zoning commission pursuant to this act. Notwithstanding the foregoing, no new large-scale commercial real estate development shall be subject to the terms and provisions of sections 26-3(2)(c) of article 26, section 26A-3(2)(c) of article 26A or section 26B-3(1)(c) of article 26B of the Boston zoning code.

Section 20. Notwithstanding any general or special law or rule to the contrary, the city of Boston is hereby authorized to establish, by ordinance, separate funds, to be known as the neighborhood housing trust and the neighborhood jobs trust. Each such fund shall be held in trust by the collector-treasurer under such terms as may heretofore or hereafter be prescribed by ordinance, subject to the approval of the mayor. Each fund shall consist of all payments heretofore or hereafter made by any developer pursuant to sections sixteen, seventeen, eighteen and nineteen other than contributions towards the creation of affordable housing as

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provided in section sixteen and any funds appropriated to such funds by the city for the purposes set forth in this act and in ordinances regulating such trusts for which appropriations are hereby authorized. Any payments made to such separate funds pursuant to the provisions of this act shall be impressed with the terms of the trusts established under the authority of this section and the ordinances adopted pursuant to this section, and shall be received by the collector-treasurer and deposited by him in a separate account; provided, however, that with respect to each new large-scale commercial real estate development, the total amount of all such payments to be made by a developer to such trusts shall first be accepted by the city council and approved by the mayor, which acceptance shall be deemed a final appropriation of said payments to such trusts. All payments to be made by a developer to such separate funds in respect to a particular new large-scale commercial real estate development shall thereupon and thereafter be deposited directly into such trusts and may thereafter be expended by the trustees of said trusts for the purposes authorized by this act, and for no other purpose. All such funds received, accepted or appropriated shall at all times be impressed with the terms of the trusts as defined by this act as regulated by ordinance and shall be dedicated exclusively to the development and operation of affordable housing for low and moderate income residents of Boston or to the development of job training programs for low and moderate income residents of Boston, and for no other purpose. Any trust or fund heretofore established by the city for either of the two purposes described in this act and now existing, and any ordinance passed for the purpose of authorizing the establishment of such trusts or funds passed prior to the effective date of this act including, without limitation, chapter seven of the ordinances of the city of Boston of nineteen hundred and eighty-six and declaration of trust of neighborhood housing trust dated November nineteenth, nineteen hundred and eighty-five and any actions taken by the trustees of said neighborhood housing trust or neighborhood jobs trust prior to the effective date of this act are hereby authorized, validated and confirmed.

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

**SECTION 4.** This act shall take effect upon its passage.

Approved October 5, 1987.

**Chapter 372. AN ACT PROVIDING FOR RECALL ELECTIONS IN THE TOWN OF ASHLAND.**

Be it enacted, etc., as follows:

**SECTION 1.** Any holder of an elected office in the town of Ashland may be recalled therefrom by the registered voters of the town herein provided, except, the maximum number of members of a board that may be recalled is a majority.

**SECTION 2.** Any one hundred voters of the town may initiate a recall petition by filing with the town clerk an affidavit containing the name of the officer sought to be recalled and a statement of the grounds for recall. The town clerk shall thereupon deliver to said voters making the affidavit copies of petition blanks demanding such recall, copies of which printed forms he shall keep available. Such blanks shall be issued by the town clerk, with his signature and official seal attached thereto. They shall be dated, shall be addressed to the selectmen and shall contain the names of all the persons to whom they are issued, the number of blanks so issued, the name of the person whose recall is sought, the office from which removal is sought, the grounds of recall as stated in the affidavit, and shall demand the election of a successor in the said office. A copy of the petition shall be entered in a record book to be kept in the office of the town clerk. Said recall petition shall be returned and filed with the town clerk within twenty days after the filing of the affidavit, and shall have been signed by at least twenty-five per cent of the registered voters of the town as of the date such affidavit was filed with the town clerk, who shall add to their signatures the street and number, if any, of their residences.

The town clerk shall within twenty-four hours of receipt submit the petition to the registrars of voters in the town, and the registrars shall within five working days certify thereon the number of signatures which are names of registered voters of the town.

**SECTION 3.** If the petition shall be found and certified by the town clerk to be sufficient he shall submit the same with his certificate to the selectmen, within five working days, and the selectmen shall within five working days give written notice of the receipt of the certificate to the officer sought to be recalled and shall, if the officer does not resign within five days thereafter, order an election to be held on a date fixed by them not less than sixty and not more than ninety days after the date of the town clerk's certificate that a sufficient petition has been filed; provided, however that if any other town election is to occur within one hundred days after the date of the certificate the selectmen shall postpone the holding of the recall election to the date of such other election. No person shall be subject to recall if his term of office expires within ninety days of the certificate. If a vacancy occurs in said office after a recall election has been ordered, the election shall

nevertheless proceed as provided in this section.

**SECTION 4.** Any officer sought to be removed may be a candidate to succeed himself, and unless he requests otherwise in writing, the town clerk shall place his name on the ballot without nomination. The nomination of other candidates, the publication of the warrant for the removal election, and the conduct of the same, shall all be in accordance with the provisions of law relating to elections, unless otherwise provided in this act.

**SECTION 5.** The incumbent shall continue to perform the duties of his office until the recall election. If said incumbent is not removed, he shall continue in office for the remainder of his unexpired term subject to recall as before, except as provided in this section. If not reelected in the recall election, he shall be deemed removed upon the qualification of his successor, who shall hold office during the unexpired term. If the successor fails to qualify within five days after receiving notification of his election, the incumbent shall thereupon be deemed removed and the office vacant.

**SECTION 6.** Ballots used in a recall election shall submit the following propositions in the order indicated: For the recall of (name of officer) Against the recall of (name of officer) Immediately at the right of each proposition there shall be a square in which the voter, by making a cross mark (X) may vote for either of the said propositions. Under the propositions shall appear the word "Candidates", the directions to the voters required by section forty-two of chapter fifty-four of the General Laws, and beneath this the names of candidates nominated in accordance with the provisions of law relating to elections. If two-thirds of the votes cast upon the question of recall is in the affirmative, the candidate receiving the highest number of votes shall be declared elected. If more than one-third of the votes on the question are in the negative, the ballots for candidates need not be counted.

**SECTION 7.** No recall petition shall be filed against an officer within ninety days after he takes office, nor, in the case of an officer subjected to a recall election and not recalled thereby, until at least ninety days after the election at which his recall was submitted to the voters of the town.

**SECTION 8.** No person who has been recalled from an office or who has resigned from office while recall proceedings were pending against him, shall be appointed to any town office within one year after such recall or such resignation.

**SECTION 9.** This act shall take effect upon its passage.

Approved October 5, 1987.