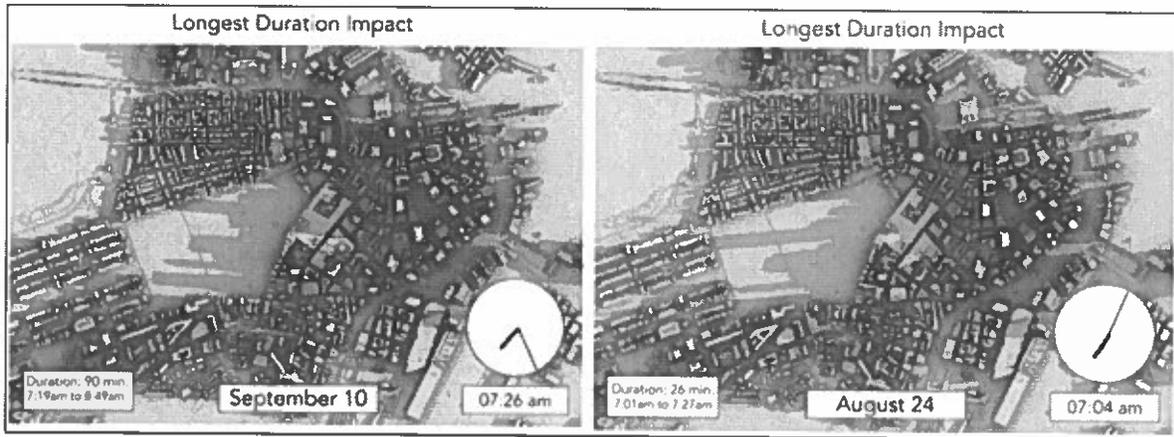


The Issue

The City wants to sell the Winthrop Square Garage parcel to a developer who will construct a large (meaning “tall”) building on the site. The proposals that developers submitted contemplated buildings between 725 feet and 775 feet tall. The proposal selected by the BPDA was for a 775 foot tower. A building of that height at that location will cast shadows on both the Boston Common and the Boston Public Garden.



Ordinarily, local zoning laws would dictate the rules concerning the permissible dimensions of buildings at a particular location within a city or town. In this case, Boston’s Zoning Code would not readily permit the construction of a tower this large. (Technically, the Code has no height restriction at this location, but it has a Floor Area to Lot Size Ratio restriction which would make it impractical to build something much taller than a few hundred feet.) Zoning laws, however, are not definitive bars to the proposed project because they include a mechanism for granting relief from their application and can be rewritten at the local level.

In addition to zoning, though, two state laws restricted the right to construct buildings that cast shadows on Boston Common and the Public Garden. The first, a 1990 law ([Attachment A](#)), prohibits construction of buildings that would cast new shadows on the Boston Common or the Lynn Common. That law contains certain exemptions, which allow for some new shadow as follows:

- New shadow allowed in first hour after sunrise or before 7:00 am - whichever is later.
- In Boston, buildings where zoning code already crafted to allow for certain large buildings not prohibited.

- In Boston, buildings in a zoning district near the Common can cast new shadows as long as it is no more than two hours between 8:00 am - 2:30 pm.
- In Boston, buildings in that district can add shadow up to a certain amount in the period between 8:00 am - 2:30 pm.

Please consider, why does this law address the Boston and Lynn Commons?

A second law, passed in 1992 after a Home Rule Petition (Attachment B), addressed shadow impacts on the Boston Public Garden. That law prohibited the construction of new shadows on the Boston Public Garden, with certain exceptions:

- New shadow allowed during first hour after sunrise or before 7:00 am - whichever is later.
- In Boston, buildings where zoning code already crafted to allow for certain large buildings not prohibited.
- Buildings in a zoning district near the Common can cast new shadows as long as it is no more than two hours between 8:00 am - 2:30 pm.

The project proposed by Millennium for the Winthrop Square Garage site would have violated these rules. The site is not located in the special zoning district and therefore could not create any new shadow after 7:00 or one hour after sunrise, which it would have.

Note: even if the project height comes down to 700 feet, it will still cast new shadow on these parks in violation of the 1990 and 1992 laws.

The Solution.

To permit the construction of a tower at the site, the 1990 and 1992 laws needed to be amended. The mechanism selected for seeking the amendment of both laws was a Home Rule Petition (Attachment C.)

The HRP Process.

Pursuant to Article 89 of the Amendments to the Massachusetts Constitution, passage of a law pursuant to the Legislature's Section 8 Home Rule Petition authority requires:

1. Approval of the petition to enact the law by the City Council.
2. Approval of the petition to enact the law by the Mayor.

- Approval by both is required. City Council cannot override a “veto” or non-approval of a petition by a mayor. See In re Opinion of the Justices to the Senate, 429 Mass. 1201 (1999).
3. Passage of an act by both houses of the Legislature.
 - Where the petition specifies the exact text of the proposed law, it must be passed in that form, but if the petition is more general the Legislature is not confined to particular text. See Opinion of Justices, 356 Mass. 775 (1969).
 4. Approval by Governor.

In this case, all of those steps happened. In April 2017 the City Council introduced a petition to modify the 1990 and 1992 special acts, held a hearing on the issue, and ultimately voted to pass a slightly modified version of the petition. (Attachment C.) The Mayor approved the same version of the petition, which called for a special law to be enacted in precisely the form set forth in the petition. After a hearing, the Legislature passed the special as proposed in the petition in July 2017, and the Governor approved the bill at the end of July. See St. 2017, c. 57.

The Substance

In order to make sense of St. 2017, c. 57, we must read it in connection with both the 1990 and 1992 special acts that it amends. The Act does the following things:

1. Amends the Boston Common Special Act to expressly permit a structure on the Winthrop Square Garage site to cast a shadow on the Common for up to two hours after sunrise or 7:00 am - whichever is later. (So extends the general rule by one hour for that parcel.)
2. Gets rid of the provision of the Boston Common law that would permit buildings near the Common to add new shadow up to an aggregate of one acre for a period of more than two hours between 8:00 and 2:30. (Reduces certain shadow previously allowable under the law from other sites.)
3. Amends the Public Garden Special Act to expressly permit a structure on the Winthrop Square Garage site to cast a shadow on the Common for up to 45 minutes after sunrise or 7:00 am - whichever is later. (I actually do not understand the shadow studies well enough to know why the building would need this additional carve out.)

4. Created a new statutory shadow limitation for new buildings in a zoning district near Copley Square Park that restricts the creation of new shadows on that park in much the same way that the special acts restrict new shadows on the Common and Public Garden.
5. Requires the BRA/BPDA to conduct a planning study for downtown Boston aimed at creating more modern planning or zoning guidelines that specifically address historic preservation, environment (including shadow impact), and climate change.

Attachment A

The deputy commissioner of capital planning and operations acting for and on behalf of the commonwealth is hereby authorized to acquire by eminent domain, by purchase or otherwise the hereinafter described parcel of public land located in the town of Templeton and presently being used for water department maintenance purposes by said town and to transfer the care, custody and control of said parcel to the department of public works in conjunction with the relocation of the Depot Road Bridge, so-called.

Subsequent to the completion of said bridge relocation, the deputy commissioner of capital planning and operations is authorized to convey said parcel, by deed approved as to form by the attorney general, to the town of Templeton for highway purposes.

Said parcel is shown on a plan of land entitled "Parcel of Land To Be Taken From The Town Of Templeton For The Purpose Of The Relocation of Depot Road And Bridge Over The Boston and Maine Railroad In The Town Of Templeton", which plan is on file with the chief engineer of the department of public works.

Approved December 21, 1990.

Chapter 362. AN ACT PROTECTING CERTAIN PUBLIC COMMONS.

Be it enacted, etc., as follows:

SECTION 1. As used in this act the following words shall have the following meanings:

"Article 38", Article 38 of the Boston Zoning Code as it existed on May first, nineteen hundred and ninety.

"Article 40", Article 40 of the Boston Zoning Code as it existed on September eleventh, nineteen hundred and eighty-nine.

"New shadow", the casting of a shadow at any time on an area which is not cast in shadow at such time by a structure which exists or for which a building permit has been granted on the date upon which application is made to a permit-granting authority for a proposed structure and which would not be cast in shadow by a structure conforming to as-of-right height limits allowed by the Boston or Lynn Zoning Code, whichever is applicable, as in force on May first, nineteen hundred and ninety. New shadow shall not include a de minimis shadow cast by an antenna, fence, flagpole, sign or other similar structure.

"Permit granting authority", any zoning board of appeals, planning board, zoning commission, redevelopment authority or other public body authorized to grant permits or approvals pursuant to chapter forty A, chapter one hundred and twenty-one A or chapter one hundred and twenty-one B of the General Laws, or chapter six hundred and sixty-five of the acts of nineteen hundred and fifty-six, as

amended. Permit granting authority shall not include the Inspectional Services Department in the city of Boston or the Building Department in the city of Lynn, or any body or department succeeding to the duties thereof.

"Structure", a structure, as defined in the Massachusetts state building code, which is: (i) intended to be permanent; and (ii) not located within the boundaries of the Boston Common or the Lynn Common.

SECTION 2. Notwithstanding any provision of chapter forty A, chapter one hundred and twenty-one A, or chapter one hundred and twenty-one B of the General Laws, or chapter six hundred and sixty-five of the acts of nineteen hundred and fifty-six, or any other general or special law to the contrary, no permit granting authority shall take any action which would authorize the construction of any structure which would cast a new shadow on the Boston Common in the city of Boston or the Lynn Common in the city or Lynn; provided, however, that the provisions of this section shall not apply to actions authorizing:

(a) Any structure which casts a new shadow upon the aforementioned commons only during the first hour after sunrise or before seven o'clock in the morning, whichever is later, or the last hour before sunset.

(b) Any structure in the city of Boston included in a development plan or a master plan within a planned development area, all as approved on or before May first, nineteen hundred and ninety, by the city of Boston Zoning Commission in accordance with chapter six hundred and sixty-five of the act of nineteen hundred and fifty-six, as such development plan or master plan may thereafter be amended; provided, however, that such amendment shall not permit construction of a structure which casts additional new shadow on any area of the Boston Common, subject to the one acre exclusion set forth in the second sentence of subsection (c); or

(c) Any structure within the Midtown Cultural District established by Article 38 which casts no new shadow for more than two hours from eight o'clock in the morning through two-thirty in the afternoon on any day from March twenty-first to October twenty-first, inclusive, in any calendar year, on any area of the Boston Common. Notwithstanding the foregoing, authorization may be granted by a permit-granting authority for a structure which casts a new shadow on the Boston Common beyond the aforementioned two hour period if the area shaded at the end of such two hour period does not exceed one acre, such area to be calculated as the sum of the areas of new shadow cast at any time beyond the two-hour limit by all structures in the Midtown Cultural District approved by the city of Boston Board of Appeal after March twentieth, nineteen hundred and eighty-nine, whether or not exempt pursuant to subsection (b).

Any structure within the South Station Economic Development Area established by Article 40 east of Atlantic avenue and north of Beach street which casts a new shadow upon the Boston Common only during the first hour after sunrise or before

eight o'clock in the morning, whichever is later, or during the last hour before sunset.

Approved December 21, 1990.

Chapter 363. AN ACT FURTHER REGULATING AN INDIVIDUAL'S RIGHT TO DO BUSINESS IN THE COMMONWEALTH FOR HABITUAL VIOLATION OF INJUNCTIONS.

Be it enacted, etc., as follows:

Section 8 of chapter 93A of the General Laws, as appearing in the 1988 Official Edition, is hereby amended by inserting after the word "any", in line 4, the following words:- individual or.

Approved December 21, 1990.

Chapter 364. AN ACT RELATIVE TO VEHICULAR BRIDGES MAINTAINED BY THE DEPARTMENT OF PUBLIC WORKS.

Be it enacted, etc., as follows:

SECTION 1. Section 1 of chapter 634 of the acts of 1971, as most recently amended by section 1 of chapter 425 of the acts of 1986, is hereby further amended by inserting after the second paragraph the following paragraph:-

The city, town, county or other public entity which controls the public way at the approaches to the removed bridge may request in writing that the department construct a culvert-type passageway sufficient for pedestrians and bicyclists under the said roadway, and the department may construct such passageway; provided, however, that upon completion of the construction of said roadway and passageway, the title to such passageway shall vest in and the maintenance of such passageway shall be the responsibility of the city, town, county or other public entity which requested the department to construct such passageway.

SECTION 2. The construction by the department, acting on behalf of the commonwealth, of any culvert-type passageway sufficient for pedestrians and bicyclists under a roadway as authorized by section one between November seventh, nineteen hundred and eighty-six and March first, nineteen hundred and ninety-one, is hereby ratified, and the title to such passageway is hereby vested in and the maintenance of such passageway is hereby declared to be the responsibility of the city, town, county or other public entity which has title to the roadway and fill which replaced the bridge.

Approved December 21, 1990.

Attachment B

Chap. 384

property described in section one as Parcel Number Three shall be valid unless such deed provides that said property shall be used for municipal purposes.

SECTION 6. In the event that a particular parcel of land described in section one is not used for the purposes described in sections three to five within five years of the effective date of this act, said respective parcel of land shall revert to the commonwealth under such terms and conditions as the commissioner may prescribe.

Approved January 14, 1993.

Chapter 384. AN ACT PROTECTING THE BOSTON PUBLIC GARDEN.

Be it enacted, etc., as follows:

SECTION 1. As used in this act the following words shall have the following meanings:

“Article 38”, Article 38 of the Boston Zoning Code as in effect on May 1, 1990.

“New shadow”, the casting of a shadow at any time on an area which is not cast in shadow at such time by a structure which exists or for which a building permit has been granted on the date upon which application is made to a permit-granting authority for a proposed structure and which would not be cast in shadow by a structure conforming to as-of-right height limits allowed by the Boston Zoning Code as in effect on May 1, 1990. New shadow shall not include a de minimis shadow cast by an antenna, fence, flagpole, sign or other similar structure.

“Permit-granting authority”, the Boston Zoning Board of Appeal, the Boston Zoning Commission, the Boston Redevelopment Authority or other public body authorized to grant permits or approvals pursuant to chapter 121A or chapter 121B of the General Laws, chapter 665 of the acts of 1956, as amended, or the Boston Zoning Code. Permit-granting authority shall not include the Boston Inspectional Services Department, or any body or department succeeding to the duties thereof.

“Public Garden”, the land in the city of Boston bounded by Charles Street, Boylston Street, Arlington Street and Beacon Street and under the care, custody, management and control of the city Parks and Recreation Commission, excluding therefrom the perimeter sidewalk areas located between the perimeter fence and the curbstones of the aforementioned streets.

“Structure”, a structure, as defined in the Massachusetts state building code, which is: (i) intended to be permanent; and (ii) not located within the boundaries of the Public Garden.

SECTION 2. Notwithstanding any provisions of chapter 121A or chapter 121B of the General Laws, or chapter 665 of the acts of 1956, or any other general or special law to the contrary, no permit-granting authority shall take any action which

would authorize the construction of any structure which would cast a new shadow on the Public Garden; provided, however, that the provisions of this section shall not apply to actions authorizing:

(a) Any structure which casts a new shadow upon the Public Garden only during the first hour after sunrise or before seven o'clock in the morning, whichever is later, or the last hour before sunset;

(b) Any structure within the Midtown Cultural District established by Article 38 which casts no new shadow upon the Public Garden after ten o'clock in the morning on any day from March 21 to October 21, inclusive, in any calendar year; or

(c) Any structure in the city of Boston included in a development plan or a master plan within a planned development area, all as approved on or before May 1, 1990, by the Boston Zoning Commission in accordance with chapter 665 of the acts of 1956, as such development plan or master plan may thereafter be amended; provided, however, that such amendment shall not permit construction of a structure which casts additional new shadow on any area of the Public Garden.

SECTION 3. This act shall take effect upon its passage.

Approved January 14, 1993.

Chapter 385. AN ACT REQUIRING A REPORT OF CARBON DIOXIDE EMISSIONS FROM POWER GENERATING FACILITIES.

Be it enacted, etc., as follows:

SECTION 1. All power generating facilities shall provide a report indicating the amount of carbon dioxide emissions released from each facility and the installation of continuous emission monitors for carbon dioxide shall not be required. Fuel sampling coupled with unit operating data or any scientifically feasible method may be used.

SECTION 2. The report required pursuant to section 1 shall commence on January first, nineteen hundred and ninety-three and terminate December thirty-first, nineteen hundred and ninety-three and shall include carbon dioxide emissions released during said time period along with the previous two years' emissions so that a three year average of carbon dioxide emissions can be calculated. Said report shall be submitted to the house and senate chairmen of the joint committee on energy, the director of the department of environmental protection, and the Director of Air Quality, Environmental Protection Agency, Region I, on or before, March thirty-first, nineteen hundred and ninety-four.

Approved January 14, 1993.

Attachment C



Boston City Council

Committee on Government Operations

Michael F. Flaherty, *Chair*

Report of Committee Chair

April 26, 2017

Dear Councillors:

Docket #0566, a home rule petition for a special law re: "An Act Protecting Sunlight and Promoting Economic Development in the City of Boston," was sponsored by Councilor Bill Linehan and referred to the Committee on Government Operations on April 12, 2017. The Committee on Government Operations held a hearing on April 24, 2017 where public comment was taken.

Docket #0566 is a home rule petition that will eliminate the remainder of the 1-acre shadow bank established by state law which allows certain projects to cast shadow that would otherwise not be in compliance with such law. **Docket #0566** will allow a limited amount of new shadow to be cast on the Boston Common and the Public Garden from new construction at 115 Winthrop Square. However, after 9:30 AM there will be no shadow on the Boston Common or the Public Garden. **Docket #0566** will require the Boston Planning and Development Agency ("BPDA") to conduct a planning initiative for downtown Boston including the Midtown Cultural District and the Financial District. **Docket #0566** will codify Article 48 of the Boston Zoning Code thereby limiting new shadow on Copley Square Park cast from future structures built within the Stuart Street District. This proposal is necessary in order to allow the selected project for the development of the 115 Winthrop Square site to move forward because of state laws concerning shadows from the 1990's.

The following individuals offered testimony on behalf of the Administration in support of the proposal: Chief John Barros, Department of Economic Development; Director Brian Golden, BPDA; Commissioner Christopher Cook, Parks and Recreation; and, William McGonagle, Administrator, Boston Housing Authority. Mr. Golden reviewed the background of the 115 Winthrop Square site explaining that it was an underutilized city-owned property. In 2015, the Boston Redevelopment Authority ("BRA") acquired control of the Winthrop Square site from the Public Facilities Commission after the City Council approved the order declaring the property surplus with the understanding that the profits from the sale or long-term lease of the property would go to the City of Boston. The property was transferred to the BRA, dba the BPDA, to handle the sale or development of the Winthrop Square site because the BRA routinely deals with large scale developments. The BPDA selected the project proposed by Millennium Partners after the RFI and RFP process.

Mr. Golden reviewed the benefits that the City will receive which include the following: Millennium Partners will provide over \$150 million in one-time revenue; an estimated \$12 million in annual property tax payments; contributions to the Neighborhood Housing and Neighborhood Jobs Trusts; new affordable housing units to Chinatown; public realm improvements in the Financial District; new construction jobs; and, permanent jobs. Chief Barros discussed the economic benefits that the City will receive including the additional jobs. Chief Barros also expressed support for the project because of economic inclusion and the City's Memorandum of Understanding with Millennium Partners which requires equity inclusion and identifies goals to diversify consultants and service contracts. Mr. McGonagle expressed support because of the benefits that the City's housing developments in East Boston and South Boston will receive for renovation and maintenance. Commissioner Cook expressed support because of the benefits that the parks will receive in order to make improvements. In particular, America's oldest park, the Boston Common, will receive \$28 million. Franklin Park will also receive \$28 million which will be the largest investment ever for the park and will benefit the neighborhoods of Dorchester, Mattapan, Jamaica Plain, Roxbury, and Roslindale. Director Golden stated that the selected project would also be subject to the Article 80 process and FAA approval.

The Committee inquired about the process, benefits, and the current law. Panels and public testimony reflected support and opposition to the proposal. Individuals testifying in opposition expressed concerns about the process and the impact on parks and open spaces. Individuals testifying in support of the proposal discussed the economic benefits which include job creation and the revenue that the City will receive. At the hearing, Director Golden requested that the Committee consider amending **Docket #0566** in Sections 7 and 8 in order to prevent unintended impacts on existing structures and to exempt structures that have already received approval.

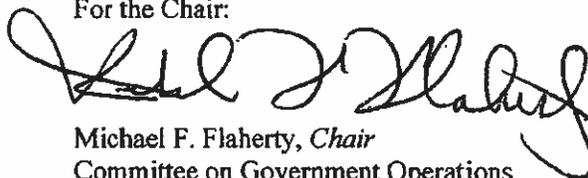
Passage of **Docket #0566** is the first step in allowing the selected project proposed by Millennium Partners to move forward. Currently the proposal would violate state law because of location. **Docket #0566** also needs the approval of the state legislature and the Governor. As previously explained, **Docket #0566** will eliminate the remainder of the 1-acre shadow bank established by state law and will allow a limited amount of new shadow to be cast on the Boston Common and the Public Garden from new construction at 115 Winthrop Square with no shadow on the Boston Common or the Public Garden after 9:30 AM. This project is unique because the City of Boston owns the land and will receive many benefits from its development. Millennium Partners will provide the City of Boston with revenue that will be used for improvements to open spaces and parks; creation of affordable housing developments and renovation of housing developments; improvements to neighborhoods; and, job creation.

By the Chair of the Committee on Government Operations, to which the following was referred:

Docket #0566, a home rule petition for a special law re: "An Act Protecting Sunlight and Promoting Economic Development in the City of Boston,"

submits a report recommending that this docket ought to pass in a new draft.

For the Chair:

A handwritten signature in black ink, appearing to read "Michael F. Flaherty". The signature is fluid and cursive, with a large initial "M" and "F".

Michael F. Flaherty, *Chair*
Committee on Government Operations



CITY OF BOSTON IN CITY COUNCIL

IN THE YEAR TWO THOUSAND SEVENTEEN

A HOME RULE PETITION FOR A SPECIAL LAW RE: "AN ACT PROTECTING SUNLIGHT AND PROMOTING ECONOMIC DEVELOPMENT IN THE CITY OF BOSTON"

WHEREAS: this Home Rule Petition strengthens the City of Boston's commitment to the future of Boston Common and further protects sunlight on America's first park by eliminating the remainder of the 1-acre shadow bank, established by state law to allow certain projects to cast shadow otherwise not in compliance with that law, and instead allowing a limited amount of new shadow to be cast on the Common and the Public Garden from new construction at 115 Winthrop Square; and

WHEREAS: this proposal codifies Article 48 of the Boston Zoning Code, which is modeled after the Boston Common shadow protections and limits new shadow on Copley Square Park cast from future structures built within the Stuart Street District; and

WHEREAS: this petition requires the Boston Planning and Development Agency (BPDA) to conduct a planning initiative for downtown Boston, including but not limited to the Midtown Cultural District and the Financial District, to define a transparent and predictable future for the area, including recommendations regarding sunlight; and

WHEREAS: in 2015, the City Council conducted a robust process to ensure that the BPDA would secure the most value for the 115 Winthrop Square site and that any proceeds would come back to the City to directly benefit the residents of Boston; and

WHEREAS: the selected project proposed by Millennium Partners will provide over \$150 million in one-time revenue, an estimated \$12 million in annual property tax

payments, thousands to our Neighborhood Housing and Neighborhood Jobs Trusts, new affordable housing units to Chinatown, public realm improvements in the Financial District, and thousands of new construction jobs and permanent jobs that will be an economic driver for the entire city; and

WHEREAS: Millennium Partners' proposal will replace a blighted garage with a mixed-use tower containing more than 1 million square feet of residential, office, retail, restaurant, parking and other commercial space, using Passive House building principles to achieve LEED Platinum Certification; and

WHEREAS: to ensure economic inclusion, the City has signed a Memorandum of Understanding with Millennium Partners regarding professional services, building services and consulting contracts with women-owned businesses and minority-owned businesses, participation in our Summer Jobs Program, hiring a construction workforce of 51% City of Boston residents, 40% persons of color, and 12% women, and increasing apprenticeship and mentoring opportunities and training programs; and

WHEREAS: the City is increasingly reliant on property taxes, has limited ability to generate new revenue, and faces increasing uncertainty about future state and federal funding. Developing the Winthrop Square garage presents a unique opportunity to deliver significant positive benefits to our residents and impactful resources for our open spaces, affordable housing developments, and neighborhoods; *NOW,*

THEREFORE BE IT ORDERED,

That a petition to the General Court, accompanied by a bill for a special law relating to the City of Boston to be filed with an attested copy of this Order be, and hereby is, approved under Clause One (1) of Section Eight (8) of Article Two (2), as amended, of the Amendments to the Constitution of the Commonwealth of Massachusetts, to the end that legislation be adopted precisely as follows, except for clerical or editorial changes of form only:

PETITION FOR A SPECIAL LAW RE: AN ACT PROTECTING SUNLIGHT AND PROMOTING ECONOMIC DEVELOPMENT IN THE CITY OF BOSTON.

SECTION 1. Subsection (b) of section 2 of chapter 362 of the Acts of 1990 is hereby amended by striking out the words “, subject to the one acre exclusion set forth in the second sentence of subsection (c).”

SECTION 2. Subsection (c) of section 2 of chapter 362 of the Acts of 1990 is hereby amended

by striking out the second sentence thereof.

SECTION 3. Section 2 of chapter 362 of the Acts of 1990 is hereby further amended by inserting after subsection (c) the following subsection:-

(d) Any structure located on property owned by the City of Boston on January first, two thousand and sixteen and located west of Federal Street, south of Franklin Street, east of Devonshire Street, and north of the intersection of High Street and Summer Street, which structure casts a new shadow upon the Boston Common for not more than two hours after the later of seven o'clock in the morning or the first hour after sunrise.

SECTION 4. Section 2 of chapter 384 of the Acts of 1992 is hereby amended by striking out the word "or" in the last line of subsection (b).

SECTION 5. Section 2 of chapter 384 of the Acts of 1992 is hereby further amended by striking out the period in the last line of subsection (c) and inserting in place thereof a semicolon and the word "or."

SECTION 6. Section 2 of chapter 384 of the Acts of 1992 is hereby further amended by inserting after subsection (c) the following subsection:-

(d) Any structure located on property owned by the City of Boston on January first, two thousand and sixteen and located west of Federal Street, south of Franklin Street, east of Devonshire Street, and north of the intersection of High Street and Summer Street, which structure casts a new shadow upon the Public Garden for not more than forty-five minutes after the later of seven o'clock in the morning or the first hour after sunrise.

SECTION 7. As used in section 7 and section 8 of this act the following words shall have the following meanings:

"Article 48," Article 48 of the Boston Zoning Code as it existed on March thirty-first, two thousand and seventeen.

"New shadow," the casting of a shadow at any time on an area which is not cast in shadow at such time by a structure which exists or for which a building permit or local zoning entitlements through the Zoning Board of Appeal or Boston Zoning Commission have been granted on the date upon which application is made to the permit-granting authority for a proposed structure and which would not be cast in shadow by a structure conforming to as-of-right height limits allowed by the Boston Zoning Code as in force on March thirty-first, two thousand and seventeen. New shadow shall not include a de minimis shadow cast by an antenna, fence, flagpole, sign or other

similar structure.

“Permit granting authority,” the Boston Zoning Board of Appeal, the Boston Zoning Commission, the Boston Redevelopment Authority or other public body authorized to grant permits or approvals pursuant to chapter 121A or chapter 121B of the General Laws, chapter 665 of the acts of 1956, as amended, of the Boston Zoning Code. Permit granting authority shall not include the Boston Inspectional Services Department, or any body or department succeeding in the duties thereof.

“Copley Square Park,” the land in the City of Boston bounded by Boylston Street, Clarendon Street, St. James Avenue, and Dartmouth Street, and under the care, custody management and control of the city Parks and Recreation Commission, excluding land occupied by Trinity Church.

“Structure,” a structure, as defined in the Massachusetts state building code, which is: (i) intended to be permanent; and (ii) not located within the boundaries of Copley Square Park.

SECTION 8. Notwithstanding any provisions of chapter 121A or chapter 121B of the General Laws, or chapter 665 of the acts of 1956, or any other general or special law to the contrary, no permit granting authority shall take any action which would authorize the construction of any structure within the Stuart Street District established by Article 48 which would cast a new shadow for more than two hours from eight o'clock in the morning through two-thirty in the afternoon on any day from March twenty-first to October twenty-first, inclusive, in any calendar year, on any area of Copley Square Park; provided, however, that the provisions of this section shall not apply to actions authorizing any structure that has received local zoning entitlements through the Zoning Board of Appeal or by virtue of being included in a development plan or planned development area master plan within the Stuart Street District, all as approved on or before March thirty-first, two thousand seventeen by the Boston Zoning Commission in accordance with chapter six hundred sixty-five of the acts of nineteen hundred and fifty-six, as such Board of Appeal relief or development plan may thereafter be amended; provided however, that such amendment shall not permit construction of a structure which would cast additional new shadow as defined in Section 7 of this Act for more than two hours as aforesaid.

SECTION 9. The Boston Redevelopment Authority shall conduct a planning initiative for downtown Boston for an area including, but not limited to, the Midtown Cultural District established by Article 38 of the Boston Zoning Code and that area of the city known as the Financial District. The initiative shall be conducted in partnership with the community to examine the preservation, enhancement and growth of downtown Boston in order to balance growth with livability while respecting the importance of sunlight, walkability, and a dynamic

mix of uses. The initiative shall culminate in a report that must include, but need not be limited to, recommendations concerning: development guidelines to facilitate predictable and appropriate development and community benefits; balancing area enhancement with the needs of existing residents, businesses and property owners; historic preservation; impacts of development on the environment, open space, and public realm, specifically including shadow impacts; and adaptability to the risks associated with climate change. The planning initiative shall commence within six months of the date of the passage of this act, and the Boston Redevelopment Authority shall publish the report on the planning initiative within three years from the passage of this act.

SECTION 10. This act shall take effect upon its passage.

Filed in City Council: April 26, 2017

Attachment D

Acts (2017)

Chapter 57

AN ACT PROTECTING SUNLIGHT AND PROMOTING ECONOMIC DEVELOPMENT IN THE CITY OF BOSTON.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Subsection (b) of section 2 of chapter 362 of the acts of 1990 is hereby amended by striking out, in lines 7 and 8, the words “, subject to the one acre exclusion set forth in the second sentence of subsection (c)”.

SECTION 2. Subsection (c) of said section 2 of said chapter 362 is hereby amended by striking out the second sentence.

SECTION 3. Said section 2 of said chapter 362 is hereby further amended by inserting after subsection (c) the following subsection:-

(d) Any structure located on property owned by the city of Boston on January 1, 2016, and located west of Federal street, south of Franklin street, east of Devonshire street and north of the intersection of High street and Summer street, which casts a new shadow upon the Boston Common in the city of Boston for not more than 2 hours after the later of 7:00 A.M. or the first hour after sunrise.

SECTION 4. Subsection (b) of section 2 of chapter 384 of the acts of 1992 is hereby amended by striking out, in line 4, the word “or”.

SECTION 5. Said section 2 of said chapter 384 is hereby further amended by striking out, in line 19, the word “Garden.” and inserting in place thereof the following words:- Garden; or

(d) Any structure located on property owned by the city of Boston on January 1, 2016, and located west of Federal street, south of Franklin street, east of Devonshire street and north of the intersection of High street and Summer street, which casts a new shadow upon the Public Garden in the city of Boston for not more than 45 minutes after the later of 7:00 A.M. or the first hour after sunrise.

SECTION 6. As used in this section and section 7 the following words shall have the following meanings:

“Article 48”, article 48 of the Boston zoning code as it existed on March 31, 2017.

“New shadow”, the casting of a shadow at any time on an area that is

not cast in shadow at such time by a structure that exists or for which a building permit or local zoning entitlements through the Boston zoning board of appeal or zoning commission of the city of Boston have been granted on the date upon which application is made to the permit granting authority for a proposed structure and which would not be cast in shadow by a structure conforming to as-of-right height limits allowed by the Boston zoning code as in force on March 31, 2017; provided, however, that “new shadow” shall not include a de minimis shadow cast by an antenna, fence, flagpole, sign or other similar structure.

“Permit granting authority,” the Boston zoning board of appeal, the zoning commission of the city of Boston, the Boston Redevelopment Authority, the Boston Planning and Development Agency or other public body authorized to grant permits or approvals pursuant to chapter 121A or chapter 121B of the General Laws, chapter 665 of the acts of 1956 or the Boston zoning code; provided, however, that “permit granting authority” shall not include the inspectional services department of the city of Boston or a body or department succeeding in the duties of it.

“Copley square park,” the land in the city of Boston bounded by Boylston street, Clarendon street, St. James avenue and Dartmouth street and under the care, custody, management and control of the parks and recreation commission of the city of Boston, excluding land occupied by Trinity Church in the city of Boston.

“Structure,” a structure, as defined in the state building code, which is: (i) intended to be permanent; and (ii) not located within the boundaries of Copley square park.

SECTION 7. Notwithstanding chapter 121A or chapter 121B of the General Laws, chapter 665 of the acts of 1956 or any other general or special law to the contrary, a permit granting authority shall not take an action that would authorize the construction of a structure within the Stuart Street District established by article 48 that would cast a new shadow for more than 2 hours from 8:00 A.M. to 2:30 P.M., inclusive, on any day from March 21 to October 21, inclusive, in any calendar year on any area of Copley square park; provided, however, that this section shall not apply to actions authorizing a structure that has received local zoning entitlements through the Boston zoning board of appeal or by virtue of being included in a development plan or planned development area master plan within the Stuart Street District, as approved not later than March 31, 2017, by the zoning commission of the city of Boston in accordance with said chapter 665, as such board of appeal relief or development plan may thereafter be amended; provided further, that such an amendment shall not

permit construction of a structure that would cast additional new shadow for more than 2 hours as aforesaid.

SECTION 8. The Boston Redevelopment Authority or the Boston Planning and Development Agency shall conduct a planning initiative for the downtown area of the city of Boston for an area including, but not limited to, the Midtown Cultural District established by article 38 of the Boston zoning code and that area of the city known as the financial district. The initiative shall be conducted in partnership with the community to examine the preservation, enhancement and growth of the downtown area of the city of Boston in order to balance growth with livability while respecting the importance of sunlight, walkability and a dynamic mix of uses. The initiative shall culminate in a report that shall include, but shall not be limited to, recommendations concerning: (i) development guidelines to facilitate predictable and appropriate development and community benefits; (ii) balancing area enhancement with the needs of existing residents, businesses and property owners; (iii) historic preservation; (iv) impacts of development on the environment, open space and the public realm, specifically including shadow impacts; and (v) adaptability to the risks associated with climate change. The planning initiative shall commence not later than 6 months after the effective date of this act and the Boston Redevelopment Authority or the Boston Planning and Development Agency shall publish the report on the planning initiative not later than 3 years after the effective date of this act.

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

Approved, July 28, 2017