

Ch. 844

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Chapter 844.

THE COMMONWEALTH OF MASSACHUSETTS

In the Year One Thousand Nine Hundred and Seventy-five

*needs
section*

AN ACT ESTABLISHING THE LOWELL DEVELOPMENT AND FINANCIAL CORPORATION.

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. Unless the context otherwise requires, the following words shall have the following meanings:

"Central business district", that area in the city of Lowell within the boundaries of the following streets: beginning at the intersection of Appleton and Gorham streets; thence southwesterly by Appleton street to Thorndike street; thence northwesterly by Thorndike-Fletcher streets to Suffolk street; thence northerly by Suffolk street continuing from the northern end of Suffolk street on a line parallel to the Western canal to the Merrimack river; thence southwesterly by the Merrimack river to the confluence of the Concord and Merrimack rivers; thence southerly by Fayette street to Church street; thence westerly by Church street to the Concord river; thence southerly along the Concord river to Charles street; thence westerly by Charles street to Gorham street; thence northerly by Gorham street to the intersection of Appleton and Gorham streets, the point of beginning.

"Corporation", Lowell Development and Financial Corporation, created by section three.

"Financial institution", any banking corporation or institution, trust company, savings bank, co-operative bank, savings and loan association, insurance company, or related corporation partnership, foundation or other institution engaged primarily in lending or investing funds.

"Greater Lowell", the city of Lowell and the towns of Dracut, Tewksbury, Billerica, Chelmsford, and Tyngsboro.

"Incorporators", Arthur R. Kelts, Leo F. Desjarlais, Joseph C. Mello, Jr., George J. Spaneas, George L. Duncan, Robert C. Maguire, John P. Slavin, Jr., William S. Taupier, John J. Hogan, Jr. and Edwin R. Biron.

SECTION 2. It is hereby declared that unused, decadent or blighted areas exist in parts of the city of Lowell; that each such area constitutes a serious and growing menace, injurious and inimical to the safety, health, morals and welfare of the residents of said city; that each such area constitutes an economic liability, substantially impairs or arrests the sound growth of said city, and retards the economic well-being of the commonwealth; that each such area decreases the value of private investments and threatens the sources of public revenue; that redevelopment of each such area in accordance with an economic development plan for the elimination of such substandard conditions and prevention of their recurrence is necessary to retain existing commercial enterprises, attract new commercial development and promote the sound economic growth of said city; that the existence of such unused, decadent or blighted areas makes persons unwilling to do business in said city; that the menace of such unused, decadent or blighted areas is beyond remedy and control solely by regulatory process in the exercise of the police power and cannot be dealt with effectively by the ordinary operations of private enterprise without the aids herein provided; that the acquisition of property for the purpose of eliminating unused, decadent, substandard, or blighted conditions therein, preventing recurrence of such conditions in the area, improvement of sites for commercial uses, the disposition of the property for redevelopment incidental to the foregoing, the exercise of powers by the corporation and any assistance which may be given by said city, or any other public body in connection therewith are public uses and purposes for which public money may be expended; and that the acquisition, planning, clearance, development, rehabilitation, or rebuilding of such unused, decadent, and blighted areas for commercial purposes are public uses and benefits for which private property may be regulated by wholesome and reasonable orders, law and directions and for which public funds may be expended for the good and welfare of said city and the commonwealth.

It is hereby further found and declared that there exists in the city of Lowell a condition of substantial and persistent unemployment and underemployment which causes hardship to many individuals and families, wastes vital human resources, increases the public assistance burdens, impairs the security of family life, impedes the economic and physical development of said city and adversely affects the welfare and prosperity

of the people; that unemployment and underemployment have been caused in substantial part by commercial companies moving from said city, that many existing commercial facilities within said city are obsolete and inefficient; that such facilities are underutilized or vacated, thereby creating additional unemployment; that such obsolescence and abandonment of existing facilities are causing serious injury to the economy of said city; that the commercial sector of the economy provides one of the best opportunities for jobs at higher wages for the inhabitants of said city; that new commercial sites are required to attract and house new commercial development, and to retain existing commercial operations in need of expansion space; that the unaided efforts of private industry have not provided and cannot provide the necessary commercial sites within the urban environment due to the problems encountered in the assembly of suitable building sites, the provision of adequate public services, the unavailability of private capital for development and the inability of private enterprise alone to plan, finance and coordinate commercial development projects.

✓ It is hereby further found and declared that commercial blight in the central business district has occurred since the by-pass thereof by interstate highway route 495, and the ready access to said route 495 from United States highway route 3 and interstate highway route 93, whereby residents of greater Lowell more readily may shop at commercial centers outside of the central business district and find it time consuming and costly to shop therein; that a program of establishing express non-access connectors from outside the city of Lowell into the central business district, free of traffic light stops, and on well marked rights of way, directly to well lighted parking areas and a program of establishing powered or other transportation of shoppers from such parking access to commercial establishments within the central business district is required to rescue the central business district from economic disintegration; that the use of existing public rights of way, the acquisition of rights of way along alleys, canals and streets for the purpose of improving vehicle and pedestrian traffic flow is a public use for which public money may be expended and that the commonwealth, and the department of public works of the commonwealth, shall cooperate in permitting, and erecting markers on state highways, to inform travellers of the routes into the central business district by appropriate signs,

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appropriate coloring of routes, appropriate bridges over, or underpasses under, cross streets, appropriate prohibition of parking, widening of streets, and removal or erection of barriers; the acquisition, planning, clearance, development, rehabilitation or rebuilding of areas leading into the central business district from state highways encircling said city for commercial, industrial or historical park purposes bring public uses and benefits for which private property may be regulated by wholesome and reasonable orders, laws and directions and for which public funds may be expended for the good and welfare of said city and of the commonwealth.

SECTION 3. The shareholders of the Corporation are hereby constituted a body corporate under the name of the Lowell Development and Financial Corporation. The Corporation shall be subject to and have the powers and privileges conferred by the provisions of chapter one hundred and fifty-five, sections eighteen, twenty-seven, thirty-one, thirty-three, and thirty-four of chapter one hundred and fifty-six and the provisions of chapter one hundred and fifty-six B and section four of chapter one hundred and eighty of the General Laws as presently enacted or hereafter amended, except insofar as said provisions are inconsistent with or otherwise restricted or limited by the provisions of this act.

SECTION 4. The principal office of the Corporation shall be located in the city of Lowell.

SECTION 5. The purposes of the Corporation shall be, to correct

THE COMMONWEALTH OF MASSACHUSETTS

Advance Copy

1978

Acts and Resolves

PAUL GUZZI, Secretary of the Commonwealth

Chap. 315. AN ACT AUTHORIZING THE LOWELL DEVELOPMENT AND FINANCIAL CORPORATION.

Be it enacted, etc., as follows:

Section 5 of chapter 844 of the acts of 1975 is hereby amended by striking out, in lines 16 to 19 inclusive, the words ", and, for the first five years of its existence, the corporation shall confine its activities exclusively to the rehabilitation, access to, and restoration of, the central business district."

Approved June 30, 1978

In furtherance of said purposes and in addition to the powers conferred on the Corporation under the provisions of section three, the Corporation shall, subject to the restrictions and limitations hereinafter contained, have the following powers:

(a) To accept, acquire other than by eminent domain, receive, and hold by bequest, devise, grant, gift, purchase, exchange, lease, transfer, judicial order or decree, or otherwise, for any of its objects and purposes, any property, both real and personal, from any source, including grants, loans or advances for or in aid of the purposes of the Corporation from any federal agency or agency of the commonwealth or any political subdivision thereof;

(b) To sell, convey, mortgage, lease, transfer, exchange or otherwise dispose of, any such property, both real and personal that the objects and purposes of the Corporation may require, subject to such limitations as may be prescribed by law;

(c) To borrow money, and, from time to time, to make, accept, endorse, execute, and issue bonds, debentures, promissory notes, bills of exchange, and other obligations of the Corporation for monies borrowed or in payment for property acquired or for any of the other purposes of the Corporation, and to secure the payment of any such obligations by mortgage, pledge, deed, indenture, agreement, or other instrument of trust, or by other lien upon, assignment of, or agreement in regard to all or any part of the property, rights of privileges of the Corporation, whether now owned or hereafter to be acquired;

(d) To make loans to any person, firm, corporation, joint stock company, association or trust located or doing business in the city of Lowell for the purpose of promoting and developing business activities of all kinds, provided such business activities tend to increase employment opportunities within said city;

(e) To acquire improved and unimproved real estate for the purpose of constructing retail, commercial and residential or other business establishments thereon, or for the purpose of disposing of such real estate to others for the construction of retail, commercial or other business establishments as the objects and purposes of the Corporation may require;

(f) To acquire, construct, reconstruct, alter, maintain, sell, convey, transfer, mortgage, pledge or otherwise dispose of retail,

commercial, industrial, residential or business establishments as the objects and purposes of the Corporation may require;

(g) To acquire, subscribe for, own, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the bonds, debentures, notes or other securities and evidences of interest in, or indebtedness of, any person, firm, corporation, joint stock company, association or trust, and while the owner or holder thereof, to exercise all the rights, powers, and privileges of ownership;

(h) To cooperate with and avail itself of the facilities and programs including, but not limited to those of the Small Business Administration of the United States, the Massachusetts Business Development Corporation, the department of commerce and development of the commonwealth, the United States Department of Commerce, the New England Regional Commission, and any similar governmental agencies; provided that at no time shall the Corporation apply for governmental funds in competition with any department, agency, or instrumentality of the city of Lowell without the express written consent of the city manager of said city.

(i) To receive stocks, bonds, donations, gifts and otherwise raise money for the above outlined purposes;

(j) To elect, appoint and employ officers, agents and employees; to make contacts and incur liabilities for any of the purposes of the Corporation;

(k) To employ consultants;

(l) To promote the city of Lowell as a regional retail, commercial, industrial, professional and financial center; and

(m) To do all things and acts necessary or convenient to carry out the powers expressly granted in this act; provided, however, that the purposes shall not include the right to apply for a license to sell alcoholic beverages; and that no part of the funds, property or net earnings of the Corporation shall inure to the benefit of any member, stockholder, other than the city of Lowell, officer of the Corporation or any private individual, and no member, officer of the Corporation, or any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation except to the extent that stockholders are entitled to participate in the distribution of the Corporation's assets upon dissolution under section nineteen, nor shall the Corporation allow any of its property to be used directly or

indirectly in carrying on of propaganda, or otherwise attempting to influence legislation. The Corporation shall not participate in or intervene in any political campaign on behalf of any candidate for public office or publish or distribute any statements with respect thereto. Notwithstanding any other provision herein contained, neither the members, directors, officers, stockholders, nor the Corporation shall participate in any of the "prohibited transactions" as defined in Section 503 of the Internal Revenue Code, as the same may, from time to time, be amended, nor shall the Corporation accumulate income or engage in any activities if the accumulation of income or the activities so engaged in are or would be within the prohibitions of Section 504 of the Internal Revenue Code as the same may be, from time to time, amended, nor shall the corporation be operated at any time for the primary and sole purpose of carrying on a trade or business for profit.

SECTION 6. The authorized capital stock of the Corporation shall consist of forty thousand shares of non-dividend-paying common capital stock with a par value of fifty dollars each. The shareholders may at any time by majority vote issue any part or all of said stock upon such terms as they shall determine or by majority vote the shareholders may delegate to the directors the power of by majority vote to issue any part or all of said stock upon such terms as they shall determine. An individual, corporation, estate, trust, company or partnership shall be entitled to purchase the same from the Corporation from time to time, as long as the latter has in its treasury authorized common capital stock not distributed. Such stock may also be purchased from other individuals, corporations, estates, trusts, companies or partnerships. None of the earnings or profits of the Corporation shall accrue to or be paid to the stockholders of common capital stock as dividends or profits in any form.

SECTION 7. Notwithstanding any rule at common law or any authorization, limitation or any such other provision of any general or special law, or any provision in their respective charters, agreements of associations, articles or organization, or trust indentures, all domestic corporations organized for the purpose of carrying on business within the commonwealth, including without implied limitation any electric or gas company as defined in section one of chapter one hundred and sixty-four of the General Laws, railroad corporations as defined in section one of chapter

one hundred and sixty of the General Laws, financial institutions, trustee and the city of Lowell are hereby authorized to acquire, purchase, hold, sell, assign, transfer, or otherwise dispose of any stocks, bonds, securities, or other evidence of indebtedness of the Corporation and to make contributions to the Corporation, all without the approval of any regulatory authority of the commonwealth.

Any contribution made under this section to the Corporation shall be in addition to any contributions authorized by section twelve C of chapter one hundred and seventy of the General Laws, and by other provisions of general or special law.

SECTION 8. In order to carry out the purposes and powers of the Corporation, the city of Lowell may raise and appropriate, or may borrow in aid of the Corporation, such sums as may be necessary to make a loan or grant to the Corporation.

SECTION 9. The shareholders of the Corporation shall have the powers of the corporation to elect directors as provided in section ten and to exercise such other powers of the Corporation as may be conferred on the shareholders by the by-laws.

SECTION 10. The board of directors of the Corporation shall be elected annually and shall have the powers of the Corporation: (a) at its option, to name an advisory board; (b) to set a fiscal year for the operation of the Corporation; and (c) to make, amend, or repeal the by-laws in whole or in part.

SECTION 11. The business and affairs of the Corporation shall be managed and conducted by an executive committee which shall have full power to commit the board of directors and the Corporation. Said committee shall be elected annually by and from the board of directors, consisting of seven voting members, of which one shall be city manager of the city of Lowell, four shall be elected from among the representatives of those participating financial institutions who have bought or subscribed shares in the Corporation in the amount of one twentieth of one per cent of their greater Lowell regular savings and checking account deposits, and the remaining two elected at large by and from the board of directors, and one non-voting member who shall be a representative of said city's designated development agency chosen by the city manager or in the case of an independent agency, by its board. In the election of the executive board, each director shall have one vote. The president of the Lowell

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Downtown Merchants Association may not be a member of the executive committee. The board of directors shall consist of twenty-five members of which one shall be the city manager of said city, one shall be the president of the Lowell Downtown Merchants Association, and one shall be the president of the Greater Lowell Chamber of Commerce. The remaining twenty-two directors shall be elected by the shareholders, casting one vote on a noncumulative basis per share owned. There shall be elected by the board of directors and from the executive board a president, treasurer, and secretary/clerk.

Directors and officers shall not be responsible for losses unless the same shall have been occasioned by the willful misconduct of such directors and officers.

SECTION 12. The Corporation shall not deposit any of its funds in any banking institution unless such institution has been designated as a depository by a vote of a majority of the directors present at an authorized meeting of the board of directors, exclusive of any director who is an officer or director of the depository so designated. The Corporation shall not receive money on deposit.

SECTION 13. The Corporation shall make reports of its condition not less than annually to the state secretary, which report shall be published in a newspaper of general circulation in the city of Lowell within sixty days of the close of the Corporation's fiscal year. The state secretary shall make copies of such reports available to the commissioner of insurance and to the commissioner of banks, and the Corporation shall also furnish such other information as may, from time to time, be required by the state secretary. In addition, the city manager of said city shall appear in person before the city council of said city not less than twice annually to report the status and plans for the development of the central business district and any real estate owned by the Corporation.

SECTION 14. The first meeting of the Corporation shall be called by a notice signed by three or more of the incorporators, stating the time, place and purpose of the meeting, a copy of which notice shall be mailed or delivered to each incorporator at least five days before the day appointed for the meeting. Said first meeting may be held without such notice upon agreement in writing to that effect signed by all the incorporators. There shall be recorded in the minutes of the meeting a copy of said notice or of such unanimous agreement of the incorporators.

At such first meeting the incorporators shall organize by the choice, by ballot, of a temporary clerk, by the adoption of by-laws, by the election by ballot of directors and by action upon such matters within the powers of the Corporation as the incorporators may see fit. The temporary clerk shall be sworn and shall make and attest a record of the proceedings until the clerk has been chosen and sworn. Eight of the incorporators shall be a quorum for the transaction of business.

Whenever the certificate required by section thirteen of chapter one hundred and fifty-five of the General Laws has been filed in the office of the state secretary, said secretary shall issue and deliver to the incorporators a certified copy of this act under the seal of the commonwealth, and the Corporation shall then be authorized to commence business, and stock thereof to the extent herein or hereafter duly authorized may, from time to time, be issued.

SECTION 15. The Corporation shall not be subject to any of the provisions of chapter sixty-three of the General Laws, nor to any taxes based upon or measured by income which shall be enacted by the commonwealth. The securities, evidences of indebtedness, and shares of stock issued by the Corporation, and income therefrom shall at all times be free from taxation with the commonwealth.

Any stockholder, or holder of any securities, evidences of indebtedness, or shares of the capital stock of the Corporation who realizes a loss from the sale, redemption, or other disposition of any securities, evidences of indebtedness or shares of the capital stock of the Corporation, including any such loss realized on a partial or complete liquidation of the Corporation, and who is not entitled to deduct such loss in computing any of such stockholder's or holder's taxes to the commonwealth, shall be entitled to credit against any taxes subsequently becoming due to the Commonwealth from such stockholders or other holders, a percentage of such loss equivalent to the highest rate of tax assessed for the year in which the loss occurs upon mercantile and business corporations as referred to in section two of chapter sixty-three of the General Laws.

SECTION 16. The provisions of chapter one hundred and ten A of the General Laws shall not apply to the shares of capital stock, bonds, debentures, notes, evidences of indebtedness, or any other securities of the Corporation.

SECTION 17. This charter may be amended by the votes of the shareholders, and such amendments shall require approval by the affirmative vote of two thirds of the shareholders entitled to vote; provided that no amendment of this charter which is inconsistent with the general purposes expressed herein or which eliminates or curtails the right of the state secretary to examine the Corporation or the obligation of the Corporation to make reports as provided in section thirteen shall be made without amendment of this act; and provided further, that no amendment of this charter which affects a stockholder's voting right shall be made without the consent of each stockholder affected by such an amendment.

Within thirty days after any meeting at which amendments of this charter have been adopted, articles of amendment sworn to by the president, treasurer, and a majority of the directors setting forth such amendment and the adoption thereof, shall be submitted to the state secretary, who shall examine them, and if he finds that they conform to requirements of the act, he shall so certify and endorse his approval thereon. Thereupon, the articles of amendment shall be filed in the office of the state secretary and no such amendment shall take effect until such articles of amendment shall have been filed as aforesaid.

Prior to or within sixty days after the effective date of any legislative amendment to this charter, the approval of such amendment shall be voted on by the stockholders of the Corporation at a meeting duly called for the purpose. If such amendment is not approved by the affirmative vote of two thirds of the stockholders entitled to vote, any stockholder who has voted against the approval of such amendment if entitled to vote, or, if not entitled to vote, has registered his disapproval in writing with the Corporation at, or before said meeting, may, within thirty days after said meeting, make a written demand upon the Corporation for payment for his stock.

SECTION 18. The period of duration of the Corporation shall be fifty years, subject, however, to the right of the members to dissolve the Corporation prior to the expiration of said period as provided in section nineteen.

SECTION 19. The Corporation may, upon the affirmative vote of two-thirds of its members petition for its dissolution by order of the supreme judicial or superior court, in the manner provided in section fifty of chapter one hundred and fifty-five of the General Laws. Upon

any dissolution of the Corporation the stockholders, if any, shall be paid on a pro rata basis that percentage of the assets of the Corporation in excess of the obligations of the Corporation which the amounts paid into the Corporation for all stock bears to sum of (1) such amounts paid into the Corporation for all the stock and (2) the amounts of all donations made to the Corporation; provided, that in no event shall a stockholder be paid upon such dissolution more than the amount paid into the Corporation for his stock.

SECTION 20. If the Corporation shall fail to commence operations within three years from the effective date of this act, then this act shall be null and void.

SECTION 21. The provisions of this act are severable, and if any of its provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not impair any of the remaining provisions.

SECTION 22. This act shall take effect upon its acceptance by the city of Lowell.

House of Representatives, December 11, 1975.

Passed to be enacted, *Thomas W. McKea*, Speaker.

In Senate, December 11, 1975.

Passed to be enacted, *Kevin B. Sturt* President.

December 23, 1975.

Approved,

Michael J. Rahn

Governor.