

;ARTICLE 85

DEMOLITION DELAY

(;Article inserted on March 6, 1995*)

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*Date of public notice: February 6, 1995 (see St. 1956, c. 665, s. 5).

SECTION 85-1. **Statement of Purpose.** The purpose of this Article is to establish a predictable process for reviewing requests to demolish certain buildings in order to: (1) establish an appropriate waiting period during which the City and the Applicant can propose and consider alternatives to the demolition of a building of historical, architectural, cultural or urban design value to the City; (2) provide an opportunity for the public to comment on the issues regarding the demolition of a particular building; and (3) minimize the number and extent of building demolitions where no immediate re-use of the site is planned.

SECTION 85-2. **Definitions.** For the purposes of this Article only, the following words and phrases, whether or not capitalized, shall have the following meanings:

1. "Applicant," means the person or persons filing an application for review under this Article.
2. "Application," means an application for review under this Article filed pursuant to Section 85-5.1.
3. "Application filing date," means the date on which the application was filed with the Landmarks Commission, pursuant to paragraph (b) of Section 85-5.1, or with the Inspectional Services Department, pursuant to paragraph (c) of Section 85-5.1.
4. "Commissioner of Inspectional Services," means said Commissioner or his or her designated representative.
5. "Day," means any day, including Saturdays, Sundays, and holidays, except where otherwise specified in this Article.
6. "Demolition," means any act of pulling down, destroying, razing, or removing a building, or the commencement of such work with the intent to complete the same.
7. "Demolition permit," means a permit issued by the Commissioner of Inspectional Services authorizing the demolition of a building pursuant to an application therefor.
8. "Downtown," means the area located east of the centerline of Massachusetts Avenue and north of the northern boundaries of the Massachusetts Turnpike Extension, and Fort Point Channel, but not including the Harborpark, as defined in this Section 85-2.
9. "Harborpark," means the areas governed by the zoning district identified as the Harborpark District in Section 3-1(f) of this Code.

10. "Landmarks Commission," means the Boston Landmarks Commission, as established by Chapter 772 of the Acts of 1975, as amended, and any successor organization thereto.
11. "Neighborhoods," means all the areas of the City not included in the Downtown or Harborpark, as defined in this Section 85-2.
12. "Significant building," means a building with respect to which the Landmarks Commission staff has made a determination, pursuant to Section 85-5.2, that further examination, including the public hearing required by Section 85-5.4, is warranted to determine whether a delay in demolition should be required, pursuant to Section 85-5.6.
13. "State Building Code," means the Massachusetts State Building Code, 780 CMR, as amended.

SECTION 85-3. Buildings Subject to Review. The following buildings are subject to review by the Landmarks Commission staff for the purpose of determining whether such buildings are significant, pursuant to Section 85-5.2.

1. In the Downtown and Harborpark. Any building located in the Downtown or Harborpark, as defined in Section 85-2.
2. In the Neighborhoods. Any building located in the Neighborhoods, as defined in Section 85-2, if:
 - (a) such building, or the portion thereof to which the application relates, is at least fifty (50) years of age; or
 - (b) such building is located in a Neighborhood Design Overlay District, as established by the provisions of this Code applicable to the building's location.

Notwithstanding any contrary provision of this Section 85-3, a building is not subject to review if it is: (1) located within a District or Protection Area designated by the Landmarks Commission pursuant to Chapter 772 of the Acts of 1975, as amended; (2) designated as a Landmark by the Landmarks Commission pursuant to said Chapter 772; (3) located within a Historic District designated by the Landmarks Commission pursuant to M.G.L. Chapter 40C; (4) located within the Historic Beacon Hill District created by Chapter 616 of the Acts of 1955, as amended; or (5) located within the Back Bay Architectural District created by Chapter 625 of the Acts of 1966, as amended.

SECTION 85-4. **Enforcement.**

1. Issuance of Demolition Permit. The requirements set forth in this Article are in addition to, and not in lieu of, the requirements of any other codes, ordinances, statutes, or regulations applicable to the demolition of buildings. The Commissioner of Inspectional Services shall not issue any demolition permit relating to a building that is subject to review, pursuant to Section 85-3, unless:
 - (a) The Commissioner deems that demolition is necessary, pursuant to subsection 2 of this Section 85-4; or
 - (b) The Commissioner: (i) has received a notice issued by the Landmarks Commission staff, pursuant to Section 85-5.2, that the building is not subject to review under this Article, pursuant to Section 85-3, or is not a significant building, pursuant to Section 85-5.3; or (ii) has not received such notice within the time period set forth in Section 85-5.2; or
 - (c) The Commissioner: (i) has received a notice issued by the Landmarks Commission, pursuant to Section 85-5.4, that no demolition delay is required pursuant to this Article; or (ii) has not received such notice within the time period set forth in Section 85-5.4; or
 - (d) The Commissioner has received a notice issued by the Landmarks Commission, pursuant to Section 85-5.8, that there is no feasible alternative to demolition; or
 - (e) The demolition delay period set forth in Section 85-5.6 has expired.
2. Required Demolition or Repair.
 - (a) Demolition. Nothing in this Article shall restrict the authority of Commissioner of Inspectional Services to order the building owner, or the City, to demolish a building at any time if the Commissioner determines that the condition of a building or part thereof presents an imminent and substantial danger to the public health or safety.
 - (b) Repair. Nothing in this Article shall restrict the authority of the Commissioner of Inspectional Services to require the Applicant to take reasonable action to prevent the need for required demolition of a significant building, which may include securing

the building and making it safe so that it does not present an imminent and substantial danger to the public.

3. Issuance of Building, Use, or Occupancy Permit. If the Landmarks Commission staff has determined that a building is significant, pursuant to Section 85-5.2, the Commissioner of Inspectional Services shall not issue any building permit for the erection of a new building on the site of such significant building before issuing a demolition permit for such significant building in compliance with this Article.

If the Landmarks Commission has determined that a significant building has been voluntarily demolished in violation of this Article, the Commissioner of Inspectional Services shall not issue any building permit for new construction, or any use or occupancy permit for any use other than a park or recreational open space, with respect to the premises of such building for a period of two (2) years after the date of the Landmarks Commission's determination. As used herein, "premises" includes the parcel of land upon which the demolished significant building was located and all abutting parcels under common ownership or control.

The Applicant (or the owner of record, if different from the Applicant) shall be responsible for properly securing the building during the time that it is subject to review under this Article. If a significant building is subject to demolition delay, pursuant to Section 85-5.6, and the Applicant fails to secure the building, the loss of the building due to fire or other causes shall be considered voluntary demolition for the purposes of this Section 85-4.3.

SECTION 85-5. **Procedure.**

1. Application. An application for review under this Article shall be made in the manner provided in this subsection 1. If the Applicant is not the owner of record of the building, the owner or owners of record shall co-sign the application.
 - a. Time for Filing Application. The Applicant (or building owner) is encouraged to apply for review under this Article as early as possible, so that any necessary review, and any delay period required by this Article, may be completed prior to, or during, any other review to which the building or its site may be subject.

If a Proposed Project, a Planned Development Area Plan (or an amendment thereof), or an Institutional Master Plan (or an amendment thereof) will involve the demolition of an existing

building, the applicant for approval of such Proposed Project or Plan (or the owner of such existing building, if different from the applicant) is strongly encouraged to request review under this Article before requesting review by the Boston Redevelopment Authority and Board of Appeal, and before such applicant (or owner) incurs expenses in connection with the planning and design of the Proposed Project or Plan. If such applicant (or owner) fails to request sufficiently early review under this Article, the approval by the Boston Redevelopment Authority of the Proposed Project or Plan, and the grant of any permission by the Board of Appeal, shall not limit the discretion of the Landmarks Commission or its staff to require a delay in demolition pursuant to this Article, and expenses incurred in connection with such Proposed Project or Plan shall not be considered hardship for purposes of evaluating the feasibility of alternatives to demolition.

- b. Application for Early Review. At any time prior to filing an application for a demolition permit, the Applicant may apply for review under this Article by submitting a request in writing to the Landmarks Commission. Such request shall indicate that review is sought under this Article for the demolition of a building and shall specify the building's address and its ward and parcel number.
- c. Application for Review in Connection with Application for Demolition Permit. If the Applicant has not requested early review under this Article, pursuant to paragraph (b) of this subsection 1, application for review under this Article shall be made in connection with an application for a demolition permit from the Inspectional Services Department. Within three (3) days after receipt of an application for a demolition permit, the Inspectional Services Department shall transmit a copy of such application to the Landmarks Commission, and such permit application shall constitute the application for review under this Article.

- 2. Staff Determination: Applicability of Review and Significance of Building. After its receipt of an application, pursuant to subsection 1 of this Section 85-5, the Landmarks Commission staff shall determine: (1) whether the building is subject to review under this Article, pursuant to Section 85-3, and (2) whether the building is a significant building, pursuant to the criteria set forth in subsection 3 of this Section 85-5.

The Landmarks Commission staff shall issue a notice of its determination within ten (10) days after the application filing date. If the Landmarks Commission staff determines that the building is significant, such notice shall:

- (a) indicate that the Landmarks Commission will hold a public hearing within the time period required by subsection 4 of this Section 85-5; and
 - (b) invite the Applicant to submit any information that the Applicant believes will assist the Landmarks Commission in:
 - (i) determining whether the building is subject to demolition delay according to the criteria set forth in subsection 5 of this Section 85-5, and (ii) evaluating alternatives to demolition, pursuant to subsection 7 of this Section 85-5.
3. Criteria for Determining Significance. The Landmarks Commission staff shall determine that the building to which the application relates is a significant building if:
- (a) the building is listed in the Landmarks Commission's Comprehensive Preservation Survey as a building that is: (i) listed on the National Register of Historic Places; (ii) recommended for such listing; or (iii) the subject of a pending application for such listing; or
 - (b) the building is the subject of a petition to the Landmarks Commission for designation as a Boston Landmark; or
 - (c) the Landmarks Commission staff finds that the building is historically or architecturally significant because of period, style, method of building construction, or important association with a famous architect or builder; or
 - (d) the Landmarks Commission staff finds that the building has an important association with one or more historic persons or events, or with the broad architectural, cultural, political, economic, or social history of the City; or
 - (e) the Landmarks Commission staff finds that the building is one whose loss would have a significant negative impact on the historical or architectural integrity or urban design character of the neighborhood.
4. Landmarks Commission Hearing to Determine Whether Significant Building is Subject to Demolition Delay.

- a. Hearing Requirement; Time for Issuance of Determination. If the Landmarks Commission staff has determined that a building is significant, pursuant to subsection 2 of this Section 85-5, the Landmarks Commission shall hold a public hearing to determine whether the building is subject to the demolition delay required by subsection 6 of this Section 85-5. At such hearing, the Landmarks Commission also may consider alternatives to demolition, as provided in paragraph (c) of this subsection 4. The Landmarks Commission shall issue its determination pursuant to such hearing within forty (40) days after the application filing date.
- b. Criteria for Requiring Demolition Delay. The Landmarks Commission shall make its determination concerning the requirement of demolition delay according to the criteria set forth in subsection 5 of this Section 85-5. The Applicant is encouraged to present any information the Applicant believes will assist the Landmarks Commission in making its determination.
- c. Early Determination of No Feasible Alternative. At the hearing required by this subsection 4, the Applicant may present any information the Applicant believes will assist the Landmarks Commission in evaluating alternatives to demolition, pursuant to subsection 7 of this Section 85-5. If, at such hearing, the Landmarks Commission finds that demolition delay is required, and also finds that the information presented at such hearing is sufficient for the Commission to issue a determination that there is no feasible alternative to demolition, pursuant to subsection 8 of this Section 85-5, the Landmarks Commission shall issue such determination within the time period set forth in this subsection 4 for the issuance of the Landmarks Commission's hearing determination.
- d. Hearing Notice and Procedure. Except where otherwise specified in this Article, the conduct of any public hearing held pursuant to this subsection 4, including public notices, hearing procedures, votes, records, and the like, shall be governed by the rules and procedures established by the Landmarks Commission through its duly adopted regulations and by-laws.
- e. Notice of Determination. Any determination issued pursuant to this subsection 4 shall specify the reasons for such determination. Such determination shall state whether or not demolition delay, pursuant to subsection 6 of this Section 85-5,

is required. If such demolition delay is required, and the Landmarks Commission has not determined, pursuant to paragraph (c) of this subsection 4, that there is no feasible alternative to demolition, such determination shall specify the date on which such delay period will expire, pursuant to subsection 6 of this Section 85-5.

5. Criteria for Determination that Building is Subject to Demolition Delay.

To determine that a significant building is subject to the demolition delay required by subsection 6 of this Section 85-5, the Landmarks Commission must find that, in the public interest, it is preferable that the building be preserved or rehabilitated rather than demolished. In making such finding, the Landmarks Commission shall consider the following criteria:

- (a) The building's historic, architectural, and urban design significance;
- (b) Whether the building is one of the last remaining examples of its kind in the neighborhood, the City, or the region; and
- (c) The building's condition.

6. Demolition Delay.

- a. Delay Period. If the Landmarks Commission has issued a determination, pursuant to subsection 4 of this Section 85-5, that a significant building is subject to demolition delay, the Commissioner of Inspectional Services shall not issue a demolition permit, pursuant to paragraph (e) of Section 85-4.1, until ninety (90) days have elapsed following the close of the public hearing held pursuant to subsection 4 of this Section 85-5.

Upon expiration of the delay period required by this subsection 6, the Landmarks Commission shall issue a notice in writing stating that such delay period has expired, and the date of such expiration, unless the Landmarks Commission has issued a determination, pursuant to subsection 8 of this Section 85-5, that there is no feasible alternative to demolition.

- b. Invitation to Consider Alternatives. If the Landmarks Commission has determined that a significant building is subject to demolition delay, and has not determined, at the hearing required by subsection 4 of this Section 85-5, that there is no feasible alternative to demolition, the Landmarks Commission

shall invite the Applicant (or the owner of record, if different from the Applicant) to participate in an investigation of alternatives to demolition, pursuant to subsection 7 of this Section 85-5. The Landmarks Commission also shall invite the participation, on an advisory basis, of the Commissioner of Inspectional Services, the Director of the Boston Redevelopment Authority, and the Chairperson of the Boston Civic Design Commission, as well as any individual or representative of any group whose participation the Applicant (or owner) requests, or approves, in writing.

7. Evaluation of Alternatives to Demolition. In evaluating alternatives to demolition pursuant to this Article, the Landmarks Commission may consider such possibilities as: the incorporation of the building into the future development of the site; the adaptive re-use of the building; the use of financial incentives for the rehabilitation of the building; the removal of the building to another site; and, with the owner's consent, the search for a new owner willing to purchase the building and preserve, restore, or rehabilitate it.

In evaluating alternatives to demolition, the Landmarks Commission shall consider, and shall invite the Applicant to present, the following information:

- (a) The cost of stabilizing, repairing, rehabilitating, or re-using the building;
 - (b) Any definite plans for the re-use of the property if the proposed demolition is carried out, and the effects such plans would have on the architectural, social, aesthetic, historic, and urban design character of the surrounding area, as well as on the economy of the area or of the City as a whole;
 - (c) Any conditions the Applicant proposes to accept for the redevelopment of the site that would mitigate the loss of the building; and
 - (d) The availability of other sites for the Applicant's intended purpose or use.
8. Determination of No Feasible Alternative. If, based on its evaluation of alternatives to demolition pursuant to subsection 7 of this Section 85-5, the Landmarks Commission is satisfied that there is no feasible alternative to demolition, the Landmarks Commission may issue a determination prior to the expiration of the delay period required by subsection 6 of this Section 85-5 authorizing the Commissioner of

Inspectional Services to issue a demolition permit pursuant to paragraph (d) of Section 85-4.1.

9. Notice. Any determination or notice issued by the Landmarks Commission or its staff pursuant to this Article shall be transmitted in writing to the Applicant, with copies to the Commissioner of Inspectional Services, the Boston Redevelopment Authority, the Boston Civic Design Commission and, where applicable, to any individual or group that the Landmarks Commission has invited to participate in an exploration of alternatives to demolition, pursuant to subsection 6 of this Section 85-5.

SECTION 85-6. **Regulations**. The Landmarks Commission may promulgate regulations to administer this Article.

SECTION 85-7. **Massachusetts Historic Districts Act**. If any provisions of this Article conflict with M.G.L. Chapter 40C (the "Massachusetts Historic Districts Act"), the provisions of the Massachusetts Historic Districts Act shall govern.

SECTION 85-8. **Severability**. The provisions of this Article are severable, and if any provision of this Article shall be held invalid by a decision of any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision of this Article.