

REGULATIONS OF THE BOSTON LANDMARKS COMMISSION
as adopted on November 30, 1976, Amended July 20, 1977 and
April 8, 1980, and May 27, 1986

Contents:

- Article 1. General Provisions
 - 1.1 Authority
 - 1.2 Purpose
 - 1.3 Internal Management of the Commission
 - Article 2. Procedures for Designation
 - 2.1 Petitions to the Commission
 - 2.2 Preliminary Hearings
 - 2.3 Preparation of a Study Report
 - 2.4 Availability of a Study Report
 - Article 3. Conduct of Public Hearings on Proposed Designations
 - 3.1 Purposes
 - 3.2 Notice
 - 3.3 Order of Appearances
 - 3.4 Sequence of Testimony
 - 3.5 Sworn Testimony
 - 3.6 Written Statements
 - 3.7 Exhibits
 - 3.8 Standards of Evidence
 - 3.9 Availability of Records of the Proceedings
 - 3.10 Prerogatives of the Presiding Officer
 - Article 4. Procedures of Regulation of Landmarks, Districts and Areas
 - Article 5. Amendments
 - 5.1 Form
 - 5.2 Approval
 - Article 6. Severability
 - 6.1 Severability
- Appendices
- A. By-laws of the Boston Landmarks Commission
 - B. Sample Designation Petition Form

Outline of Article 4

- 4.1 Applications for Certificates from the Commission
- 4.2 Processing of the Application
- 4.3 Administrative Review
- 4.4 Public Hearing on Applications
 - 4.4.1 Notice
 - 4.4.2 Conduct of the Hearing
- 4.5 Consideration by the Commission
- 4.6 Certificate of Design Approval
 - 4.6.1 Approval
 - 4.6.2 Approval with Provisos
 - 4.6.3 Approval with Conditions to be Covenants
 - 4.6.4 Disapproval
- 4.7 Notice of Decision
- 4.8 Certificate of Exemption
- 4.9 Certificate of Exemption Based on Hardship
- 4.10 Violations
- 4.11 Records
 - 4.11.1 Plans
 - 4.11.2 Minutes

ARTICLE 1: General Provisions

- 1.1 Authority: These Regulations are adopted pursuant to Section 3 of Chapter 772 of the General Laws of the Commonwealth of Massachusetts for 1975, hereinafter referred to as the enabling statute.
- 1.2 Purpose: These Regulations are adopted for the purpose of interpreting the enabling statute and implementing its administration and enforcement. The Regulations pertain primarily to the relationship between the Boston Landmarks Commission and the public in the conduct of the business of the Commission.
- 1.3 Internal Management of the Commission: The internal management of the Commission shall be governed by its By-laws as provided in the enabling statute. A copy of the By-laws in effect at the time of the adoption of these Regulations is appended hereto as Appendix A.

ARTICLE 2: Procedures for Designation

2.1 Petitions to the Commission

Citation: The Mayor, any ten registered voters of the city or any Commission member may petition the Commission to designate a landmark, landmark district, architectural conservation district or protection area or to amend or rescind such a designation, and the Commission shall within thirty-days next following the filing of such petition hold a preliminary hearing on such petition with the petitioners and arrange for the preparation of a report and, if required, request the appointment of a study committee.

Petitions for designation may be filed with the Executive Director/Secretary to the Commission or his or her designee at the Commission offices at the new City Hall in Boston.

In order to facilitate the processing of a petition, the Commission requires that certain information be contained in the petition, including the following:

- 2.1.1 A brief description of the property proposed for designation (by address or boundaries) and a photograph, if possible;
- 2.1.2 A map showing the location of the property;
- 2.2.3 The category of designation proposed;
- 2.1.4 A brief statement of why the property should be considered for designation.
- 2.1.5 The names, addresses, and telephone numbers of the petitioners.

The Commission shall make forms available to the public for its use in filing petitions for designation. A sample designation petition for is appended hereto as Appendix B.

The Commission may, however, at its discretion accept petitions which do not contain the information enumerated herein.

- 2.2 Preliminary Hearings: As provided in the enabling statute, the Commission shall hold a preliminary hearing within thirty days of the filing of a petition for designation. The purpose of the preliminary hearing is to present to the Commission why a property or properties should be considered for designation, and to initiate the process for preparing a study report on the proposed designation.

Whenever possible, the preliminary hearing will be conducted at the next regular business meeting of the Commission. The petitioners will be notified of the time and place of the preliminary hearing. At its discretion, the Commission may notify other interested persons or organizations of such preliminary hearings.

If, after the Commission has heard reasons why the proposed designation should be considered, the Commission finds cause to reject the petition without further study, it may do so by simple majority vote provided that its reasons for so acting are stated in the decision and are furnished in writing to the petitioners.

2.3

Preparation of a Study Report

Citation: Prior to the designation or amendment of designation of any landmark, landmark district, architectural conservation district or protection area, an investigation and report on the historical and architectural significance of the structures, sites or objects to be designated shall be made. Such report will also attempt to provide an indication of the economic status of the property or properties under consideration for designation by providing such information as assessed value, recent real estate transactions or other appropriate data. The report shall also recommend the boundaries of any proposed landmark, landmark district, architectural conservation district or protection area and recommend standards to be adopted by the Commission in carrying out its regulatory functions provided under Section Five of this act. All recommendations shall be in consideration of any master plan, zoning requirements, projected public improvements and existing and proposed renewal and development plans applicable to the section of the city to be affected by the designation or amendment of designation.

In the case of a landmark which is under consideration for designation, the report shall be prepared by the Commission with the assistance of its staff or consultants or in the case of a landmark district, architectural conservation district or protection area, the report shall be prepared by a study committee consisting of five members of the Commission and six persons who have demonstrated interest in the district or area under consideration and who shall be appointed by the Mayor and confirmed by the City Council, with the assistance of the Commission staff or consultants.

Reports on properties under consideration for designation shall be prepared according to the standards and format established by the Commission.

No report will be considered completed until, in the case of a potential district designation, the report has been adopted by a majority of the members of the study committee and accepted by the Chairperson of the Commission; and in the case of a potential Landmark designation, until the report has been approved by the Executive Director and accepted by the Chairperson of the Commission. Determinations to adopt, accept or approve a report shall be based upon criteria intended to assure a product of high professional standards, including scholarship, accuracy, completeness and related editorial concerns; such determinations shall not be unreasonably delayed or withheld.

- 2.4 Availability of the Study Report: Copies of a completed study report shall be made available to the public at the offices of the Commission at the BRA Library, and at the appropriate local public library branch nearby to the property under consideration. The Commission shall make its study reports, or facsimile copies thereof, available to the public at cost.

As required by statute, the study report will be transmitted to the Massachusetts Historical Commission and the Boston Redevelopment Authority for consideration and recommendations.

ARTICLE 3: Conduct of Public Hearings on Proposed Designations

- 3.1 Purposes: The purposes of public hearings on proposed designations are to present the findings of the study report on the potential designation, to hear testimony of persons having an interest in the potential designation, and to obtain information which may be of assistance to the Commission in arriving at its decision or designation.
- 3.2 Notice: The Commission shall give notice of such public hearing by an appropriate advertisement published in a newspaper of general circulation in the city and, if possible, in at least one periodical, if any exists, circulated in the vicinity of the proposed landmark, landmark district, architectural conservation district or protection area at least three weeks prior to the date of the hearing and by mailing a copy of such advertisement to the owner of the proposed landmark and to every owner as appearing on the then most recent tax list of property abutting the proposed landmark or within the proposed landmark district, architectural conservation district or protection area as determined from the records of the Assessing Department and to the Mayor, the Boston Redevelopment Authority, the City Clerk, the Office of Public Service, and any other person that may have filed a written request for such notice with the Commission. Such request may be made annually in December. Notice of such hearing will announce the availability of a report on the proposed designation.
- 3.2.2 Notice of public hearings on proposed designations shall be consistent with the enabling statute and Chapter 303 of the General Laws of the Commonwealth of Massachusetts of 1975. In seeking to notify the public, the Commission shall endeavor to foster interest and participation in the discussion of the matters under consideration.
- 3.3 Order of Appearances: The normal order of appearances of persons testifying at a public hearing on proposed designations shall be as follows:
- 3.3.1 Opening of the hearing by the Presiding Officer at the hearing;
 - 3.3.2 Incorporation in the record of the notice of hearing;
 - 3.3.3 Statement of the Presiding Officer summarizing the purpose of the hearing;
 - 3.3.4 Presentation of the findings and recommendations of the study report;
 - 3.3.5 Recording of appearances by counsel;
 - 3.3.6 Statements by elected officials and the executive directors of those agencies having review responsibilities as provided in the enabling statute;

- 3.3.7 Statements and presentation of evidence in support of the proposed designation;
- 3.3.8 Questions of other witnesses appearing in support by members of the Commission;
- 3.3.9 Statements and presentation of evidence in opposition to the proposed designation;
- 3.3.10 Questions of other witnesses appearing in opposition by members of the Commission;
- 3.3.11 Rebuttal, if any;
- 3.3.12 Adjournment.
- 3.4.1 Those individuals directly involved with the property under consideration (e.g., owner, managing agent, tenants, users);
- 3.4.2 Property owners from abutting and nearby areas;
- 3.4.3 Residents from abutting and nearby areas;
- 3.4.4. Representatives from interest groups, local organizations and public agencies;
- 3.4.5 Qualified individuals offering professional opinion or expert testimony;
- 3.4.6 The general public.
- 3.5 Sworn Testimony: At the discretion of the Presiding Officer, persons wishing to offer factual matters, professional opinion or expert testimony for the consideration of the Commission may be sworn.

Article 3.6 Written Statements:

Revise to read as follows: "The Commission may, at its discretion, request written statements from witnesses summarizing their testimony. Written statements in support of or in opposition to a designation, or offering additional information, or commentary on information previously provided may be submitted to the Commission at its offices for a period up to and including three working days excluding Saturday, Sunday & Holidays. Under a special circumstances the Chairperson may extend the time for filing of written statements for a period of up to 15 working days. Written statements so submitted will be part of the record for the public hearing and available for public inspection.

- 3.7 Exhibits: Exhibits shall be marked for identification and shall be offered in an orderly fashion. They shall be made available for examination by any and all parties in interest. Leave to file post-hearing exhibits such as photographs and maps may be sought at the hearing, or thereafter in writing, which may be granted by the Chairperson.
- 3.8 Standards of Evidence: Hearings shall be conducted in such a manner as will result in an equitable determination of the issues as promptly as circumstances permit. The Commission shall make determinations as to the relevance and materiality of evidence. The Commission may require a preliminary statement of the nature of the evidence proposed to be elicited from any witness.
- 3.9 Qualification of Witnesses: The Commission shall be the sole judge of the qualifications of an individual seeking to offer expert testimony or professional opinion.
- 3.10 Cross Examination: Cross examination of witnesses is a privilege extended by the Commission to certain qualified, designated individuals in the interest of eliciting material testimony on matters before the Commission. Such privilege may be withdrawn if the cross examination does not serve this purpose or is inconsistent with an orderly, expeditious, equitable hearing.
- 3.11 Availability of Records of the Proceedings: Copies of records of the proceedings, including transcripts, minutes, written statements, exhibits and evidence, shall be made available to the public and all parties at interest at the offices of the Commission. At the discretion of the Commission, wider distribution of copies of such records may be made in like manner as hereinbefore provided in Article 2.4
- 3.12 Prerogatives of the Presiding Officer: The Presiding Officer shall enforce the Regulations of the Commission and may institute such other procedures or take such additional steps as he or she deems necessary to assure an orderly, equitable and expeditious hearing of the matters under discussion.

ARTICLE 4: PROCEDURES FOR CARRHING OUT THE REGULATORY FUNCTIONS OF THE COMMISSION

4.1 Application for Certificates from the Commission

Any person seeking a Certificate of Design Approval or Certificate of Exemption for proposed changes to a property designated by the Boston Landmarks Commission, shall file an application with the Commission.

Such application will be filed at the offices of the Commission with the Secretary to the Commission. Property owners (or their authorized agents) must sign each application, and applications from a condominium building must have a signature representing an endorsement from the trustees (or managing board).

The applicant shall use an application form provided by the Commission for the purpose. The application generally requires the following information:

1. The property name (if any) and address.
2. The name and address of the owner.
3. The name and address of the applicant, if other than the owner.
4. A written description of all proposed physical changes and the reasons for making the changes.
5. The names and addresses of professional advisors and contractors
8. Photos of building.

The Commission may also require such descriptive material as is necessary to evaluate the proposed changes. Such requirements will be specified in the appropriate application form and instructions adopted by the Commission and may include the following:

1. photographs showing existing conditions and surroundings
2. site plan, if relevant
3. elevation drawings
4. specifications
5. material and color samples, if relevant.

4.1 Applications

For a minor project, simple sketches or annotated photographs may be sufficient. For a major project, elevation drawings and additional materials may be required. The staff to the Commission may refuse to accept a petition if sufficient descriptive material has not been provided.

4.2 Processing of the Application

Within eight days (excluding Saturdays, Sundays, and legal holidays) after an application has been filed, the Secretary to the Commission or designee shall decide whether the application shall be acted on as an application for a Certificate of Design Approval or Certificate of Exemption.

4.3 Administrative Review

Administrative review of applications may occur at staff level under the following conditions:

1. Certificates of Exemption involving routine maintenance and repair (or in-kind replacement of existing architectural or site details);
2. The applications involve minor modifications or changes which are deemed easily reversible to include: interior and exterior signs; paint colors; roofing surfaces; storm windows; security window grilles; intercom/buzzer/security devices; replacement wood-constructed windows and doors; repointing; cleaning; restoring minor masonry elements; downspout, gutter, flashing systems; pavers; lighting fixtures; awnings and canopies. In cases where the propriety of staff-level review is in question, the executive director shall determine whether the staff or the Design Review Committee shall act on the application.
3. The Commission shall authorize staff members to review these applications, and two or more staff members shall participate at each review. No formal public notice shall be required for administrative review.
4. Staff determinations shall be based upon interpretations of the general standards and criteria and of the specific standards and criteria which accompany a landmark designation.

The staff shall issue a written notice of decision for each review and include information to the applicant on appealing a decision to the Design Review Committee (See below). A report on administrative reviews shall be routinely distributed to the full Commission, and all correspondence shall be maintained in the regulatory files of the Commission.

All interested parties aggrieved by a staff determination may request a second review of an application before the Design Review Committee provided written notice to that effect is presented to the Commission within 30 days following the date on which the Notice of Decision is mailed or a new application if filed within 30 days following the date on which the Notice of Decision is mailed. No fee shall be charged for a reconsidered application.

4.4 Public Hearing on Application

The Commission shall hold a public hearing on every application determined in accordance with the enabling statute to require a Certificate of Design Approval or Certificate of Exemption for cases of economic hardship except for these cases delegated to administrative review at a staff level. (See 4.3)

In cases where applications are filed from architectural conservation districts (for landmark districts) prior to the appointment of a district Commission, the Commission shall determine whether review of the applications shall occur by the full Commission, by the Design Review Committee, by an interim sub-Commission, or by staff. Full review shall transfer to the district Commission once appointments have been approved by the City Council.

4.4.1 Notice

The Commission shall give ten days notice of such hearings to:

1. Members and Alternates of the Commission
2. The City Clerk (to be posted in the office thereof)

3. Applicants
4. Owners of abutting properties as listed in the most recent tax list
5. The Mayor
6. The Boston Redevelopment Authority
7. The Inspectional Services Department
8. Any person (or organization) requesting notice of such hearing such request (to be made or renewed annually in December.)

The notice of the hearing will contain the following information:

1. Date, time and place of the hearing
2. List of applications to be heard, including address of applicant and a precis of proposed work
3. Notice that applications are available for review at the offices of the Commission.

4.4.2

Conduct of the Hearing

The hearing may be conducted by the chairman, by any other member of the Design Review Committee, or by Commission staff; this individual shall be considered to be the Presiding Officer.

Hearings will normally be held in City Hall or, if appropriate and desirable, in the vicinity of the district (or landmark). The Presiding Officer shall open each hearing by reading a statement which identifies the purpose of the review and establishes an appropriate forum for proceedings by a public body.

Applications will be heard in the order given in the agenda; except that the Presiding Officer may change the order to prevent delays, such as if an applicant is not present and applicants listed later in the agenda are present. The Presiding Officer will ask the applicant to describe the application, and then will ask for staff comments on conformance with the standards and criteria and a recommendation for action. Any member of the public, in order of recognition by the Presiding Officer, may then speak on

the application. The Presiding Officer may, at his or her discretion, change any procedure for conduct of hearings, provided that all persons affected by the application have a fair opportunity to be heard. The chairman may also impose a time limit on testimony.

4.5 Consideration by the Commission

Following the public hearing, the Presiding Officer will file a written report with recommendations for action by the Commission. A summary oral report may also be made to the Commission at the time of consideration. Unless any member of the Commission so requests, a full review of each application shall not take place a second time before the Commission.

As soon as may be convenient following the public hearing, but no later than the thirtieth day following the filing of the application, unless applicant in writing shall allow additional time, the Commission shall act on the application.

4.6 Certificate of Design Approval

The Commission may take the following actions regarding an application for a Certificate of Design Approval:

4.6.1 Approval

The Commission may approve the application as submitted; this action authorizes the Secretary to issue a Certificate of Design Approval.

4.6.2 Approval with Provisos

The Commission may approve the application subject to certain provisos generally pertaining to changes in the proposed work or subsequent design review of elements of the proposed work by either Commission or staff.

4.6.3 Approval with Conditions to be Covenants

Subject to the provisions of Section 6 of Chapter 772, the Commission may approve an application, incorporating into the Certificate of Design Approval conditions to be covenants running with the land, found to achieve the purposes of the enabling act.

4.6.4 Disapproval

The Commission may decide not to issue a Certificate of Design Approval, in which case it shall state in writing its reasons for its decision. If, when considering the application, the Commission finds there is insufficient information to evaluate the proposed changes, it may disapprove the application "without prejudice" for reasons of insufficient information. In this case, the application must be resubmitted for consideration and treated as if it were a new application, unless the applicant agrees to a waiver of the 30-day time limit, and the application is tabled until the next hearing.

4.7 Notice of Decision

Notices of determinations by the Commission shall be sent by certified mail to applicants and by regular mail to those who have at the public hearing requested such notice. A Certificate of Design Approval shall be considered valid for two years following issuance of the notice of decision.

4.8 Certificate of Exemption

According to of the Enabling Act, there are conditions under which the Commission shall issue a Certificate of Exemption. These pertain to applications delineating work which is "ordinary maintenance and repair", or which is required to remove or rectify a condition dangerous to the public safety. A Certificate of Exemption shall also be issued for work authorized under a permit dated prior to the effective date of the Act.

The Commission staff shall review each application to see if any of these conditions apply. Upon determining that any such conditions do apply, a Certificate of Exemption shall immediately be issued.

For purposes of administering the process expeditiously, "ordinary maintenance and repair" will be interpreted to include changes to designated properties which are specifically excluded from the jurisdiction of the Commission by virtue of the design guidelines adopted at the time of designation.

4.9

Certificate of Exemption Based on Hardship

Section 7 of Chapter 772 establishes certain conditions under which the Commission may issue a Certificate of Exemption based on economic hardship to the applicant. No administrative review may occur on an application for a Certificate of Exemption based on Hardship.

An applicant seeking a Certificate of Exemption based on financial hardship shall be required to produce evidence of substantial financial hardship.

At the time of filing for a Certificate of Exemption based on hardship, the applicant shall supply the Commission with the following information:

1. The amount paid for the property, the date of purchase and the party from whom purchased (including a description of the relationship, if any, between the owner and the person from whom the property was purchased).
2. The assessed value of the land and improvements thereon according to the two most recent assessments.
3. Real estate taxes for the previous two years.
4. Annual debt service, if any, for the previous two years.
5. All appraisals obtained within the previous two years by the owner or applicant in connection with the purchase, financing or ownership of the property.
6. Any listing of the property for sale or rent, price asked and offers received, if any.
7. Any consideration by the owner as to profitable adaptive uses for the property.

If the property is income-producing, an owner must also provide: annual gross income from the property for the previous two years; itemized operating and maintenance expenses for the previous two years; and cash flow, if any, during the same period.

4.10

Violations

Commission staff shall notify owners of record or sites where the changes are being made without Commission approval that they are in violation of the enabling act and that they are required to report directly to the Commission about the violation. The staff shall issue notices of violation to the owners of record, describing the violation and the steps needed to rectify it, in response to complaints filed by any of the following:

1. any Commissioner or alternate;
2. the executive director or any member of the staff;
3. the City of Boston Inspectional Services Department; or
4. any person, if the violation is certified by a person listed above.

Commission staff shall send notices of violation by first class mail upon receipt of the complaint, subject to certification. The staff shall simultaneously file a complaint with the Inspectional Services Department. If the owner or record does not respond within ten days of the violation notice, the secretary shall send a second notice expressing the intent of the Commission to present the case to Corporation Counsel if no response is received.

If no response is forthcoming, the secretary shall be required (with the consent of the executive director or the chair of the Commission) to present the violation to the Corporation Counsel for appropriate action to require conformance with the enabling act.

A cease and desist order shall be issued where work deemed hazardous to the preservation of the landmark (e.g., sandblasting, removal of significant artifact, demolition) is underway and immediate notification is required to suspend such activity. Such orders shall be delivered in person to the site.

4.11 Records

All records of the regulatory function of the Commission shall be on file in the Environment Department and available for public inspection.

4.11.1 Minutes

Minutes, taken by Commission staff, shall include: a summary of discussion of each application presented at the public hearing; a record of any motions, including the name of the member making the motion, and a listing of all yea and nay votes cast. No minutes need be taken for administrative reviews (See Section 4.4). The minutes shall be available to all members and to the public.

ARTICLE 5: Amendments

- 5.1 Form: Amendments to these Regulations shall be proposed in writing and shall be made available to the public and the members of the Commission at such time as notice is given for the public hearing at which they are to be considered.
- 5.2 Approval: Amendments to these Regulations may be considered at any regular, special or annual meeting of the Commission subsequent to a public hearing on the proposed amendments. Approval shall be consistent with the following provisions by the By-laws: Article 4.2.b shall be used to determine the quorum required and Article 4.3 shall be used to determine the votes required for approval.

ARTICLE 6: Se verability

6.1 Se verability: The provisions of these Regulations are severable; if any such provision or provisions shall be held invalid or unconstitutional by any decision of any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provisions of the Regulations.