



Michael S. Dukakis
Governor

Kentaro Tsutsumi
Chairman

The Commonwealth of Massachusetts

Executive Office of Public Safety

State Board of Building Regulations and Standards

*McCormack State Office Building
One Ashburton Place - Room 1301
Boston, Massachusetts 02108*

(617) 727-3200

December 29, 1986

Mr. Joseph J. Cellucci, Building Commissioner
Inspectional Services Department
City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

Re: Issuance of Permits/Validity of Local Ordinances

Dear Commissioner Cellucci:

You have asked that I speak to the issue of local ordinances which attempt to restrict or regulate the issuance of building or demolition permits by a local building commissioner or inspector of buildings.

The issuance of building or demolition permits is governed by the State Building Code. Presently, the only method whereby a city or town may impose any requirements or standards which are more restrictive than the State Building Code is contained in Chapter 143, Section 98 of the General Laws. This process requires a petition to the Board of Building Regulations and Standards by the municipality, and a positive action by that body.

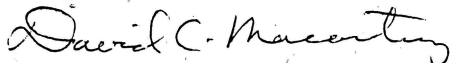
When the first State Building Code became effective on January 1, 1975, Chapter 802 of the Acts of 1972 provided that all ordinances and by-laws of cities and towns or regulations of State Agencies, Boards, Commissions, or Departments in conflict with the State Building Code ceased to be effective on that date. Since that date, the power to enact more restrictive requirements than those contained in the State Building Code has always been specifically delegated by Chapter 23B, Section 21 to the State Building Code Commission, and most recently, to the Board of Building Regulations and Standards by Chapter 143, Section 98.

Commissioner Cellucci
December 29, 1986
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For these reasons, no local ordinance may restrict or regulate the issuance of building or demolition permits unless specific authorization has been granted by the authority which promulgates the State Building Code.

Very truly yours,

STATE BOARD OF BUILDING REGULATIONS AND STANDARDS



David C. Macartney
Technical Director

DCM/k



Michael S. Dukakis
Governor

Kentaro Tsutsumi
Chairman

Charles J. Dinezio
Administrator

The Commonwealth of Massachusetts

State Board of Building Regulations and Standards

CODEWORD

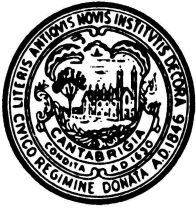
December, 1986

WHO REGULATES BUILDING PERMITS?

In recent months, we have investigated several complaints about illegal practices of certain cities and towns with regard to issuance of building permits. In one incident, a town Board of Selectmen actually issued a building permit, and prevented the building official from using town counsel to challenge this action. Due to our intervention, the Attorney General's Office is now undertaking legal action to resolve this problem.

Many other complaints have dealt with procedures in which a permit applicant is forced to obtain sign-offs from other municipal officers or boards before he may apply for a building permit. We regard this type of process as illegal, since it effectively delegates the authority to issue or refuse building permits to the other officials and boards. Chapter 143, Section 3 of the General Laws gives this authority **only** to the Building Official, and does not authorize delegation of the authority to grant or deny the permits.

A building official is free to consult with other municipal authorities to assist him in the performance of his duties. However, a building official is also bound by certain requirements - he must issue or deny permit applications within thirty days, and any denials must be specific as to sections of code or law violated. Other municipal authorities are not bound by these limits, and are provided with their own enforcement tools to do their respective jobs. The bottom line is that the building code, not any other regulation or code, has statutory authority to regulate the issuance or denial of building permits, and the building official, not any other municipal authority, is empowered by law to administer the building code and to issue or deny building permits.



CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139
TEL. 498-9011

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

RICHARD C. ROSSI
Deputy City Manager

January 12, 1987

To the Honorable, the City Council:

A dispute exists as to the validity of several of the City's ordinances insofar as they may be viewed as attempting to restrict or regulate the issuance of building or demolition permits by the Commissioner of Inspectional Services. Provisions in the Historical Commission Ordinance No. 965, and the Rent Control Board Ordinance insofar as it purports to require removal permits prior to a demolition permit issuing are implicated in this dispute.

The Commissioner of Inspectional Services has informed me that he has been advised by the State Board of Building Regulations and Standards that any City ordinance that is more restrictive than the State Building Code, relative to issuance of building or demolition permits, is invalid unless it has first been approved by the Board under General Laws Chapter 143, section 98. I am attaching a copy of a letter to Joseph J. Cellucci, Building Commissioner, from David C. Macartney, Technical Director of the State Board of Building Regulations and Standards. Also attached is a copy of a newsletter from the Board discussing the responsibilities of the Building Official relative to building and demolition permits.

The Law Department has conferred with Mr. Macartney and informs me that the Board encourages Building officials to cooperate with other municipal authorities. The Board approves notification to other municipal authorities of the filing of applications for permits. The Board strongly opposes any sign-off approval of an application or any power of review of the allowance or denial of the permit by other municipal authorities.

None of the ordinances cited above has been submitted to the Board for review and approval. It is my opinion that the question of the validity of these ordinances must be resolved to prevent recurring conflicts in the permit process. It appears that one possible solution to this dispute might be to proceed with the administrative process required by General Laws Chapter 143, section 98.

Very truly yours,

Robert W. Healy
City Manager

Re: dispute as to the validity of several City ordinances insofar as they may be viewed as attempting to restrict or regulate the issuance of building or demolition permits by the Commissioner of Inspectional Services.

In City Council,

January 12, 1987

*Referred to the Hearing
Hearing Postponed to 1/26/87*