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Barney Heath
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MEMORANDUM

DATE: October 25, 2019

TO: Councilor Susan Albright, Chairman
Members of the Zoning and Planning Committee

FROM: Barney Heath, Director, Department of Planning and Development
James Freas, Deputy Director
Katy Hax Holmes, Chief of Preservation Planning

RE: **#204-19 - Review and possible amendment of Demolition Delay and Landmark Ordinances**
COUNCILORS KELLEY, ALBRIGHT, AUCHINCLOSS, COTE, CROSSLEY, GREENBERG, KALIS, KRINTZMAN, LAPPIN, LEARY, LIPOF, MARKIEWICZ, NORTON, AND SCHWARTZ requesting a review and, if appropriate, an update of Chapter 22, Sections 22-50 to 22-76 that relate to demolition delays, historic designation, and landmarking

MEETING DATE: October 28, 2019

CC: City Council
Planning and Development Board
Andrew Lee, Associate City Solicitor

Staff will present the results of its analysis of the Demolition Delay and Local Landmark ordinances and recommendations for changes. An Excel spreadsheet is provided with this memo that summarizes: 1) issues that were identified during this process; 2) ordinances in which the issue was identified; and 3) a recommendation. A proposed red-lined version of both ordinances is also attached.

Demolition Delay Ordinance (22-50)

The Demolition Delay ordinance was adopted in 1985, ten years after the creation of the Newton Historical Commission (NHC) under City Ordinance Chapter 22, Section 22-50. This ordinance was intended to create a waiting period to allow the identification and possible preservation of historically significant buildings and structures over 50 years old in Newton. The Newton Historical Commission administers both partial and full demolition applications.

Staff, in partnership with the commission chair, is authorized to make the initial determination of historical significance. In the Demolition Delay ordinance, the following issues were noted:

- Abutter notices
Abutter notices are currently mailed by the City to alert immediate abutters to the proposed demolition property. To date, notices are mailed only to immediate abutters. Staff is proposing to expand to abutter notices to 300' from the subject property to alert more neighbors of the planned demolition, and to be consistent with the abutter notice practices for special permit projects. Funds required for additional postage could be gleaned from a new full-demo application fee (see below).

- Appeals process
The current process for appeals involves a request by an applicant to have an item re-heard by the Commission. The applicant has a fixed time in which to file the appeal and it is heard at the next regularly scheduled hearing of the Commission. The Commission accepts the appeal if the applicant demonstrates there is information that was not considered as part of the initial review for historical significance. Five other city ordinances were reviewed for language related to an appeals process. In Boston, Brookline, Cambridge and Worcester, no appeals process was articulated in their demolition ordinances. In Hingham, the applicant may appeal to superior court.

In addition, the appeals section in the Newton ordinance currently grants the Commission authority to let an appeal expire and then revert to the original decision as a matter of course. Staff proposes to rewrite this section to establish a fixed appeal period with no provision for reverting to the original decision. Appeals will also have the option of moving forward to superior court.

- Withdrawal of a property from the demo delay process
The current ordinance has no provision for a property owner to withdraw a property from a demolition delay. Only Somerville's ordinance was found to have this provision. Language for the Newton ordinance is proposed by staff to allow owners to withdraw their properties from a demolition delay without prejudice. For example: if a demolition delay is ended by withdrawing an application, a small project at a future time could be approved administratively and not have to go before the Commission to waive the delay. UPDATE: Law review of this provision is ongoing due to potential conflicts with other city ordinances.
- 50-year benchmark
The Newton Historical Commission currently reviews properties over the age of 50 years for which partial or full demolition is proposed. This is a rolling cut-off date. Staff reviewed demolition delay ordinances from Boston, Cambridge, Salem, Somerville, and Worcester to determine their benchmark dates. Somerville had a 75-year benchmark and Worcester maintained a list of significant properties city-wide. The remaining communities had a 50-year benchmark: Boston, Cambridge, and Salem. Amongst this

group, Newton has the highest number of post-World War II neighborhoods and houses. This means that the effect of lessening the benchmark to, say, 75 years would remove the mandated cooling-off period in the demo delay ordinance and potentially negatively affect post-war neighborhoods in Newton. Staff is recommending that the 50-year benchmark remain in place.

- Definitions of Historical Significance and Preferably Preserved

The Demolition Delay ordinance currently contains language defining ‘historically significant’ and ‘preferably preserved’ that does not clearly define the differences. Language used in ordinances from Boston, Brookline, Cambridge, Salem, Somerville and Worcester defined ‘preferably preserved’ as properties that meet the significance criteria and were also in the public interest to preserve. The Planning and Law departments proposed draft language to better distinguish the differences.

- 150’ from a local historic district (LHD) boundary

This item is currently included in the historical significance definition and was identified by a user of this ordinance as of questionable import. This category of significance was not easily found in other city ordinances. Newton, however, has four separate local historic districts, each with distinct architectural and contextual themes. Internal review of this criteria for review was deemed to be necessary to ensure that the City’s four LHDs do not become ‘islands.’ Staff recommends retaining this category for review in the demolition delay ordinance.

- General organization and clarity of ordinance

The organization of the demolition delay ordinance needs work. The definitions section needs to be alphabetized; paint color as criteria for review needs to be removed; sections of the ordinance need to be rearranged; and the definitions of terms need to be clarified. This is an ongoing effort as the larger issues in the ordinance are identified and remedied.

Local Landmark Ordinance (22-60)

Established in 1993 under City Ordinance Chapter 22, Sections 22-60 through 22-75, Newton’s Local Landmark Ordinance was created to serve as a municipal tool to preserve the City’s most historically significant buildings. The Landmarks Ordinance in the City of Newton provides the highest level of protection for properties determined to be the most architecturally or historically significant in the city. Under the Landmarks program, the Newton Historical Commission identifies buildings, structures, landscapes, and places that define the historic character of the city and have, over time, helped to establish a sense of place. In the Local Landmarks ordinance, the following issues were noted:

- Role of Planning Board

The Planning Board is included in the landmark ordinance in accordance with the Comprehensive Plan. Current language in the ordinance requires that the Planning Board be made aware of landmark items on the agenda but does not specify any further

role for the Board in their review. Ordinances from other communities were not consulted for this item, since a proposed solution to the vagueness of the ordinance was simple. Staff proposes adding language that the Planning Board receives a copy of the landmarks report that is prepared by city staff.

- Owner notification

Owners of properties that are under consideration and review as local landmarks have remarked in the past that they have not received mailings from the City with respect to the consideration of their properties. Staff proposes that the owners be notified by certified mail to ensure timely receipt of notices.

- Neighbors as appellants

The current ordinance allows owners, immediate abutters, owners of properties in the same historic districts, or non-profit organizations (whose mission includes some aspect of historic preservation as a founding principal) to appeal decisions made with respect to local landmarks. This portion of the ordinance was identified as providing too many opportunities for litigation. Staff review of this ordinance found no reason to eliminate a party from appealing a decision to landmark a property.

- Hardship

Hardship was identified as a category under which the landmark ordinance could be improved. City staff review of the ordinance found there was already a section in the ordinance which addressed potential hardships after properties were landmarked. City staff believes that this response was sufficient on the issue of potential hardship, since the language matched what was already included in chapter 40C ordinance language for local historic districts.

- Nominators

Concern was expressed that in the ordinance, the Newton Historical Commission had the authority to both nominate local landmarks and vote to create them. It was said that powers granted to the NHC at both ends of the landmarking process created an appearance of bias. City staff considered ways in which the expertise of the Commission, as required in the Certified Local Government agreement, could be retained while assigning the Commission's involvement to one end of the landmarking process. Staff recommends removal of the Commission from the nomination process outlined in the ordinance and instead proposes authorizing the Commission to accept nominations initiated by the following entities: property owners of record, city councilors, the Director of Planning and Development, Commissioner of Inspectional Services, or by a petition containing a minimum of ten Newton citizens. Both Boston and Cambridge accept petitions from a minimum of ten citizens to initiate landmark nominations.

- Massachusetts Historical Commission (MHC)

The MHC is currently included in the local landmark ordinance as a ‘certifier’ of eligibility opinions for historically significant properties. MHC recently requested to be removed from the ordinance for two stated reasons: 1) it believed that a state agency included in a local ordinance was inappropriate and possibly not legal; and 2) it believed that its role in Newton was redundant because as a Certified Local Government, Newton hired professional staff with education and experience in historic preservation and could form its own professional opinions on National and State-register eligibility. Staff recommends removing the Massachusetts Historical Commission from the landmark ordinance.

Lastly, procedural improvements were considered in order to streamline implementation of both ordinances and improve outcomes from NHC decisions. The following areas of improvement were identified with respect to process:

- Training
- Agendas and LL nominations
- Online access to NHC decisions
- Yard signs for full demo proposals
- Clarify abutter notice language
- Charge application fee for applications for full demolition

Attachments

- 1) Article III. Historical Provisions. Section 22-38 to 22-73. Red-lined copy by Planning and Law
 - 2) Excel spreadsheet of categories for review
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DIVISION 1. COMMISSIONS AND DISTRICTS

Sec. 22-38. Historical commission— establishment, purpose, appointment, officers.

(a) There is hereby established under General Laws chapter 40, section 8D a Newton Historical Commission for the preservation, promotion and development of the historical or archeological assets of the city, to be governed by and operated in accordance with the provisions relative thereto of the General Laws or any special act or amendment thereto.

(b) Said commission shall consist of seven members, including one member from ~~two nominees submitted by the Historic Newton, Inc. Jackson Homestead Trustees~~; one member who is a registered architect from ~~two nominees submitted by~~ the Boston Society of Architects; one member from ~~two nominees submitted by~~ the Newton Board of Realtors; and four members who shall be appointed at large. If within thirty (30) days after submission of a written request for nominees to any of the organizations herein named no such nominations have been made, the mayor may proceed to appoint the commission without nomination by such organization. There also shall be appointed no more than seven alternate members, who shall be selected at large.

(c) The permanent members shall elect one member as chair ~~and one member as secretary~~. In the event a member is absent or unable to act for any reason, the chair shall designate an alternate member to act. ~~In the event the chair is absent or unable to act for any reason, the sitting commission will elect a member to serve as acting chair acting chair to serve for one hearing only.~~

~~(d) Members and alternate members of the historical commission shall by their appointment to the historical commission also be appointed as members and alternate members respectively of the historic district commission(s) established under section 22-40. (Ord. No. 102, 12-15-75; Ord. No. X-17, 4-16-02)~~

Cross references—Division of city into zoning districts, §1-4; regulations governing appointment to and service on commissions and committees, §2-8

Sec. 22-39. Same—Powers and duties.

(a) The historical commission shall be possessed of powers and subject to duties in accordance with the provisions of the General Laws relative thereto, as they may be amended, to the extent of monies given, granted, contributed, bequeathed and appropriated.

(b) The historical commission shall have in addition to the powers and duties of an historical commission under the General Laws the following further powers and duties, subject to appropriation or other receipt of monies, and may, in exercise of any of its powers or duties accept and expend such monies and employ clerical and technical assistants and consultants:

- (1) to cooperate with, consult, and serve as an advisory body on matters affecting the historical assets of the city to officers, departments, boards, commissions, committees and other agencies of the city, and to assure that the comprehensive plan embodies appropriate preservation of those assets;
- (2) to conduct a survey of Newton buildings and sites for the purpose of determining those of historic significance architecturally or otherwise;
- (3) to propose as it deems appropriate the establishment of additional historic districts and changes in existing historic districts;
- (4) upon recommendation of the historic district commission(s) established under section 22-40, and in accordance with the Historic Districts Act, to act as the historic district study committee for the establishment of additional historic districts;

- (5) to offer assistance to and advise owners and occupants of historic buildings and structures ~~on problems of preservation;~~
- (6) acquire in the name of the city by gift, purchase, grant, bequest, devise, lease or otherwise the fee or lesser interest in real or personal property of significant historical value and may manage the same; and may administer on behalf of the city any properties or easements, restrictions or other interests in real property which the city may have or may accept as gifts or otherwise and which the city may designate the commission as the administrator thereof. (Ord. No. 102, 12-15-75)

Sec. 22-40. Historic district; purpose, governance, appointments, officers.

(a) *Purpose.* The purpose of this section is to promote the preservation and protection of the distinctive characteristics of buildings and places significant in the history of the City of Newton, the maintenance and improvement of settings of such buildings and settings, and the encouragement of design compatible with the existing architecture.

(b) *Definitions.* As used in this section, the following terms shall be defined as set forth herein unless otherwise stated:

To alter, alteration: To rebuild, reconstruct, restore, remove, demolish or other similar activities, ~~including a change in exterior color.~~

Building: A combination of materials forming a shelter for persons, animals or property.

Certificate of Appropriateness: The certificate issued by a commission if it determines that the construction or alteration for which an application for a certificate of appropriateness has been filed will be appropriate for or compatible with the preservation or protection of the district.

Certificate of Non-applicability: The certificate issued by a commission if it determines that the construction or alteration for which a certificate of appropriateness or a certificate of non-applicability has been filed does not involve any exterior architectural feature or involves an exterior architectural feature which is not subject to review by the commission.

Certificate of Hardship: The certificate issued by a commission if it determines that owing to conditions especially affecting the building or structure involved, but not affecting the historic district generally, failure to approve an application will involve a substantial hardship, financial or otherwise, to the applicant and such application may be approved without substantial detriment to the public welfare and without substantial derogation from the intent and purposes of this section. A certificate of hardship shall also be issued by the commission in the event that it fails to make a determination on an application within sixty (60) days of filing.

Commission: An historic district commission as established hereunder.

To construct, construction: To build, erect, install, enlarge, move and other similar activities.

District: An historic district established pursuant to chapter 40C and these ordinances consisting of one or more district areas.

Exterior architectural features: Such portion of the exterior of a building or structure as is open to view from a public street, public way, public park or public body of water, including but not limited to the architectural style and general arrangement and setting thereof, the kind, color and texture of exterior building materials, the color of paint or other materials applied to exterior surfaces and the type and style of windows, doors, lights, signs and other

appurtenant exterior fixtures.

Person aggrieved: The applicant, an owner of adjoining property, an owner of property within the same historic district located within one hundred (100) feet of said property lines and any charitable corporation which has as one of its purposes the preservation of historic structures or districts.

Sign: Any symbol, design, or device used to identify or advertise any place of business, product, activity or person.

Structure: A combination of materials other than a building, including a sign, fence, wall, terrace, walk or driveway, and all supporting assemblies, supporting structures, equipment and facilities ancillary or accessory to antennae and wireless communication equipment as described in Sec. 30-18A of the Newton Revised Ordinances, entitled Wireless Communications Devices.

(c) *Districts.*

- (1) A district shall consist of one or more district areas as delineated in the map or maps identified in subsection (c)(4) hereof.
- (2) Prior to the establishment of additional districts, an investigation and report on the historical and architectural significance of the buildings, structures or sites to be included in the proposed district shall be made by the existing district commission(s) or by the historical commission acting as an historic district study commission pursuant to the provisions of G.L. C. 40C, sections 3 and 4, as set forth in subsections (c)(2) - (4) of this section. The buildings, structures or sites to be included in the proposed district may consist of one or more parcels or lots of land, or one or more buildings or structures on one or more parcels or lots of land. Copies of the report shall be transmitted to the planning board and to the Massachusetts Historical Commission for their respective consideration and recommendations. Not less than sixty (60) days after such transmittal, the study committee shall hold a public hearing on the report after due notice given at least fourteen days prior to the date thereof, which shall include a written notice mailed postage prepaid, to the owners as they appear on the most recent real estate tax list of the board of assessors of all properties to be included in such district or districts. The committee shall submit a final report with its recommendations, a map of the proposed district or districts and a draft of the proposed ordinance to the city council for its consideration. Adoption of such ordinance shall require a two-thirds (2/3) vote of the city council.
- (3) In the case of the enlargement or reduction of an existing district, the investigation, report and hearing shall be conducted by the historic district commission having jurisdiction over such district. In the case of a creation of an additional historic district, the investigation, report and hearing shall be conducted by the existing historic district commission or commissions acting jointly if there is more than one historic district commission, provided, however, that the existing historic district commission(s) may relinquish all power relative to the establishment of an additional district(s) as permitted by G.L. C. 40C, section 3, in which event the historical commission shall serve as an historic district study committee to perform all acts required of historic district commission(s) for the establishment of additional districts.
- (4) A district created pursuant to this ordinance or any amendment to the boundaries of an existing district shall not become effective until a map or maps setting forth the boundaries of the new district, or the change in the boundaries of an existing district has been filed with the city clerk and recorded in the Middlesex South Registry of Deeds.

(d) *District Commissions.*

- (1) Each district shall be administered by a commission consisting of seven (7) members, appointed by the

mayor subject to confirmation by the city council. Initial terms shall be as follows: two (2) members shall be appointed for one (1) year; two (2) members shall be appointed for two (2) years and three (3) members shall be appointed for three (3) years. The mayor shall fill the vacancies in membership arising from expired terms by appointments for a term of three (3) years. Appointments to membership shall be so arranged that the term of at least one member will expire each year, and their successors shall be appointed in the same manner as the original appointment. Any vacancy in the membership of the commission shall be filled for the unexpired portion of any member's term by the mayor.

- (2) A commission shall include one member from two nominees submitted by the local chapter of the American Institute of Architects; one attorney; one realtor from two nominated by the local Board of Realtors; one member or alternate member of the historical commission; one additional member or alternate member of the historical commission or one member nominated by the Newton Historical Society; and two residents or property owners from the district administered by the commission. If within thirty (30) days after submission of a written request for nominees to any of the organizations herein named no such nominations have been made, the mayor may proceed to appoint members without nomination by such organization.
- (3) The mayor shall appoint at least two and no more than seven alternate members to each commission. Alternate members need not be from nominees of organizations entitled to nominate members. In the event that a permanent member is absent or unable to act for any reason, the chairman of the commission shall designate an alternate member to act in place of a permanent member. The initial appointments of alternate members shall be for terms of two or three years, with appointments thereafter being for three year terms.
- (4) Each member and alternate member to a commission shall continue to serve in office after the expiration date of his or her term until a successor is duly appointed, except as provided in subsection (d)(5) hereof.
- (5) The term of the historical commission member shall be coterminous with his or her membership on the historical commission. Any member of a commission appointed by virtue of his or her residence or ownership of property within the district who removes his/her residence or property ownership from such district shall be considered to have resigned from his membership on such commission.
- (6) A commission shall at the beginning of each fiscal year hold an organizational meeting and elect a chairman, a vice chairman, and secretary from among the permanent members, and file notice of such election with the city clerk.
- (7) Meetings of a commission shall be held at the call of the chairman, at the request of two permanent members and in such other manner as a commission shall determine.
- (8) Four (4) members of a commission shall constitute a quorum.

(e) *District Commission Powers and Duties.*

- (1) A commission shall regulate the construction and/or alteration of any building(s) or structure(s) within the district over which it has jurisdiction in accordance with the provisions of G.L. c. 40C and the procedures and criteria established by this ordinance. Except as otherwise provided in subsection (h) hereof or in the ordinance provision establishing a specific district, no building or structure within a district shall be constructed or altered in any way that affects exterior architectural features unless the commission having jurisdiction over that district shall first have issued a certificate of appropriateness, a certificate of non-applicability or a certificate of hardship with respect to such construction or alteration.

- (2) A commission may adopt and/or amend reasonable rules and regulations which are consistent with the provisions of this section and with G.L. c. 40C, and which set forth such procedures as it deems desirable and necessary for the regulation of and conduct of its business, including requirements for the contents and form of applications for certificates, fees, hearing procedures, and other matters. The commission shall file a copy of any such rules and regulations with the city clerk. All fees imposed by the commission shall be approved in advance by the city council.
 - (3) A commission shall keep a permanent record of its decisions, transactions, resolutions, and of the vote of each member participating therein.
 - (4) A commission shall cooperate with, consult and advise officers, departments, boards, commissions, committees and other agencies of the city on matters affecting the administration of the district under its jurisdiction.
 - (5) A commission shall offer assistance to and advise owners and occupants of historic buildings and structures within the district of its jurisdiction on problems of preservation.
 - (6) A commission may propose as it deems appropriate enlargements and reductions to the district under its jurisdiction; and in accordance with the provisions of this section and G.L. c. 40C, conduct investigations, prepare reports and conduct public hearings concerning enlargements or reductions to the district.
 - (7) A commission may act relative to the establishment of additional historic district(s) as permitted by G.L. c. 40C, or may relinquish all its powers relative to the establishment of additional historic districts and recommend that the historical commission act as an historic district study committee to perform all acts required of an historic district commission(s) for the establishment of additional historic districts.
 - (8) A commission may, subject to appropriation or receipt of other monies, employ clerical and technical assistants and consultants and incur other expenses appropriate to the carrying on of its work and may accept money gifts and expend the same for such purposes.
- (f) *Procedures for Review of Applications for Certificates of Appropriateness, Non-Applicability and Hardship.*
- (1) Any person who desires to obtain a certificate from a commission shall file an application with a commission. The application shall be accompanied by such plans, elevations, specifications, photographs, and other information, including in the case of demolition or removal a statement of the proposed condition and appearance of the property thereafter, as may be reasonably deemed necessary by the commission to enable it to make a determination on the application. The date of the filing of an application shall be the date on which a copy of such application with all supporting documentation is received at the city's department of planning and development. A commission shall determine within fourteen (14) days after the filing of an application for a certificate whether the application involves any exterior architectural features which are subject to approval by the commission.
 - (2) If the application involves any features which are subject to approval, a commission shall hold a public hearing at its next regularly scheduled meeting after the filing of a completed application for a certificate of appropriateness or a certificate of hardship unless additional time is agreed to by the applicant in writing or unless such hearing is dispensed with as provided in subsection (f)(3) hereof. Copies of the public notice of the time, place and purposes of the public hearing shall be mailed to the applicant, to the owners of all adjoining property and to other property owners deemed by the commission to be materially affected thereby, to the planning and development board, to any person filing written request for notice of hearings and to such other persons as the commission shall deem entitled to notice.

- (3) A public hearing on an application need not be held if such hearing is waived in writing by all persons entitled to notice thereof. In addition, a public hearing on an application may be waived by a commission if the commission determines that the exterior architectural feature involved or its category, as the case may be, is so insubstantial in its effect on the district that it may be reviewed by the commission without public hearing on the application, provided, however, that if the commission dispenses with a public hearing on an application, notice of the application shall be given to the owners of all adjoining property and other property deemed by the commission to be materially affected thereby as above provided and ten (10) days shall elapse after the mailing of such notice before the commission may act upon such application.
- (4) A commission shall render a decision within sixty (60) days after the filing of a completed application for a certificate of appropriateness unless further time for a decision is allowed, in writing, by the applicant. If the commission shall fail to make a determination within sixty (60) days, the commission shall thereupon issue a certificate of hardship.
- (5) In the case of a disapproval of an application for a certificate of appropriateness, a commission shall place upon its records the reasons for such determination and shall forthwith cause a notice of its determination, accompanied by a copy of the reasons therefore as set forth in the records of the commission, to be issued to the applicant, and the commission may make recommendations to the applicant with respect to appropriateness of design, arrangement, texture, materials, and similar features. Prior to the issuance of any disapproval, the commission may notify the applicant of its proposed action accompanied by recommendations of changes in the applicant's proposal which, if made, would make the application acceptable to the commission. If within fourteen (14) days of the receipt of such notice the applicant files a written modification of his application in conformity with the recommended changes of the commission, the commission shall cause a certificate of appropriateness to be issued to the applicant.
- (6) The concurring vote of four members of a commission shall be required to issue a certificate. All other matters that may come before a commission may be determined by a majority vote of the commission members present at the meeting.
- (7) In issuing certificates, a commission may, as it deems appropriate, impose certain conditions and limitations, and may require architectural or plan modifications consistent with the intent and purpose of this section.
- (8) If a commission determines that the construction or alteration for which an application for a certificate of appropriateness has been filed will be appropriate for or compatible with the preservation or protection of the district, the commission shall issue a certificate of appropriateness.
- (9) If a commission determines that an application for a certificate of appropriateness or for a certificate of non-applicability does not involve any exterior architectural feature, or involves an exterior architectural feature which is not subject to review by the commission, the commission shall cause a certificate of non-applicability to be issued to the applicant.
- (10) If the construction or alteration for which an application for a certificate of appropriateness has been filed shall be determined to be inappropriate and therefore disapproved, or in the event of an application for a certificate of hardship, a commission shall determine whether, owing to conditions especially affecting the building or structure involved, but not affecting the district generally, failure to approve an application will involve a substantial hardship, financial or otherwise, to the applicant and whether such application may be approved without substantial detriment to public welfare and without substantial derogation from the intent and purposes of this section. If the commission determines that owing to such conditions failure to approve the application will involve substantial hardship to the applicant and approval thereof may be made without such substantial detriment or derogation, the commission shall issue a certificate of hardship.

- (11) Each certificate issued by the commission shall be dated and signed by the chairman or such other person designated by the commission to sign such certificates on its behalf.
- (12) The commission shall send a copy of certificates and disapprovals issued to the applicant and shall file a copy with the city clerk and the commissioner of inspectional services.
- (13) Any person aggrieved by a determination of a commission, may, within twenty (20) days of the filing of the notice of such determination with the city clerk, file a written request with the commission for a review by a person or persons, not exceeding three, of competence and experience in such matters, designated by the Metropolitan Area Planning Council. The finding of the reviewers shall be filed with the City Clerk within forty-five (45) days after the request, and shall be binding on the applicant and the commission, unless further appeal is sought in superior court as provided in G.L. c. 40C, section 12A. The filing of such further appeal shall occur within twenty (20) days after the finding of the reviewers has been filed with the city clerk.

(g) *Criteria for Determinations.*

- (1) In deliberating on applications for certificates, a commission shall consider, among other things, the historic and architectural value and significance of the site, building or structure, the general design, arrangement, texture, material and color of the features involved, and the relation of such features to similar features of buildings and structures in the surrounding area.
- (2) In the case of new construction or additions to existing buildings or structures, a commission shall consider the appropriateness of size and shape of the building or structure both in relation to the land area upon which the building or structure is situated and to buildings and structures in the vicinity, and a Commission may in appropriate cases impose dimensional and set-back requirements in addition to those required by applicable zoning ordinances.
- (3) A commission shall not consider interior arrangements or architectural features not subject to public view.
- (4) A commission shall not make any recommendation or requirement except for the purpose of preventing developments incongruous to the historic aspects or the architectural characteristics of the surroundings and of the district.
- (5) Nothing in this section shall be construed to prevent the ordinary maintenance, repair or replacement of any exterior architectural feature within a district which does not involve a change in design, material or the outward appearance thereof, nor to prevent landscaping with plants, trees or shrubs, nor construed to prevent the meeting of requirements certified by a duly authorized public officer to be necessary for public safety because of an unsafe or dangerous condition, nor construed to prevent any construction or alteration under a permit duly issued prior to the effective date of any ordinance provision or amendment thereto listing a specified district.
- (6) A commission shall not review and shall issue a certificate of non-applicability for the reconstruction, substantially similar in exterior design, of a building, structure or exterior architectural feature damaged or destroyed by fire, storm or other disaster, provided such reconstruction is begun within one (1) year thereafter and carried forward with due diligence.
- (7) With the exception of applications submitted pursuant to subsection (f), nothing in the design controls authorized by this section shall be construed as giving a commission the power to require restoration of any building or structure or portion of any building or structure to any particular historic appearance or style of said building or structure or said portion of building or structure had already been substantially removed or

lost or changed prior to the adoption of the initial ordinance provision establishing historic commissions, to-wit, December 15, 1975.

- (8) A commission is authorized to deny any application for a certificate of appropriateness, non-applicability or hardship for the proposed construction or alteration of any building or structure within the district over which it has jurisdiction upon a determination that there is an unremediated violation of this ordinance in existence at the subject building or structure, regardless of whether said violation is attributable to the present owner or a predecessor in title to the subject premises. Upon proper remediation of any such violation, as verified by said commission with the assistance of and review by the commissioner of inspectional services, or building official, if necessary, any such application shall proceed through the established procedure for commission review, subject to the established administrative criteria for determinations, as set out in subsections 22-40(f) and 22-40(g).

(h) *Exclusions.*

- (1) A commission shall have no jurisdiction to review the following categories of exterior architectural features, and shall issue a certificate of non-applicability for:
- a) temporary structures and signs erected for a period of sixty (60) days or less;
 - b) one residential identification sign which is not more than one foot square in area provided that:
 - i) the sign consists of letters and/or street identification numbers painted or otherwise suitably inscribed on wood, brass or stone without a symbol or trademark; and
 - ii) if illuminated, such sign is illuminated only indirectly (indirectly meaning by a light source directed at the sign surface and not contained within the sign or its structure).
 - c) a second set of residential building numbers affixed or inscribed on buildings in order to comply with Section 26-7, Numbering of buildings, shall not be subject to review by nor shall they require a certificate of non-applicability from said commission.
 - d) signs for professional or security purposes which are not more than one foot square in area; provided that:
 - i) only one sign is displayed for each building or structure;
 - ii) the sign consists of letters painted on wood or brass without a symbol or trademark;
 - iii) if illuminated, it is illuminated only indirectly.
 - e) terraces, walks, and sidewalks so long as such structure is substantially at grade level;
 - f) storm doors, storm windows, screens, lightning protection, window boxes, window air conditioners and lighting fixtures, except for freestanding lighting fixtures;
 - g) paint colors;
 - h) colors of roof materials.
 - i) antennae designed to receive television broadcast signals; antennae designed to receive direct broadcast satellite services, including direct-to-home satellite services, but only if one meter or less in diameter;

antennae designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, but only if one meter or less in diameter or diagonal measurement, as set out in Section 207 of the Federal Telecommunications Act of 1996 and rules and regulations promulgated thereunder, 47 C.F.R. Ch.1, Subpart S, §1.4000, and any successor laws, rules or regulations; satellite earth station antennae, as detailed in FCC rules and regulations, 47 C.F.R. 25.104 and any successor laws, rules and regulations; and any antennae in a non-residential building or structure which are not visible because they are concealed within the building, structure or its physical appurtenances, including, but not limited to a steeple, belfry, or the like. Supporting assemblies, supporting structures, equipment and facilities ancillary or accessory to such antennae as described in Sec. 30-18A of the Newton Revised Ordinances are not exempt nor excluded from historic district commission and historic commission jurisdiction and review pursuant to M.G.L. c. 40C and Sec. 22-40 through 22-44 of the Newton Revised Ordinances.

(i) *Enforcement.*

The commission, as defined herein, is authorized to institute any and all actions and proceedings, in law or in equity, in any court of competent jurisdiction, consistent with the provisions of G.L. c. 40C, s. 13, as amended, or its successor, as it deems necessary and appropriate to obtain compliance with the requirements of this ordinance and the determinations, rulings and regulations issued pursuant thereto. Whoever violates any of the provisions of this ordinance shall be punished by a fine not exceeding three hundred dollars (\$300.00) for each offense. Each day any violation of this ordinance shall continue shall constitute a separate offense.

(j) *Building Permits.*

The commission shall notify the commissioner of inspectional services or building official in writing of any violation of the requirements of this ordinance or its determinations, rulings and regulations with regard to a specific building or structure, and shall instruct said commissioner or building official to make a permanent record of such violation in the corresponding property file maintained in the department of inspectional services as required by law. Prior to the issuance of any building permit for the construction, reconstruction, alteration, renovation, repair, removal, demolition, or change of use or occupancy of any building or structure, said commissioner or building official shall review the property file and ascertain whether a notice of unremediated violation of this ordinance is on record. To the extent allowed by law, including but not limited to the provisions of the state building code, 780 CMR 111.1 (6th ed.) or its successor, unless the commissioner or building official is satisfied there is no outstanding unremediated violation of this ordinance, he or she shall reject such application for a building permit for such building or structure in writing, stating the reasons therefor.

(k) *Severability.*

The provisions of this section shall be deemed to be severable. If any of its provisions shall be held to be invalid or unconstitutional by any court of competent jurisdiction the remaining provisions shall continue in full force and effect. (Ord. No. 102, 12-15-75; Ord. No. V-157, 12-15-97; Ord. No. V-214, 12-21-98; Ord. No. V-300, 5-15-00; Ord. No. X-197, 03-20-06; Ord. No. X-209, 05-01-06; Ord. No. B-13, 07-09-18)

Sec. 22-41. Newton Upper Falls Historic District; established, boundaries.

There is hereby established an historic district to be known as the Newton Upper Falls Historic District, bounded and described as shown on the map entitled "Newton Upper Falls Historic District Expansion, July 11, 1985." (Ord. No. 102, 12-15-75; Ord. No. 274, 6-5-78; Ord. No. R-190, 11-16-81; Ord. No. S-133, 10-21-85; Ord. No. T-155, 6-17-91)

Editor's Note – The referenced map is on file in the office of the City Clerk. A copy of the map appears in the Appendix at the end of this

chapter.

Sec. 22-42. Chestnut Hill Historic District; established, boundaries.

(a) There is hereby established an historic district to be known as the Chestnut Hill Historic District, bounded and described as shown on the map entitled, "Chestnut Hill Historic District, March 19, 1991."

(b) As authorized by the General Court in chapter 49 of the Acts of 1996, the following definition of "exterior architectural features" shall control in the Chestnut Hill Historic District only:

Exterior architectural features: Such portion of the exterior of a building or structure as is open to view from a public street, public way, public park, public body of water or private way, including but not limited to the architectural style and general arrangement and setting thereof, the kind, color and texture of exterior building materials, the color of paint or other materials applied to exterior surfaces and the type and style of windows, doors, lights, signs and other appurtenant exterior fixtures.

(c) Notwithstanding the provisions of this section and section 22-40 in general and section 22-40(e)(i) in particular, the Chestnut Hill Historic District Commission may make only non-binding recommendations regarding changes to the exterior architectural features open to view from a private way of properties located on Essex Road and from Nos. 147 through 256 Chestnut Hill Road, with the following exceptions where such decisions of the commission shall be fully binding in the ordinary course:

- (1) demolition of a building or structure so long as such demolition occurs after such property ceases to be legally or beneficially owned by the owner of record as of the effective date of the 1996 amendment to Sec. 22-42;
- (2) any lot created by subdivision of such properties where its required frontage lies on a way whose properties are not then subject to such limited commission review;
- (3) any property where the legal or beneficial owner of record files with the city clerk a certificate indicating irrevocable consent on behalf of such owner and of successor owners to submit to the jurisdiction of the historic district commission and to be bound by its decisions, subject to any statutory rights of appeal;
- (4) all of such properties on Essex Road or on the portion of Chestnut Hill Road identified above, if at any time not less than seventy-two and one-half percent of the total number of owner-occupied properties on the specific road under consideration have been made the subject of a filing described in subsection (c), at which time the limits on commission review established by the above provisions shall lapse and shall not be reestablished for such specific road. It shall also be sufficient for such lapse to occur if the owner-occupants of all but four of the owner-occupied properties on the specific road under consideration have made the filing described in subsection (c).

(d) No owner of any property claiming the benefit of this exemption shall have standing as an aggrieved person for the purpose of appealing any decision of the district commission concerning property other than his own, other than a decision relating to changes to architectural features visible from a public way.

(e) The limited commission review herein established shall not affect the district commission's authority to regulate exterior architectural features open to view from a public street, way, park or body of water, even if such features are located on property containing exterior architectural features subject to such limited review, nor shall it affect the commission's authority under sections 22-60 et seq., and 22-50 of the Newton Revised Ordinances relating to landmark preservation and the demolition of structures, respectively. (Ord. No. T-155, 6-17-91; Ord. No. V-100, 12-16-96)

Editor's Note – The referenced map is on file in the office of the City Clerk. A copy of the map appears in the Appendix at the end of this chapter.

Sec. 22-43. Newtonville Historic District; established, boundaries.

(a) There is hereby established an historic district to be known as the Newtonville Historic District, bounded and described as shown on the map entitled “Proposed Newtonville Local Historic District,” prepared by Newton Geographic Information System (GIS), with a date of 12-Aug-2002. (Ord. No. X-29, 9-3-02)

Editor's Note – The referenced map is on file in the office of the City Clerk. A copy of the map appears in the Appendix at the end of this chapter.

Sec. 22-44. Auburndale Historic District; established, boundaries.

(a) There is hereby established an historic district to be known as the Auburndale Historic District, bounded and described as shown on the map entitled “Auburndale Proposed Local Historic District,” prepared by Newton Geographic Information System (GIS), with a date of January 05, 2005. (Ord. No. X-135, 03-21-05)

Editor's Note – The referenced map is on file in the office of the City Clerk. A copy of the map appears in the Appendix at the end of this chapter.

Secs. Reserved 22-45—22-49. Reserved.

DIVISION 2. DEMOLITION
DELAY

Sec. 22-50. Demolition of historically significant buildings or structures.

(a) *Intent and Purposes.* This section is adopted in furtherance of the policy set forth in the Newton Comprehensive Plan to assure the preservation and enhancement of the City of Newton's historical and cultural heritage by preserving, rehabilitating or restoring whenever possible, buildings or structures which have distinctive architectural features or historical associations that contribute to the historic fabric of the City.

(b) *Definitions.* For the purposes of this section, the following words and phrases have the following meanings:

Commission: The Newton Historical Commission, or if the regulated building or structure is in a local historic district established pursuant to G.L. c. 40C, the local historic district commission.

Commission staff: The person(s) regularly providing staff services for the commission whom the commission has designated commission staff for the purposes of this ordinance.

Commissioner: The commissioner of inspectional services.

Application: An application to the commissioner for a demolition permit as defined by this ordinance.

Demolition permit: Any permit issued by the commissioner which is required by the State Building Code and which authorizes the total or partial demolition of a building or structure (excluding interior demolition) regardless of whether such permit is called a demolition permit, alteration permit, building permit, etc.

Total demolition: The pulling down, razing or destruction of the entire portion of a building or structure which is above ground regardless of whether another building or structure is constructed within the original footprint of the destroyed building or structure.

Partial demolition: The pulling down, destruction or removal of a substantial portion of the exterior of a

building or structure or the removal of architectural elements which define or contribute to the historic character_

of the structure.

- (1) Items requiring review by the commission or staff at a hearing. Partial demolition of any architecturally significant features which would alter the massing of the existing structure including, but not limited to the following items:
 - a) Additions or ell's determined to be architecturally significant by commission or commission staff.
 - b) Roofs, including flat roofs, determined to be architecturally significant by commission or commission staff.
 - c) Porches determined to be architecturally significant by commission or commission staff, except open decks, staircases, and entryways, which are excluded from review.
 - d) Removal or envelopment by subsequent additions of 50% or more of any single exterior wall surface. Each wall is calculated by square footage individually.
 - e) Demolition of any architectural detail determined to be architecturally significant by commission or commission staff included but not limited to:
 - i) Brackets
 - ii) Crown molding
 - iii) Porch columns and railings
 - iv) Bay windows
 - v) Dormers
 - vi) Chimneys
- (2) Items requiring review by the commission that may be reviewed and approved by commission staff without a hearing if plans indicate:
 - a) Removal or alteration of the roof structure.
 - b) Repair or replacement of existing and original porches with similar materials to match existing.
 - c) Demolition or construction of additions or alterations not visible from a public way.
 - d) Removal or envelopment by subsequent additions of 50% to 100% of any single exterior wall surface. Each wall is calculated by square footage.
- (3) *Items considered to be de minimis and requiring no commission or commission staff review:*
 - a) *Open porches and entryways consisting of only a set of stairs, an entrance platform and a roof which are utilitarian in design or do not contribute to the architectural significance or character of the building.*

b) Demolition or construction of new additions which remove, alter, or envelop 50% or less of a single

exterior wall.

c) Removal or alteration of less than 50% of the roof structure

d) Normal maintenance of a building’s exterior, including, but not limited to repair or replacement of roof surfaces, repair or replacement of gutters, and repair or replacement of existing doors and windows, including casings and frames, repair or replacement of existing exterior cladding (e.g., clapboards, shingles, masonry, etc.).

Historically significant building or structure: Any building or structure which is in whole or in part fifty (50) or more years old and which:

- (1) is ~~in any federal or state historic district, or if~~ in any local historic district and; is not open to view from a public street, public park or public body of water; ~~or~~
- (2) is ~~listed on or is within an area~~ listed on the National Register of Historic Places or State Register of Historic Places, or ~~formally-~~ listed as eligible for ~~such listing on said National Register or, or listed on or is within an area listed on the State Register of Historic Places, or eligible for such listing State Register;~~ or
- (3) is listed on the National Register of Historic Places or State Register of Historic Places as part of an historic district, but not individually, or formally listed as eligible for listing on said National Register or State Register as part of an historic district, but not individually; or
- ~~(4)~~ has been determined by the commission or its designee to be a historically significant building after a finding that it is:
 - a) importantly associated with one or more historic persons or events, or with the architectural, cultural, political, economic or social history of the City of Newton, the Commonwealth of Massachusetts or the United States of America; ~~or; or~~
 - b) historically or architecturally important by reason of period, style, method of building construction or association with a particular architect or builder, either by itself or in the context of a group of buildings or structures; or
 - c) located within one hundred fifty (150) feet of the boundary line of any federal or local historic district and contextually similar to the buildings or structures located in the adjacent federal or local historic district.

Preferably preserved: An historically significant building or structure which the commission has determined should be preserved, rather than totally or partially demolished, in accordance with the standards set forth in subsection (c)(5) below.

(c) Procedure.

- (1) No demolition permit for a building or structure which is in whole or in part fifty or more years old shall be issued by the commissioner except in conformity with the provisions of this section, as well as any other applicable law, statute, ordinance or regulation.
- (2) If any applicant and the owner of the building or structure, if different from the applicant seeks to demolish, in whole or in part, a building or structure which is in whole or in part fifty or more years old, the owner of the building or structure shall file a demolition review application with the commission for a determination as to whether the building or structure is historically significant and shall provide the commission with the following information:

- a) a site plan or a copy of that portion of the tax assessor's map which shows the building or structure to be demolished and the property on which it is located;

- b) photographs of all existing façade elevations of the building or structure to be totally or partially demolished;
- c) a description of the proposed plans for demolition and the reason(s) therefore.

- (3) Within fifteen (15) days after the commission's receipt of a demolition review application, the commission shall make a determination as to whether the building is or is not historically significant and shall notify, in writing, the commissioner and the applicant of this determination. The commission may delegate the determination that a building or structure is historically significant to commission staff or to a designated commission member. In the event that the commission delegates the determination to the commission staff or to a designated commission member, the commission shall adopt criteria to be followed by the staff or the member in making this determination.

A determination that a building or structure is or is not historically significant made by the commission staff or a designated commission member may be appealed to the full commission by filing a notice of appeal with the commission not later than fifteen (15) days after the written notice that the building or structure is or is not historically significant has been filed with the commissioner. Filing the appeal of the determination shall not stay the effect of such determination. Following a hearing before the commission, which may, but is not required to be conducted in conjunction with the hearing on whether the building or structure is preferably preserved, the commission shall affirm or reverse the determination and file notice of such determination with the commissioner. If the appeal of the determination is made independent of the preferably preserved hearing, the commission shall follow the same procedure for such hearing as that set forth in subsection (c)(5) below. ~~If the commission shall fails to conduct a hearing render a decision on the appeal of said determination or fails to rule on the appeal within forty-five (45) days from the filing of the appeal unless further time for a decision is allowed, in writing, by the appealing party, the determination that a building or structure is or is not historically significant will be reversed based on the appeal. shall remain unchanged, and the commissioner shall not issue a demolition permit until the procedural requirements of subsection (c)(5) below have been satisfied.~~

- (4) No demolition permit shall be issued by the commissioner for a building or structure determined to be historically significant until the procedural requirements of subsection (c)(5) of this ordinance have been satisfied. The commissioner may grant the demolition permit if the commissioner:
- a) does not receive written notice within forty-five (45) days after the commission's receipt of a demolition permit application that the building or structure is historically significant; or
 - b) receives written notice from the commission that the building either is not historically significant, or is historically significant, but clearly would not be deemed preferably preserved by the commission.
- (5) When a building or structure is determined to be historically significant, the commission shall hold a public hearing to determine whether the building or structure, or the portion of the building or structure to be demolished, is preferably preserved. ~~A building or structure is preferably preserved if it is in the public interest to preserve the building or structure rather than allow its demolition or it is the last remaining example of its style.~~ The applicant shall provide the commission with the following information for this determination:
- a) in the case of partial demolition involving alteration(s) or addition(s) to a building or structure, (i) proposed plans and elevation drawings for the affected portion of the building or structure; and (ii) a plot plan of the property, if the same is required to obtain a permit under the State Building Code for the proposed alteration(s) or addition(s); and
 - b) if the site of the building or structure to be demolished is to be redeveloped, plans showing the use or

development of the site after demolition together with a statement identifying all zoning variances and/or special permits which may be required in order to implement the proposed use or development.

The date the commission receives all the above information shall be stamped on the information received and shall be considered the submission date. Following public notice as set forth in subsection (c)(8) of this ordinance, the commission shall hold a public hearing within forty-five (45) days of the submission date to determine whether the building or structure should be preferably preserved, based on the criteria set forth in this paragraph. If the commission finds that the demolition proposed in the application would result in the demolition of a historically significant building or structure whose loss would be detrimental to the historical or architectural heritage or resources of the City of Newton, then the commission shall find that the building or structure should be preferably preserved.

- (6) Upon a determination that the building or structure which is the subject of an application for a demolition permit is preferably preserved, the commission shall give written notice of the determination to the commissioner. A copy of the commission's determination shall also be sent to the applicant for the demolition permit and to the owner of the building or structure if different from the applicant.
- a) For a building or structure listed in the National Register of Historic Places or [State Register of Historic Places](#), ~~determined formally listed as~~ eligible for listing in the National Register of Historic Places, [listed on the National Register of Historic Places or State Register of Historic Places as part of an historic district, but not individually, or formally listed as eligible for listing on said National Register or State Register as part of an historic district, but not individually, by the Massachusetts Historical Commission](#) no demolition permit shall be issued for a total demolition or a partial demolition of a building or structure until eighteen (18) months after the date of such determination by the commission, unless the commission informs the commissioner prior to the expiration of such eighteen (18) month period that the commission is satisfied that the applicant for the demolition permit and the owner of the building or structure, if different from the applicant, has:
- i) made a bona fide, reasonable and unsuccessful effort to locate a purchaser for the building or structure who is willing to preserve, rehabilitate or restore the building or structure; or,
 - ii) has agreed to accept a demolition permit on specified conditions approved by the commission.
 - iii) If the specified conditions involve approved plans and elevations, then no demolition permit shall be issued by the commissioner unless the applicant provides, as part of his application for a demolition permit, a complete set of plans and elevation drawings which have been signed and stamped by the commission or commission staff.
 - iv) The applicant shall have two (2) years from the date of the expiration of the eighteen (18) month period in which to apply for and obtain a demolition permit. No demolition permit shall be issued for such building or structure after the expiration of this two (2) year period, unless the procedural requirements of subsection (c)(5) hereof have been satisfied.
 - v) In order to encourage applications that preserve, restore, reuse, or rehabilitate historic buildings and structures, no application for a total demolition of a building or structure which has been unfavorably and finally acted upon by the commission shall be acted favorably upon within four months after the date of final unfavorable action unless the said commission finds:
 - (a) by a vote of two-thirds (2/3) of those members present, substantial and material changes in said resubmitted application; or,
 - (b) by a majority vote of those members present, that the resubmitted application proposes to preserve the building or structure.

~~(C) that the applicant chooses not to proceed with demolition and may, at any time, inform the Commission and withdraw their application without prejudice~~

- vi) Due notice shall be given to parties in interest of the time and place of the proceedings when the resubmitted application will be considered.

- b) For all other buildings and structures not covered under section (6)(a) above, no demolition permit shall be issued for a total demolition or a partial demolition of a building or structure found preferably preserved until one (1) year after the date of such determination by the commission, unless the commission informs the commissioner prior to the expiration of such one (1) year period that the commission is satisfied that the applicant for the demolition permit and the owner of the building or structure, if different from the applicant, has:
- i) made a bona fide, reasonable and unsuccessful effort to locate a purchaser for the building or structure who is willing to preserve, rehabilitate or restore the building or structure; or,
 - ii) agreed to accept a demolition permit on specified conditions approved by the commission.
 - iii) If the specified conditions involve approved plans and elevations, then no demolition permit shall be issued by the commissioner unless the applicant provides, as part of his application for a demolition permit, a complete set of plans and elevation drawings which have been signed and stamped by the commission or commission staff.
 - iv) The applicant shall have two (2) years from the date of the expiration of the one (1) year period in which to apply for and obtain a demolition permit. No demolition permit shall be issued for such building or structure after the expiration of this two (2) year period, unless the procedural requirements of subsection (c)(5) hereof have been satisfied.
 - v) In order to encourage applications that preserve, restore, reuse, or rehabilitate historic buildings and structures, no application for a total demolition of a building or structure which has been unfavorably and finally acted upon by the commission shall be acted favorably upon within four months after the date of final unfavorable action unless the said commission finds
 - (a) by a vote of two-thirds (2/3) of those members present, substantial and material changes in said resubmitted application; or,
 - (b) by a majority vote of those members present, that the resubmitted application proposes to preserve the building or structure.
 - vi) Due notice shall be given to parties in interest of the time and place of the proceedings when the resubmitted application will be considered.
- (7) In the event a transfer of ownership of a preferably preserved property occurs during the applicable demolition delay period, the full applicable demolition delay period will restart from the date of the transfer of ownership.
- (8) In the event a transfer of ownership of a preferably preserved property occurs after the applicable demolition delay period expires but prior to the issuance of a demolition permit, no demolition permit shall issue until the new owner complies with the procedures set forth in section 22-50 (c)-(5).
- (9) Upon a determination by the commission that a building or structure is not preferably preserved or upon the commission's failure to make any determination within forty-five (45) days of the submission date, the commissioner may grant a demolition permit for the building or structure.
- (10) Public notice of commission hearings shall provide the date, place and time of the hearing and the addresses of the properties to be considered at the hearing. Public notice shall include, at a minimum, posting with the

city clerk and notification to the director of planning and development, to the applicant, to the owners of all abutting property within 300' of the property and to other property owners deemed by the commission to be materially affected.

- (11) If the applicant is someone other than the owner or his designated agent a demolition review application cannot be filed until the commission receives written authorization from the owner that the applicant may apply for changes to their property.

(d) *Emergency Demolition.* If a building or structure poses an immediate threat to public health or safety due to its deteriorated condition, the owner of such building or structure may request issuance of an emergency demolition permit from the commissioner. As soon as practicable after the receipt of such request, the commissioner shall arrange to have the property inspected by a board consisting of himself or his designee; the city engineer or his designee; the fire chief or his designee; the chairman of the commission or his designee; and one (1) disinterested person chosen by the commissioner. After inspection of the building or structure and consultation with the other members of the board, the commissioner shall determine whether the condition of the building or structure represents a serious and imminent threat to public health and safety and whether there is any reasonable alternative to the immediate demolition of the building or structure which would protect public health and safety. If the commissioner finds that the condition of the building or structure poses a serious and imminent threat to public health and safety and that there is no reasonable alternative to the immediate demolition of the building or structure, then the commissioner may issue an emergency demolition permit to the owner of the building or structure. Whenever the commissioner issues an emergency demolition permit under the provisions of this section of the ordinance, he shall prepare a written report describing the demolition of the building or structure and the basis of his decision to issue an emergency permit with the commission. Nothing in this section shall be inconsistent with the procedures for the demolition and/or securing of buildings and structures established by M.G.L. c. 143, sections 6-10.

In the event that a board of survey is convened under the provisions of M.G.L. c. 143, section 8 with regard to any historically significant building or structure, the commissioner shall request the chairman of the commission or his designee to accompany the board during its inspection. A copy of the written report prepared as a result of such inspection shall be filed with the commission.

(e) *Non-Compliance.* Anyone who demolishes a historically significant building or structure without first obtaining and complying fully with the provisions of a demolition permit issued in accordance with this section shall be subject to a fine of not more than three hundred dollars (\$300.00) for each day of violation of this ordinance.

In addition, unless a demolition permit issued in accordance with this section was obtained and unless such permit was fully complied with, including full compliance with plans and elevation drawings signed and stamped by the commission, the commissioner may elect to (1) issue a stop work order halting all work on the building or structure until the commission notifies the commissioner in writing that the applicant has appeared before the commission to address such non-compliance, and the commission has accepted the applicant's plans to remediate such noncompliance; (2) refuse to issue any certificates of occupancy, temporary or final, until any noncompliance has been remediated; and/or (3) refuse to issue a permit required by the State Building Code pertaining to any property on which an historically significant building or structure has been demolished for a period of two (2) years from the date of demolition, provided that this provision shall not prevent the commissioner from issuing any permit required to insure the safety of persons and property."

The commission may, upon application to and determination by the commission that reuse of the property in accordance with building plans prepared by the owner and submitted to the commission and all relevant agencies will substantially benefit the neighborhood and provide compensation for the loss of the historic elements of the property either through reconstruction of the lost historic elements or significant enhancement of the remaining historic elements of the site or the surrounding neighborhood, waive the fine, in whole or in part, and/or the ban on

issuance of a building permit in order to allow the issuance of a building permit for construction or reconstruction of

a building or structure approved by the commission. An owner receiving a waiver of the fine and/or ban on issuance of a building permit under this provision shall execute a binding agreement enforceable against all heirs, assigns and successors in interest with the commission to insure that any reuse of the site undertaken during the two-year ban shall be implemented in accordance with the plans, terms, and conditions approved by the commission. Any reuse of the site undertaken during the two-year ban which fails to comply with the terms of the commission's approval granted under this provision shall also permit reinstatement of the fine for non-compliance with this ordinance.

(f) *Securing Historically Significant Buildings and Structures.* If, following an application for a demolition permit, a building or structure has been determined to be historically significant, and the building or structure is subsequently destroyed by fire or other cause before any determination is made by the commission as to whether the building or structure is preferably preserved, a rebuttable presumption shall arise that the owner voluntarily demolished the building or structure without obtaining a demolition permit in accordance with the provisions of this ordinance. In such cases, the commissioner shall not issue any permit required under the State Building Code pertaining to the property on which the historically significant building or structure was located (except as necessary to secure public safety or health) for a period of two (2) years from the date of destruction of the building or structure, unless the owner can provide evidence satisfactory to the commissioner that he took reasonable steps to secure the building or structure against fire or other loss or that the cause of the destruction was not otherwise due to the owner's negligence.

(g) *Securing Preferably Preserved Buildings and Structures.* If during the period of demolition delay for a building or structure determined to be preferably preserved, such building or structure is destroyed through fire or other cause, the commissioner shall not issue any permit required under the State Building Code pertaining to the property on which the preferably preserved building or structure was located (except as necessary to secure public safety or health) until the end of the period of demolition delay, unless the owner can provide evidence to the commission that he took reasonable steps to secure the building or structure against fire or other loss or that the cause of the destruction was not otherwise due to the owner's negligence.

(h) *Buildings and Structures located in Local Historic Districts.* The provisions of this ordinance shall not apply to any building or structure located in a local historic district established pursuant to M.G.L. c. 40C and subject to regulation by the local historic district commission under the provisions of Sec. 22-40 of the Revised Ordinances.

(i) *Severability.* In case any section, paragraph, or part of this section is declared invalid or unconstitutional by any court of competent jurisdiction, every other section, paragraph, or part of this ordinance shall continue in full force and effect.

(j) *Enforcement.* The commission is authorized to institute any and all actions and proceedings, in law or in equity, in any court of competent jurisdiction, as it deems necessary and appropriate to obtain compliance with the requirements of this section.

(k) *Applicability.*

(1) Notwithstanding the foregoing, this section shall not apply and a demolition permit shall be issued for the reconstruction substantially similar in exterior design of a building structure or exterior architectural feature damaged or destroyed by fire, storm, or other disaster, provided such reconstruction is begun within six (6) months thereafter and is carried forward with due diligence. This exception shall be limited to reconstruction of only that portion of the building or structure damaged by such catastrophic event.

(2) This subsection shall not apply to buildings or structures which have been designated as landmarks pursuant to Sec. 22-60 of the revised ordinances.

(Ord. No. S-230, 12-1-86; Ord. No. S-315, 6-20-88; Ord. No. T-252, 12-7-92; Ord. No. U-19, 6-20-94; Ord. No. V-98, 12-16-96; Ord. No. V-99, 12-16-96; Ord. No. X-205, 5-1-06; Ord. No. Z-22, 04-22-08; Ord. No. Z-76, 02-07-11;

Ord. No. A-74, 04-04-16)

Sec. 22-51. Demolition by Neglect.

(a) Purpose and Intent

It is the intent of this section to preserve from deliberate or inadvertent neglect the exterior features of landmarked buildings and structures, or the interior portions thereof when such maintenance is necessary to prevent deterioration and decay of the exterior of the building or structure.

(b) Definition

“Demolition by neglect” shall mean neglect in maintaining, repairing, or securing a landmark that results in (i) loss of the character of a documented exterior architectural feature of the building or structure that contributes to its status as a landmark; (ii) deterioration of an exterior feature of the building or structure; or (iii) the loss of the structural integrity of the building or structure.

(c) Owner’s Obligations

The owner of a landmark shall preserve such landmark against decay and deterioration through prompt correction of any of the following defects:

- (1) Deteriorated or inadequate foundation, defective or deteriorated flooring or floor supports, deteriorated walls or other vertical structural supports;
- (2) Structural components of ceilings, roofs, floors, ceiling, roof and floor supports or other horizontal structural components which sag, split or buckle due to defective material or deterioration;
- (3) Deteriorated or ineffective waterproofing or weatherproofing of exterior walls, roofs, foundations, or floors, including broken or missing windows or doors, siding, trim, shingles or cladding, or windows left open when weather conditions do not warrant it;
- (4) Defective or insufficient weather protection for exterior wall covering, including lack of paint or weathering due to lack of paint or other protective covering;
- (5) Any fault or defect in the building which renders it structurally unsafe, whether interior or exterior;
- (6) Deterioration of exterior chimney or chimney support system;
- (7) Deterioration of external plaster, stucco, masonry or mortar;
- (8) Deterioration of rainwater drainage systems whether interior or exterior;
- (9) Deterioration of any documented exterior architectural feature which in the judgment of the commission produces a detrimental effect upon the character of the building;
- (10) Failure to adequately heat the premises to avoid freezing of heating and/or plumbing fixtures, or failure to properly drain heating and/or plumbing systems before the advent of freezing temperatures;
- (11) Failure to adhere to any preservation plan or guideline regarding maintenance provided by the commission

(12) Deterioration of any other elements which, if not adequately maintained, would eventually cause the building or structure to crack, bulge, buckle, sag, rot, crumble or collapse, in whole or in part.

(d) Any owner who fails to maintain such building or structure in compliance with this section shall be subject to the remedial procedures of subsection (e)(1) as well as the penalties under section 22-71.

(e) (1) Upon receipt of a complaint that an historic landmark is threatened by demolition by neglect, or on the commission's own initiative, the commission shall request the commissioner of inspectional services or his designee to inspect such landmark. If the commissioner of inspectional services concludes that the landmark is threatened by demolition by neglect, he shall make a written report of his findings to the commission.

(2) Upon the receipt of such written finding of the commissioner of inspectional services, the commission shall hold a public hearing after giving such notice as provided under section 22-63(d). If the Commission finds that the landmark is threatened by demolition by neglect, and the owner has not requested and received a hardship exemption under section (f) herein, the Commission may vote to:

a) require the owner to repair all conditions contributing to demolition by neglect by a date certain;

b) secure the building or structure against further deterioration or other loss;

c) provide the owner with a preservation plan and maintenance guidelines as authorized under Sec. 22-64, and require the owner to undertake such plan according to a timeline set by the commission;

d) assess penalties as set forth in section 22-71; and

e) seek such injunctive relief as it deems necessary and appropriate to preserve such landmark in cases where there is imminent danger of the loss of a landmark.

These remedies shall be cumulative and not exclusive.

(3) For purposes of this ordinance, if a landmark threatened by demolition by neglect is located within a local historic district, then reference to "commission" hereunder shall refer to the local historic district commission of the local historic district in which such landmark is located.

(f) Building Permits

The commission shall notify the commissioner of inspectional services or building official in writing of any landmark found to be threatened by demolition by neglect, and shall instruct said commissioner or building official to make a permanent record of such determination in the corresponding property file maintained in the department of inspectional services as required by law. Prior to the issuance of any building permit for the construction, reconstruction, alteration, renovation, repair, removal, demolition, or change of use or occupancy of any landmark, said commissioner or building official shall review the property file and ascertain whether a notice of unremediated violation of this ordinance is on record. To the extent allowed by law, including but not limited to the provisions of the state building code, 780 CMR 111.1 (6th ed.) or its successor, unless the commissioner or building official is satisfied there is no outstanding unremediated violation of this ordinance, he or she shall reject such application for a building permit for such landmark in writing, stating the reasons therefor; provided, however, that he or she shall not reject such application if the work intended to be performed is required by the commission to remediate such violation.

(g) Exemptions

- (1) The owner may request exemption from this ordinance if the owner can prove to the commission that maintenance of the landmark will cause substantial hardship according to the standards set forth in Section 22-40(f)(10); provided, however, that the owner's self-created hardship shall not qualify as a basis for a hardship exemption.
- (2) In situations where, in the commission's view, it is impracticable to immediately repair an architectural feature, or prohibitively expensive to replace it, then the owner shall remove and store such architectural feature safely, until such time as it becomes financially possible to recreate the feature from the original pieces. The owner shall make temporary repairs in its place to protect the structure and/or provide for the safe use of the landmarked premises. (Ord. No. X-179, 12-19-2006)

Secs. 22-52—22-59. Reserved.

DIVISION 3. LANDMARKS

Sec. 22-60. Landmark Preservation—enactment and purpose.

This division is enacted pursuant to the authority derived from section 6 of the Home Rule Amendment to the Constitution of the Commonwealth of Massachusetts, and Charter of the City of Newton.

The purpose of this enactment is to promote the educational, cultural, economic and general welfare of the public through the preservation and protection of the distinctive architecture and other characteristics of buildings, structures, landscapes, and places significant in the history and prehistory of the Commonwealth of Massachusetts and the City of Newton and through the maintenance and improvement of settings for such buildings, structures, landscapes, and places and through the encouragement of compatible development and the discouragement of destruction of or damage to such resources. (Ord. T-288, 9-9-93)

Sec. 22-61. Definitions.

For purposes of this section, the following words shall be defined as follows:

Altered: changed in exterior color, otherwise changed, rebuilt, reconstructed, restored, removed, or remodeled.

Building: a combination of materials forming a shelter for persons, animals, or property.

Commission: the Newton Historical Commission or particular Historic District Commission acting under the provisions hereof.

Constructed: built, erected, installed, enlarged, or moved.

Demolished: destroyed or altered in such a substantial manner as to constitute destruction.

Exterior architectural feature: such portion of the exterior of a building or structure as is open to view from a public or private street, way, park, or body of water which is identified for preservation by its designation by the commission as a landmark, including but not limited to the architectural style and general arrangement and setting thereof, the kind, ~~color~~, and texture of exterior building materials, ~~the color of paint or other materials applied to exterior surfaces~~ and the type and style of windows, doors, lights, signs, and other appurtenant exterior fixtures.

Historic district: any area containing distinctive buildings, structures, landscapes, and places as established in

accordance with G.L. c. 40, s. 8D and chapter 22 of the Revised Ordinances.

Landmark: any building, structure, landscape or place which has been designated for preservation in accordance with Section 22-63 (b). for reasons of its historic significance.

Landscape: a streetscape or an arrangement of land for human use and enjoyment, including placement of structures, vehicular and pedestrian ways and plantings.

Person aggrieved: the applicant, an owner of adjoining property, an owner of property within the same historic district or of property within one hundred feet of the property lines of the property subject to the application, and any charitable corporation having as one of its purposes the preservation of historic buildings or places.

Structure: a combination of materials other than a building, including, but not limited to, a bridge, tower or other engineering work, sign, fence, wall, terrace, walk or driveway. (Ord. No. T-288, 9-9-93)

Sec. 22-62. Eligibility for designation.

(a) All buildings, structures, landscapes and places are eligible to be nominated for landmark designation if such property:

(1) is listed on the National Register of Historic Places or State Register of Historic Places, or formally listed as eligible for listing on said National Register or State Register. ~~All buildings, structures, landscapes and places currently listed on the National Register of Historic Places as individual sites or otherwise listed as eligible for said National Register as individual sites shall be eligible for landmark designation and preservation. No additional investigation and report on the historical and architectural significance of the buildings, structures, landscapes or places to be designated as a landmark shall be required for such sites.~~

~~(1)~~ is listed on the National Register of Historic Places or State Register of Historic Places as part of an historic district, but not individually, or formally listed as eligible for listing on said National Register or State Register as part of an historic district, but not individually

~~(2)~~

~~(2) Buildings, structures, landscapes, and places listed on the National Register of Historic Places as part of an historic district, but not individually, or which are eligible for said National Register as part of an historic district, but not individually, may be eligible for landmark designation and preservation if the commission determines that such building, structure, landscape or place is a contributing element of such National Register historic district and possesses one or more of the National Register criteria. The commission may reject the nomination of any such building, structure, landscape or place if it determines that such property lacks sufficient historical or architectural significance for landmark designation. Buildings; or~~

(3) ~~structures, landscapes or places that~~ **which meet the criteria for historical significance in accordance with Section 22-50 (b)(3) of the Demolition Delay ordinance** are eligible for the National Register either individually or as part of a district may be nominated for landmark designation if they possess historic characteristics sufficient to qualify for listing on the National Register, as certified by the Massachusetts Historic Commission has been determined by the commission or its designee to be historically significant after a finding that it is:

i. ~~importantly associated with one or more historic persons or events, or with the architectural, cultural, political, economic or social history of the City of Newton, the Commonwealth of Massachusetts or the United States of America;~~

ii. ~~historically or architecturally important by reason of period, style, method of building construction or association with a particular architect or builder, either by itself or in the context of a group of buildings or structures; or~~

~~iii.~~ **located within one hundred fifty (150) feet of the boundary line of any federal or local historic**

[district and contextually similar to the buildings or structures located in the adjacent federal or local historic district.](#)

- (b) Any land which, as of August 9, 1993, is contained in the same lot upon which a building or structure eligible for landmark designation is located regardless of whether such lot is later divided, subdivided or redrawn, or any land which, as of August 9, 1993, is contained in an adjoining or surrounding lot(s) held in common ownership or control or used in connection with the lot upon which the building or structure eligible for landmark designation is located, shall be subject to inclusion in the landmark designation as a Newton Landmark Preservation Site, where the preservation and maintenance of such land is necessarily and reasonably related to the stated legislative goal of landmark preservation. Any such designation of land shall include a statement of the reason(s) for the inclusion of the land in the landmark designation pursuant to the legislative standards established herein.
- (c) Should any owner, subsequent owner, lessee, heir or assign seek to place a new building or structure on a lot which has been included in a designation as a landmark, the design, size, shape and location of said new building or structure shall be subject to the full review authority of the commission as set out in sections 22-65 and 22-66 as a condition to any building permit to insure that such new building or structure is not detrimental to the landmark status of any pre-existing building or structure, and does not undermine the purpose and intent of this division of the preservation of any building, structure, landscape or place of historic significance. (Ord. No. T-288, 9-9-93; Ord. No. U-25, 9-7-94; Ord. No. X-159, 07-11-05; Ord. No. X-240, 11-6-06)

Sec. 22-63. Designation.

(a) ~~Members~~ ~~Property Owners of record~~ The owner(s) of record of the subject property, members of the city council, the mayor, the director of planning and development, ~~or the commissioner of inspectional services~~ or any ten (10) registered voters of the City may ~~, in addition to the commission,~~ nominate properties for designation by the commission as Newton Landmark Preservation Sites, through a written nomination to the commission. ~~—If nominated by anyone other than the owner(s) of record, t~~ The commission shall notify by certified mail the owner(s) of the property upon receipt of the written nomination.

(b) The commission by three-quarters (3/4) vote may, after public hearing, designate as a landmark any property within the city being or containing a structure or landscape which it determines ~~meets one or more of the following reasons to be either:~~

- ~~(1) 1)~~ listed on the National Register of Historic Places or State Register of Historic Places, or formally listed as eligible for listing on said National Register or State Register~~listed on the National Register of Historic Places;~~
- ~~(2) or determined eligible for list~~ listed on the National Register of Historic Places or State Register of Historic Places as part of an historic district, but not individually, or formally listed as eligible for listing on said National Register or State Register as part of an historic district, but not individually, and such property is a contributing element of such National Register historic district and possesses one or more of the National Register criteria;~~ng~~
- ~~(3) a; 2)~~ resource at which events occurred that have made an outstanding contribution to, and are identified prominently with, or which best represent some important aspect of cultural, political, economic, military, or social history;
- ~~(4) 3)~~ a resource associated significantly with the lives of outstanding historic personages; or
- ~~(5) 4)~~ a resource representative of elements of architectural or landscape design or craftsmanship which embody distinctive characteristic of a type inherently valuable for study of a period, style or method of construction of development, or a notable work of an influential architect, landscape architect, designer, or builder.

~~to be either (1) importantly associated with one or more historic persons or events, or with the broad architectural, aesthetic, cultural, political, economic, or social history of the city or the commonwealth or (2) historically or architecturally significant (in terms of period, style, method of construction, or association with a famous architect or builder) either by itself or in the context of a group of structures and may order amendments to any designation of landmark theretofore made. Designation of a landmark or amendment or rescission of previous designation shall include a statement of the reasons for such designation pursuant to the legislative standards established herein.~~

(c) The commission shall consider ~~one or more of~~ the following conditions:

- (1) that the location and setting is compatible with future preservation and use;
- (2) that the distinguishing characteristics of significance are for the most part original and intact or capable of restoration;
- (3) that the existing or proposed use is compatible with the preservation and maintenance of the site.

(d) The commission shall hold a public hearing prior to any designation of landmarks. The commission shall give not less than fourteen days' notice of such public hearing by publication in a newspaper of general circulation in

Newton and by mailing notice thereof to the owner of the proposed landmark and to every property owner abutting the proposed landmark (each such owner to be determined from the then current records of the assessing department), and to the mayor, the planning board, and the city clerk.

Prior to the public hearing, the commission shall transmit copies of the landmark report agenda to the planning board for its consideration ~~and recommendation~~.

(e) The Newton Landmark Preservation Sites shall be recorded as follows:

- (1) The office of the city clerk shall record with the Middlesex County recorder the legal description of all buildings, lands, sites or areas designated as Newton Landmark Preservation Sites by the board, and shall send a copy to the commissioner of inspectional services. In addition, the same may be made available to the public in form and fashion as the commission or board deems appropriate.
- (2) Newton Landmark Preservation records.
 - a) The commission shall keep current and public a list of all properties designated as Newton Landmark Preservation Sites, or included in the State or National Register of Historic Places and make the same available to the public in form and fashion as the commission or city council deems appropriate.
 - b) The commission will provide the commissioner of inspectional services and the director of planning and development with current lists and maps showing Newton Landmark Preservation Sites and Districts for their use in referring applications to the commission. (Ord. No. T-288, 9-9-93; Ord. No. X-228, 9-18-06).

Sec. 22-64. Additional powers and duties of the commission.

The commission shall have the following powers and duties in addition to those otherwise specified herein:

(a) The commission shall have the authority to provide general preservation plans and guidelines to owners of Newton Landmark Preservation Sites regarding maintenance, restoration, and rehabilitation.

(b) The commission shall have the authority to promote public recognition and appreciation for Newton Landmark Preservation Sites. It shall periodically publish a register of designated ~~and potential~~ Newton Landmark Preservation Sites, along with guidelines and preservation programs available at that time.

(c) The commission shall have the authority to initiate solicitation of gifts and contributions to be made to the city to support the activities and purposes of the commission. The commission shall assist the city staff in the preparation of applications for grant funds made by the city to outside funding sources for the purpose of city landmark preservation. (Ord. No. T-288, 9-9-93)

Sec. 22-65. Review authority.

(a) Except as this division may otherwise provide, unless the commission shall first have issued a certificate of appropriateness, a certificate of non-applicability, or a certificate of hardship, no building, structure, exterior architectural feature or landscape of a landmark shall be altered or demolished nor any building or demolition permit issued therefor by the city or any department thereof.

(b) Any person who desires to obtain a certificate from the commission shall file with the commission an application for a certificate of appropriateness, a certificate of non-applicability, or a certificate of hardship, as the case may be, in such form as the commission may reasonably determine, together with such plans, elevations, specifications, materials, or other information the commission deems necessary to enable it to make a determination on the application. When such an application involves the proposed alteration to or demolition of a Newton Landmark Preservation Site that is located within a local Historic District, the commission shall have the option of delegating its review authority to the local Historic District Commission which has the review authority over that local historic district.

(c) The commission shall issue a certificate of appropriateness to the applicant:

- (1) if the commission determines that the construction, alteration or demolition for which an application of appropriateness has been filed will be appropriate for or compatible with the preservation or protection of the landmark, or
- (2) if prior to the issuance of any disapproval, the commission, as it may, notifies the applicant of the commission's proposed action and includes, as it may, recommendations for changes in the applicant's proposal, which may include recommendations as to appropriateness of design, arrangement, texture, material and similar features, that, if made, would make the application acceptable to the commission and within fourteen days of the receipt of such notice, the applicant files a written modification of his application in conformity with the recommended changes of the commission.

(d) The commission shall issue a certificate of non-applicability to the applicant if the commission determines that an application for a certificate of appropriateness or for a certificate of non-applicability:

- (1) does not involve any exterior architectural feature or landscape of a landmark, or (2) involves an exterior architectural feature or landscape of a landmark that is not then subject to review by the commission in

accordance with the provisions hereof.

(e) If a certificate of hardship has been applied for, or if the commission determines that the construction or alteration for which a certificate of appropriateness has been applied for is inappropriate, the commission shall issue a certificate of hardship to the applicant if the commission determines that:

- (1) owing to conditions especially affecting the building, structure, landscape, or place involved, but not affecting the landmark's general historic qualities, failure to approve an application will involve a substantial hardship, financial or otherwise, to the applicant;
- (2) such application may be approved without substantial derogation from the intent and purpose of this ordinance; and
- (3) the application may be approved without substantial detriment to the public welfare.

(f) The commission shall issue a certificate of appropriateness to the applicant if the commission fails to make a determination on an application within the time specified in paragraph three of section 22-67. (Ord. No. T-288, 9-9-93; Ord. No. X-240, 11-6-06)

Sec. 22-66. Factors to be considered by the commission.

In passing upon matters before it, the commission shall consider, among other things:

(a) *In general:*

- (1) the historical and architectural value, and significance of the building, structure, landscape, or place;
- (2) the general design, arrangement, texture, material, and color of the features involved; and
- (3) the relation of such features to similar features of buildings and structures in the surrounding area.

(b) *In the case of new construction or additions to existing buildings or structures:* the appropriateness of the size, shape, and location of the building or structure, both in relation to the land area upon which the building or structure is situated and to buildings and structures in the vicinity.

(c) *In the case of demolition or removal:*

- (1) whether the demolition or removal of a building or structure of such architectural or historic significance would impair the public interest and the general welfare of the people of the city, town, or state;
- (2) whether the demolition or removal of the building or structure would undermine the purpose and intent of this division and the objectives of local preservation plans;
- (3) whether the building or structure has so deteriorated that preservation or restoration is not structurally or economically feasible, provided that the owner's self-created hardship or failure to maintain the property in good repair shall not qualify as a basis for the issuance of a certificate of hardship.

The commission shall ~~not~~ make ~~any~~ recommendations or requirements ~~except~~ for the purpose of preventing developments incongruous to the historical or architectural characteristics of a building, structure, landscape or site, or their surroundings.

The commission may impose dimensional and set-back requirements in addition to those required by the applicable ordinance or by-law. (Ord. No. T-288, 9-9-93)

Sec. 22-67. Determination.

The commission shall determine promptly, and in all events within forty-five (45) days after the filing of an application for a certificate of appropriateness, a certificate of non-applicability or a certificate of hardship, as the case may be, whether the application involves any exterior architectural features, or landscapes that are subject to approval by the commission. If the commission determines that such application involves any such features or landscapes, the commission shall hold a public hearing on such application, unless such hearing is dispensed with as hereinafter provided in paragraph four of this section.

The commission shall fix a reasonable time for the hearing on any application and shall give public notice of the time, place, and purposes thereof at least fourteen days before said hearing in such manner as it may determine, and shall give notice by mailing, postage prepaid, a copy of said notice to: (a) the applicant, (b) the owners of all adjoining property and other property deemed by the commission to be materially affected thereby as they appear on the most recent real estate tax list of the board of assessors; (c) the planning board; (d) any person filing a written request for notice of hearings, such request to be renewed yearly in December, and (e) such other persons as the commission shall deem entitled to notice.

As soon as convenient after such public hearing but in any event within sixty days after the filing of the application, or within such further time as the applicant may allow in writing, the commission shall make a determination on the application. If the commission fails to make a determination within such period of time, the commission shall thereupon issue a certificate of appropriateness.

A public hearing on an application need not be held if such a hearing is waived in writing by all persons entitled to notice thereof. In addition, a public hearing on an application may be waived by the commission if the commission determines that the exterior architectural feature, landscape or archeological feature of the landmark is so insubstantial in its effect on the landmark that it may be reviewed by the commission without a public hearing on the application, provided, however, that if the commission dispenses with a public hearing on an application, notice of the application shall be given to the owners of all adjoining property and other property deemed by the commission to be materially affected thereby as above provided, and ten days shall elapse after the mailing of such notice before the commission may act upon such application.

A certificate of appropriateness, a certificate of non-applicability or a certificate of hardship shall be issued upon majority vote of the members of the commission, except in the case of inaction by the commission within the time specified in this section, in which case a certificate of appropriateness shall be automatically issued.

Each certificate of appropriateness, non-applicability or hardship issued by the commission shall be dated and signed by its chairman, vice chairman, secretary, or such other person designated by the commission to sign such certificates on its behalf.

The commission shall file with the city clerk, and with any department of the city having authority to issue building or demolition permits, a copy of notice of all certificates and determinations of disapproval issued by the commission. (Ord. No. T-288, 9-9-93)

Sec. 22-68. Ordinary maintenance.

Nothing in this division shall be construed to prevent: (a) the ordinary maintenance or repair of any building, structure or landscape; (b) the ordinary maintenance, repair or replacement of any exterior architectural feature of a landmark that, with respect to either (a) or (b), does not involve a change in design or material, or the appearance

thereof; if such features have been included in the findings of the Landmark Commission at the time of designation; (c) landscaping with plants, trees or shrubs, provided that such landscaping does not affect any significant landscape feature; (d) meeting of requirements certified by a duly authorized public officer to be necessary for public safety because of an unsafe or dangerous condition; (e) any construction or alteration under a permit duly issued prior to the effective date of the landmark ordinances, except as provided herein. (Ord. No. T-288, 9-9-93)

Sec. 22-69. Administrative review.

~~There shall be a review procedure whereby any person aggrieved by a determination of the commission with respect to a Certificate of Appropriateness, Hardship or Non-Applicability may, within twenty days after the filing of the notice of such determination with the city clerk, file a written request with the commission for a review by a person or persons of competence and experience in such matters, designated by the Metropolitan Area Planning Council (MAPC).~~Reserved

~~The finding of the person or persons making such review shall be filed with the city clerk within forty five days after the request, and shall be binding on the applicant and the commission, unless a further appeal is sought in the superior court as provided herein. (Ord. No. T 288, 9 9 93)~~

Sec. 22-70. Judicial review.

Any person aggrieved by a determination of the commission, or by the finding of a person or persons making an administrative review as provided herein, may, within twenty days after the filing of the notice of the aforesaid determination or finding with the city clerk, appeal to the superior court ~~sitting in equity~~ for Middlesex County. The court shall hear all pertinent evidence and shall uphold the determination of the commission if the court finds the decision of the commission to be supported by substantial evidence and within the authority of the commission, or may remand the case for further action by the commission, or make such other decree as justice and equity may require. The burden of proof shall be on the aggrieved person. The remedy provided by this section shall be exclusive, but the parties shall have all other rights of appeal and exception as in other equity cases. Costs shall not be allowed against the party appealing such determination of the commission unless it shall appear to the court that the appellant acted in bad faith or with malice in making the appeal to the court. (Ord. No. T-288, 9-9-93)

Sec. 22-71. Enforcement.

Middlesex Superior Court sitting in equity shall have jurisdiction to enforce the provisions of this division and any regulations enacted hereunder and the determinations, rulings, and regulations issued pursuant thereto and may, upon the petition of the mayor or of the city council or of the commission, restrain by injunction violations thereof; and, without limitation, such court may order the removal of any building, structure, or exterior architectural feature constructed in violation thereof, or the substantial restoration of any building, structure, exterior architectural feature or landscape of a landmark altered or demolished in violation thereof, and may issue such other orders for relief as may be equitable.

Whoever violates any of the provisions of this division shall be punished by a fine of three hundred dollars (\$300.00). Each day during any portion of which a violation continues to exist shall constitute a separate offense.

Sec. 22-72. Advisory review.

The review process set out in section 22-65 shall be advisory only for properties containing from one through four family dwellings which continue to be owned and occupied by the legal owner-occupants of record as of August 9, 1993, unless full review as set out in section 22-65 is voluntarily agreed to by said owner-occupants. Such advisory review shall cease, and the commission shall have authority to impose the full review set out in section 22-65 when and if such occupancy ceases or when legal or equitable ownership is transferred, whether by sale, an agreement to

sell, or a transfer in trust, but excluding the grant of a mortgage. (Ord. No. T-288, 9-9-93; Ord. No. U-1, 2-7-94)

Sec. 22-73. Severability.

The provisions of this division shall be severable. If any of its provisions shall be held to be invalid or unconstitutional by any court of competent jurisdiction, the remaining provisions shall continue in full force and effect. (Ord. No. T-288, 9-9-93; Ord. No. T-288, 8-9-93)

Secs. 22-74—22-75. Reserved.

DIVISION 4. CITY-OWNED BUILDINGS

Sec. 22-76. Preservation of city-owned properties subject to funding under the Community Preservation Act.

(a) Purpose and Intent:

The purpose of this section is to encourage (1) the preservation and protection of city-owned buildings, structures and properties (2) the maintenance and improvement of landscapes, grounds and settings of such buildings and structures and (3) compatible development to preclude destruction or damage of such resources

(b) Definitions:

For the purpose of this division, the following words and phrases shall be defined as follows:

Alter/alteration: Rebuilding, reconstructing, restoring, removing, demolishing or similar actions relating to regulated buildings, structures and properties including a change to the exterior paint color or colors.

Building: A combination of materials including a roof forming a shelter for persons, animals or property.

Certificate of Appropriateness: The certificate issued by the commission if it determines that the construction or alteration for which an application for a certificate of appropriateness has been filed will be appropriate for or compatible with the preservation or protection of the city-owned building or structure.

Certificate of hardship: The certificate issued by the commission if it determines that owing to the conditions especially affecting the building or structure involve failure to approve an application will involve a substantial hardship to a city department or agency and that such application may be approved without substantial detriment to the public welfare and without substantial derogation from the intent and purpose of this section.

Certificate of non- applicability: The certificate issued by the commission or its designee if it determines that the construction or alteration for which a certificate of appropriateness or a certificate of non-applicability has been filed does not involve any exterior architectural feature, any interior primary space, or involves an exterior architectural feature which is not subject to review by the commission.

City: The City of Newton.

Commission: The Newton Historical Commission.

Commissioner: The Commissioner of the Newton Inspectional Services Department.

Demolish/Demolition: To destroy or to alter in such a substantial manner as to constitute destruction.

ORDINANCE

DEMOLITION DELAY

1. Abutter notices
 2. No appeals process except for NHC rehearing proposal within 20 days
 3. W/D app after demo delay imposed
 4. 50-year benchmark
 5. Historical significance and Preferably Preserved
 6. 150' from LHD boundary
 7. Ordinance clean-up
- LOCAL LANDMARKS*
8. Planning Board role
 9. Owner notification
 10. Neighbors
 11. Hardship
 12. Clarify LL nominations
 13. MHC wants 'out' of landmark ord.

ISSUE

DEMOLITION DELAY

1. Not enough neighbors notified
2. Is NHC too biased?
3. Cannot w/d app. after pref. preserved
4. Too young? Too many properties?
5. Definitions too similar
6. Too restrictive for props. adjoining LHDs?
7. Outdated steps, clarifications needed
8. Ordinance too vague on PB role
9. Owners claim they receive no notice
10. Neighbors aggrieved parties in LL
11. No provision in ordinance. But there is!
12. NHC role unclear in ordinance
13. Believes inclusion in ordinance redundant,

RECOMMENDATION

DEMOLITION DELAY

1. Expand notice to 300' to match SP process
 2. Only CLG with internal appeal process; Add superior court option?
 3. Add withdrawal provision to ordinance
 4. No change recommended
 5. Review and rewrite
 6. No change recommended
 7. Update where needed
- LOCAL LANDMARKS*
8. Enhance role with LL report review
 9. Send certified mail
 10. No change recommended
 11. No change recommended
 12. NHC will not nominate landmarks
 13. Remove MHC as certifier of eligibility

not appropriate

PROCEDURAL

PROCEDURAL

PROCEDURAL

- | | | |
|---|---|---|
| 14. Training for NHC members | 14. No formal training; handouts, etc. | 14. Everyone on same page sooner |
| 15. LL discussions on NHC agendas | 15. Process can appear non-transparent | 15. Certified letters will help, also add agenda item to clarify nomination |
| 16. Post all NHC decisions online | 16. Staff issues them by request | 16. Updating permitting software. Decisions more transparent, less staff time |
| 17. Post signs in yards of full demo apps | 17. Neighborhoods not always aware | 17. Informs more neighbors, applicant pays |
| 18. Add statement with abutter notice | 18. Recipients often not clear why a notice | 18. Abutters more informed |
| 19. Full demolition applications | 19. Currently no fee for demo applications | 19. Charge \$100 |