

## DIVISION 2. DEMOLITION DELAY

**Sec. 22-50. Demolition of historically significant buildings or structures – intent and purpose.**

This division 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.

**Sec. 22-51. Definitions.**

For the purposes of this Division 2. Demolition Delay, the following words shall be defined as follows:

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

*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.

*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.

*Formally listed as eligible for listing:* A determination has been made by the Keeper of the National Register of Historic Places that the property is eligible for listing on the National Register.

*Historically significant:* Any building or structure that has been determined by the commission or its designee to meet the criteria set forth in Sections 22-53(a) and (c).

*Inventory of historic and archaeological assets of the Commonwealth of Massachusetts:* The list of historic and archaeological assets compiled and maintained by the Massachusetts Historic Commission pursuant to M.G.L. c. 9, Sections 26 and 26A(1) .

*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 building or structure.

*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 Section 22-54.

*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.

**Sec. 22-52. Items considered to be de minimis.** Notwithstanding the provisions of Sections 22-53 and 22-54, the commissioner may issue a demolition permit without commission review if, after consultation with commission staff, the commissioner determines that the plans do not involve removal of any architecturally significant features and are limited to:

- (1) Removal of open porches and entryways of only a set of stairs, an entrance platform and a roof which are utilitarian in design;
- (2) Demolition or construction of new additions which remove, alter, or envelop 50% or less of a single exterior wall;
- (3) Removal or alteration of less than 50% of the roof structure; or
- (4) 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 (clapboards, shingles, masonry, etc.).

**Sec. 22-53. Historically Significant**

- (a) No demolition permit shall be issued by the commissioner except in conformity with the provisions of this Sec. 22-53, as well as any other applicable law, statute, ordinance or regulation, for any building or structure that:
  - 1) was in whole or in part built in or before 1945;
  - 2) is individually listed on the National Register of Historic Places, or formally listed as eligible for listing on said National Register, individually;
  - 3) is listed on the National Register of Historic Places as part of an historic district, but not individually, or formally listed as eligible for listing on said National Register as part of an historic district, but not individually; or
  - 4) is listed on the inventory of historic and archaeological assets of the Commonwealth of Massachusetts.
- (b) If any owner of a building or structure identified in Sec. 22-53(a) seeks to demolish in whole or in part such building or structure, the owner, or an applicant acting on behalf of the owner, 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:
  - 1) 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;

- 2) photographs of all existing façade elevations of the building or structure to be totally or partially demolished;
- 3) a description of the proposed plans for demolition and the reason(s) therefore; and
- 4) proof of legal ownership of the building or structure in a form satisfactory to commission staff.

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

- (c) Within fifteen (15) business 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. A building or structure identified in Sec. 22-53(a) shall be determined to be historically significant if it meets one or more of the following criteria:
  - (1) is in any federal or state historic district, or if in any local historic district, is not open to view from a public street, public park or public body of water;
  - (2) is individually listed on the National Register of Historic Places, or formally listed as eligible for listing on said National Register, individually;
  - (3) is listed on the National Register of Historic Places as part of an historic district, but not individually, or formally listed as eligible for listing on said National 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:
    - 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.
- (d) The commission may delegate the determination that a building or structure is historically significant to commission staff and a designated commission member.

- (f) Notwithstanding the provisions of Sections 22-54 and 22-55, alterations to a building or structure determined to be historically significant may be approved by commission staff without a hearing if the commission staff determines that the plans do not involve removal of any architecturally significant features and are limited to:
- a) Removal or alteration of 50% to 100% 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; or
  - d) Removal or envelopment by subsequent additions of 50% to 100% of any single exterior wall surface.

Each wall is calculated by square footage.

- (g) No demolition permit shall be issued by the commissioner for a building or structure determined to be historically significant until the procedural requirements of Section 22-54 of this ordinance have been satisfied. Notwithstanding the foregoing, the commissioner may grant the demolition permit if the commissioner:
- 1) 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;
  - 2) receives written notice from commission staff that the proposed alterations do not involve removal of any architecturally significant features and are approved by commission staff pursuant to Section 22-53(f); or
  - 3) receives written notice from the commission that the building or structure is not historically significant.

**Sec. 22-54. Preferably preserved.**

- (a) 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 is preferably preserved.
- (b) The commission shall give not less than fourteen (14) days' notice of such public hearing to the applicant, owner(s) of the building or structure if different from the applicant, notice to the record owner(s) (each such owner to be determined from the then current records of the assessing department) of those properties within three hundred (300) feet of the property line of the subject property, and notice to other property owners deemed by the commission to be materially affected. Notices shall also be posted with the city clerk and sent to the director of planning and development.

- (c) In the case of partial demolition involving alteration(s) or addition(s) to a building or structure, the applicant shall provide the commission with: (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). In the case of a total demolition, no additional materials are required to be submitted.
- (d) For a partial demolition, the date the commission receives all the above information shall be the submission date. For a total demolition, the date the commission determines the property is historically significant shall be the submission date.
- (e) 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 Section 22-54(f).
- (f) 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. In making such finding, the commission shall consider the following conditions:
  - 1) the historic value and significance of the building or structure;
  - 2) the architectural value and significance of the building or structure;
  - 3) the general design, arrangement, texture and materials of the features and the relation to those features to similar buildings and structures in the nearby area; and
  - 4) the extent of historic fabric remaining in the building or structure.
- (g) 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.
  - 1) For a building or structure listed in the National Register of Historic Places or formally listed as eligible for listing on said National Register, individually or as part of an historic district, 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.
  - 2) For all other buildings and structures not covered under Section 22-54(g)(1) 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.

- (h) After the expiration of the applicable demolition delay period, the commissioner may issue a demolition permit. The scope of the demolition permit shall be limited to the alterations and demolition proposed in the applicant's submissions to the commission.
- (i) The owner of the preferably preserved building or structure shall have two (2) years from the date of the expiration of the applicable demolition delay 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 this Section 22-54 have been satisfied.
- (j) 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.
- (k) 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 this Section 22-54.
- (l) 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.

#### **Sec. 22-55. Waiver**

- (a) After a determination that a building or structure is preferably preserved, the commission may waive the applicable demolition delay period upon a finding that the applicant has either:
  - 1) 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
  - 2) has agreed to accept a demolition permit on specified conditions approved by the commission.
- (b) An applicant for a partial demolition may seek a waiver anytime during the applicable demolition delay period after the commission's determination that the subject building or structure is preferably preserved.

(c) 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 (4) months after the date of final unfavorable action unless the said commission finds:

- 1) by a vote of two-thirds (2/3) of those members present, substantial and material changes in said resubmitted application, or that the resubmitted application proposes to preserve the building or structure.

The commission shall not make a finding under this Sec. 22-55(c) until at least thirty (30) days after the date of the final unfavorable action.

(d) The commission shall give not less than fourteen (14) days' notice of the time and place of the proceedings when the request for waiver will be considered to the applicant, owner(s) of the building or structure if different from the applicant, notice to the record owner(s) (each such owner to be determined from the then current records of the assessing department) of those properties within three hundred (300) feet of the property line of the subject property, and notice to other property owners deemed by the commission to be materially affected. Notices shall also be posted with the city clerk and sent to the director of planning and development.

(e) Upon a determination by the commission to waive the demolition delay period for a building or structure found to be 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. Upon receipt of such determination, the commissioner may grant a demolition permit for the building or structure.

- 1) If the owner agreed to accept a demolition permit on specified conditions that 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.

### **Sec. 22-56. 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.

#### **Sec. 22-57. Non-Compliance and Enforcement**

- (a) 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.

- (b) 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 Division 2. Demolition Delay ordinance.
- (c) In case any section, paragraph, or part of this Division 2. Demolition Delay 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.

#### **Sec. 22-58. Securing Buildings and Structures**

- (a) *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.
- (b) *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.

**Sec. 22-59. Applicability and Judicial Review**

- (a) 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 Section 22-40 of the Revised Ordinances.
- (b) 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.
- (c) This section shall not apply to buildings or structures which have been designated as landmarks pursuant to Section 22-64 of the revised ordinances.
- (d) The owner(s) of a building or structure determined to be preferably preserved under Section 22-54 of the Revised Ordinances, may, within twenty (20) days after the commission makes such determination, 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 unless it finds the action to be arbitrary, capricious, or based on legally untenable grounds, 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 owner(s) of the subject building or structure. 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.