



Zoning & Planning Committee Agenda

City of Newton In City Council

Thursday, May 7, 2020

The Zoning and Planning Committee will hold this meeting as a virtual meeting on Thursday, May 7, 2020 at 7:00 pm. To view this meeting, use this link at the above date and time <https://us02web.zoom.us/j/92360294374>. To listen to the meeting via phone dial 1-646-558-8656 and use the Meeting ID 923 6029 4374.

Items Scheduled for Discussion:

Public Hearing

#178-20 Adoption of the Open Space and Recreation Plan Update

DIRECTOR OF PLANNING requesting discussion of the 2020-2027 Open Space and Recreation Plan, a letter stating that the Zoning and Planning Committee reviewed the Plan, and adoption of the plan as an amendment to the 2007 Comprehensive Plan.

Zoning and Planning Held 8-0 on 03/23/2020

Chair's Note: *The section of chapter 22 dealing with landmarking, as amended by the assigned Working Group, will be presented for review and adoption. It is anticipated that a Committee vote could be taken at the next meeting.*

#29-20 Review and possible amendment of Demolition Delay and Landmark Ordinances

COUNCILORS KELLEY, ALBRIGHT, AUCHINCLOSS, CROSSLEY, GREENBERG, KALIS, KRINTZMAN, LEARY, LIPOF, MARKIEWICZ, BOWMAN, HUMPHREY, RYAN AND NORTON 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.

Zoning & Planning Held 8-0 on 04/13/2020

Respectfully Submitted,

Deborah J. Crossley, Chair

The location of this meeting is accessible and reasonable accommodations will be provided to persons with disabilities who require assistance. If you need a reasonable accommodation, please contact the city of Newton's ADA Coordinator, Jini Fairley, at least two business days in advance of the meeting: jfairley@newtonma.gov or (617) 796-1253. The city's TTY/TDD direct line is: 617-796-1089. For the Telecommunications Relay Service (TRS), please dial 711.



Ruthanne Fuller
Mayor

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Barney S. Heath
Director

MEMORANDUM

DATE: April 29, 2020

TO: Councilor Crossley, Chair of the Zoning and Planning Committee
Members of the Zoning and Planning Committee

FROM: Barney Heath, Director of Planning and Development
Jennifer Steel, Chief Environmental Planner

RE: **#178-20 Adoption of the Open Space and Recreation Plan Update**
DIRECTOR OF PLANNING requesting discussion of the 2020-2027 Open Space and Recreation Plan, a letter stating that the Zoning and Planning Committee reviewed the Plan, and adoption of the plan as an amendment to the 2007 Comprehensive Plan.

MEETING DATE: May 7, 2020

CC: Luis Perez-Demorizi, Open Space Coordinator
Nicole Banks, Commissioner of Parks, Recreation, and Culture
Jonathan Yeo, Chief Operating Officer

Background

The Open Space and Recreation Plan (OSRP) is an important municipal planning document and required for state grant eligibility. It provides an inventory of all existing areas of recreational use and natural open space (City-owned and privately owned) and a list of goals and priorities for municipal actions regarding recreational facility and open space improvements, land acquisitions, and accessibility improvements. Each OSRP must conform with the state's required format and is reviewed and approved by the state Department of Conservation Services, a part of the Executive Office of Energy and Environmental Affairs. Once approved, the OSRP is valid for 7 years. The City's current OSRP is valid from 2013-2020 and has an expiration date of May 31, 2020.

The priorities for this update of the OSRP are updating the inventory of Newton's open space resources and establishing realistic priority goals, objective, and action items that align with the community's needs.

2020 - 2027 Update

To assist with this OSRP update, the City hired a team of graduate students (Rowan Cignoni, Cara Montague, and Samantha Peikes) from the Conway School for Landscape Design to manage the bulk of the OSRP update process. Additionally, the Mayor approved the formation of an OSRP Advisory Committee with representation from City staff, Boards and Commissions, and relevant community organizations.

Community Engagement

The Conway team worked diligently to collect information on Newton's current interests and needs with a robust community engagement process. This started with an online survey available to all residents' and a separate survey, sent out by City staff, to Newton's youth. The surveys featured a variety of questions designed to: (1) gather demographic information regarding family size, relative ages, and which village they resided in; (2) gauge current use of open space and recreational resources; (3) determine what residents feel is lacking from those resources; and (4) provide an opportunity for feedback about desired improvements to Newton's open space resources. The community-wide survey garnered over 1,200 responses in the weeks that it was open, and the youth survey garnered 27 responses from the Youth Commission and students at Newton North and Newton South High Schools.

OSRP Table of Contents

- Section 1: Plan Summary
- Section 2: Introduction – Provides definitions for frequently used terms and a statement of purpose for the plan. There is a summary of planning and public participation processes, which is detailed more in Section 6 and Appendix B.
- Section 3: Community Setting -- Provides demographic information about Newton and a history of its growth and development patterns.
- Section 4: Environmental inventory and Analysis -- Provides a detailed description of the environmental characteristics of Newton, along with a discussion of environmental challenges faced by the community. The majority of the Maps in the plan are found in this section.
- Section 5: Inventory of Lands -- Tabular data regarding open space resources, both publicly and privately owned, in Newton.
- Section 6: Community Vision – Provides a more detailed look at the public participation process and the first statement of goals.
- Section 7: Analysis of Needs -- Reviews public feedback from the surveys, public forums, and Advisory Committee input about Newton's open space needs. The second statement of goals.
- Section 8: Goals and Objectives – Describes in more detail the goals and identifies the objectives that will help the City achieve its goals.
- Section 9: Seven Year Action Plan -- Details prioritized actions that will help the City achieve its goals and objectives. A final table lists for each objective lead implementation bodies, potential funding sources, and timelines.

Summary of OSRP 2020-2027 Goals

The following list provides a title and a short description of each of the 6 goals of Newton's 2020-2027 OSRP Update. While many issues and needs were discussed and considered during the update process, these 6 themes and goals emerged as warranting immediate action and follow-through.

- Goal 1: Coordinated planning and adequate funding for the management of all open space resources

Continuing to ensure appropriate funding and integration of climate change mitigation and adaptation into open space stewardship, connectivity, protection, and accessibility efforts.

- Goal 2: Maintenance and Improvement of the City's open space resources
Maintaining and improving natural areas, athletic fields, parks, water resources, and the urban tree canopy to ensure that healthy and resilient open space in Newton can persist for future generations. This will entail collaborations between City departments, Friends groups, organizations, and volunteers to foster additional public-private partnerships, meet funding needs, and develop master plans.
- Goal 3: Maximized accessibility of Newton's open space resource.
Expanding universal accessibility, within parks and along pedestrian trails.
- Goal 4: Minimized Gaps in the Availability of Newton's Open Space Resources
Increasing diverse, open spaces resources in the parts of the city that have fewer conservation areas and parks and reduced tree cover.
- Goal 5: Connectivity to and between open space resources
Developing more bicycle and pedestrian linkages to open spaces by expanding existing trail networks and building new connections where possible.
- Goal 6: Protection and expansion of Newton's open space resource inventory
Permanently protecting natural areas and parks for wildlife and passive recreation.

Going Forward

The 4-30-20 OSRP draft is being released on April 30th to City Councilors and the general public for a 2-week review period which is due to end on May 14th. All public comment should be forwarded to concom@newtonma.gov.

The draft is in near final form, but please note that work continues on some text and on the maps and figures. Some figure number references are therefore out of order and will be corrected in the final draft.

During the public review period, the draft will be presented to Planning and Development and Zoning and Planning, on 5/4/20 and 5/7/20, respectively. The P&D meeting will be a public meeting. The ZAP meeting will be a public hearing, as required by the state. The request is for ZAP to support the OSRP's adoption as an amendment to the City's 2007 Comprehensive Plan.

Once public comment and Board and Committee comments have been received, City staff will incorporate needed edits, finalize Section 10: Public Comment, and provide the revised draft for ZAP for a vote to adopt as an element of Newton's Comprehensive Plan.

Electronic Link: City of Newton Open Space and Recreation Plan 2020-2027, dated 4/30/20
<http://www.newtonma.gov/gov/planning/lrplan/os/default.asp>



Ruthanne Fuller
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Barney S. Heath
Director

MEMORANDUM

DATE: May 5, 2020

TO: Councilor Deborah Crossley, Chair, Zoning & Planning Committee
Members of the Zoning & Planning Committee

FROM: Barney Heath, Director, Department of Planning and Development
Andrew Lee, Law Department
Katy Hax Holmes, Chief, Preservation Planning

RE: **#29-20 Review and possible amendment of Demolition Delay and Landmark Ordinances**
COUNCILORS KELLEY, ALBRIGHT, AUCHINCLOSS, CROSSLEY, GREENBERG, KALIS, KRINTZMAN, LEARY, LIPOF, MARKIEWICZ, BOWMAN, HUMPHREY, RYAN AND NORTON 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: May 7, 2020

CC: John Lojek, Commissioner of Inspectional Services
Alissa O. Giuliani, City Solicitor
Jonathan Yeo, Chief Operating Officer

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 Landmark Ordinance in the City of Newton provides the highest level of protection for properties determined to be the most architecturally or historically significant. 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.

Under the current ordinance, in addition to the Newton Historical Commission, the Mayor, members of the City Council, the Director of Planning and Development or the Commissioner of Inspectional Services may nominate properties as Landmarks. Landmarks are designated at a public hearing of the Newton Historical Commission by a 3/4 vote of the Commission. In order to be eligible for Landmark status a property must be listed in or eligible for listing in the National Register of Historic Places.

Once a property becomes a local Landmark, the Newton Historical Commission reviews proposed changes to Landmarked properties as though they were included in a local historic district. This means that any alterations to the exterior of the structure, such as demolition, additions, renovations, deterioration by neglect, or new construction, must be reviewed and approved by the Newton Historical Commission. Designation of a local Landmark means that the decision is filed with the Registry of Deeds.

In practice, the Local Landmarks ordinance has been invoked when the city's historically significant buildings become the subjects of applications for full demolition. Newton currently has 23 Local Landmarks.

The Working Group was formed to examine issues City Councilors raised with regards to the City's current Landmark designation process. The Working Group is comprised of President Albright, City Councilors Crossley, Kelley, and Baker, Doug Cornelius from the Newton Historic Commission, and is assisted by Barney Heath and Katy Hax Holmes from the Planning Department, and Andrew Lee for the Law Department. Issues with the current local Landmark Ordinance included concerns that it is poorly organized and difficult to interpret.

The Working Group met weekly over the past three months to review and recommend changes to the Local Landmark Ordinance. In its review of the ordinance the Working Group examined National Landmark practices, undertook comparisons of other communities' local Landmark provisions and sought to incorporate best practices. The Working Group's recommendations include:

- (i) restructuring the organization of the ordinance so that it sequentially sets forth the process including identification of properties that are eligible for nomination, the nomination process, the designation process, and appeals options;
- (ii) setting requirements that provide sufficient notice periods for interested parties, including the owner of a nominated property, through all steps of the Landmarking process; and
- (iii) defining clear and objective criteria for eligibility of properties for nomination, acceptance or rejection of a nominated property, and designation of a property as a local Landmark.

The complete redlined version and clean version of the Working Group's proposed amendments to the Landmark ordinance are attached for your review. Identified below are sections of the ordinance which received the most attention:

Purpose (reorganized)

"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:

- (a) 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 city of Newton, Commonwealth of Massachusetts or the United States of America;

- (b) the maintenance and improvement of settings for such buildings, structures, landscapes, and places; and
- (c) the discouragement of destruction of or damage to such resources and the encouragement of compatible development. (Ord. T-288, 9-9-93)”

Criteria for Nomination/Designation (Revised)

- Remove Massachusetts Historical Commission from eligibility process
- Adopt National Park Service criteria language used for designating National Landmarks in guiding the Newton Historic Commission for both the nomination and designation phases of the local landmark process.

Nomination (Revised)

- WHO CAN NOMINATE? Owners of property or two members of the NHC
or

City Council members, or Mayor, or Director of Planning and Development, or Commissioner of Inspectional Services



- WHEN? NHC must hold meeting to consider nomination. Meeting must be held 45 to 90 days from date of receipt
- WHAT THEN? NHC must determine to accept or reject any nomination. Additional investigation by NHC will follow

Designation (Revised)

- Public hearing must be held 30 to 90 days from vote to accept nomination.
- Minimum of 14 days’ notice of public hearing
- Notice by publication and certified mail to owner
- Notify Planning and Development Board (PB) upon acceptance of nomination
- PB recommendation in concert with City’s policies and adopted plans
- NHC by 3/4 vote of members present, must be minimum 4 affirmative votes

Notice (Revised)

- Notice sent at least 14 days after NHC receives nomination. Certified mail to owner and regular mail to immediate abutters
- Notice must include petition and date of commission meeting to review nomination

Appeals (Pending)

- Law office waiting to hear from MAPC
- Retain superior court language and provision

This item was originally docketed as #244-30 in July 2019 and was subsequently held by the Council. The item was re-docketed this year as #37-20. The current landmark suspension is slated to expire on June 30, 2020.

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:

- (a) 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~~ city of Newton, Commonwealth of Massachusetts or the United States of America; ~~(Ord. T-288, 9-9-93)~~
- (b) the maintenance and improvement of settings for such buildings, structures, landscapes, and places; and
- (c) the discouragement of destruction of or damage to such resources and the encouragement of compatible development. ~~(Ord. T-288, 9-9-93)~~

Sec. 22-61. Definitions.

For purposes of this ~~section~~ Division 3. Landmarks, 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 [AL1] and the type and style of windows, doors, lights, signs, and other appurtenant exterior fixtures.

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.

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 for reasons of its historic significance in accordance with Section 22-64.

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 (100) 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~~nomination.

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

(1) ~~is individually listed on the National Register of Historic Places as individual sites^[AL2], or otherwise formally listed as eligible for listing on 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., individually;~~

(2) ~~Buildings, structures, landscapes, and places is listed on the National Register of Historic Places as part of an historic district, but not individually, or which are formally listed as eligible for listing on said National Register as part of an historic district, but not individually, may be eligible for landmark designation and preservation if the; or~~

(3) ~~has been determined by the commission determines or its designee to be historically significant after a finding that such building, structure, landscape or place is a contributing element of such National Register historic district and possesses it is:~~

i. ~~importantly associated with one or more of the National Register criteria. The commission may reject the nomination of any such building, structure, landscape historic persons or place if it determines that such property lacks sufficient historical events, or architectural significance for landmark designation. Buildings which are eligible for the National Register either individually with the architectural, cultural, political, economic 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 social history of the City of Newton, the Commonwealth of Massachusetts Historic Commission or the United States of America; or~~

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.~~

(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-~~6566~~ and 22-~~6667~~ 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. Nomination ~~Designation~~.

(a) ~~(a) Members~~ Petitions for nomination of buildings, structures, landscapes and places for consideration of designation as a landmark shall only be submitted to the commission, on a form provided by the department of planning and development, by the following:

- (1) all record owners of the nominated property;
- (2) members of the city council, ~~–~~ elected from the ward in which the property is situated^[AL3], provided that at least one (1) member of the commission must co-petition the nomination;
- (3) the mayor, the director of planning and development, or the commissioner of inspectional services may, in addition to the commission, nominate properties for designation by the commission as Newton Landmark Preservation Sites, through a written nomination to the ~~–~~, provided that at least one (1) member of the commission. ~~The~~ must co-petition the nomination; or
- (4) any two (2) members of the commission^[AL4].

(b) Upon receipt of a petition for nomination, the commission shall schedule a meeting to consider the nomination, which meeting shall be held not less than forty-five (45) days nor more than ninety (90) days from the date of the commission’s receipt of the petition. Within fourteen (14) days after the receipt of a petition for nomination, the commission shall send a notice to the record owner(s) of the property by certified mail and a notice to the immediate abutters by regular mail. The notice to the record owner(s) and abutters shall include the petition for nomination and the date of the commission meeting.

(c) At this or a subsequent meeting, the commission shall determine whether to reject the nomination or to accept the nomination and conduct further study of the nominated property. The commission may accept the nomination of buildings, structures, landscapes and places upon an initial determination that such property may meet one or more of the following criteria:

- (1) the property significantly represents an architectural type, style or design distinguished by innovation, rarity, uniqueness, or overall quality of design, detailing, materials or craftsmanship;
- (2) the property is meaningfully associated with a person or persons who significantly contributed to the cultural, historic, architectural or archeological aspect of the development of the city of Newton, Commonwealth of Massachusetts, or the Unites States of America;
- (3) the property’s identification as a notable work of an architect, designer, engineer or builder whose work is significant in the history or development of the city of Newton, Commonwealth of Massachusetts or the United States of America; or
- (4) historic events or activities occurred at the property that have made an outstanding contribution to, or which best represent some important aspect of, the history of the city of Newton, Commonwealth of Massachusetts or the United States of America.

~~(d) Upon an initial determination to accept the nomination, the commission shall notify the owner of the property upon receipt of the written nomination.~~ planning and development board of such acceptance.

Sec. 22-64. Designation. ~~(b) The commission~~

~~(a) If the commission determines to accept the nomination of a property, the commission shall hold a public hearing prior to a vote on whether to designate the property as a landmark. The public hearing shall be held not less than thirty (30) days and not more than (90) days from the date of the commission’s determination to accept the nomination. The commission shall give not less than fourteen (14) days’ notice of such public hearing by publication in a newspaper of general circulation in Newton and by mailing notice to the record owner(s) of the property by certified mail and notice to abutters by regular mail. The term abutters as used in this paragraph shall mean the record owners (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 nominated property. The commission shall also give not less than fourteen (14) days’ notice of such public hearing to the mayor, the planning and development board, and the city clerk.~~

~~(b) At or after the public hearing, the commission by three-quarters (3/4) vote may, after public hearing, but in no instance less than four (4) votes in the affirmative, may designate as a landmark any property within the city being or containing a building, structure or landscape which it determines to be either (1) importantly associated with meet one or more historic persons of the following criteria:~~

~~(1) the property significantly represents an architectural type, style or events design distinguished by innovation, rarity, uniqueness, or overall quality of design, detailing, materials or craftsmanship;~~

~~(2) the property is meaningfully associated 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 reversion of previous designation shall include a statement of the reasons for such designation pursuant to the legislative standards established herein; a person or persons who significantly contributed to the cultural, historic, architectural or archeological aspect of the development of the city of Newton, Commonwealth of Massachusetts, or the United States of America;~~

~~(3) (e) The property’s identification as a notable work of an architect, designer, engineer or builder whose work is significant in the history or development of the city of Newton, Commonwealth of Massachusetts or the United States of America; or~~

~~(4) historic events or activities occurred at the property that have made an outstanding contribution to, or which best represent some important aspect of, the history of the city of Newton, Commonwealth of Massachusetts or the United States of America.~~

~~(c) In determining whether to designate a property as a landmark, the commission shall also consider the following conditions:~~

~~(1) that the location and setting is compatible with future preservation and use;~~

~~(1) ⇔ that the distinguishing characteristics of significance are for the most part original and intact or capable of restoration;~~

(2) (3) that the existing or proposed use property, location and setting is compatible with the future preservation and maintenance of the site; and

~~(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 agenda to the planning board for its consideration and recommendation.~~

(3) (e) the property's context in relation to the City's policies and adopted plans and the property's surrounding area.

(d) The planning and development board may make a recommendation which evaluates the relationship of the proposed designation to the city's adopted policies and plans and the effect of the proposed designation on the surrounding area. The planning and development board shall also make recommendations regarding any other planning considerations relevant to the proposed designation. The planning and development board may make recommendations to the commission any time prior to the public hearing.

(e) Amendment or rescission of any designation shall be upon the request of a person or persons authorized to nominate a property for landmark designation and shall follow the procedures set forth in Sections 22-63 and 22-64. If a request for amendment or rescission of a designation is acted upon unfavorably, no new request for amendment or rescission shall be submitted for the identical property or area for a period of one (1) year from the date of such unfavorable action, except upon a showing of substantial and material newly discovered information.

(f) Designation of a landmark or amendment or rescission of a previous designation shall include a statement of the reasons for such designation, amendment or rescission relevant to the criteria and conditions set forth in Sections 22-64(b) and (c).

(g) 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~~commission, 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. 22-6465. 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. 22-6566. 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-~~666~~7. 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~~68. Determination.

The commission shall determine promptly, and in all events within ~~forty five (45)~~sixty (60) 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~~69. 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~~70. Administrative review.

There shall be a review procedure whereby any person aggrieved by a determination of the commission 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).^[AL5]

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~~71. 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~~72. 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. (Ord. No. T-288, 9-9-93)

Sec. 22-~~72~~73. 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,

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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. 22-7374.
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)

Sec. 22-74—22-75. 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) ~~Reserved.~~ 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 pursuant to section 22-65(a); or

(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 22-72.

(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 22-64(a). 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 (g) 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. 22-65, and require the owner to undertake such plan according to a timeline set by the commission;

d) assess penalties as set forth in section 22-72; 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

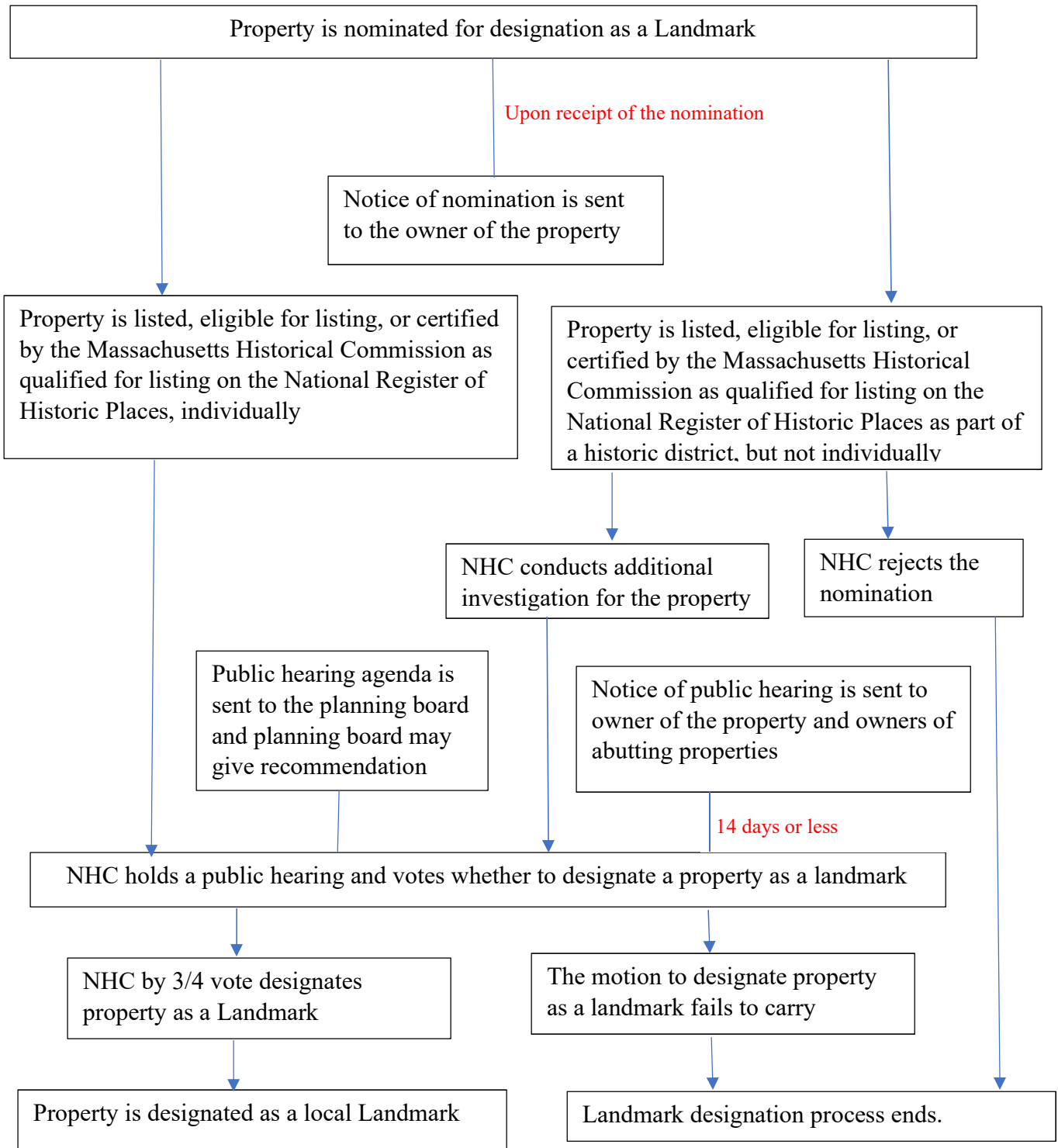
The commission shall notify the commissioner of inspectional services or building official in writing of any landmark found to be threatened by demolition by neglect, and shall instruct said commissioner or building official to make a permanent record of such determination in the corresponding property 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)

LANDMARK ORDINANCE - CURRENT



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:

- (a) 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 city of Newton, Commonwealth of Massachusetts or the United States of America;
- (b) the maintenance and improvement of settings for such buildings, structures, landscapes, and places; and
- (c) the discouragement of destruction of or damage to such resources and the encouragement of compatible development. (Ord. T-288, 9-9-93)

Sec. 22-61. Definitions.

For purposes of this Division 3. Landmarks, 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 [AL1] and the type and style of windows, doors, lights, signs, and other appurtenant exterior fixtures.

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.

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 for reasons of its historic significance in accordance with Section 22-64.

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 (100) 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 nomination.

- (a) All buildings, structures, landscapes and places are eligible to be nominated for landmark designation if such property:
- (1) is individually listed on the National Register of Historic Places^[AL2], or formally listed as eligible for listing on said National Register, individually;
 - (2) 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
 - (3) 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; or
 - 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.
- (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 22-66 and 22-67 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. Nomination

- (a) Petitions for nomination of buildings, structures, landscapes and places for consideration of designation as a landmark shall only be submitted to the commission, on a form provided by the department of planning and development, by the following:
- (1) all record owners of the nominated property;
 - (2) members of the city council elected from the ward in which the property is situated^[AL3], provided that at least one (1) member of the commission must co-petition the nomination;
 - (3) the mayor, the director of planning and development, or the commissioner of inspectional services, provided that at least one (1) member of the commission must co-petition the nomination; or
 - (4) any two (2) members of the commission^[AL4].
- (b) Upon receipt of a petition for nomination, the commission shall schedule a meeting to consider the nomination, which meeting shall be held not less than forty-five (45) days nor more than ninety (90) days from the date of the commission's receipt of the petition. Within fourteen (14) days after the receipt of a petition for nomination, the commission shall send a notice to the record owner(s) of the property by certified mail and a notice to the immediate abutters by regular mail. The notice to the record owner(s) and abutters shall include the petition for nomination and the date of the commission meeting.
- (c) At this or a subsequent meeting, the commission shall determine whether to reject the nomination or to accept the nomination and conduct further study of the nominated property. The commission may accept the nomination of buildings, structures, landscapes and places upon an initial determination that such property may meet one or more of the following criteria:
- (1) the property significantly represents an architectural type, style or design distinguished by innovation, rarity, uniqueness, or overall quality of design, detailing, materials or craftsmanship;
 - (2) the property is meaningfully associated with a person or persons who significantly contributed to the cultural, historic, architectural or archeological aspect of the development of the city of Newton, Commonwealth of Massachusetts, or the United States of America;
 - (3) the property's identification as a notable work of an architect, designer, engineer or builder whose work is significant in the history or development of the city of Newton, Commonwealth of Massachusetts or the United States of America; or
 - (4) historic events or activities occurred at the property that have made an outstanding contribution to, or which best represent some important aspect of, the history of the city of Newton, Commonwealth of

- (d) Upon an initial determination to accept the nomination, the commission shall notify the planning and development board of such acceptance.

Sec. 22-64. Designation.

- (a) If the commission determines to accept the nomination of a property, the commission shall hold a public hearing prior to a vote on whether to designate the property as a landmark. The public hearing shall be held not less than thirty (30) days and not more than (90) days from the date of the commission's determination to accept the nomination. The commission shall give not less than fourteen (14) days' notice of such public hearing by publication in a newspaper of general circulation in Newton and by mailing notice to the record owner(s) of the property by certified mail and notice to abutters by regular mail. The term abutters as used in this paragraph shall mean the record owners (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 nominated property. The commission shall also give not less than fourteen (14) days' notice of such public hearing to the mayor, the planning and development board, and the city clerk.
- (b) At or after the public hearing, the commission by three-quarters (3/4) vote, but in no instance less than four (4) votes in the affirmative, may designate as a landmark any property within the city being or containing a building, structure or landscape which it determines to meet one or more of the following criteria:
- (1) the property significantly represents an architectural type, style or design distinguished by innovation, rarity, uniqueness, or overall quality of design, detailing, materials or craftsmanship;
 - (2) the property is meaningfully associated with a person or persons who significantly contributed to the cultural, historic, architectural or archeological aspect of the development of the city of Newton, Commonwealth of Massachusetts, or the United States of America;
 - (3) the property's identification as a notable work of an architect, designer, engineer or builder whose work is significant in the history or development of the city of Newton, Commonwealth of Massachusetts or the United States of America; or
 - (4) historic events or activities occurred at the property that have made an outstanding contribution to, or which best represent some important aspect of, the history of the city of Newton, Commonwealth of Massachusetts or the United States of America.
- (c) In determining whether to designate a property as a landmark, the commission shall also consider the following conditions:
- (1) that the distinguishing characteristics of significance are for the most part original and intact or capable of restoration;
 - (2) that the property, location and setting is compatible with future preservation and maintenance; and
 - (3) the property's context in relation to the City's policies and adopted plans and the property's surrounding area.
- (d) The planning and development board may make a recommendation which evaluates the relationship of the proposed designation to the city's adopted policies and plans and the effect of the proposed designation on the surrounding area. The planning and development board shall also make recommendations regarding any

other planning considerations relevant to the proposed designation. The planning and development board may make recommendations to the commission any time prior to the public hearing.

- (e) Amendment or rescission of any designation shall be upon the request of a person or persons authorized to nominate a property for landmark designation and shall follow the procedures set forth in Sections 22-63 and 22-64. If a request for amendment or rescission of a designation is acted upon unfavorably, no new request for amendment or rescission shall be submitted for the identical property or area for a period of one (1) year from the date of such unfavorable action, except upon a showing of substantial and material newly discovered information.
- (f) Designation of a landmark or amendment or rescission of a previous designation shall include a statement of the reasons for such designation, amendment or rescission relevant to the criteria and conditions set forth in Sections 22-64(b) and (c).
- (g) 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 commission, 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 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. 22-65. 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. 22-66. 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. 22-67. 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. 22-68. Determination.

The commission shall determine promptly, and in all events within sixty (60) 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. 22-69. 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. 22-70. Administrative review.

There shall be a review procedure whereby any person aggrieved by a determination of the commission 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).^[AL5]

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. 22-71. 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. 22-72. 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. (Ord. No. T-288, 9-9-93)

Sec. 22-73. 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. 22-74. 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)

Sec. 22-75. 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 pursuant to section 22-65(a); or

(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 22-72.

(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 22-64(a). 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 (g) 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. 22-65, and require the owner to undertake such plan according to a timeline set by the commission;

d) assess penalties as set forth in section 22-72; 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)

LANDMARK ORDINANCE - PROPOSED

