

CITY OF NEWTON

IN CITY COUNCIL

ORDINANCE NO.

, 2020

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEWTON **That the Revised Ordinances of Newton, Massachusetts, 2017, as amended, be and are hereby further amended with respect to Article III of Chapter 22 HISTORICAL PROVISIONS as follows:**

- I. RENUMBER **Sec. 22-51. Demolition by Neglect** to **Sec. 22-75. Demolition by Neglect**
- II. DELETE the second sentence of **Sec. 22-60. Landmark Preservation – enactment and purpose.** and insert in place thereof the following language:

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 and 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)
- III. DELETE the word “section” where it occurs in the first sentence of **Sec. 22-61. Definitions.** and insert in place thereof “Division 3. Landmarks”.
- IV. DELETE the words “changed in exterior color, otherwise” where they occur in the definition of *Altered* in **Sec. 22-61. Definitions.**
- V. DELETE the word “color” and the words “the color of paint or other materials applied to exterior surfaces” where they occur in the definition of *Exterior architectural feature* in **Sec. 22-61. Definitions.**
- VI. INSERT after the definition of *Exterior architectural feature* in **Sec. 22-61. Definitions.** as follows:

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.

VII. INSERT in the end of the definition of *Landmark* in **Sec. 22-61. Definitions.** as follows:

“in accordance with Section 22-64.”

VIII. DELETE the definition of *Person Aggrieved* in **Sec. 22-61. Definitions.** in its entirety and insert in place thereof the following language:

Person aggrieved: all record owners of the subject property, 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 subject property, and any charitable corporation having as one of its purposes the preservation of historic buildings or places.

IX. DELETE the word “designation” from the title of **Sec. 22-62. Eligibility for designation** and insert in place thereof “nomination”.

X. DELETE the first and second paragraph of **Sec. 22-62. Eligibility for designation.** in their entirety and insert in place thereof the following language:

(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, 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.

XI. DELETE the words “sections 22-65 and 22-66” where they occur in the fourth paragraph of **Sec. 22-62. Eligibility for designation.** and insert in place thereof “Sections 22-66 and 22-67”.

XII. NUMBER the third and fourth paragraph of **Sec. 22-62. Eligibility for designation.** “(b)” and “(c)”, respectively.

XIII. DELETE **Sec. 22-63. Designation.** in its entirety and insert in place thereof the following language:

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 any of the following:

- (1) all record owners of the nominated property;
 - (2) a member of the city council, 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.
- (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 city clerk and to each councilor for the ward in which the nominated property is located, record owner(s) of the property by certified mail, and a notice to the immediate abutters by regular mail. The notice 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 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 Massachusetts or the United States of America.
- (d) Upon an initial determination to accept the nomination, the commission shall notify the planning

and development board of such acceptance.

XIV. INSERT after **Sec. 22-63. Designation.** a new **Sec. 22-64. Designation** as follows:

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 ninety (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)

AND RENUMBER **Sec. 22-64** to **Sec. 22-74** accordingly.

XV. INSERT in the end of subparagraph (a) of **Sec. 22-65. Review Authority.** as follows:

Alterations to the color or paint on exterior surfaces of a building, structure, or exterior architectural feature of a landmark shall require a certificate of appropriateness, a certificate of non-applicability, or a certificate of hardship, only if such color or paint to be altered is identified for preservation by the commission's designation of the landmark.

- XVI. DELETE the words "material, and color" where they occur in subparagraph (a)(2) of **Sec. 22-66. Factors to be considered by the commission.** and insert in place thereof "and material".
- XVII. INSERT after the word "fourteen" in the second paragraph of **Sec. 22-68. Determination.** the number "(14)".
- XVIII. INSERT after the word "sixty" in the third paragraph of **Sec. 22-68. Determination.** the number "(60)".
- XIX. DELETE **Sec. 22-69. Administrative Review.** in its entirety and insert in place thereof the following language:

Sec.22-70. Administrative review.

- (a) There shall be a landmark review commission to review final determinations of the Newton historical commission at the request of any person aggrieved by such determination.
- (b) The landmark review commission shall consist of three (3) members as follows:
 - (1) The current chair of the urban design commission, or their designee selected from the current members of the urban design commission;
 - (2) The current chair of the zoning board of appeals, or their designee selected from the current members of the zoning board of appeals; and
 - (3) A current chair of a historic district commission, or their designee selected from the current members of their respective historic district commission.
 - i. The member from a historic district commission shall serve for a single administrative review under this Section 22-70.
 - ii. The historic district commission from which a member shall be selected shall alternate in the following order: Newton Upper Falls historic district commission; Chestnut Hill historic district commission; Newtonville historic district commission; and Auburndale historic district commission.
- (c) A person aggrieved by a final determination of the Newton historic commission may, within twenty (20) 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 the landmark review commission. The review fee of \$500.00 must be paid with the filing of the written request.
- (d) The landmark review commission shall hold a public hearing prior to rendering a finding on the

written request for administrative review. The landmark review 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 subject 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 subject 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.

- (e) After the public hearing and within forty-five (45) days after the request was filed, the landmark review commission shall file with the city clerk its finding, which shall be binding on the requestor of the administrative appeal and the commission, unless a further appeal is sought in the superior court as provided herein. The forty-five (45) day deadline may be extended by written agreement between the Newton historic commission, the landmark review commission and the requestor.
- (f) The landmark review commission shall hear all pertinent evidence and shall uphold the Newton historic commission's decision unless it finds the action to be arbitrary, capricious, or based on legally untenable grounds.

XX. INSERT after the word "twenty" in **Sec. 22-70. Judicial review.** the number "(20)".

XXI. DELETE the words "if the court finds the decision of the commission to be supported by substantial evidence and within the authority of the commission" where they occur in **Sec. 22-70. Judicial Review.** and insert in place thereof as follows:

"unless it finds the action to be arbitrary, capricious, or based on legally untenable grounds"

BE IT FURTHER ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEWTON that properties nominated for landmark status prior to June 30, 2020 that have not yet been designated shall be subject to and comply with the landmark designation procedures and requirements set forth in **Sec. 22-64. Designations.** as amended by this Order.

Approved as to legal form and character:

ALISSA O. GIULIANI
City Solicitor

Under Suspension of Rules
Readings Waived and Adopted

EXECUTIVE DEPARTMENT
Approved:

(SGD) DAVID A. OLSON

(SGD) RUTHANNE FULLER

City Clerk

Mayor

DRAFT