

CITY OF SOMERVILLE
ORDINANCE NO. _____
IN THE BOARD OF ALDERMEN: _____

AN ORDINANCE REPLACING THE EXISTING DEMOLITION REVIEW ORDINANCE WITH AN UPDATED DEMOLITION REVIEW ORDINANCE

WHEREAS, the City seeks to maintain and enhance its historic character; and,

WHEREAS, the demolition of significant preferably preserved structures can have impacts on the City's historic character; and,

WHEREAS, since 2003, a Demolition Review Ordinance has permitted the Historic Preservation Commission to review projects for proposed demolitions, and seek strategies to maintain existing preferably preserved structures; and,

WHEREAS, the current ordinance has challenges that limit the ability to successfully preserve structures; and,

WHEREAS, SomerVision and many of the Somerville by Design neighborhood plans often identify important preferably preserved structures that may be at risk for demolition; and,

WHEREAS, while SomerVision and the Somerville by Design plans call for transforming some areas of the City, the plans also call for conservation of neighborhood character, particularly in the City's residential neighborhoods; and,

WHEREAS, demolition of preferably preserved structures is inconsistent with the goal of neighborhood conservation; now,

THEREFORE, be it adopted by the Board of Aldermen, in session assembled, that the Somerville Code of Ordinances is hereby amended as follows:

Section 7.28 of the Code of Ordinances, as adopted by Ordinance No. 2003-05 is hereby repealed and replaced with the following:

DEMOLITION REVIEW ORDINANCE

Section 1: Intent and Purpose

The purpose of this ordinance is to preserve and protect significant buildings within the City of Somerville ("City") which constitute or reflect distinctive features of the architectural, cultural, political, economic, or social history of the City, and which are outside a designated local historic district; to encourage owners of such preferably preserved significant buildings and members of the Somerville Historic Preservation Commission ("Commission") to develop strategies to preserve, rehabilitate, or restore such buildings, rather than demolish them; or in the alternative to seek out persons willing to purchase and to preserve, rehabilitate, or restore such buildings, rather than demolish them; and to promote the public welfare by making the City a more attractive place in which to live. To achieve these purposes, the Commission is empowered to advise the Building Official with respect to the issuance of demolition permits. The issuance of demolition permits for significant buildings is regulated as provided in this ordinance.

Section 2: Definitions

For the purposes of this ordinance, the following words and phrases shall have the meanings set forth below:

2.1 Applicant means any person filing an application for a city permit.

2.2 Application means a written application for a permit for the demolition of a building or structure.

2.3 Board of Survey means the board ordered to respond, by Massachusetts General Laws Chapter 143 Section 8, when an owner of a building or structure does not respond to a notice that the building or structure is unsafe. The board shall consist of the City engineer, the head of the fire department, and one disinterested person to be appointed by the Building Official.

2.4 Building means any combination of materials forming a shelter for persons, animals or property.

2.5 Building Official means the person occupying the office of Superintendent or Director of Inspectional Services, or his/her designee.

2.6 Business Day means a day that is not a recognized municipal or federal holiday, and is not a Saturday or Sunday.

2.7 Chairperson means the head of the Commission, the person performing the functions of the chairperson. In the event that no one holds that title, chairperson shall refer to the individual(s) whose role is to execute the administrative functions of a chairperson for the Somerville Historic Preservation Commission. Chairperson may also refer to any other person to whom the chairperson delegates authority to act according to this ordinance.

2.8 City Clerk means the person holding the office of city clerk in the City.

2.9 Commission means the Somerville Historic Preservation Commission (SHPC).

2.10 Demolition means the act of pulling down, destroying, removing, moving, or razing a building or structure. Demolition includes commencing the work of partial, substantial, serial, or total destruction of a building or structure with the intent of completing the same. For the purposes of this ordinance, the term "demolition" shall not include routine maintenance, nor interior renovations (except as noted below where the integrity of the structure is at risk). Demolition includes partial demolition, serial demolition, illegal demolition and demolition by neglect.

2.10.1 Partial demolition means demolition of more than 25% of the volume, or 25% of the exterior surfaces of the structure.

2.10.2 Serial Demolition means the ongoing demolition in stages over any time period of 5 years or less where several small demolitions accrete to 25% or more of the volume or exterior surfaces of the structure.

2.10.3 Illegal demolition means a demolition undertaken by any person without an application having been reviewed and approved by the Somerville Historic Preservation Commission.

2.10.4 Demolition by Neglect is as defined in Chapter 7, Section 7.29 of the City of Somerville Ordinances.

2.11 Demolition Delay Period means a period of time whereby a window of opportunity is emplaced to enable the owners of a property, working with the Commission or its designees to determine ways of

preserving and rehabilitating the property as an alternative to demolition.

2.12 Exempt areas means the following:

- a. The Assembly Square District, Brickbottom District, Inner Belt Industrial Park District, Boynton Yards / Union Redevelopment District and Grand Junction District, with boundaries as incorporated herein and available on file and available for inspection in the office of the City Clerk, and the office of the Planning Director; and,
- b. the historic districts within the City of Somerville as identified in Section 7-18 of the Code of Ordinances; and,
- c. buildings or structures owned by the City of Somerville or any of its political subdivisions.

2.13 Final Determination means a determination of Preferably Preserved made by the Commission in accordance with Section 4 of this Ordinance.

2.14 Initial Determination means a determination of Significance made by the Commission in accordance with Section 4 of this ordinance.

2.15 Owner means the entity with legal title to a building or structure.

2.16 Permit means a written permit issued by the Building Official for demolition (as defined herein) of a building or structure pursuant to an application.

2.17 Person means an individual, corporation, partnership, association, trust, society, or similar entity.

2.18 Preferably Preserved building or structure means any significant building or structure, which the Commission determines, as provided in Section 4 of this chapter, that it is in the public interest to be preserved or rehabilitated rather than to be demolished.

2.19 Premises means the parcel of land upon which the demolished building or structure was located and all adjoining parcels of land under common ownership or control that are identified in the permit application.

2.20 Reasonable Economic Return means the cost to rehabilitate the building to the point at which a reasonable use or a reasonable profit can be realized from the property. This may mean bringing a building up to code to the point at which it can be occupied, not necessarily to its "highest and best use," preferred use or a restoration project.

2.21 Significant building or structure means any building or structure within the City as determined by the Commission in their Initial Determination which:

- a. Is listed on, or is within an area listed on, the National Register of Historic Places, or which is the subject of a pending application for listing on the National Register, or;
- b. Is at least 50 years old, and has been determined by the Commission to be a significant building or structure, per Section 5 of this ordinance.

2.22 Structure means any constructed, erected, or placed material or combination of materials in or upon the ground, excluding sidewalks, stairs and paving on streets, driveways, parking areas, and patios.

2.23 Voluntarily means any act(s) done by design or intention, which is proposed, intended, or not accidental. An Act of God is not considered voluntary, but rather is regarded as an act done without the will or choice of the applicant (or owner, if different from applicant). For the purposes of this chapter, the destruction of a significant building or structure for failure to properly secure it shall be considered voluntary.

Section 3: Review of Demolitions

No building or structure in the City of Somerville may undergo demolition, as defined in Section 2, except through the provisions of this ordinance. Demolition may only be permitted if one of the following apply:

- a. The building or structure does not meet the *prima facie* definition of significant (i.e. it is less than 50 years old, and is not currently on, or proposed to be placed on, the National Register), or;
- b. The building or structure is located within an exempt area, or;
- c. The building or structure is determined by the Commission or its designee to not be significant, through the procedure of Section 5 of this ordinance, or;
- d. The building or structure is determined by the Commission to not be preferably preserved through the procedure of Section 6 of this ordinance, or;
- e. The Commission lifts or shortens a Demolition Delay Period per Section 7 of this ordinance, or;
- f. The Demolition Delay Period, per Section 7 of this ordinance, is exhausted.

Section 4: Notification

When the Building Official or Planning Director receives an application for a demolition permit, a building permit or a permit for zoning relief (including but not limited to special permit, site design plan review or variance), for:

- a. work that will constitute demolition, as defined in this ordinance, and;
- b. is on a building or structure that is or could be determined significant, as defined in this ordinance, and;
- c. is not within an exempt area, then;

the Building Official or Planning Director will, within ten (10) days, notify the Commission or its designees in writing that a relevant application has been received. This notification shall include a copy of the application, and shall be delivered to the Commission or its designees by interoffice mail, email, fax, or by in-hand delivery.

Section 5: Initial Determination (Determination of Significance)

5.1 Determinations by the Commission

Upon receipt of a notification per Section 4, the Commission shall move to determine if a building or structure is significant, as follows:

- a. If a building or structure is listed on, or is within an area listed on, the National Register of Historic Places, or the subject of a pending application for listing on the National Register, it shall be automatically determined significant, and shall be scheduled for final determination per Section 6.
- b. Otherwise, for structures over 50 years old the Commission or its designee shall make a written determination whether the building or structure, which is the subject of the relevant permit application, is a significant building or structure, within thirty (30) days of receiving a copy of the application, unless an extension of time is permitted by mutual agreement of the applicant and the Commission.

5.2 Application and Plan Review

Prior to a determination of significance by the Commission, the applicant must submit an application to the Commission which shall include:

- a. A brief description of the type of building or structure.
- b. A scaled certified plot plan showing the location of the significant building or structure on the property and with reference to neighboring properties.
- c. Photographs of all street façade elevations and portions of the building or structure visible from a public way.
- d. A bid from a qualified, licensed contractor showing the estimated cost of the proposed

demolition.

5.3 Criteria for Determination of Significance

To determine if a structure over 50 years old is significant, the Commission must make a finding that the building or structure is:

- a. Importantly associated with one or more historic persons or events, or with the broad architectural, cultural, political, economic or social history of the City or the Commonwealth of Massachusetts; or,
- b. Historically or architecturally significant (in terms of period, style, method of building construction, or association with a reputed architect or builder) either by itself or in the context of a group of buildings or structures, and therefore it is in the public interest to be preserved or rehabilitated rather than to be demolished.

5.4 Procedure for Public Notice and Meetings

A determination of significance shall be made in a duly noticed public meeting of the Commission, except as exempted in Section 5.6. The Commission shall give notice of the meeting by publishing the time, place, and purpose of the meeting in a local newspaper, at least fourteen (14) days prior to the hearing. The Commission shall also mail, in a form designated by the City, a notice to the applicant, the owner of the building or structure and abutters to the subject property within 300 feet, postmarked at least ten (10) days prior to the meeting.

5.5 Notice of Decision

- a. If the Commission determines that the building or structure is not a Significant building or structure, this determination shall be transmitted to the Building Official, the applicant, the owner of the building or structure and to the City Clerk. The applicant will not be required to take any further steps toward preservation of the building or structure and the permit may be granted, subject to all other building permit and zoning requirements.
- b. If the Commission determines that the building or structure is Significant, it shall notify the Building Official, the applicant, and the City Clerk, of its determination. The owner or applicant, or their representatives, shall then be required to attend a subsequent Final Determination public hearing with the Commission to determine if the structure is to be Preferably Preserved.
- c. If the Commission fails to act in accordance with this process within the prescribed time periods, the Building Official may grant the demolition permit, provided that the applicant has met all other requirements under the filed applications, and shall notify the Commission in writing that the permit has been granted.

5.6 Delegation

The Commission may delegate the determination of significance of certain classes or types of buildings or structures to the Planning Division staff, through the Rules and Regulations for the Commission. Such delegation may include, but not be limited to, provisions to permit staff review of significance of concrete block garages, outbuildings, sheds and similar accessory structures.

Section 6: Final Determination (Determination of Preferably Preserved)

6.1 Additional Application and Plan Review Materials

The Commission may request application information, in addition to the information requested in Section 5.2, in the process of a final determination, as follows. An applicant must submit:

- a. Information about the proposed project that will be pursued, if the demolition is permitted to proceed

In the event that the applicant and/or owner seek to take a position that the structure is of deficient structural integrity, the applicant shall submit:

- b. An independent licensed structural engineer's report, from a qualified and experienced structural engineer with proven expertise in historic building techniques.

In the event, that the applicant and/or owner seek to take a position that a financial hardship applies to an income property, the Commission may request any or all of the following. Such a request shall be subject to a vote by Commissioners and where the vote is carried then it will be incumbent upon the applicant to provide such information in order for the demolition review process to continue:

- c. The appraised value of the property by a licensed appraiser for the following conditions:
 - In the property's current condition;
 - After completion of the proposed demolition;
 - After rehabilitation of the existing property for continued use.
- d. An estimate from an architect, developer, contractor, or appraiser experienced in rehabilitation as to the cost to rehabilitate the building to the point of which a reasonable use or a reasonable profit can be realized from the property. Such considerations may include, but not be limited to, bringing a building up to code so it can be occupied.
- e. The amount paid for the property, the date of purchase, and the person from whom the property was purchased, a description of the relationship, if any, between the owner of record, the applicant and the person from whom the property was purchased or is being purchased, and the terms of the purchase or proposed purchase, including financing.
- f. Operation and maintenance expenses, depreciation deduction and annual cash flow before and after debt service, if any.
- g. The name of all mortgagees and the balance of all mortgages or other financing secured by the property and annual debt service.
- h. All appraisals obtained within the previous two (2) years by the owner or applicant in connection with the purchase, financing and ownership of the property.
- i. Any listing of the property for sale or rent, the price asked and offers received for sale or rent, if any, within the previous five (5) years.
- j. The assessed value of the property for the previous two (2) assessment years.
- k. The form of ownership or operation of the property, whether sole proprietorship, for profit or not-for-profit corporation, limited partnership, joint venture or other.
- l. Any other information considered necessary by the Commission to determine whether the property yields or may yield a reasonable economic return to the property owner(s).
- m. Proof of the applicant's efforts to obtain financing, tax incentives, preservation grants and other incentives to allow the applicant to earn a reasonable economic return from the property.
- n. Documents, including copies of invoices, detailing the applicant's efforts in ongoing maintenance and repair.

6.2 Procedure for Public Notice and Meetings

The Commission shall conduct a public hearing on the application within forty-five (45) days of its initial determination of significance, unless an extension of time is permitted by mutual agreement of the applicant and the Commission. The Commission shall give the public notice of the hearing by publishing the time, place, and purpose of the hearing in a local newspaper, at least fourteen (14) days prior to the hearing. The Commission shall also mail, in a form designated by the City, a notice to the applicant, the owner of the building or structure and abutters to the subject property within 300 feet, postmarked at least ten (10) days prior to the hearing.

6.3 Public Hearing

The applicant or their agent must present their demolition request in person to the Commission and be prepared to answer questions asked by the Commission. If the property applicant, their agent, or property owner is unable to address questions regarding the demolition request or the supporting documentation, the experts / professionals who prepared the information must be present. If the applicant, owner or

their agent cannot attend the meeting or adequately address questions, the demolition request will be continued to a later meeting and the Commission's determination will be delayed.

6.4 Peer Review

The Commission may call for a peer review of any professional report as prescribed under Massachusetts General Law Section 44 Chapter 53G (to be provided at the applicant / owner's expense), should the Commission deem it necessary to make a final determination.

6.5 Final Determination

If the Commission determines that the demolition of the Significant building or structure would be detrimental to the architectural, cultural, political, economic, or social heritage of the City, then, the Commission shall determine that such building or structure shall be considered a Preferably Preserved building or structure. In rare cases, the Commission may, at their discretion, determine that a building or structure is not preferably preserved, by making a finding that the negative impact on the heritage of the City would be exceeded by the benefit to the City of the development that would occur if the demolition were permitted to go forward.

6.6 Filing of Decision

Within twenty-one (21) days following the date of the public hearing, the Commission or its designees shall file a final determination, in writing, with the City Clerk, and shall inform the Building Official, the applicant and the owner of the building or structure.

7. Process for Preferably Preserved Buildings

7.1 Demolition Delay Period

Upon the Commission's final determination that said building or structure is Preferably Preserved, per Section 3, the Building Official shall not issue a demolition permit for building or structure during the Demolition Delay Period. The Demolition Delay Period shall be {12, 18, 24} months, beginning from the date following the day upon which the Commission made the final determination that building or structure is preferably preserved.

7.2 Alternatives to Demolition

During the Demolition Delay Period, the applicant, their agent, and/or the owner (if different from applicant), and the Commission or its designees shall actively pursue alternatives to demolition of the preferably preserved building or structure, including but not limited to, finding a buyer for the building or structure that is willing to rehabilitate the property, rather than demolish it. The applicant, their agent, and/or the owner is required to actively pursue alternatives to demolition by meeting with a subcommittee of the Commission or the designees of the Commission at a minimum of once per month during the Demolition Delay Period.

7.3 Shortening / Ending the Demolition Delay Period

The Commission may shorten or end the demolition delay period, at its discretion, upon determination that one of the following conditions applies:

- a. The Commission determines that there is no reasonable likelihood that either the owner or some other person or group is willing to purchase, preserve, rehabilitate or restore such building or structure.
- b. The Commission and the applicant come to a mutually agreeable plan for a more limited demolition that adequately preserves the property and permits the applicant to meet the findings of Section 6.5.
- c. The Commission and the applicant come to a mutually agreeable set of strategies for addressing the heritage on the site, including but not limited to: photographic documentation; architectural renderings of the structure to be demolished; salvage of material; installation of

historic signage; and/or design standards for a replacement structure.

Upon making a determination to shorten or end the Demolition Delay Period, the Commission shall file a decision and inform the applicant and the Building Official per Section 6.6.

7.4 Withdrawal

If the applicant chooses not to proceed with demolition, the applicant may, at any time, inform the Commission and withdraw their application without prejudice.

8. Enforcement

8.1 Authority

The Commission, the City Clerk, and the Building Official are each specifically authorized to institute any and all actions and proceedings, in law or in equity, as they deem necessary and appropriate to obtain compliance with the requirements of this article. This may include, but is not limited to, the complete reconstruction and restoration of the demolished structure.

8.2 Fines

Anyone who demolishes a significant building or structure without complying fully with the provisions of this ordinance shall be subject to a fine of not more than \$300 per day until a remedy is determined. The duration of the period of this penalty shall be determined by the City based on satisfactory adherence to the agreed-upon remedy. The City may, at its discretion, direct this fine to the owner, the contractor, or the applicant, or allocate the fine amongst the parties as it deems appropriate. Unpaid fines shall result in a municipal lien against the subject property.

8.3 Building Permit Delay

No building permit shall be issued for a new building or structure on any premises where a significant building or structure is demolished in violation of this ordinance for a period of three (3) years after the date of demolition.

9. Other Provisions

9.1 Secure Building

Upon a determination by the Commission that a building or structure is a preferably preserved building or structure, the owner shall be responsible for properly securing the building or structure.

9.2 Emergency Demolition

Nothing in this article shall derogate from the authority of the Building Official to act under Massachusetts General Laws Chapter 143 and the State Building Code.

9.3 Historic Districts Act

If any provision of this ordinance conflicts with the "Historic Districts Act," Massachusetts General Laws Chapter 40(C), the Act shall prevail.

9.4 Rules and Regulations

The Commission may establish rules and regulations of procedure for the implementation of this ordinance, including but not limited to establishment of an application process, application fees, and the delegation process that is set forth in Section 5.6.

9.5 Transferability

Where the owner sells a property that is in the middle of the demolition review process, that new owner may continue the review process but may be required to submit updated documentation as required by

the Commission.

9.6 Severability and Reinstatement

In case any section, paragraph or part of this ordinance for any reason shall be declared invalid by any court, every other section, paragraph and part shall continue in full force and effect. If any section, sentence, clause or phrase of this ordinance is held invalid, the relevant section, sentence, clause or phrase in effect prior to the effective date of the ordinance shall be reinstated in full force and effect, without further action from the Board of Aldermen.

Approved by the Board of Aldermen:

_____ President

DRAFT