

SAMPLE DEMOLITION DELAY BYLAW – AGE BASED

This bylaw can be emailed to you by contacting the Massachusetts Historical Commission.

This bylaw should be passed as a General Bylaw, not a Zoning Bylaw.

This bylaw is for a twelve month delay period as recommended by the Massachusetts Historical Commission.

However, most demolition delay bylaws in Massachusetts are for six months.

Consult with your municipal legal counsel regarding this sample bylaw.

Consult with your municipal legal counsel regarding the use of non-criminal compliance as an enforcement provision for this bylaw.

For more information on demolition delay bylaws including a map of municipalities with demolition delay, contact the Massachusetts Historical Commission at (617) 727-8470 or by email at Christopher.Skelly@state.ma.us.

+++++

Title of Bylaw

The Preservation of Historically Significant Buildings

Intent and Purpose

This by-law is enacted for the purpose of preserving and protecting significant buildings within the Town which constitute or reflect distinctive features of the architectural, cultural, economic, political or social history of the town and to limit the detrimental effect of demolition on the character of the town. Through this bylaw, owners of preferably preserved buildings are encouraged to seek out alternative options that will preserve, rehabilitate or restore such buildings and residents of the town are alerted to impending demolitions of significant buildings. By preserving and protecting significant buildings, streetscapes and neighborhoods, this bylaw promotes the public welfare by making the town a more attractive and desirable place in which to live and work. To achieve these purposes the Historical Commission is authorized to advise the Building Inspector with respect to demolition permit applications. The issuance of demolition permits is regulated as provided by this by-law.

Definitions

APPLICANT-Any person or entity who files an application for a demolition permit. If the applicant is not the owner of the premises upon which the building is situated, the owner must indicate on or with the application his/her assent to the filing of the application.

APPLICATION-An application for the demolition of a building.

BUILDING-Any combination of materials forming a shelter for persons, animals, or property.

BUILDING COMMISSIONER - The person occupying the office of Building Commissioner or otherwise authorized to issue demolition permits.

COMMISSION – The [name of town] Historical Commission or its designee.

DEMOLITION-Any act of pulling down, destroying, removing, dismantling or razing a building or commencing the work of total or substantial destruction with the intent of completing the same.

DEMOLITION PERMIT - The building permit issued by the Building Inspector for a demolition of a building, excluding a building permit issued solely for the demolition of the interior of a building.

PREFERABLY PRESERVED - Any significant building which the Commission determines, following a public hearing, that it is in the public interest to be preserved rather than demolished. A preferably preserved building is subject to the twelve month demolition delay period of this bylaw.

SIGNIFICANT BUILDING – Any building within the town (city) which is in whole or in part fifty years or more old and which has been determined by the Commission or its designee to be significant based on any of the following criteria:

- The Building is listed on, or is within an area listed on, the National Register of Historic Places; or
- The Building has been found eligible for the National Register of Historic Places; or
- The Building is importantly associated with one or more historic persons or events, or with the broad architectural, cultural, political, economic or social history of the Town or the Commonwealth; or
- The Building is historically or architecturally important (in terms of period, style, method of building

construction or association with a recognized architect or builder) either by itself or in the context of a group of buildings.

Procedure

No demolition permit for a building which is in whole or in part fifty years or more old shall be issued without following the provisions of this bylaw. If a building is of unknown age, it shall be assumed that the building is over 50 years old for the purposes of this bylaw.

An applicant proposing to demolish a building subject to this bylaw shall file with the Building Commissioner an application containing the following information:

- The address of the building to be demolished.
- The owner's name, address and telephone number.
- A description of the building.
- The reason for requesting a demolition permit.
- A brief description of the proposed reuse, reconstruction or replacement.
- A photograph or photograph(s) of the building.

The Building Commissioner shall within seven days forward a copy of the application to the Commission. The Commission shall within fifteen days after receipt of the application, make a written determination of whether the building is significant.

Upon determination by the Commission that the building is not significant, the Commission shall so notify the Building Commissioner and applicant in writing. The Building Commissioner may then issue the demolition permit.

Upon determination by the Commission that the building is significant, the Commission shall so notify the Building Commissioner and the applicant in writing. No demolition permit may be issued at this time. If the Commission does not notify the Building Commissioner within fifteen days of receipt of the application, the Building Commissioner may proceed to issue the demolition permit.

If the Commission finds that the building is significant, it shall hold a public hearing within thirty days of the written notification to the Building Commissioner. Public notice of the time, place and purpose of the hearing shall be posted in a conspicuous place in town hall for a period of not less than seven days prior to the date of said hearing and the applicant and the building inspector shall be notified in writing of the meeting time and place.

The Commission shall decide at the public hearing or within fourteen days after the public hearing whether the building should be preferably preserved. If agreed to in writing by the applicant, the determination of the Commission may be postponed.

If the Commission determines that the building is not preferably preserved, the Commission shall so notify the Building Commissioner and applicant in writing. The Building Commissioner may then issue the demolition permit.

If the Commission determines that the building is preferably preserved, the Commission shall notify the Building Commissioner and applicant in writing. No demolition permit may then be issued for a period of twelve months from the date of the determination unless otherwise agreed to by the Commission. If the Commission does not so notify the Building Commissioner in writing within twenty one days of the public hearing, the Building Commissioner may issue the demolition permit.

Upon a determination by the Commission that any building which is the subject of an application is a preferably

preserved building, no building permit for new construction or alterations on the premises shall be issued for a period of twelve months from the date of the determination unless otherwise agreed to by the Commission.

No permit for demolition of a building determined to be a preferably preserved building shall be granted until all plans for future use and development of the site have been filed with the Building Commissioner and have found to comply with all laws pertaining to the issuance of a building permit or if for a parking lot, a certificate of occupancy for that site. All approvals necessary for the issuance of such building permit or certificate of occupancy including without limitation any necessary zoning variances or special permits, must be granted and all appeals from the granting of such approvals must be concluded, prior to the issuance of a demolition permit under this section.

The Building Commissioner may issue a demolition permit or a building permit for a preferably preserved building within the twelve months if the Commission notifies the Building Commissioner in writing that the Commission finds that the intent and purpose of this bylaw is served even with the issuance of the demolition permit or the building permit.

Following the twelve month delay period, the Building Commissioner may issue the demolition permit.

Administration

The Commission may adopt such rules and regulations as are necessary to administer the terms of this bylaw. The Commission is authorized to adopt a schedule of reasonable fees to cover the costs associated with the administration of this bylaw.

The Commission may delegate authority to make initial determinations of significance to one or more members of the Commission or to a municipal employee.

The Commission may pro-actively develop a list of significant buildings that will be subject to this bylaw. Buildings proposed for the significant building list shall be added following a public hearing.

Emergency Demolition

If after an inspection, the Building Commissioner finds that a building subject to this bylaw is found to pose an immediate threat to public health or safety due to its deteriorated condition and that there is no reasonable alternative to the immediate demolition of the building or structure, then the Building Commissioner may issue an emergency demolition permit to the owner of the building or structure. The Building Commissioner shall then prepare a report explaining the condition of the building and the basis for his decision which shall be forwarded to the Commission.

Enforcement and Remedies

The Commission and/or the Building Commissioner are each specifically authorized to institute any and all actions and proceedings, in law or equity, as they may deem necessary and appropriate to obtain compliance with the requirements of this by-law or to prevent a threatened violation thereof.

Any owner of a building subject to this bylaw that demolished the building without first obtaining a demolition permit in accordance with the provisions of this bylaw shall be subject to a fine of not more than Three Hundred Dollars. Each day the violation exists shall constitute a separate offense until a faithful restoration of the demolished building is completed or unless otherwise agreed to by the Commission.

If a building subject to this bylaw is demolished without first obtaining a demolition permit, no building permit shall be issued for a period of two years from the date of the demolition on the subject parcel of land or any adjoining parcels of land under common ownership and control unless the building permit is for the faithful restoration referred to above or unless otherwise agreed to by the Commission.

Historic District Act

Following a determination that the building is significant and preferably preserved, the Commission may recommend to town meeting that the building be protected through the provisions of Massachusetts General

Law, Chapter 40C, the Historic Districts Act. The steps required under M.G.L. Chapter 40C shall be followed prior to the establishment of a local historic district. Nothing in this by-law shall be deemed to conflict with the provisions of the Historic District Act, Massachusetts General Laws Chapter 40C. If any of the provisions of this by-law do so conflict, that act shall prevail.

Severability

In case any section, paragraph or part of this by-law be for any reason declared invalid or unconstitutional by any court, every other section, paragraph, and part shall continue in full force and effect.