



Recodification Committee Report

City of Newton **In City Council**

Monday, July 1, 2018

Present: Councilors Albright and Baker

City Staff Present: David Olson (City Clerk), Ouida Young (Acting City Solicitor), Shawna Sullivan (Committee Clerk), John Wyman (Historic District Commissions)

- #391-18** **Discussion of changes to the Historic District Commission section of the Ordinances**
RECODIFICATION COMMITTEE requesting discussion of changes to the Historic District Commission sections of Chapter 22 of the Ordinances as suggested by the Recodification Committee during the 2017 recodification process.
- Action:** **Recodification Approved 2-0 items 1-6 and docket for further consideration in ZAP items 7 & 8**

Note: John Wyman presented the working groups suggested changes to the Historic District Commission sections of the Ordinances. The group recommended 8 items be changed in the Historic District Ordinances. The first six items were technical amendments that the Recodification Committee was comfortable recommending for approval by the City Council. Items 7 & 8 were more substantial and the Committee recommends that these be docketed and referred to the Zoning & Planning Committee for consideration:

1. Change the deadline for Historic District Commission action on requests for certificates from 45 to 60 days. This change will put Newton's Ordinance in line with Mass Law which gives historic district commissions 60 days to act. Currently, if a commission does not act within 45 days the applicant is entitled to a certificate of hardship and can perform the requested modifications.
2. Clarification that an application for a certificate is not complete without all supporting documentation. The addition of the words "with all supporting documentation" is proposed to be added to make clear that the time period within which a commission may act on an application starts when the commission has received both the application and all supporting documentation.
3. Recognition that historic district commissions meet monthly. The current ordinance requires that a commission hold a public hearing within twenty (20) days after the filing of a completed application. It is proposed that the ordinances be changed to give flexibility to commissions to follow their current practices of monthly meetings as well as to conduct additional meetings if they so choose.
4. Clarification of the number of votes required to approve certificates as opposed to votes on other matters. The current version of the ordinance is confusing and needs to comply with the

requirement in Mass Law. A certificate can be issued only by four or more affirmative votes of commission members. A sentence has been added to make it clear that for all other votes such as election of officers, adoptions of procedures, standards and rules, and other matters, as long as a quorum is present a majority vote of the commission members present is sufficient to adopt a motion.

5. Shortening the by-right entitlement for temporary structures and signs from 90 days to 60 days. The ordinance currently allows a property owner to obtain a certificate of non-applicability for any structure or sign for 90 days. Typical temporary signs in historic districts include signs for charitable and school events and political signs during election campaigns. Temporary structures most often include dumpsters, portable toilets, and temporary skating rinks.

6. Separating the current single section on rules for signs which combines rules for two different types of signs which are subject to different standards into subsections (b) and (c) to simplify without any substantive change.

The Recodification Committee recommends the following two items be docketed and referred to the Zoning and Planning Committee for discussion.

7. Extending jurisdiction of the historic districts to terraces, walks and public sidewalks. Mass G.L. c. 40C, §8 (a)(2) allows municipalities to subject terraces, walks and sidewalks to review by historic district commissions but Newton's ordinance does not. Because terraces, walks and sidewalks are often an important aspect of historic properties, historic district commissions have been making recommendations concerning them and recommend that they be given explicit jurisdiction to do so.

8. Giving historic districts jurisdiction over reflective glazes in storm windows. Since the enactment of the historic district ordinance in 1975 the use of coated glazing in storm windows has increased. The historic districts request they be given jurisdiction over coated glazing which obscure the view of historic windows from public ways as set forth in the proposed new §22-40 (h)(1)(e).

A full description of all eight items is attached as well as a red-lined version of the changes.

#390-18 Discuss future ordinance changes suggested by the Recodification Committee
RECODIFICATION COMMITTEE requesting discussion on future Ordinance changes
suggested by the Recodification Committee in the 2017 Recodification Report.
Held 2-0

Note: The Committee reviewed the remaining items listed in the Report of the Recodification Committee from December 4, 2017 and recommends the following:

City Seal Ordinance – this item has been docketed and initially discussed in Programs & Services. The committee encourages the discussion to be finished up and reported to the Council.

Update Purchasing Section of Ordinances – The text for this section of the Ordinances has been drafted by the Purchasing Agent and is being reviewed by the Law Department. The committee encourages the Law Department to complete its review and docket the item.

The Committee encourages the Law Department to review with the appropriate departments the following items and docket requests for change as soon as practicable:

Engineering's Stormwater Management Policy and Ordinance to be consistent.
Develop a Revolving Funds Ordinance to Meet Municipal Modernization requirements.
Clarify who has control of Parking on Municipal Property.
Codify the Shrubs and Overhanging Vegetation Removal Charges.

The Committee requests a docket item be submitted and referred to the Programs & Services Committee to discuss the following item:

Rules change that will require Law Department Review of Ordinance changes before the Council takes final action on the change.

The Recodification Committee will meet again in September for a status update on these items.

Meeting adjourned.

Respectfully Submitted,

Councilor Susan S. Albright
Councilor R. Lisle Baker

TO: THE RECODIFICATION COMMITTEE

FROM: JOHN WYMAN

JULY 2, 2018

SUBJECT: SUGGESTED CHANGES TO THE NEWTON HISTORIC DISTRICT,
NEWTON ORDINANCES, §§22-40 THROUGH 22-44

During the recodification process of the Newton City Ordinances in the fall of 2017 the recodification committee identified a number of ordinances that appeared to need revisions. As the longtime chair of the Chestnut Hill Historic Commission I volunteered to organize a review of the Historic District Ordinance. Barbara Kurze, Senior Preservation Planner for the City of Newton who provides staff and administrative assistance to all four of the Newton historic districts, collected information and organized two meetings of the chairs and vice chairs and other interested commission members of the four commissions where we discussed issues that have arisen since the ordinance was adopted in 1975. As a result of those meetings a consensus among all of the participants for the changes to the existing ordinance that are shown in the revised ordinance and redline version attached to this memorandum. The proposed changes are described in paragraphs 1 through 8 below.

1. Change the deadline for Historic District Commission action on requests for certificates from 45 to 60 days. While Mass G.L. c. 40C, §11, 4th paragraph, allows municipalities to adopt ordinances allowing commissions up to 60 days to act on applications, the Newton ordinance requires that historic commissions act on applications within 45 days of the filing of a completed application. If a commission does not act within 45 days the applicant is entitled to a certificate of hardship and can perform the requested modifications. All of the Newton historic district commissions meet once a month. While most applications are acted on within 14 to 30 days of submission of an application, occasionally a commission does not have a quorum due to vacations, recusals or other causes. There would be no significant change to current commission practices and procedures by this modification and it would reduce if not eliminate circumstances which in the past have denied commissions an opportunity to review of some applications.
2. Clarification that an application for a certificate must include all supporting documentation. Mass G.L. c. 40C, §6, 2nd paragraph, gives a commission the power to require applicants to file "such plans, elevations, specifications, material and other information ... as may reasonably deemed necessary by the commission to enable it to make a determination on the application." The addition of the words "with all supporting documentation" is proposed to be added to §22-40 (f)(1) to make clear that the time period within which a commission may act on an application starts when the commission has received an application and all supporting documentation.
3. Recognition that historic district commissions meet monthly. §22-40 (f)(2) of the current ordinance requires that a commission hold a public hearing within twenty (20) days after the filing of a completed application. All historic district commissions meet once a month. It is proposed that subsection (f)(2) be changed to give flexibility of commissions to

follow their current practices of monthly meetings and to conduct additional meetings if they so choose. Additional changes to this subsection are three other editorial changes.

4. Clarification of votes required to approve certificates and votes on other matters.

Subsection (d)(1) of the ordinance requires that each commission have seven members. The current version of §22-40 (f)(6) is confusing and is proposed to be shortened to comply with the requirement in Mass G.L. c. 40C, §11, 1st paragraph, that a certificate can be issued only by four or more affirmative votes of commission members. In addition, a sentence is added to make it clear that for all other votes such as election of officers, adoptions of procedures, standards and rules, and other matters, as long as a quorum is present a majority vote of the commission members present is sufficient to adopt a motion.

5. Shortening the of right entitlement for temporary structures and signs from 90 to 60 days.

§22-40 (h)(1) currently allows a property owner to obtain a certificate of non-applicability for any temporary structure or sign for 90 days. Typical temporary signs in historic districts include signs for charitable and school events and political signs during election campaigns. Temporary structures most often include dumpsters and portable toilets.

6. Separating §22-40 (h)(1)(b) into two sections for clarity. The current section combines rules for two different types of signs that are subject to different standards. They have been separated into subsections (b) and (c) and simplified without any substantive change.

7. Extending jurisdiction of the historic districts to terraces, walks and sidewalks. Mass G.L. c. 40C, §8 (a)(2) allows municipalities to subject terraces, walks and sidewalks to review by historic district commissions but Newton's ordinance does not. Because terraces, walks and sidewalks are often an important aspect of historic properties, historic district commissions have been making recommendations concerning them and recommend that they be given explicit jurisdiction to do so.

8. Giving historic districts jurisdiction over reflective glazes in storm windows. Since the enactment of the historic district ordinance in 1975 the use of coated glazing in storm windows has increased. The historic districts request they be given jurisdiction over coated glazing which obscure the view of historic windows from public ways as set forth in the proposed new §22-40 (h)(1)(e).

ARTICLE III. HISTORICAL PROVISIONS

DIVISION 1. COMMISSIONS AND DISTRICTS

Sec. 22-40. Historic district; purpose, ~~governance~~, appointments, officers.

(a) *Purpose.* The purpose of this section is to promote the preservation and protection of the distinctive characteristics of buildings and places significant in the history of the City of Newton, the maintenance and improvement of settings of such buildings and settings, and the encouragement of design compatible with the existing architecture.

(b) *Definitions.* As used in this section, the following terms shall be defined as set forth herein unless otherwise stated:

To alter, alteration: To rebuild, reconstruct, restore, remove, demolish or other similar activities, including a change in exterior color.

Building: A combination of materials forming a shelter for persons, animals or property.

Certificate of Appropriateness: The certificate issued by a commission if it determines that the construction or alteration for which an application for a certificate of appropriateness has been filed will be appropriate for or compatible with the preservation or protection of the district.

Certificate of Non-applicability: The certificate issued by a commission if it determines that the construction or alteration for which a certificate of appropriateness or a certificate of non-applicability has been filed does not involve any exterior architectural feature or involves an exterior architectural feature which is not subject to review by the commission.

Certificate of Hardship: The certificate issued by a commission if it determines that owing to conditions especially affecting the building or structure involved, but not affecting the historic district generally, failure to approve an application will involve a substantial hardship, financial or otherwise, to the applicant and such application may be approved without substantial detriment to the public welfare and without substantial derogation from the intent and purposes of this section. A certificate of hardship shall also be issued by the commission in the event that it fails to make a determination on an application within ~~forty-five~~ sixty (60) days of filing.

Commission: An historic district commission as established hereunder.

To construct, construction: To build, erect, install, enlarge, move and other similar activities.

District: An historic district established pursuant to chapter 40C and these ordinances consisting of one or more district areas.

Exterior architectural features: Such portion of the exterior of a building or structure as is open to view from a public street, public way, public park or public body of water, 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 and the type and style of windows, doors, lights, signs and other appurtenant exterior fixtures.

Person aggrieved: The applicant, an owner of adjoining property, an owner of property within the same historic district ~~as property located~~ within one hundred (100) feet of said property lines and any charitable corporation which has as one of its purposes the preservation of historic structures or districts.

Sign: Any symbol, design, or device used to identify or advertise any place of business, product, activity or person.

Structure: A combination of materials other than a building, including a sign, fence, wall, terrace, walk or driveway, and all supporting assemblies, supporting structures, equipment and facilities ancillary or accessory to antennae and wireless communication equipment as described in Sec. 30-18A of the Newton Revised Ordinances, entitled Wireless Communications Devices.

(c) *Districts.*

- (1) A district shall consist of one or more district areas as delineated in the map or maps identified in subsection (c)(4) hereof.
- (2) Prior to the establishment of additional districts, an investigation and report on the historical and architectural significance of the buildings, structures or sites to be included in the proposed district shall be made by the existing district commission(s) or by the historical commission acting as an historic district study commission pursuant to the provisions of G.L. C. 40C, sections 3 and 4, as set forth in subsections (c)(2) - (4) of this section. The buildings, structures or sites to be included in the proposed district may consist of one or more parcels or lots of land, or one or more buildings or structures on one or more parcels or lots of land. Copies of the report shall be transmitted to the planning board and to the Massachusetts Historical Commission for their respective consideration and recommendations. Not less than sixty (60) days after such transmittal, the study committee shall hold a public hearing on the report after due notice given at least fourteen days prior to the date thereof, which shall include a written notice mailed postage prepaid, to the owners as they appear on the most recent real estate tax list of the board of assessors of all properties to be included in such district or districts. The committee shall submit a final report with its recommendations, a map of the proposed district or districts and a draft of the proposed ordinance to the city council for its consideration. Adoption of such ordinance shall require a two-thirds (2/3) vote of the city council.
- (3) In the case of the enlargement or reduction of an existing district, the investigation, report and hearing shall be conducted by the historic district commission having jurisdiction over such district. In the case of a creation of an additional historic district, the investigation, report and hearing shall be conducted by the existing historic district commission or commissions acting jointly if there is more than one historic district commission, provided, however, that the existing historic district commission(s) may relinquish all power relative to the establishment of an additional district(s) as permitted by G.L. C. 40C, section 3, in which event the historical commission shall serve as an historic district study committee to perform all acts required of historic district commission(s) for the establishment of additional districts.
- (4) A district created pursuant to this ordinance or any amendment to the boundaries of an existing district shall not become effective until a map or maps setting forth the boundaries of the new district, or the change in the boundaries of an existing district has been filed with the city clerk and recorded in the Middlesex South Registry of Deeds.

(d) *District Commissions.*

- (1) Each district shall be administered by a commission consisting of seven (7) members, appointed by the mayor subject to confirmation by the city council. Initial terms shall be as follows: two (2) members shall be appointed for one (1) year; two (2) members shall be appointed for two (2) years and three (3) members shall be appointed for three (3) years. The mayor shall fill the vacancies in membership arising from expired terms by appointments for a term of three (3) years. Appointments to membership shall be so arranged that the term of at least one member will expire each year, and their successors shall be appointed in the same manner as the original appointment. Any vacancy in the membership of the commission shall be filled for the unexpired portion of any member's term by the mayor.
- (2) A commission shall include one member from two nominees submitted by the local chapter of the American Institute of Architects; one attorney; one realtor from two nominated by the local Board of Realtors; one member or alternate member of the historical commission; one additional member or alternate member of the historical commission or one member nominated by the Newton Historical Society; and two residents or property owners from the district administered by the commission. If within thirty (30) days after submission of a written request for nominees to any of the organizations herein named no such nominations have been made, the mayor may proceed to appoint members without nomination by such organization.
- (3) The mayor shall appoint at least two and no more than seven alternate members to each commission. Alternate members need not be from nominees of organizations entitled to nominate members. In the event that a permanent member is absent or unable to act for any reason, the chairman of the commission shall designate an alternate member to act in place of a permanent member. The initial appointments of alternate members shall be for terms of two or three years, with appointments thereafter being for three year terms.
- (4) Each member and alternate member to a commission shall continue to serve in office after the expiration date of his or her term until a successor is duly appointed, except as provided in subsection (d)(5) hereof.
- (5) The term of the historical commission member shall be coterminous with his or her membership on the historical commission. Any member of a commission appointed by virtue of his or her residence or ownership of property within the district who removes his/her residence or property ownership from such district shall be considered to have resigned from his membership on such commission.
- (6) A commission shall at the beginning of each fiscal year hold an organizational meeting and elect a chairman, a vice chairman, and secretary from among the permanent members, and file notice of such election with the city clerk.
- (7) Meetings of a commission shall be held at the call of the chairman, at the request of two permanent members and in such other manner as a commission shall determine.
- (8) Four (4) members of a commission shall constitute a quorum.

(e) *District Commission Powers and Duties.*

- (1) A commission shall regulate the construction and/or alteration of any building(s) or structure(s) within the district over which it has jurisdiction in accordance with the provisions of G.L. c. 40C and the procedures and criteria established by this ordinance. Except as otherwise provided in subsection (h) hereof or in the ordinance provision establishing a specific district, no building or

structure within a district shall be constructed or altered in any way that affects exterior architectural features unless the commission having jurisdiction over that district shall first have issued a certificate of appropriateness, a certificate of non-applicability or a certificate of hardship with respect to such construction or alteration.

- (2) A commission may adopt and/or amend reasonable rules and regulations which are consistent with the provisions of this section and with G.L. c. 40C, and which set forth such procedures as it deems desirable and necessary for the regulation of and conduct of its business, including requirements for the contents and form of applications for certificates, fees, hearing procedures, and other matters. The commission shall file a copy of any such rules and regulations with the city clerk. All fees imposed by the commission shall be approved in advance by the city council.
- (3) A commission shall keep a permanent record of its decisions, transactions, resolutions, and of the vote of each member participating therein.
- (4) A commission shall cooperate with, consult and advise officers, departments, boards, commissions, committees and other agencies of the city on matters affecting the administration of the district under its jurisdiction.
- (5) A commission shall offer assistance to and advise owners and occupants of historic buildings and structures within the district of its jurisdiction on problems of preservation.
- (6) A commission may propose as it deems appropriate enlargements and reductions to the district under its jurisdiction; and in accordance with the provisions of this section and G.L. c. 40C, conduct investigations, prepare reports and conduct public hearings concerning enlargements or reductions to the district.
- (7) A commission may act relative to the establishment of additional historic district(s) as permitted by G.L. c. 40C, or may relinquish all its powers relative to the establishment of additional historic districts and recommend that the historical commission act as an historic district study committee to perform all acts required of an historic district commission(s) for the establishment of additional historic districts.
- (8) A commission may, subject to appropriation or receipt of other monies, employ clerical and technical assistants and consultants and incur other expenses appropriate to the carrying on of its work and may accept money gifts and expend the same for such purposes.

(f) Procedures for Review of Applications for Certificates of Appropriateness, Non-Applicability and Hardship.

- (1) Any person who desires to obtain a certificate from a commission shall file an application with a commission. The application shall be accompanied by such plans, elevations, specifications, photographs, and other information, including in the case of demolition or removal a statement of the proposed condition and appearance of the property thereafter, as may be reasonably deemed necessary by the commission to enable it to make a determination on the application. The date of the filing of an application shall be the date on which a copy of such application [with all supporting documentation](#) is received at the city's department of planning and development. A commission shall determine within fourteen (14) days after the filing of an application for a certificate whether the application involves any exterior architectural features which are subject to approval by the commission.

- (2) If the application involves any features which are subject to approval, a commission shall hold a public hearing ~~within twenty (20) days~~ at its next regularly scheduled meeting after the filing of a completed application for a certificate of appropriateness or a certificate of hardship unless additional time is agreed to by ~~both the applicant and the commission in writing~~ or unless such hearing is dispensed with as provided in subsection (f)(3) hereof. Copies of the public notice of the time, place and purposes of the public hearing shall be mailed to the applicant, to the owners of all ~~other~~ adjoining property and to other property owners deemed by the commission to be materially affected thereby, to the planning and development board, to any person filing written request for notice of hearings and to such other persons as the commission shall deem entitled to notice.
- (3) A public hearing on an application need not be held if such hearing is waived in writing by all persons entitled to notice thereof. In addition, a public hearing on an application may be waived by a commission if the commission determines that the exterior architectural feature involved or its category, as the case may be, is so insubstantial in its effect on the district that it may be reviewed by the commission without 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 (10) days shall elapse after the mailing of such notice before the commission may act upon such application.
- (4) A commission shall render a decision within ~~forty-five (45)~~ sixty (60) days after the filing of a completed application for a certificate of appropriateness unless further time for a decision is allowed, in writing, by the applicant. If the commission shall fail to make a determination within ~~forty-five (45)~~ sixty (60) days, the commission shall thereupon issue a certificate of hardship.
- (5) In the case of a disapproval of an application for a certificate of appropriateness, a commission shall place upon its records the reasons for such determination and shall forthwith cause a notice of its determination, accompanied by a copy of the reasons therefore as set forth in the records of the commission, to be issued to the applicant, and the commission may make recommendations to the applicant with respect to appropriateness of design, arrangement, texture, materials, and similar features. Prior to the issuance of any disapproval, the commission may notify the applicant of its proposed action accompanied by recommendations of changes in the applicant's proposal which, if made, would make the application acceptable to the commission. If within fourteen (14) 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, the commission shall cause a certificate of appropriateness to be issued to the applicant.
- (6) The concurring vote of ~~a majority of the members, i.e., four members,~~ of a commission shall be required to issue a certificate. All other matters that may come before a commission may be determined by a majority vote of the commission members present at the meeting.
- (7) In issuing certificates, a commission may, as it deems appropriate, impose certain conditions and limitations, and may require architectural or plan modifications consistent with the intent and purpose of this section.
- (8) If a commission determines that the construction or alteration for which an application for a certificate of appropriateness has been filed will be appropriate for or compatible with the preservation or protection of the district, the commission shall issue a certificate of appropriateness.
- (9) If a commission determines that an application for a certificate of appropriateness or for a certificate of non-applicability does not involve any exterior architectural feature, or involves an exterior

architectural feature which is not subject to review by the commission, the commission shall cause a certificate of non-applicability to be issued to the applicant.

- (10) If the construction or alteration for which an application for a certificate of appropriateness has been filed shall be determined to be inappropriate and therefore disapproved, or in the event of an application for a certificate of hardship, a commission shall determine whether, owing to conditions especially affecting the building or structure involved, but not affecting the district generally, failure to approve an application will involve a substantial hardship, financial or otherwise, to the applicant and whether such application may be approved without substantial detriment to public welfare and without substantial derogation from the intent and purposes of this section. If the commission determines that owing to such conditions failure to approve the application will involve substantial hardship to the applicant and approval thereof may be made without such substantial detriment or derogation, the commission shall issue a certificate of hardship.
- (11) Each certificate issued by the commission shall be dated and signed by the chairman or such other person designated by the commission to sign such certificates on its behalf.
- (12) The commission shall send a copy of certificates and disapprovals issued to the applicant and shall file a copy with the city clerk and the commissioner of inspectional services.
- (13) Any person aggrieved by a determination of a commission, may, within twenty (20) days of 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, not exceeding three, of competence and experience in such matters, designated by the Metropolitan Area Planning Council. The finding of the reviewers shall be filed with the City Clerk within forty-five (45) days after the request, and shall be binding on the applicant and the commission, unless further appeal is sought in superior court as provided in G.L. c. 40C, section 12A. The filing of such further appeal shall occur within twenty (20) days after the finding of the reviewers has been filed with the city clerk.

(g) *Criteria for Determinations.*

- (1) In deliberating on applications for certificates, a commission shall consider, among other things, the historic and architectural value and significance of the site, building or structure, the general design, arrangement, texture, material and color of the features involved, and the relation of such features to similar features of buildings and structures in the surrounding area.
- (2) In the case of new construction or additions to existing buildings or structures, a commission shall consider the appropriateness of size and shape 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, and a Commission may in appropriate cases impose dimensional and set-back requirements in addition to those required by applicable zoning ordinances.
- (3) A commission shall not consider interior arrangements or architectural features not subject to public view.
- (4) A commission shall not make any recommendation or requirement except for the purpose of preventing developments incongruous to the historic aspects or the architectural characteristics of the surroundings and of the district.
- (5) Nothing in this section shall be construed to prevent the ordinary maintenance, repair or replacement of any exterior architectural feature within a district which does not involve a change in design,

material or the outward appearance thereof, nor to prevent landscaping with plants, trees or shrubs, nor construed to prevent the meeting of requirements certified by a duly authorized public officer to be necessary for public safety because of an unsafe or dangerous condition, nor construed to prevent any construction or alteration under a permit duly issued prior to the effective date of any ordinance provision or amendment thereto listing a specified district.

- (6) A commission shall not review and shall issue a certificate of non-applicability for the reconstruction, substantially similar in exterior design, of a building, structure or exterior architectural feature damaged or destroyed by fire, storm or other disaster, provided such reconstruction is begun within one (1) year thereafter and carried forward with due diligence.
- (7) With the exception of applications submitted pursuant to subsection (f), nothing in the design controls authorized by this section shall be construed as giving a commission the power to require restoration of any building or structure or portion of any building or structure to any particular historic appearance or style of said building or structure or said portion of building or structure had already been substantially removed or lost or changed prior to the adoption of the initial ordinance provision establishing historic commissions, to-wit, December 15, 1975.
- (8) A commission is authorized to deny any application for a certificate of appropriateness, non-applicability or hardship for the proposed construction or alteration of any building or structure within the district over which it has jurisdiction upon a determination that there is an unremediated violation of this ordinance in existence at the subject building or structure, regardless of whether said violation is attributable to the present owner or a predecessor in title to the subject premises. Upon proper remediation of any such violation, as verified by said commission with the assistance of and review by the commissioner of inspectional services, or building official, if necessary, any such application shall proceed through the established procedure for commission review, subject to the established administrative criteria for determinations, as set out in subsections 22-40(f) and 22-40(g).

(h) *Exclusions.*

- (1) A commission shall have no jurisdiction to review the following categories of exterior architectural features, and shall issue a certificate of non-applicability for:
 - a) temporary structures and signs erected for a period of ~~ninety-sixty~~ (9060) days or less;
 - b) one residential identification ~~signs-sign~~ which ~~are-is~~ not more than one foot square in area; provided that ~~a second set of residential building numbers affixed or inscribed on buildings in order to comply with Section 26-7, Numbering of buildings, shall not be subject to review by nor shall they require a certificate of non-applicability from said commission; provided further that:~~
 - i) the sign consists of letters and/or street identification numbers painted or otherwise suitably inscribed on wood, brass or stone without a symbol or trademark; and
 - ii) if illuminated, such sign is illuminated only indirectly (indirectly meaning by a light source directed at the sign surface and not contained within the sign or its structure).
 - ec) a second set of residential building numbers affixed or inscribed on buildings in order to comply with Section 26-7, Numbering of buildings, shall not be subject to review by nor shall they require a certificate of non-applicability from said commission.

d) signs for professional or security purposes which are not more than one foot square in area; provided that:

i) only one sign is displayed for each building or structure;

ii) the sign consists of letters painted on wood or brass without a symbol or trademark;

iii) if illuminated, it is illuminated only indirectly.

~~d) terraces, walks, and sidewalks so long as such structure is substantially at grade level;~~

e) storm doors and storm windows with clear and non-coated ~~non-reflective~~ glazing.

~~e) storm doors, storm windows, f) window~~ screens, -lightning protection, window boxes, window air conditioners and lighting fixtures, except for freestanding lighting fixtures;

~~f) g)~~ paint colors;

~~g) h)~~ colors of roof materials.

h) i) antennae designed to receive television broadcast signals; antennae designed to receive direct broadcast satellite services, including direct-to-home satellite services, but only if one meter or less in diameter; antennae designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, but only if one meter or less in diameter or diagonal measurement, as set out in Section 207 of the Federal Telecommunications Act of 1996 and rules and regulations promulgated thereunder, 47 C.F.R. Ch.1, Subpart S, §1.4000, and any successor laws, rules or regulations; satellite earth station antennae, as detailed in FCC rules and regulations, 47 C.F.R. 25.104 and any successor laws, rules and regulations; and any antennae in a non-residential building or structure which are not visible because they are concealed within the building, structure or its physical appurtenances, including, but not limited to a steeple, belfry, or the like. Supporting assemblies, supporting structures, equipment and facilities ancillary or accessory to such antennae as described in Sec. 30-18A of the Newton Revised Ordinances are not exempt nor excluded from historic district commission and historic commission jurisdiction and review pursuant to M.G.L. c. 40C and Sec. 22-40 through 22-44 of the Newton Revised Ordinances.

(i) Enforcement.

The commission, as defined herein, is authorized to institute any and all actions and proceedings, in law or in equity, in any court of competent jurisdiction, consistent with the provisions of G.L. c. 40C, s. 13, as amended, or its successor, as it deems necessary and appropriate to obtain compliance -with the requirements of this ordinance and the determinations, rulings and regulations issued pursuant thereto. Whoever violates any of the provisions of this ordinance shall be punished by a fine not exceeding three hundred dollars (\$300.00) for each offense. Each day any violation of this ordinance shall continue shall constitute a separate offense.

(j) Building Permits.

The commission shall notify the commissioner of inspectional services or building official in writing of

any violation of the requirements of this ordinance or its determinations, rulings and regulations with regard to a specific building or structure, and shall instruct said commissioner or building official to make a permanent record of such violation 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 building or structure, 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 building or structure in writing, stating the reasons therefor.

(k) *Severability.*

The provisions of this section shall be deemed to 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. 102, 12-15-75; Ord. No. V-157, 12-15-97; Ord. No. V-214, 12-21-98; Ord. No. V-300, 5-15-00; Ord. No. X-197, 03-20-06; Ord. No. X-209, 05-01-06)

Sec. 22-41. Newton Upper Falls Historic District; established, boundaries.

There is hereby established an historic district to be known as the Newton Upper Falls Historic District, bounded and described as shown on the map entitled "Newton Upper Falls Historic District Expansion, July 11, 1985." (Ord. No. 102, 12-15-75; Ord. No. 274, 6-5-78; Ord. No. R-190, 11-16-81; Ord. No. S-133, 10-21-85; Ord. No. T-155, 6-17-91)

Editor's Note – The referenced map is on file in the office of the City Clerk. A copy of the map appears in the Appendix at the end of this chapter.

Sec. 22-42. Chestnut Hill Historic District; established, boundaries.

(a) There is hereby established an historic district to be known as the Chestnut Hill Historic District, bounded and described as shown on the map entitled, "Chestnut Hill Historic District, March 19, 1991."

(b) As authorized by the General Court in chapter 49 of the Acts of 1996, the following definition of "exterior architectural features" shall control in the Chestnut Hill Historic District only:

Exterior architectural features: Such portion of the exterior of a building or structure as is open to view from a public street, public way, public park, public body of water or private way, 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 and the type and style of windows, doors, lights, signs and other appurtenant exterior fixtures.

(c) Notwithstanding the provisions of this section and section 22-40 in general and section 22-40(e)(i) in particular, the Chestnut Hill Historic District Commission may make only non-binding recommendations regarding changes to the exterior architectural features open to view from a private way of properties located on Essex Road and from Nos. 147 through 256 Chestnut Hill Road, with the following exceptions where such decisions of the commission shall be fully binding in the ordinary course:

- (1) demolition of a building or structure so long as such demolition occurs after such property ceases to be legally or beneficially owned by the owner of record as of the effective date of the 1996

amendment to Sec. 22-42;

- (2) any lot created by subdivision of such properties where its required frontage lies on a way whose properties are not then subject to such limited commission review;
- (3) any property where the legal or beneficial owner of record files with the city clerk a certificate indicating irrevocable consent on behalf of such owner and of successor owners to submit to the jurisdiction of the historic district commission and to be bound by its decisions, subject to any statutory rights of appeal;
- (4) all of such properties on Essex Road or on the portion of Chestnut Hill Road identified above, if at any time not less than seventy-two and one-half percent of the total number of owner-occupied properties on the specific road under consideration have been made the subject of a filing described in subsection (c), at which time the limits on commission review established by the above provisions shall lapse and shall not be reestablished for such specific road. It shall also be sufficient for such lapse to occur if the owner-occupants of all but four of the owner-occupied properties on the specific road under consideration have made the filing described in subsection (c).

(d) No owner of any property claiming the benefit of this exemption shall have standing as an aggrieved person for the purpose of appealing any decision of the district commission concerning property other than his own, other than a decision relating to changes to architectural features visible from a public way.

(e) The limited commission review herein established shall not affect the district commission's authority to regulate exterior architectural features open to view from a public street, way, park or body of water, even if such features are located on property containing exterior architectural features subject to such limited review, nor shall it affect the commission's authority under sections 22-60 et seq., and 22-50 of the Newton Revised Ordinances relating to landmark preservation and the demolition of structures, respectively. (Ord. No. T-155, 6-17-91; Ord. No. V-100, 12-16-96)

Editor's Note – The referenced map is on file in the office of the City Clerk. A copy of the map appears in the Appendix at the end of this chapter.

Sec. 22-43. Newtonville Historic District; established, boundaries.

(a) There is hereby established an historic district to be known as the Newtonville Historic District, bounded and described as shown on the map entitled “Proposed Newtonville Local Historic District,” prepared by Newton Geographic Information System (GIS), with a date of 12-Aug-2002. (Ord. No. X-29, 9-3-02)

Editor's Note – The referenced map is on file in the office of the City Clerk. A copy of the map appears in the Appendix at the end of this chapter.

Sec. 22-44. Auburndale Historic District; established, boundaries.

(a) There is hereby established an historic district to be known as the Auburndale Historic District, bounded and described as shown on the map entitled “Auburndale Proposed Local Historic District,” prepared by Newton Geographic Information System (GIS), with a date of January 05, 2005. (Ord. No. X-135, 03-21-05)

Editor's Note – The referenced map is on file in the office of the City Clerk. A copy of the map appears in the Appendix at the end of this chapter.

Secs. Reserved 22-45—22-49. Reserved.

Additional proposed language for possible inclusion into subsection (f): A commission may delegate to its chair, vice-chair, secretary or assigned staff person the power to issue certificates of non-applicability without a public hearing in situations in which an application does not include items which are subject to review by the commission.