

Demolition Delay and Historic Landmark City Ordinance Chapter 22,
Section 22-50, 22-60 through 75
Docket item #204-19 Background Notes from Kelley

From early May through August, I met with Newton architects, land use attorneys, City Councilors, residents, Historic Preservation, Planning and Law Dept. staff * to hear their thoughts about how Chapter 22 is working from their perspective.

There is general and overall agreement from these various users that an update of the Ordinance to ensure **consistent use of terminology and language** is in order. At the time of the July 18 meeting with Law Dept. staff, it was agreed that a fine-tooth comb approach to reading through the entire ordinance for such legal inconsistencies would be done by Jonah with Ali's approval.

I went section by section through the entire Ordinance with the attorneys, the architects and Katy Hax Holmes, collecting specific feedback about how each section is working from their view. Some of the key areas that should be addressed are mentioned below.

A short list of the key sections that were noted as needing review begin with the **makeup of the Newton Historic Commission members**, to **definitions, criteria, powers and duties**, should proof of receipt of **public notice** such as by certified letter to abutters be required and should the **City Councilors from the ward** in question be informed, that the **appeals process** by an "aggrieved party" is no longer being done through the Metropolitan Area Planning Council (MAPC) as stipulated (Sec. 22-40 (13)).

Starting with Sec. 22-38 Historical Commission (b) which lays out the **makeup of the Commission members**, all stakeholders noted that the current list of nominators is not updated nor being followed and needs updating. For instance, the Boston Society of Architects is not submitting names of nominees, nor is the Newton Board of Realtors. Suggestions included adding a CPC member, having a licensed and registered architect, a licensed real estate agent, and considering geographic distribution (for example now there are 3 members from West Newton Hill) across the city. Looking at the clause where if no nominations come forth then the Mayor may appoint members was also suggested.

Criteria for Determination 22-40 (g) has several aspects that would benefit from discussion. **Connected terminology** between the Demolition Delay Sec. 22-50 and the previous sections on Historical Commissions and Districts 22-38 through 49 will benefit from a thorough examination to determine when language ought to be the same, or different. Some language and definitions are purposefully carried over between sections, some may not apply to varying intentions.

“Historically significant” and “Preferably preserved” are terms that apply to historic districts in Division 2: Demolition Delay. Should these same standards apply to Division 3 Landmarks as well, or are there distinctions to be made? Does landmarking deserve a higher bar?

The **Administrative Review and Judicial Review**. Sec. 22-69 **Appeal process** has two steps for an aggrieved party. The first as I noted is to the MAPC, which is not interested in participating anymore. What other body than the MAPC would be appropriate?

The second level of appeal is to the Supreme Court for Middlesex County (which some consider to be onerous, time consuming, and expensive with a \$2500 cost?). The appeal process needs to be reconsidered. If the time frames stipulated are not met, what happens; does the aggrieved party prevail?

In terms of how a structure or landscape can be demolished or landmarked, if that property is not currently on the National Register of Historic Places, it must go before the Massachusetts Historic Commission (MHC) to be determined as eligible for the National Register. Right now the MHC has decided not to participate in weighing in on these requests from local historical commissions including Newton’s, so this crucial step in our Ordinance is not longer viable.

Division 3. Landmarks Sec. 22-60 through 70. Some **definitions need to be updated**, for instance “color of paint” should be deleted as Newton’s Historical Commission does not consider that to be an exterior feature they rule on.

Clarification in the **ambiguous wording** of who may nominate a structure or landscape to be landmarked is needed. Different stakeholders interpret the current wording differently; is it the listed people who can individually do it, or are they in addition to the others listed, for example?

“Members of the city council, the mayor, the director of planning and development, or the commissioner of inspectional services may, in addition, to the commission, nominate properties for designation by the commission...”. The attorneys are divided on how they read this section. Others ask if a Councilor from the ward in which the property lies should be required to join in, or is it fair to let a councilor from any ward nominate a property in another ward?

All buildings over **50 years** are now eligible to be considered. That is over 85% of Newton properties. Should that number change now that the ordinance has been in place for decades, and should it apply in all sections? Some argue that the criteria of being associated with a “famous architect” is difficult to agree on- what and who is “famous”?

Factors to be considered by the Commission Sec. 22-66. (c). It is currently stated that “The commission shall not make any recommendations or requirements except

for the purpose of preventing developments incongruous to the historical or architectural characteristics of a building, structure, landscape or site, or their surroundings.” Questions around this clause arose as to whether the intent is to prevent development or preserve.

There are many relatively **simple word changes** that can apply if determined to be the intention of the Ordinance, throughout the document for strength and clarity where appropriate, for instance “shall consider” may be changed to “shall incorporate”, etc.

These notes are but a hint of the many layers of multiple and repeating sections of Chapter 22 that would benefit from review and updating. To be brief, key areas to address include the composition of the NHC, who can nominate a property to be landmarked, what appeals processes are in place for owners, should the descriptions of demolition delay and historic landmarking be different, what organizations or bodies will substitute for the roles held by the MHC and MAPC, is 50 years still the right designation for “historic; to name a few.

Next steps may include one or two approaches.

1. The Law Department first takes a thorough look at conflicting and/or consistent and appropriate use of terminology and language to clean it up before the end of this term.
2. A more substantial revision that clarifies intention, appropriate and willing bodies for the designation and administrative review/appeal processes is created as a draft to come back before ZAP in December if possible.

A subcommittee consisting of myself, Jake Auchincloss, Susan Albright, Deb Crossley, Ted Hess-Mahan, with input from the Planning and Law departments is in place to take on the drafting of a proposed ordinance revision.

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